



# City of Morgan Hill

## Legislation Details (With Text)

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**Title:** IMPLEMENTATION OF A COMMUNITY CHOICE ENERGY PROGRAM

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**Indexes:**

**Code sections:**

**Attachments:** 1. FINAL DRAFT SVCCE Technical Study\_112515, 2. CCA Ordinance, 3. Ordinance Resolution, 4. Exhibit A Budget Scorecard.pdf, 5. Exhibit B JPA Agreement, 6. 29 Supplement 1, 7. 29 Supplement 2, 8. 29 Presentation

Date	Ver.	Action By	Action	Result
12/16/2015	1	City Council	accepted	Pass
12/16/2015	1	City Council	waived reading of the Ordinance	Pass
12/16/2015	1	City Council	introduced	Pass
12/16/2015	1	City Council	adopted	Pass
12/16/2015	1	City Council	appointed	Pass
12/16/2015	1	City Council	appointed	Pass

## CITY COUNCIL STAFF REPORT MEETING DATE: DECEMBER 16, 2015

**PREPARED BY:** Anthony Eulo, Program Administrator/Community Services Department  
**APPROVED BY:** City Manager

## IMPLEMENTATION OF A COMMUNITY CHOICE ENERGY PROGRAM

### RECOMMENDATION(S)

1. Accept the Silicon Valley Community Choice Energy Technical Study Draft Report;
2. **Waive the first and second reading of the ordinance;**
3. **Introduce the ordinance authorizing the implementation of a community choice aggregation program and the City's participation in the Silicon Valley Clean Energy Authority;**
4. Adopt resolution with the following actions:
  - a. Approving the "Joint Powers Agreement Establishing the Silicon Valley Clean Energy Authority,"
  - b. Finding that the proposed actions are exempt from the California Environmental Quality Act, and
  - c. Appropriating up to \$150,000 in recoverable seed funds in the FY 15/16 Environmental Programs budget; and
5. Appoint a member of the City Council to serve as a Director of the Authority and one additional

elected official or City staff member to serve as an alternate Director.

## **COUNCIL PRIORITIES, GOALS & STRATEGIES:**

### **Ongoing Priorities**

Protecting the environment

Maintaining fiscal responsibility

### **2015 Focus Areas**

Stimulate Economic Development

Participate in Regional Issues

### **REPORT NARRATIVE:**

Authorized by California law, Community Choice Energy (CCE) enables city and county governments to pool the electricity demand within their jurisdictions to directly procure or generate electrical power supplies on behalf of the residents and businesses in their communities. The main driver for interest in CCE programs in California is the opportunity to accelerate the shift to renewable and low greenhouse gas (GHG) emitting energy sources in support of climate action objectives. While electric supply is handled by the CCE program, the electricity grid and customer service remain with the incumbent utility, or PG&E in Santa Clara County. Three CCE programs now operate in California - Marin Clean Energy, Sonoma Clean Power and Lancaster Choice Energy.

The Morgan Hill City Council has considered this concept in the past and directed staff to work with other communities in Santa Clara County on the development of a program. If approved, the actions recommended for Council action in this report will result in the City officially joining the Silicon Valley Community Choice Energy program.

### ***The Partnership***

Spurred by discussions among elected officials at the Santa Clara County Cities Association, the Cities of Sunnyvale, Cupertino and Mountain View and the County of Santa Clara (for its unincorporated areas) contributed funding to a collaborative study. With each agency contributing \$80,000, the four agencies formed the Silicon Valley CCE Partnership (SVCCEP - [www.svcleanenergy.org](http://www.svcleanenergy.org) <<http://www.svcleanenergy.org>>), with each serving a project role as guided by executive leadership. Sunnyvale staff led the project team, and procured the consultant services needed to support the partnership and to conduct an initial assessment to assist decision-makers with determining whether and how to move forward with a CCE program. Cupertino led community outreach and engagement efforts outlined below. Mountain View is working to review financing options to cover anticipated program start-up costs and working capital requirements.

