



Feb. 7, 2023

OCPA Chair Fred Jung and Board Members

Via email

**RE: The Board of Directors Must End OCPA's Legacy of Corruption by Replacing Its Failed Leadership Now**

Honorable Chair Jung and Boardmembers,

We are a coalition of organizations and advocates dedicated to climate and social justice in Orange County. **We are writing to you today regarding the urgent need to replace Orange County Power Authority (OCPA) CEO Brian Probolsky and General Counsel BBK as soon as possible as key steps to restoring trust in this critically important agency, and eliminating the failures and corruption permitted by the former Board and remaining leadership.**

Community Choice remains one of the most important climate programs ever adopted in the state of California, and has supercharged the clean energy economy. Not only have Community Choice programs accelerated clean energy on the grid, they have also helped alleviate electricity costs for low-income families, create local energy projects, high road jobs and community investment necessary to protect communities from climate impacts.

Since its first Board meeting in December 2020, OCPA has lacked transparency, shunned community input, and refused to follow CCE best practices. **Melahat Rafiei, who recently [pleaded guilty](#) to attempted bribery of Irvine city council members and led corruption schemes elsewhere in OC, played a key role in creating many of OCPA's continuing problems.** In 2021, Rafiei touted to activists that she was part of a behind-the-scenes group that was making decisions about OCPA.

Time and again over the last two years, Probolsky, BBK, and the OCPA Board failed to deliver a trusted CCE program for Orange County. As fiduciaries of your respective municipalities, you have a strict duty to act at all times for the benefit and interest of the residents whom you represent. Continuing to allow Probolsky and BBK to lead OCPA is not in the best interest of Orange County families.

**Replacing BBK and Probolsky is the critical first step to reforming OCPA and making it an institution the community can trust.** The Board must terminate its service agreement with vendor BBK, terminate Probolsky, and appoint qualified interim replacements until permanent staff can be identified through a public recruitment process.

**In keeping with principles of democracy and open government, these critical decisions must occur in open session to provide transparency and rebuild community trust, which Probolsky, BBK and the former Board have destroyed.**

Following are some of BBK, Probolsky and the Board's failures:

**Member exits and additional potential exits**

- In December 2022, the County of Orange voted to leave OCPA, and the City of Irvine narrowly voted to stay in OCPA until June pending the replacement of the CEO. The City of Huntington Beach has indicated it will discuss its potential departure of OCPA in February. The City of Lake Forest voted to leave in February 2021.

## Rate-setting

- At OCPA's June 22, 2021 Board meeting, BBK and Probolsky [proposed](#) that the Board authorize them to negotiate, set terms and execute a \$50 million credit facility without providing any of the loan's terms or conditions and no information on how the rate covenants would impact ratepayers in the future. The [staff report](#) for the item was 2 pages in length.
- At its June 2022 Board meeting, OCPA disclosed a 5.5% rate increase to take effect in July 2023 due to requirements in its credit agreement. Prior to the Board adopting this deal with Union Bank months earlier, community members warned that the requirements in the deal created a risk of mandatory rate increases, but the Board and staff dismissed the advocates comments as "misinformation." Now we know that the advocate comments and concerns were correct.
- OCPA was 4.5 months late securing necessary credit guarantees and establishing access to a credit line. This has had a direct impact on customer rates. The Implementation Plan [timeline](#) indicated that credit guarantees should have been completed by May 2021, but were not completed until Sept. 14, 2021, putting OCPA at a disadvantage for negotiating power rates, particularly for Resource Adequacy contracts, which have an annual deadline of Oct. 31.
- Unlike every other CCE in California, the OCPA Board, Probolsky and BBK had no meaningful discussion of energy market conditions in the year leading up to its launch and did not publish its pro forma business plan prior to launch according to CCE best practice.
- The OCPA Board, Probolsky and BBK had no discussion of how OCPA rates might compare to SoCal Edison rates based on their crucial early financial and energy procurement decisions until January 2022, less than a month before sending customer notifications.
- **Because Probolsky, BBK, and the Board did not follow well-established CCE best practices regarding rate setting, OCPA was not able to offer a lower price than SCE for any of its products at launch, forcing thousands of Orange County families to pay higher-than-necessary electricity rates or opt out.**

## Employee harassment

- At the Nov. 9, 2021 OCPA Board meeting, witnesses saw Probolsky yell at COO Antonia Castro-Graham on camera during the Zoom meeting, prompting her to resign and requiring a confidential financial settlement, which was paid for by OCPA ratepayers.

## **Costs**

- OCPA legal expenses from BBK are consistently hundreds of thousands of dollars [over budget](#). In 2021, BBK was 278% over budget, and in 2022 was 208% over budget.

