

Orange County Power Authority:
Come Clean



GRAND JURY 2021-2022

ORANGE COUNTY POWER AUTHORITY: COME CLEAN

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SUMMARY

With start-up funding from the City of Irvine, the Orange County Power Authority (OCPA) was formed to provide customers with an alternative power provider that offers higher levels of ‘cleaner’ or ‘greener’ electric power than default levels offered by current providers, Southern California Edison (SCE) and San Diego Gas and Electric (SDGE). OCPA has just begun serving commercial customers and will add residential customers in its member communities which currently consist of Irvine, Huntington Beach, Fullerton, Buena Park, and all unincorporated areas of Orange County.

The Orange County Grand Jury (OCGJ) endorses OCPA’s mission and wants to see it flourish. The citizens of Orange County deserve and will benefit from sustainable energy. However, no matter the mission of a public agency, the ability to see how that agency operates and utilizes public funds is of paramount importance. The OCGJ began its investigation into OCPA in response to significant public discussion and criticism regarding OCPA’s formation and activities, some of which came from the very individuals who had ardently supported green energy, community choice energy feasibility studies, and the inception of OCPA.

Since the OCGJ initiated its investigation in 2021, OCPA has made significant improvements in terms of transparency. Specifically, beginning in February 2022, more information can be found on the OCPA website, and OCPA Board of Directors (Board) meeting minutes and videos, which had been removed from the site, were restored. In addition, the Community Advisory Committee meeting videos appeared for the first time. While the OCGJ applauds these improvements, certain critical changes have not taken place. As of early April 2022, past the start date for commercial customers, neither the OCPA notices that were required to be mailed to customers, nor the OCPA website, contained any direct mention of the increased charges that would be incurred due to the default ‘green energy’ tiers selected by member cities for their businesses and residents. OCPA continues to be reluctant to share information requested by the OCGJ, the public, and OCPA member cities.

In recognition of the fact that OCPA manages a very large budget and commits to long-term power contracts worth hundreds of millions of dollars, the OCGJ is particularly concerned that OCPA is operating without in-house leadership with sufficient expertise to oversee the very complex decisions involved in energy planning and transactions.

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BACKGROUND

The concept of Community Choice Aggregation (CCA) was developed to provide a higher level of ‘green energy’ and support the reduction of greenhouse gases. Instead of carbon-based energy, as an energy purchasing agency, a CCA can selectively purchase power from organizations that provide higher percentages of ‘green power’ than currently mandated in many states, albeit sometimes at a higher price per kilowatt hour (kWh) than ‘baseline’ energy with carbon-based components.

CCA, interchangeably known as Community Choice Energy (CCE), was enabled in California in 2002 by AB117, which authorizes government entities (such as cities or joint powers authorities) to purchase and/or generate electricity for residents, businesses, and municipal facilities. The CCE becomes the energy provider in place of a privately held Investor-Owned Utility (IOU) such as Southern California Edison or San Diego Gas and Electric. Interestingly, the IOU is still required to provide the distribution system, meter reading, and billing services to the CCE. Energy generation charges are separately itemized on the customer’s bill. CCEs are subject to California Public Utilities Commission (CPUC) regulations and oversight, even though the CCE is a government entity.

CCEs are required by the CPUC to meet the same energy requirements as IOUs in terms of power quality, power reliability, and resource adequacy (i.e., they must maintain access to 115 percent of maximum expected load). Since most CCEs do not generate electricity, they rely upon the open energy market to purchase power. Power purchases must be made well in advance of need to avoid last minute, on-the-spot purchases (spot market) that are typically extraordinarily expensive and can rapidly deplete CCE cash reserves. The energy market is extremely complex and requires detailed knowledge of its rules and subtleties. Most start-up CCEs have experienced Chief Executive Officers and initially hire contractors to schedule and purchase power until the CCE is able to employ qualified staff with the knowledge and experience to meet the CPUC’s strict requirements.

Joint Power CCE’s in Southern California

Formation of California CCEs began in 2010. By year-end 2021, 23 California CCEs were in operation serving 11 million customers.¹ Many of the first CCEs in California started in Northern California and have been able to offer their customers financial savings in the purchase of

¹ CalCCA, a CCE advocacy group; <https://cal-cca.org>.

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energy. CalCCA has reported that CCE customers collectively saved about \$90 million on energy bills in 2018 compared to IOU counterparts.²

One CCE, Western Community Energy (WCE), filed for Chapter 9 bankruptcy in June 2021, approximately one year after its launch of service. At the time of its bankruptcy, WCE served 113,000 customers in six cities within Riverside County and had accumulated debt of \$100 million with less than \$50 million in available assets. A combination of an unexpectedly high level of customer defaults (blamed on COVID) and an extreme heat wave in August 2020 are the reasons attributed to the bankruptcy.