### ***Initial Study Results***

Based on the experiences of the Marin and Sonoma programs (launched in 2010 and 2014, respectively), the Assessment Report found that CCE programs offer many benefits and programs that can be designed to achieve a variety of public policy and program objectives. Both CCE programs offer electricity supply portfolios with lower GHG emissions than that of PG&E, with customer options for a standard service (with higher renewable energy ratios than PG&E) and a voluntary program to pay a moderate premium for 100% renewable energy supply. CCE programs also offer competitive rates. While they are careful to not promise to always have rates lower than PG&E, both programs are currently providing lower rates for baseline, greener electricity supply (e.g. 50 percent in Marin and 36 percent in Sonoma).

CCE programs can be designed to also achieve other climate action objectives. Local investments can be directed to incentivizing solar installations and energy conservation programs, in addition to promoting innovative approaches that incorporate new technologies. Both operating programs offer favorable terms for existing and new rooftop solar installations. Marin Clean Energy has invested in local and in-state renewable projects totaling more than 225 megawatts (MWs) of new clean power, and resulting in construction and related vendor jobs. In this way, CCE programs also provide local economic development benefits. Sonoma is taking a similar path and is also investing in an innovative 12 MW “floatovoltaic” solar array installation atop local irrigation ponds. Marin recently launched a partnership with Tesla to promote on-property battery storage. Marin also secured more than \$5M from state public purpose programming funds (paid by all electricity ratepayers) to expand their local energy conservation programs. As such, CCE programs offer strong opportunities to meet CAP objectives for energy conservation and local solar programs. Here in the South Bay, there is also enhanced potential for synergies with Silicon Valley technology companies.

Upon learning the positive results of the Initial Study, the four core agencies of the SVCCEP contributed additional funding to complete the attached Technical Study. Before proceeding with the Study, other Santa Clara County jurisdictions were invited to join the planning effort. Eight additional agencies, **including the City of Morgan Hill**, authorized the SVCCEP to include their community’s data in the Technical Study.

### ***Technical Study Findings***

In November 2014, the City of Sunnyvale on behalf of SVCCEP issued a Request for Qualifications for technical services to complete a Technical Study for purposes of describing the potential benefits and liabilities associated with forming a CCE program in Santa Clara County. Following the outcome of the Initial Assessment Report and Council’s budget authorization for continued CCE efforts, the Partnership hired Pacific Energy Advisors (PEA) to complete this work. PEA has extensive experience in CCE program development in California and has supported the launch of all three operating CCE programs (Marin, Sonoma, and recent program in Lancaster). The attached final report reflects the results of PEA’s comprehensive analysis, which addresses prospective CCE operations under a range of scenarios over a ten-year planning horizon, including the identification of anticipated rate/cost impacts, environmental benefits, resource composition and economic development amongst other considerations. A summary of this report is provided below.

- **SVCCE’s Prospective Customers:** Currently, Pacific Gas & Electric (“PG&E”) serves approximately 240,000 customer accounts within communities of the CCE Study Partners, representing a mix of residential (≈90%) and commercial (≈10%) accounts. These customers consume nearly four (4) billion kilowatt hours (“kWh”) of electric energy each year. While the majority of customers fall under the residential classification, such accounts historically consume only 34% of the total electricity delivered by PG&E while commercial accounts consume the remaining 66%.
- **SVCCE Supply Scenarios:** For purposes of the Study, PEA and the CCE Study Partners identified three indicative supply scenarios, which were designed to test the viability of prospective CCE operations under a variety of energy resource compositions, emphasizing the SVCCE Partnership’s interest in significantly reducing greenhouse gas emissions (“GHGs”) through increased use of carbon-free electric energy sources.
  - **Scenario 1:** Match the incumbent investor-owned utility’s (“IOU”), Pacific Gas & Electric Company (“PG&E”), projected greenhouse gas emissions (“GHGs”) profile while exceeding