## **Operational and vendor selection failures**

- Probolsky violated OCPA's agreement with creditor MUFG Union Bank in Sept. 2022 by approving a loan repayment to the City of Irvine, endangering OCPA's ongoing ability to operate.
- On August 31, 2022 SoCal Edison proposed the CPUC increase OCPA's Financial Security Requirement (FSR) cost by roughly 77 times the prior FSR amount, with a potential impact over \$123 million. BBK and Probolsky have never provided the OCPA Board an update on these proceedings.
- BBK and Probolsky proposed the Board authorize them to negotiate and execute a \$14.3 million data management contract without providing any of the contract terms (proposed June 22, 2021).
- Probolsky proposed the Board authorize him to negotiate and execute a \$395,000 recurring annual contract for Power Supply Portfolio Management and Power Procurement Services with a vendor which had no experience with power supply portfolio management for CCEs (proposed April 13, 2021).
- OCPA has not created a Risk Oversight Committee, which the OCPA [Risk Management Policy](#) states should have been done in Q3 2021, prior to execution of any power supply transactions.
- The County of Orange Financial Audit noted numerous shortcomings in OCPA's contracting and vendor selection processes, noting OCPA did not always ensure requisitions were completed for all contracts and purchases, and sufficient cost details to clearly support the services being procured and establish a maximum obligation amount were not always included.
- The County of Orange Performance Audit and Financial Audit found that OCPA failed to properly put contracts out to bid and justify why they were working with certain contractors.

- Since 2021, OCPA has been paying Rob Howard, who has no experience with CCE, to coordinate OCPA marketing efforts, pre-enrollment notices and special program courtesy letters, areas in which he has no experience.

## **Governance**

- OCPA Board has not adopted any the following policies prescribed in the Implementation Plan:
  - Budget and Accounting Policy (Scheduled for Adoption January 26, 2021)
  - Guidelines for Access to Public Records (Scheduled for Adoption January 26, 2021)
  - Time-sensitive Legislative and Regulatory Policy (Scheduled for Adoption March 9, 2021)
  - Debt Management Policy (Scheduled for Adoption September 14, 2021)
  - Delinquent Account, Collections, and Bad Debt Policy (Scheduled for Adoption September 14, 2021)
  - Investment Policy (Scheduled for Adoption September 14, 2021)
- 25 months after OCPA launch, OCPA has no bylaws despite repeated requests by Board members to draft them.
- BBK erroneously advised the Board on the addition of the County of Orange to the JPA and its premature addition as a voting member of the agency. This means that the County should never have voted on any matter at OCPA. Following are key facts regarding the erroneous addition of the County of Orange:
  - OCPA's new member policy adopted unanimously in May 2021 stated that OCPA could not add new members for the following year after "early November" and that new members would be ex-officio until they began receiving electricity from OCPA, which for the county would have been 2023. Despite this, at BBK's insistence, the OCPA Board voted to accept the county into OCPA and add the county's representative as a voting Board member in December 2021.
  - During the Dec. 14, 2021 OCPA Board meeting, BBK said that because the new member policy was never added to the JPA, it could not be effectuated. BBK's interpretation contradicted the JPA agreement, which says an additional party may become a member of the Authority upon satisfaction of any additional conditions as established by the Board or applicable laws or regulations (4.1.3).
  - Several of the Board members objected to BBK's interpretation at the Dec. 14, 2021 meeting, but BBK was firm in their interpretation. BBK did not explain why they did not ensure that all OCPA-approved policies including the new member policy were added to the JPA agreement.
  - The OCPA Board adopted a revised new member policy Sept. 6, 2022, after the county had already been voting for nine months.
  - Section 3 of the OCPA JPA agreement says that at least thirty (30) days advance written notice is required in order to add a new party (3.9.4.1.), and because the

county voted to join Nov. 16, they could not have provided the required 30+ days written notice before the Dec. 14 meeting. BBK did not mention this JPA provision at the Dec. 14 or Dec. 21, 2021 OCPA Board meetings.

### Energy contracting

- The County of Orange Performance Audit reports that some OCPA Board members never had opportunities to view unredacted power contracts.

### Transparency

- OCPA has never published its check register.
- Many residents have reported over the last two years that OCPA has not responded to their PRA requests.

The Board should not continue to make or allow Probolsky and BBK to continue to make decisions that harm Orange County families. OCPA cannot grow and bring the benefits of CCE to additional Orange County cities under the leadership of Probolsky and BBK.

The County of Orange audit states that retaining in-house counsel is a CCE best practice. **BBK was hired as a vendor and can be terminated any time. Probolsky is an at-will employee and can be terminated at any time.**

Again, in order to create the world-class CCE that Orange County deserves, the Board must terminate its service agreement with BBK, terminate Probolsky, and appoint qualified interim replacements until permanent staff can be identified through a public recruitment process. These critical decisions should occur in open session to provide transparency and rebuild community trust, which Probolsky, BBK and the former Board have destroyed.

Thank you for your prompt attention to this matter.

Sincerely,

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