Roots of the Orange County Power Authority

Starting in 2018, the Cities of Huntington Beach and Irvine began conducting feasibility studies related to CCEs and their potential benefits. While Huntington Beach deferred further action, the City of Irvine continued with additional research. Based on the results of its feasibility study, around July 2020, Irvine moved forward by contracting with a team from the law firm of Best Best & Krieger (BBK). OCPA was formed pursuant to a Joint Powers Agreement (JPA) in November 2020. Five member cities signed onto the JPA: Irvine, Huntington Beach, Buena Park, Fullerton, and Lake Forest. Lake Forest later dropped out of membership. A number of other cities were approached and declined to join, deciding to “wait and see.”

Initially, the City of Irvine committed \$250,000 in formation costs. It pledged another \$2.5 million for start-up costs, along with \$5 million in “launch costs” and/or collateral for the loan OCPA would need to secure in order to purchase power needed initially.³ To date, Irvine has invested some \$7.5 million, which will be repaid beginning in 2027 assuming the CCE remains viable.⁴ Other member cities do not bear any such liability risk.

In December 2020, the newly formed OCPA began to hold Board of Director meetings. The Board consisted of one delegate from each of the member cities and two delegates from the City of Irvine. In November 2021, the Orange County Board of Supervisors voted to join OCPA on behalf of all unincorporated areas within Orange County, which added a County Supervisor to the OCPA Board.

In April 2022, OCPA began providing power to commercial customers in Irvine, Huntington Beach, Buena Park, and Fullerton. OCPA plans to begin providing power for residential

² *Ibid.*

³ OCPA Joint Powers Agreement, page 20.

⁴ *Ibid.*, pages 20-21, and Exhibit A.

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customers in these cities in October 2022. It is expected that Orange County unincorporated areas will start receiving power from OCPA in 2023.

REASON FOR THE STUDY

In Orange County, ardent supporters of CCEs began voicing criticisms and concerns about OCPA due to their lack of confidence in its leadership and a general lack of transparency in its operation. Various news articles, including reports that advocates of CCEs were advising cities not to join OCPA, prompted the OCGJ to investigate further.⁵

METHOD OF STUDY

- Interviews with OCPA Board members, OCPA staff, OCPA contractors, city council members, city managers, Community Advisory Committee (CAC) members, and members of the community.
- Review of state and local laws and regulations.
- Review of OCPA member websites, staff reports, agendas, and meeting recordings.
- Review of California Public Utilities Commission websites, rules, and regulations.
- Review of OCPA's website, contracts, proposals, written communications, financial records, reports, and OCPA Board meeting videos, agendas, and minutes.
- Website information for other CCEs in California and news articles.

INVESTIGATION AND ANALYSIS

Rocky Start for OCPA

Government agencies at all levels typically follow a strict set of rules related to filling open staff positions. These frequently include the use of recruiting firms for senior positions. For example, County executive job descriptions normally include the requirement of an advanced degree or significant managerial experience in the relevant field. According to OCPA's published implementation plan dated December 28, 2020, three months were allocated to find and hire an

⁵ See, e.g., Voice of OC, "Laguna Beach to Study Leaving Edison for Renewable Energy," July 14, 2021; Voice of OC, "OC Power Authority to Rewrite Conflict of Interest Code Without Fixing Transparency Concerns," Aug. 2, 2021; Irvine Watchdog, "Orange County Power Authority Unable to Properly Manage Basic Duties," Oct. 12, 2021.

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Executive Director.⁶ OCPA Board members were sworn in immediately before the inaugural Board meeting on December 16, 2020. During that meeting, the Board appointed an attorney from BBK as part-time General Counsel to OCPA.⁷ The newly appointed General Counsel presented the Board with a job description and a single candidate each for the positions of Chief Executive Officer (CEO) and Chief Operating Officer (COO).

Inexplicably, the position descriptions for COO and CEO were not made publicly available prior to the hiring decision. The job descriptions also lacked any requirement for prior education, experience, knowledge of the electrical utility or energy industries, or CCEs. Recruiting efforts were minimal at best, despite these public positions being highly demanding and very well compensated. This is not consistent with best practices. The positions require the public's trust and, preferably, prior familiarity with CCEs. With no other candidates to consider, the Board voted to approve hiring of the CEO and COO on January 12, 2021. The CEO began working immediately, while the COO began employment in March. A Chief Financial Officer (CFO) was hired about nine months later in October 2021.

The COO had a strong and extensive background in the clean energy field and municipal participation in that field,. Despite her job description, the COO was not given a role in the process of vetting, retaining, or working with outside contractors critical to OCPA's operations. The COO resigned from OCPA on December 3, 2021, after less than a year of service. In the meantime, the CEO, who had virtually no employment experience with CCEs or energy purchase and trading prior to joining OCPA, was left in charge with a \$34 million budget, significant signing authority, little meaningful oversight, and no OCPA governing bylaws. The CEO's duties are determined by the Board.⁸ However, after the COO resigned, Board members and the CEO maintained conflicting opinions about whether a replacement should be hired, who had the authority to make that decision, and who would interview and hire the replacement.⁹ With so much authority bestowed on the CEO, the OCGJ is concerned about what it found to be a continuing pattern of failing to follow best hiring practices.