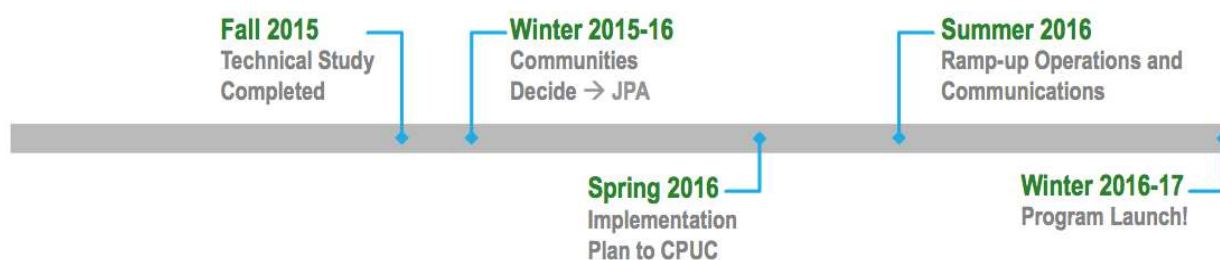
- PG&E's projected renewable energy content.
- **Scenario 2:** Exceed applicable renewable energy procurement mandates by providing SVCCE customers with a minimum 51% renewable energy content in year one of program operations, scaling up to 66% in year 10, while also promoting a 20% reduction in electric energy sector GHG emissions relative to PG&E's projected emissions profile by procuring additional GHG-free energy products.
- **Scenario 3:** Maximize renewable energy and GHG-free power supplies while maintaining general parity with PG&E's projected electric rates throughout the Study period.
- **Projected SVCCE Impacts:** Based on current market prices and various operating assumptions, the Study indicates that SVCCE demonstrates the potential for customer cost savings, significant GHG reductions and economic benefits, as outlined below:
  - **Cost Savings:** Scenarios 1 and 2 demonstrate the potential for customer cost savings ranging from 1% to 5%, relative to projected PG&E rates, over the ten-year study period. Scenario 3, which was designed to maximize clean energy deliveries to SVCCE customers, maintains general rate parity with PG&E.
  - **Environmental Benefits:** Scenario 1, which was specifically designed to match the incumbent utility's projected GHG emissions profile, did not yield any expected emissions savings. Supply Scenario 2, which was framed to achieve specified proportionate GHG emission reductions of at least 20% relative to the incumbent utility, resulted in annual emissions *reductions* ranging from approximately 38,000 (Year 1 impact) to 82,000 (Year 10 impact) metric tons. Scenario 3 yielded the most significant emissions benefits - annual projected emissions *reductions* ranged from approximately 112,000 (Year 1 impact) to 352,000 (Year 10 impact) metric tons, a proportionate annual GHG reduction ranging from 60% (Year 1 impact) to 86% (Year 10 impact) relative to PG&E's projected emission profile.
  - **Economic Benefits:** The prospective SVCCE long-term contract portfolio includes approximately 340 MW of new generating capacity, all of which is assumed to be located within California and some of which may be located within communities of the CCE Study Partners. Based on widely used industry models, such projects are expected to generate up to 11,000 construction jobs and as much as \$1.4 billion in total economic output. Ongoing operation and maintenance ("O&M") jobs associated with such projects are expected to employ as many as 185 full time equivalent positions ("FTEs") with additional annual economic output approximating \$30 million. SVCCE would also employ a combination of staff and contractors, resulting in additional ongoing job creation (up to 30 FTEs per year) and related annual economic output ranging from \$3 to \$9 million.
- **Risks and Sensitivity Analysis:** Sensitivity analyses were performed by PEA to examine the range of impacts that could result from changes in the assumed base case. The key variables examined are: 1) power and natural gas prices; 2) renewable energy prices; 3) low carbon energy prices; 4) PG&E rates; 5) PG&E surcharges; and 6) customer participation/opt-out rates. Additionally, a "small JPA" sensitivity case was run reflective of minimal community participation in the SVCCE joint powers agency to test the viability of a much smaller CCE program, and a "perfect storm" sensitivity was run to examine the cumulative impacts of adverse changes to the key variables. The sensitivity analysis produced a range of levelized electric rates for the CCE program and PG&E.

The Technical Study also highlights risks that may be faced by the CCE program as well as related risk-mitigation measures, including, but not limited to, the following:

- Financial risks to SVCCE's member municipalities in the unlikely event of CCE failure;
- Financial risks that may exist in the event that procured energy volumes fall short of or exceed actual customer energy use;
- Reasonably foreseen legislative and regulatory changes, which may limit a CCE's ability to remain competitive with the incumbent utility;
- Availability of renewable and carbon-free energy supplies required to meet compliance mandates, SVCCE program goals, and customer commitments; and
- General market volatility and price risk.