⁶ EES Consulting, Inc., *CCE Feasibility Study and Technical Assessment*, January 16, 2020, Appendix A;. OCPA Community Choice Aggregation Implementation Plan and Statement of Intent, December 28, 2020, refers to an "interim" Executive Director having been appointed on December 16, 2020., which is the date of the inaugural OCPA Board Meeting. There is no mention of any such interim appointment in those or any other OCPA Board meeting minutes.

⁷ The General Counsel also serves other clients, including as General Counsel to other CCEs such as San Diego Community Power, Desert Community Energy, and Butte Choice Energy Authority.

⁸ OCPA Joint Powers Agreement, Section 3.12, November 20, 2020.

⁹ As of the date of this Report, the COO had not been replaced.

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Financial Risks and Oversight Concerns

Newly formed CCEs enjoy an initial advantage because their commercial and residential customers are automatically enrolled in their programs. OCPA is in a particularly good position because three of their four member cities chose the 100 percent tier level, which is the most financially beneficial for OCPA and its member cities. However, power purchase agreements may be negotiated as much as twenty years in advance. If its customer opt-out rate increases, a CCE may be holding power contracts that have to be sold quickly on the spot market, which could result in unanticipated profits or losses. Therefore, good decisions need to be made early; long-term stability depends on carrying out the best strategic plan possible in a very volatile market.

As an illustration of the volatility of the energy market, a 2022 study by LevelTen Energy found that “a shortage of new renewable projects available to interested buyers has caused prices for power purchase agreements to rise 9.7 percent since the beginning of 2022, and 28.5 percent since the beginning of 2021.”¹⁰ Therefore, it is not surprising that the OCPA mid-year budget reported an increase of projected energy costs to be “\$14.2 million higher than expected due to higher market prices” and the member city tier level choices.¹¹

OCPA has been faced with purchasing short and long-term energy contracts at a time when rates are historically high. OCPA has reportedly committed over \$500 million dollars towards power deliveries through its contractor, Pacific Energy Advisors (“PEA”). PEA purchases power on behalf of a number of CCEs throughout the state. Due to the complexity and potential liability associated with these purchases, having experienced in-house positions or traders that oversee their short and long-term strategy and contracts is critical. This has not happened at OCPA.

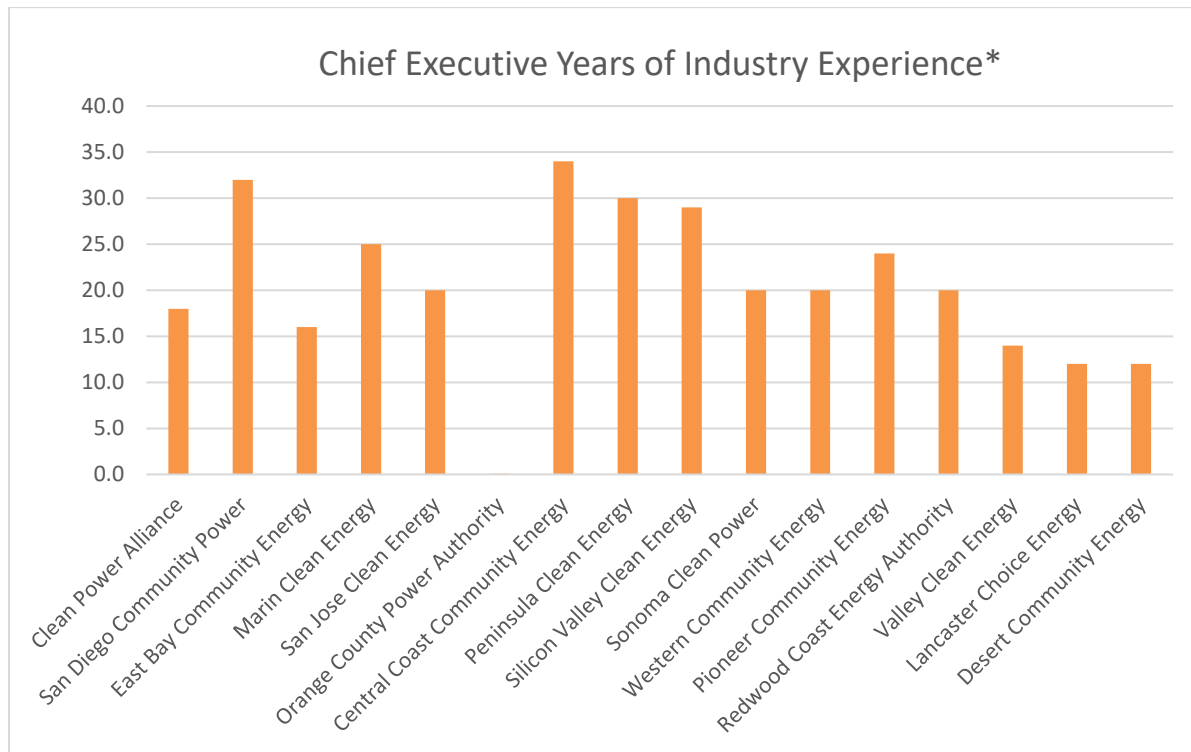
OCPA Board members and staff have purportedly been in search of a Director of Power Purchases since OCPA’s inception, but no one has been hired to fill that position. The OCGJ is concerned that the CEO and Board members provided not only different opinions about whether the position would be filled, but also who has the power to make that hiring decision.

With respect to the CEO position, other California CCE’s have employed leaders with years of experience in the energy industry, as illustrated in the following comparison chart:

¹⁰ Utility Drive, Penrod, E., *PPA Prices Rise 28.5 percent as Supply and Regulatory Challenges Pile Up*, April 13, 2022.

¹¹ OCPA Fiscal Year 2021-2022 Mid-Year Operating Budget Amendment (Staff Report Item 5.2, March 1, 2022).

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*At time of hire.

At OCPA, the CEO has nearly unchecked authority over an annual budget exceeding \$34 million, power purchasing decisions, and the selection and oversight of all contractors. This is no small matter. Requests seeking the amount that had been committed to power contracts went unanswered until April 2022, when it was disclosed in a public meeting that the figure was “*in excess of a half a billion dollars.*”¹²

In addition to the CEO’s responsibility for implementing OCPA’s overall vision, this agency, which relies almost exclusively on contractors, must also have personnel with the appropriate technical knowledge and experience to provide meaningful oversight of those contractors. Contractors have been given the responsibility for power purchases, data analysis and management, marketing and communications, management consulting, public relations, customer service, legal services, and industry lobbying. This reliance on contractors comes at a significant cost to OCPA.¹³

¹² April 5, 2022, OCPA Board Meeting.

¹³ OCPA Fiscal Year 2021-2022 Mid-Year Operating Budget Amendment (Staff Report Item 5.2, March 1, 2022).

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OCPA cannot claim it has effective oversight of its contractors with a CEO who had no prior relevant energy industry experience, no COO, no Director of Power Purchases, and no other senior level employee with the appropriate expertise for hands-on oversight.

As a safeguard to this and other potential risks, and as a standard practice for CCEs, OCPA adopted Policy No. 9, the Energy Risk Management Policy. Section 7.2 of that policy requires that the Board establish a Risk Oversight Committee (ROC) prior to the commencement of retail electric service. Among other duties, the ROC is charged with reviewing trading transactions and supply contracts and reporting their findings to the Board regarding OCPA's adherence to risk management policies. Once again, the CEO is provided exclusive powers when it comes to oversight. The CEO is charged with selecting the ROC members and scheduling those meetings, which are to take place at least quarterly. To date, after over half a billion dollars has been committed to power purchases and commercial service has begun, there is no public record that the ROC has been formed.

At OCPA's inception, concerns were raised about the aggressive timeline in place to start service relative to other CCE start-ups. With only fifteen operational months before the commercial service date of April 1, 2022, the pressure was on to meet the CPUC resource adequacy power purchase requirements without overpaying. As it turns out, in November 2021, OCPA sent a request to the CPUC requesting a waiver of the 2022 year-ahead local resource adequacy requirements. On January 22, 2022, the CPUC granted the waiver based on OCPA's reasonable and good faith efforts to contract for the required amounts.

However, during the May 3, 2022, OCPA Board Meeting, the Board went into closed session to discuss the CPUC's assessment of a Resource Adequacy (RA) fine. According to the CPUC website, OCPA has been assessed an RA fine of \$1,962,845. The OCPA Board has appealed this fine. It should be noted, however, that according to the CPUC listing, out of the 117 RA fines that have been imposed since 2009, only one appeal resulted in a dismissal while two others resulted in a fine adjustment. Including OCPA, only six of the 117 fines listed exceeded \$1.5 million, one of which was Riverside-based Western Community, the CCE that went into bankruptcy. The legal costs and time that will be required to address this fine is unknown. It is incumbent upon the Board to determine the root cause of this problem and take steps to avoid similar issues in the future.

The Importance of Transparency

CCEs are public agencies subject to the Brown Act and the Public Records Act. Board meetings are open to the public. CCEs produce financial reports on an annual basis subject to third-party audit.

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Transparency, particularly financial transparency, helps keep corruption in check, bolsters public confidence in government, and promotes fiscal responsibility. In the case of OCPA, a hint to the attitude of the CEO and OCPA Board Chair is reflected by the Chairman's comment in the December 21, 2021, special meeting of the Board when the Chair stated, "We're not a typical agency; this is about as private as a public agency can get."¹⁴ *OCPA is not a private agency.* According to the California Public Utilities Commission (CPUC) website:

The Public Records Act broadly defines "public records" to include written and recorded records, unless the Public Records Act or other law exempts the records from disclosure. Pursuant to Government Code section 6252(e), public records "includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." . . . The Public Records Act provides for public access to records the CPUC generates, as well as records created by others that the CPUC has in its possession.