### ***Timeline & Next Steps***

The graphic below provides a high level summary of the main steps involved in forming a CCE program that culminates in the provision of service to enrolled customers. Key implementation activities envisioned for SVCCEP include those related to 1) CCE entity formation; 2) regulatory requirements; 3) procurement; 4) financing; 5) organization; and 6) customer noticing.



#### **• JPA Formation:**

#### **December 2015 - March 2016**

Unless the municipal organization that will legally register as the CCE entity already exists, it must be legally established. Municipalities electing to offer or allow others to offer CCE service within their jurisdiction must do so by ordinance. The two existing multi-jurisdictional CCE programs each employ a Joint Powers Authority structure for program governance. Such a structure offers centralized administration of the operations and typically representation from each community on the Board of Directors. The JPA structure also offers a legal and fiscal firewall so that the assets and liabilities of the CCE program are completely separate from the general funds of member cities.

Over the past year, the project team facilitated the development of a governance structure for a CCE program, engaging all twelve agencies in this process. The results of this effort are embodied in the attached JPA Agreement. This effort was facilitated by Greg Stepanicich, Esq. (of Richards Watson and Gershon) who supported the launch of Marin Clean Energy. The JPA documents developed for the “Silicon Valley Clean Energy Authority” build from those of the two existing programs, which also have many similarities, with Sonoma having used the Marin agreement as a model for its own structure. Key features of the Silicon Valley Clean Energy Authority Agreement include the following:

- **Effective Date (2.1) & Initial Participants (2.2)** - The Agreement becomes effective on or prior to March 31, 2016 if executed by at least three Initial Participants after the adoption of Ordinances as required by the Public Utilities Code.
- **Purpose (2.4)** - To study, promote, develop, conduct, operate and manage energy and energy -related climate change programs
- **Board of Directors (4.1)** - The Board is comprised of one Director from each Party. The

governing body of each Party appoints a regular Director (from among the governing body) and an alternate (which need not be from among the governing body).

- **Board Voting (4.9)** - actions of the Board on all matters shall require an affirmative vote of a majority of all Directors on the entire Board, unless a supermajority is specified. Two or more Directors may request that a voting shares vote also be held (4.9.2) which is based upon the Party's proportional annual energy use (4.9.3). In such cases, both the vote by Directors and the voting shares vote must be affirmative for an action to be approved by the Board.
- **Funding of Initial Costs (6.3.2)** - In the event that the CCE Program becomes operational, these Initial Costs paid by the Initial Participants shall be reimbursed by the Authority within four years of the Effective Date.
- **Withdrawal (7.1)** - The agreement provides opportunities for a Party to withdraw and describes their ongoing obligations and liabilities where applicable. Such obligations can include losses to the Authority for the power contracted to serve a Party's jurisdiction. An additional provision for early withdrawal allows that a Party may withdraw should be procurement process not yield successful results (cleaner energy for rates at or below that of PG&E).

The Board of Directors is targeted to have its first meeting in April 2016.

- **Regulatory Compliance: January 2016 - November 2016**

Before aggregating customers, the CCE program must meet certain requirements set forth by the California Public Utilities Commission (CPUC). In the case of SVCCE, an Implementation Plan must be adopted by the JPA, and that Implementation Plan must be submitted to the CPUC. The Implementation Plan must include the following:

- An organizational structure of the program, its operations, and its funding;
- Ratesetting and other costs to participants;
- Provisions for disclosure and due process in setting rates and allocating costs among participants;
- The methods for entering and terminating agreements with other entities;
- The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures;
- Termination of the program; and
- A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

A Statement of Intent must be included with the Implementation Plan that provides for: universal access, reliability, equitable treatment of all classes of customers, and any requirements established by law or the CPUC concerning aggregated service. The CPUC has 90 days to complete a review and certify the Implementation Plan. Following certification of the Implementation Plan, the CCE entity must submit a registration packet to the CPUC, which includes:

- An executed service agreement with PG&E, which may require a security deposit; and
- A bond or evidence of sufficient insurance to cover any reentry fees that may be imposed against it by the CPUC for involuntarily returning customers to PG&E service. The current CCE bond amount is \$100,000.