While there is a long list of exceptions to public disclosure in the Public Records Act, none of those exceptions broadly applies to public agency budgets, financial statements, or audits.

Until at least March 2022, after more than a year in operation and unlike other CCE's, OCPA did not have budgets, financial statements, or rate comparisons published on its website. OCPA was reticent in providing this information when it was requested, and this documentation only appeared on the OCPA website after the OCGJ investigation and interviews were underway. Even as of April 2022, the website failed to clearly state the rate differences that would be imposed upon commercial and residential customers and made no direct mention of the increases customers would be paying based on their automatic opt-in to the program.

In addition, as of June 2022, no governing bylaws have been adopted. Such bylaws can be important in establishing internal procedures, such as approval processes, and clarifying what has not been spelled out in the formation documents. For example, the JPA's provision describing a Board member's term of office can, and has been, interpreted in two ways by different Board members and OCPA. Each city is assigned a sitting council member to represent it on the Board

¹⁴ December 21, 2021, Special Meeting of the OCPA Board, at 1:15-1:20. The Chairman is responding to a public speaker who objected to the benefits package offered to senior OCPA staff members. The speaker noted that each of the employee benefits (high salary, 300 hours of annual paid time off, monthly car allowance of \$500, retirement contributions, etc.) seemed out of scale to what public employees normally earn, even if it is a hybrid public agency. Not surprisingly, the Minutes of this Board Meeting reported only that the speaker "compared the proposed benefits with those of the Department of Homeland Security." This summary is misleading in that it seems to suggest that OCPA benefits offered are comparable when, in fact, the speaker stated that the highest Homeland Security Department benefits "don't come remotely close to the gratuitous benefits" provided to OCPA executives.

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for a term of four years. Some believe that the city may reassign the Board member if the member no longer sits on their city council. Others believe that Board members may remain on the Board for four years even if they are no longer in office with their respective cities. Clarifying this procedure is important because the latter interpretation would mean that an OCPA sitting Board member who no longer has any official standing or obligation to a member city may remain on the Board. Having bylaws in place should also resolve ambiguities about what powers the CEO has, such as whether the CEO can unilaterally make decisions regarding senior management and executive positions.

Insufficient Notices, Opting Out and Hiding Rate Increases

By law, commercial and residential customers serviced by CCEs are automatically enrolled in the CCE program tier level that has been authorized by their member cities. OCPA offers three plans:

- **Basic Choice** offers the same renewable energy delivery of 38 percent as SCE and SDGE. This choice results in no increase in charges;
- **Smart Choice** offers 69 percent renewable energy. This choice increases the customer's bill by one cent per kWh;
- **100% Renewable Choice** offers the 100% renewable option and adds 1.5 cents per kWh.

In contrast, San Diego Community Power ("SDCP"), made up of San Diego, four neighboring cities and some unincorporated areas, offers two programs: PowerOn provides 50 percent renewable with five percent greenhouse gas free at prices competitive with SDGE; the Power100 program offers 100 percent renewable energy with 100 percent carbon free electricity, for less than one cent more per kilowatt hour than SDGE. Carlsbad, Del Mar and Solana Beach are served by Clean Energy Alliance ("CEA") at rates similar to SDCP.

OCPA's member cities of Irvine, Huntington Beach, and Buena Park selected their default to be 100 percent renewable energy while Fullerton chose the 69 percent tier level. Buena Park's staff report estimated a cost increase to the City of \$103,127 per year for city-owned facilities if it enrolled in the 69 percent Smart Choice level, and an increase of \$154,691 at the 100 percent Renewable Choice level.¹⁵

Under AB117, OCPA is required to provide customers with two notices prior to automatically changing the customer from SCE to OCPA service. In February 2022, commercial businesses located in the member cities of OCPA were advised of the change to have OCPA as their power

¹⁵ Agenda Report to City Council Study Session, February 22, 2022.

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provider effective April 1, 2022. Commercial customers were also informed that they were able to “opt-out” of OCPA service or change from their pre-assigned tier level.

Although the price differentials were known to OCPA at the time, no pricing information was included in the mailers sent to the affected businesses, nor could it easily be found on the OCPA website. The additional cost per kWh for OCPA customers at the 100 percent renewable energy level is *double* the additional costs SDGP and CEA charge their San Diego County customers for 100 percent renewable energy, and nearly double the additional cost SCE charges for 100 percent ‘green’ energy. In another example of OCPA’s lack of transparency, commercial customers were expected to decide upon the level of service they wanted without being provided or given appropriate access to the price of each of those services.

At the March 1, 2022, OCPA Board Meeting, a member of the public pointed out that the notices sent out to alert commercial customers failed to mention or indicate in any way that their rates would automatically be going up unless the business chose to opt-out of the program or opt-down to the Basic Plan tier. The second required notice also omitted this information. *Nowhere in its notices to customers does OCPA inform the customer that if they take no action, their bill will increase.* Instead, the notices state: “Note, that OCPA rates are competitive with SCE rates...” Responding to the complaint about the inadequate rate information, OCPA merely replied that the notice was satisfactory because it was legally compliant.