The CCE program would be required to participate in the CPUC's resource adequacy program before commencing service to customers by providing load forecasts and advance demonstration of

resource adequacy compliance. More specifically, a start-up CCE program would be required to file a formal load forecast with the CEC upon execution of a primary supply contract, which triggers a 100% commitment to program launch.

- **Procurement: May 2016 - November 2016**

Power supplies must be secured several months in advance of commencing service. Power purchase agreements, with one or more power suppliers, would be negotiated, typically following a competitive selection process. Services that are required include provision of energy, capacity, renewable energy and scheduling coordination.

- **Financing: April 2016 - October 2016**

Funding must be obtained to cover program and Agency start-up activities and working capital needs. Start-up funding is typically secured early in the implementation process, as these funds are needed to conduct due diligence, planning and program development, and other critical activities leading up to service commencement. Working capital lender commitments should be secured well in advance, but actual credit drawdown need not occur until 4-6 months prior to program launch and customer enrollment.

- **Organizational Formation: April 2016 - February 2017**

Initial staff positions would be filled several months in advance of service commencement to conduct the implementation process. On an interim basis, Parties are envisioned to provide some functional services to the JPA under separate service agreements. Initially, internal staff of the CCE program may be relatively small but this would likely change in the event that the CCE determines to insource various administrative and operational responsibilities and/or develops and administers new programs for its customers. Contracts with other service providers, such as for data management services, would be negotiated and put into effect well in advance of service commencement.

- **Community Engagement & Customer Noticing January 2017 - ongoing**

If authorized by agency's elected bodies to move forward into SVCCE's pre-launch activities, the partnership will intensify its outreach efforts. By law, every customer being enrolled into the CCE program must receive a minimum of four written notifications. For study purposes, the Technical Feasibility Study assumes that customers will be enrolled three phases, each comprising a third of the total customer base, over a 25-month period. Such notices must contain program terms and conditions as well as opt-out instructions and must be sent to prospective customers at least twice within the sixty-day period immediately preceding automatic enrollment. These notices are referred to as "pre-enrollment" notices. Two additional "post-enrollment" notices must be provided within the sixty-day period following customer enrollment during the statutory opt-out period. This costly direct mail campaign will also be paired with more cost-effective social media, collateral development, traditional advertising, and grassroots organizing (e.g. tabling at farmers markets, festivals, etc.). The partnership's cost-share proposal (JPA Agreement, Exhibit E) anticipates these approaches, which will be assimilated into a next-phase Outreach Plan, should participation in the JPA be approved.

- **Ratesetting & Program Development: November 2016 - ongoing**

As a California CCE, SVCCE would have independent ratesetting authority with regard to the electric generation charges imposed on its customers. Prior to service commencement, SVCCE would need to establish initial customer generation rates for each of the customer groups represented in its first operating phase or for all prospective customers within the CCE's prospective service territory.

SVCCE may decide to create a schedule of customer generation rates that generally resembles the current rate options offered by PG&E as has been the case with existing programs. This practice would facilitate customer rate comparisons and should avoid confusion that may occur if customers were to be transitioned to dissimilar tariff options. SVCCE would need to establish a schedule for ongoing rate updates and changes for future customer phases and ongoing operations.

SVCCE may also choose to offer certain customer-focused programs, such as Net Energy Metering (NEM), voluntary green pricing and/or feed-in tariff (FIT) programs, at the time of service commencement. To the extent that SVCCE intends to offer such programs, specific program design would need to be done in advance of service commencement.

### **COMMUNITY ENGAGEMENT:       Involve**

There have been three community workshops held in South Santa Clara County on the development of the SVCCE. If the Council chooses to proceed with the program, each energy customer included in the program will be sent four different notices providing them with an opportunity to opt out of the program, if they so choose to do so, as well as informing them about opportunities that they have to specify their preference for a greener energy mix for their particular account.