The OCPA website also omitted the rate differentials, which OCPA had known about for quite some time. At no point has OCPA made any effort to inform its customers about the automatic raise in rates if the customer takes no action to make a change. In the current economic climate of general inflation and overall increases in energy costs, customers could easily be unaware that a percentage of the higher bills they are receiving are attributable to their auto-enrollment in the OCPA program.

OCPA’S Contradictory Messaging About the Effect of Opting Out

While explaining its “competitive and stable rates,” the OCPA website includes the following statement: “When demand for clean energy goes up, OCPA gains greater leverage to negotiate better rates.”¹⁶ Consistent with this statement, during the February 8, 2022, Irvine City Council meeting, a council member stated, “As more cities join us the cheaper the rates will be for everyone.” This is also the consensus in the CCE world:

High opt-out rates can quickly deteriorate the financial stability of the CCE program. Not only would customer opt-out lead to lower than anticipated retail

¹⁶ OCPA website; <https://www.ocpower.org> (last visited June 7, 2022).

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margins but could leave the CCE stuck with excess power. Having to sell extra electricity on the spot market can mean selling it at a loss.¹⁷

During the same February 8, 2022, Irvine City Council meeting, the question was posed: “If more people opted out than the model, how would it affect electric rates?” The OCPA CFO responded that the working model allows for a five percent opt-out rate for residential customers and a ten percent opt-out rate for commercial. The CFO then stated: “If [the opt-out rate] increases more than our expectation or assumption, it won’t have a significant financial impact because the revenue will match with all the costs of energy.” Follow-up questions led the CFO to explain further: “If more people chose to opt out, more than 10 percent let’s say, the costs of energy will decrease as well as our revenue. So, because of the matching principle, there will be no significant financial impact to us.” This statement is inconsistent with the information contained on the OCPA website and the prevailing wisdom that low opt-out rates are important to the success of any CCE.¹⁸

The percentage of customers and the energy load those customers represent are crucial figures to OCPA’s success. Yet, dissemination of the information regarding the opt-out load percentages has been restricted by OCPA. Member cities and others requesting that information have been denied access to or received few specifics about the opt-out and opt-down activity, and what impact that has on the overall OCPA financial picture.

Public Information Not Reaching Board Members or the Public

The OCPA Board of Directors is charged with oversight of the agency. Under the JPA, the Board “shall conduct all business and activities of the Authority consistent with this Agreement and any bylaws, operating procedures, and applicable law.”

To properly perform its oversight function, the Board must have access to all documents related to OCPA, even if that information is not subject to public disclosure. Unfortunately, this is not the approach that has been taken at OCPA. Based on interviews and our review of documents, there has been a pattern of failure and/or resistance to providing information to the Board, even when the information has been specifically requested. This lack of transparency does not align with public agency obligations and can create suspicions of wrongdoing.

¹⁷ Battaglioli, Daniela, “*Towards Electricity Decarbonization: Options for Community Choice Energy in Del Mar, CA*” (2017), citing Pacific Energy Advisors, Inc. (2016, January 8). Peninsula Clean Energy CCA Risk Analysis Summary Table. Retrieved from 31 28 <https://www.peninsulacleanenergy.com/wpcontent/uploads/2015/10/FINAL-Peninsula-CleanEnergy-CCA-Technical-Study.pdf>

¹⁸ See *id.*

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Information has been made equally unavailable to the member cities and the public. During the public comment section at the December 21, 2021, Board meeting, a speaker stated that there had been previous requests from a Board member, as well as the public, for financial information, including that the check register be provided. No response was provided, the information was not posted online, and the minutes did not record either the request made on December 21, 2021, nor those made prior to that date. The OCGJ investigation corroborated that several information requests properly submitted by the public were virtually ignored. Board members were also stymied from obtaining this information. They were allowed to review the information only after making multiple requests, and under the condition that the records be reviewed at the OCPA office.¹⁹ The OCGJ and member cities continue to face roadblocks in their attempts to obtain information directly from OCPA. It should not be up to OCPA staff to determine which of its actions are subject to Board oversight.

In December 2020 and early January 2021, the OCPA Board meetings were held remotely, but recorded on video. Beginning on January 26, 2021 (coinciding with the hiring of the CEO), those meetings were no longer recorded. After some public outcry, video recording resumed on June 9, 2021. Often, Board meeting minutes and videos would not be posted for several weeks or longer. During the course of our investigation, in or about March 2022, video recordings of Board meetings held between July 13, 2021 and January 11, 2022, were removed entirely from the OCPA website and could not be accessed. During the first week of April 2022 the videos re-appeared, along with meeting minutes. OCPA did not explain the temporary removal of that information.