### **ALTERNATIVE ACTIONS:**

The Council could choose to delay action on this item at this time, direct the staff to develop or evaluate a different CCE program, or to suspend the City's consideration of CCE at this time. If the Council desires additional information before acting, delaying action until early 2016 would still enable to City to become one of SVCCE's "Initial Participants." After March, 2016, it will likely be possible to join SVCCE, however, there may be additional costs associated with joining at that time. Considering a different CCE program may be possible, as new CCE's are forming, however the impacts of doing so are undetermined at this time. Suspending action at this time would result in the City's power mix continuing to be solely based on PG&E's energy procurement without any formal way for the City to influence the "greenness" of the power supplied to the community.

### **PRIOR CITY COUNCIL AND COMMISSION ACTIONS:**

In recognizing the benefits associated with CCE power, the City Council expressed strong support for a CCE program at its Environmental Workshop in October, 2014. With this direction, City staff have continued to evaluate CCE options and included a CCE program in the City's FY 15/16 workplan.

### **FISCAL AND RESOURCE IMPACT:**

The Technical Feasibility Study concludes that ~\$2.9M would be needed to support the development of SVCCEP, inclusive of initial staff hires, implementation plan development, procurement, community outreach, utility bond requirement, and the initial customer notification and enrollment process. A summary of program cost components is shown below. The JPA will refine these estimates after formation.

<b>Cost Item</b>	<b>Amount</b>
Internal Staff	\$730,000
Technical Consulting and Legal Services	\$620,000
Marketing and Communications	\$280,000
Customer Noticing and Mailers	\$120,000
Security Deposits	\$40,000



Miscellaneous Administrative and General	\$95,000
CCE Bond	\$100,000
Debt Service	\$720,000
Other Pre-launch Activities	\$180,000
<b>Total</b>	<b>\$2,885,000</b>

It is intended that approximately \$2M of this amount will be funded by contributions from participating jurisdictions (shown as Initial Costs in Exhibit E of the JPA Agreement) with the remaining \$900,000 financed through a bank line of credit or municipal term loan. Note that these initial can be recovered over a period time from the operating revenue of CCE program if launched.

Up to now, the Partnership efforts have been funded by the Cities of Cupertino, Mountain View, and Sunnyvale and County of Santa Clara, with each contributing a total of \$170,000 to date. These four lead agencies are envisioned to contribute an additional \$350,000 to support program launch with an additional \$100,000 being requested as a contingency to supplement the Initial Costs of the JPA should multiple parties decline to join. The JPA also requires funding contributions from the other eight Initial Participants in lesser amounts.

The amount requested from Morgan Hill is a base amount of \$100,000 with an additional \$50,000 being requested as a contingency to supplement the Initial Costs of the JPA should multiple parties decline to join. As stated above, these costs can ultimately be recovered within the first two years of the program from CCE operating revenues. Since this is considered an advance, there is no impact to fund balance. However, there would be a future impact if the advance is not repaid.

In addition, the JPA will require operating capital and significant credit capacity for its initial power supply contract. The amount is currently projected between \$10M-\$15M and will depend on the size of initial program roll out. This credit requirement may be met through a bank or municipal term loan, with a repayment/refinancing period of 3-5 years. It is important to note that a portion or all of the initial loan amount will require a credit guaranty, most often provided by a single or multiple member agencies of the JPA. This guaranty stays in place until the program is operational, revenues begin flowing into JPA, and the creditor removes the guaranty requirement. The process for identifying potential banking partners and securing working capital and the necessary credit for the first energy contract is beginning under the direction of the current Partnership for presentation and decision making by the JPA Board.

Beyond the costs associated with forming and operating Silicon Valley Clean Energy, it should be noted that, based upon the scenarios provided in the Technical Study, this program has the potential to reduce operational costs for its member agencies, in addition to the community at large. Should Scenario 2, which offers a modest 3% savings/year over PG&E rates, be achieved by the program, the City of Morgan Hill could save up tens of thousands of dollars annually on its electricity bills.

### **CEQA (California Environmental Quality Act):**

Not a Project

This action is not a “CEQA project” since this action involves organizational and administrative activities of government that will not result in direct or indirect physical changes in the environment.

**LINKS/ATTACHMENTS:**

1. Technical Study
2. Ordinance
3. Resolution
4. Budget Scorecard
5. JPA Agreement