The Board meets monthly on Tuesday mornings. Often, the agenda and staff reports are not made public or provided to Board members until the preceding Friday or Saturday, just in time to comply with the 72 hours' notice required by the Brown Act, leaving little time to properly review the materials and prepare for the upcoming meeting.

The OCGJ confirmed that in 2021, matters were being placed on the agenda only at the instruction of the CEO, and that requests from individual Board members and the CAC for items to be placed on the agenda were being ignored. In a detailed review of the OCPA Board minutes, the OCGJ found inaccuracies and unnecessary or potentially misleading omissions, including failing to refer to questions and statements made during public comments. There also appeared to be many technical difficulties during Zoom meetings.

There are also examples of OCPA presenting information in a way that misled the public. At the March 1, 2022, OCPA Board meeting, approval of the mid-year operating budget was on the

¹⁹ OCPA Board meeting video and minutes of Dec. 21, 2021.

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agenda. During the budget presentation, the Board was informed that the year's anticipated legal costs would be increasing by \$446,000, from \$354,000 to \$800,000. OCPA explained – in writing and orally – that the anticipated increased costs were “primarily due to a large number of PRA (Public Record Act) requests, non-legal board clerk support services, legal support for unanticipated matters, and power supply procurement transactions and negotiation services.”²⁰

Listing the PRA requests *first* overstates the significance of their associated costs. When asked for clarification, OCPA General Counsel explained that legal staff were needed to support OCPA in “day to day operations” and that there had been “quite a bit” of PRA requests. Finally, when asked directly how much of the budget was dedicated to handling PRA requests, the answer was \$22,000 for the year. Aside from the fact that responses to those PRA requests had, in large part, not been forthcoming, this is a trifling percentage of the \$800,000 budget request. Attempting to blame the doubling in legal costs on PRA requests seems indicative of OCPA's attitude towards individuals who seek information and transparency.

Underutilizing the Community Advisory Committee

According to the OCPA implementation document which describes the purpose and scope of the Community Advisory Committee (CAC), that Committee is intended to advise the OCPA Board on the operation of its energy program, help identify areas of concern, and assist in educating the public.

The very first duty listed on the Scope of Duties document is to elect officers of the CAC “to ensure that the Committee can operate independently and collaboratively, with limited support from Authority staff, but in keeping with the priorities of the Board.” That effort was reportedly thwarted for some time by the intervention and inaction of the CEO. This finding was confirmed in a memo dated January 26, 2021, from the CEO to the OCPA Board. The Board had requested that staff provide an overview and update on the CAC at its next meeting on January 26, 2021. Rather than comply with the Board's request, the CEO disregarded its direction by notifying the Board via the memo that “since the Authority will not launch until the Spring 2022, staff does not want to rush to bring this item before the Board.”

According to the minutes from the February 23, 2021, OCPA Board meeting, members of the Board and the public stressed the importance of the CAC and urged immediate action to get it started. The COO at the time believed a start date of April was reasonable. Despite the discussion of appointments and the requests to get things moving quickly, the CEO stated that this was a

²⁰ The Public Records Act provides the people with broad rights of access to public records to help keep government entities accountable. Except as legally exempted from disclosure, public agencies are required to make their records “promptly available” to requesters. Cal. Gov. Code § 6253(b) (emphasis added).

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“receive and file” agenda item and that no Board action was required, thus stifling any energy and momentum for the CAC to be formed. CAC finally conducted its first meeting on July 8, 2021, but was not approved by the CEO to elect officers until January 12, 2022.

The CAC consists of two direct appointees per member city. At its first meeting in July 2021, the CAC decided to conduct meetings the first Thursday of the month. Board members and the CAC repeatedly requested to have the CAC as a standing position on the Board’s agenda, but this did not occur until February 2022, a delay of six months after its establishment. Even then, the CEO planned to schedule CAC presentations to the Board on a merely quarterly basis.

The Secretary of the CAC is responsible for taking attendance and meeting notes and must work with OCPA staff to ensure meeting minutes are finalized and posted. According to the OCPA website, the CAC agendas are posted, although no minutes had been posted until April 2022. This oversight demonstrates a disregard for the CAC and contributed to a lack of transparency.

The CAC consists of well-informed and dedicated residents/business owners from the four member cities. It appears that the CEO and Board are underutilizing the CAC’s expertise and enthusiasm. A key example of this underutilization occurred on November 23, 2021, when the Board discussed establishing an ad hoc marketing and outreach committee in lieu of assigning this task to the CAC, or seek its advice and input in other ways

Comparison research on how to utilize a CAC was conducted with respect to the San Diego Community Power (SDCP) agency. SDCP was established in September 2019, approximately one year before OCPA was formalized. The first CAC meeting of the SDCP was conducted on May 22, 2020. The SDCP CAC focuses on engaging with the public and providing feedback to the Board so that they can make educated decisions in the best interest of the community. The SDCP CAC is very focused and abides by the following Scope of Work guidelines:

- Provide venue of ongoing citizen support (i.e., marketing and outreach)
- Elect officers
- Adopt a work plan every year
- Work on objectives to assist the Board
- Help the Board identify issues of concern
- Draft reports to the Board with findings and recommendations
- Represent views of constituents (i.e., marketing and outreach)
- Incorporate language around inclusion and diversity
- Plan and engage at community events (i.e., marketing and outreach)
- Serve as information channel back to communities (i.e., marketing and research)

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The SDCP CAC conscientiously posts their monthly agenda, the full agenda packet, and a recording of each meeting on their website. This indicates transparency within the agency. It is not uncommon for the SDCP Board to engage their CAC. For example, the CAC was able to appoint a representative to join the CEO Ad Hoc Search Committee and received updates from the Board on the CEO recruitment process. The SDCP CAC has a standing item and/or position on its Board's regular agenda. Lastly, the SDCP CAC was empowered to review and provide input on a Social Media Policy for the agency and established a CAC Community-Member Communications Guide. By comparison to SDCP, OCPA fails to empower or support its CAC.

Representative citizens of Orange County have worked very hard to develop CCEs to bring sustainable energy to Orange County. It is our hope that the issues raised in this report will be addressed in a timely manner so that confidence can be restored in OCPA, and it will flourish and expand in its membership and participation.

FINDINGS

- F1 OCPA has not properly implemented bylaws and other procedures to promote and ensure transparency.
- F2 OCPA unreasonably delayed the formation of the CAC, has failed to properly utilize CAC member expertise, and has stifled the CAC from functioning as an advisory committee as intended.
- F3 OCPA hiring practices and procedures for both employees and contractors have failed to follow best practices, potentially damaging the credibility of the agency and raising questions of cronyism.
- F4 OCPA has failed to hire a Director of Power Purchases or other experienced senior staff as appropriate for a CCE, resulting in a lack of oversight of contractors and fewer checks and balances in its operation.
- F5 OCPA lacks experienced in-house staff to develop and implement a long-term strategic plan as well as short-term plans to mitigate economic risks.
- F6 OCPA Board meeting agendas and staff reports are distributed at the last minute and Board meeting minutes are not always accurate, complete, or posted in a timely manner.

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RECOMMENDATIONS

Based on its investigation described herein, the OCGJ makes the following recommendations:

- R1 Implement OCPA and Community Advisory Committee by-laws consistent with those of other CCEs within California. (F1) Timeline: October 1, 2022.
- R2 Include the Community Advisory Committee as a standing item on the OCPA Board minutes and recognize the Community Advisory Committee as an advisory committee, and not simply a mouthpiece. (F2) Timeline: October 1, 2022.
- R3 Hire a Director of Power Purchases or other qualified staff positions to properly oversee Pacific Energy Advisors and CalPine contractors utilizing best practices. (F3, F4, F5) Timeline: December 1, 2022.
- R4 Utilize a member agency clerk or assign a qualified OCPA staff member to handle the agendas and minutes for the OCPA Board and OCPA Community Advisory Committee to ensure that they are prepared properly and posted in a timely manner. (F6) Timeline: October 1, 2022.

RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.

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- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required and requested from:

90 Day Response Required	F1	F2	F3	F4	F5	F6
OCPA Board of Directors	X	X	X	X	X	X

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90 Day Response Required	R1	R2	R3	R4
OCPA Board of Directors	X	X	X	X

90 Day Response Requested	R1	R2	R3	R4
City of Buena Park City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Fullerton City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Huntington Beach City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Irvine City Council				X

90 Day Response Requested	R1	R2	R3	R4
Orange County Board of Supervisors				X

REFERENCES

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Irvine Watchdog, “*Orange County Power Authority Unable to Properly Manage Basic Duties*,” Oct. 12, 2021.

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OCPA Community Choice Aggregation Implementation Plan and Statement of Intent, December 28, 2020.

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OCPA financial spreadsheets and audit reports, fiscal year and mid-year budget documents.

OCPA Implementation Plan, December 28, 2020.

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GLOSSARY

AB	Assembly Bill
BBK	Best, Best & Krieger
CAC	Community Advisory Committee
CCA	Community Choice Aggregation
CCE	Community Choice Energy
CEA	Clean Energy Alliance
CEC	Community Choice Energy
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
COVID	Coronavirus Disease
CPUC	California Public Utilities Commission
IOU	Investor-Owned Utility, such as Southern California Edison
JPA	Joint Powers Agreement
kWh	Kilowatt hour
OCPA	Orange County Power Authority
OCGJ	Orange County Grand Jury
PEA	Pacific Energy Advisors
PRA	Public Records Act
RA	Resource Adequacy
ROC	Risk Oversight Committee
SCE	Southern California Edison

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SDGE	San Diego Gas and Electric
SDCP	San Diego Community Power, a CCE
Spot Market	The wholesale electricity spot market is a venue for trading electricity as a commodity. It serves as a clearing house to reflect the economic value of electricity for a particular period, as indicated by the “spot price.”
WCE	Western Community Energy, a CCE