

Final  
Report on California Public Utilities  
Commission Process to Implement Community  
Choice Aggregation (Task 2)

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## I. INTRODUCTION

Legal authority for CCA is governed by the Community Choice Aggregation legislation (AB 117, Chapter 838, September 24, 2002). Among other things, AB 117 instructs the California Public Utilities Commission to establish rules for implementing community choice aggregation. The purpose of this report is to clarify the costs, credits, rules and protocols developed in the CPUC process for implementing CCA in California and to evaluate the possible impacts of CCA implementation to local governments.

## II. CPUC PROCESS

On September 4, 2003, the CPUC issued an order instituting a rulemaking (Rulemaking 03-09-007) in order to develop the guidelines for community aggregation programs, as it was directed to do under AB 117. On October 2, 2003 the CPUC reissued the rulemaking under Docket No. R.03-10-003 in order to correct certain clerical errors in the original rulemaking. Following the initial pre-hearing conference and with the concurrence of parties to the proceeding, the CPUC Administrative Law Judge (ALJ) bifurcated the proceeding into two phases. The scope of Phase I was to determine issues related to costs imposed by the local utilities on CCAs and CCA customers, namely cost responsibility surcharges to enable recovery for certain energy contracts and investments. Other cost issues include transaction fees and general program implementation costs. The general scope of Phase II was to address the processes for interactions between CCA Providers and the local utilities and other operational details.

The CPUC issued its final decision (D.04-12-046) in Phase I on December 16, 2004 and adopted interim rules to permit CCAs to form pending litigation of final rules in Phase II. A final decision (D.05-12-041) in Phase 2 was issued on December 15, 2005. The regulatory proceeding is now complete and the rules for implementing CCA have been established. CCAs will need to track other proceedings at the CPUC including Renewable Portfolio Standards, and Resource Adequacy.

The CPUC process included numerous workshops, filed comments, written testimony, evidentiary hearings and CPUC rulings. There were seventeen parties that actively participated in the proceeding, representing interests of utilities, potential CCAs, consumers and environmental interests. Parties that presented testimony or filed comments include:

- Pacific Gas & Electric Company (PG&E)
- Southern California Edison Company (SCE)
- San Diego Gas and Electric Company (SDG&E)
- Local Government Commission Coalition (LGCC)
- City and County of San Francisco (CCSF)
- California Clean Energy Resources Authority (CalCLERA)
- Kings River Conservation District (KRCD)
- Inland Valley Development Agency (IVDA)

- Local Power (LP)
- CPUC's Office of Ratepayer Advocates (ORA)
- The Utility Reform Network (TURN)
- California Department of Water Resources (DWR)
- City of Chula Vista (CV)
- County of Los Angeles (LAC)
- Energy Choice, Inc (ECI)
- City of Moreno Valley (MV)
- Community Environmental Council (CEC)

The major milestones of the CCA process are shown below.

REGULATORY MILESTONE	DATE
Rulemaking issued	October 2, 2003
Comments on rulemaking	October 22, 2003
1 <sup>st</sup> Pre-hearing conference	October 29, 2003
<i>Phase 1</i>	
Pre-workshop comments on cost issues	January 9, 2004
Workshop on CRS and cost issues	January 14, 2004
Workshop on information issues	January 15, 2004
IOU joint report on information issues	January 30, 2004
Comments on utility information report	February 12, 2004
Filing of proposed utility services and tariffs	March 1, 2004
2 <sup>nd</sup> workshop on CRS and costing issues	March 2, 2004
Reply comments on utility information report	March 10, 2004
Workshop on implementation and transactional issues	March 12, 2004
Opening testimony	April 15, 2004
Reply testimony	May 7, 2004
Rebuttal testimony	May 20, 2004
Evidentiary hearings	June 2-14, 2004
Briefs	July 9, 2004
Reply Briefs	July 23, 2004
Proposed decision	October 29, 2004
Comments on proposed decision	November 18, 2004
Reply comments	November 23, 2004
Final Decision	December 16, 2004
<i>Phase 2</i>	
2 <sup>nd</sup> Pre-hearing conference	January 25, 2005
IOU proposed tariffs	February 14, 2005
Workshop on open season concept	March 3, 2005
Workshop on CRS vintaging	March 9, 2005
Workshop on IOU tariff filing	March 16, 2005
Workshop on implementation plans	March 22, 2005
Workshop on in-kind power	March 30, 2005

REGULATORY MILESTONE	DATE
3 <sup>rd</sup> Pre-hearing conference	March 30, 2005
Opening testimony	April 28, 2005
Reply testimony	May 9, 2005
Rebuttal testimony	May 16, 2005
Evidentiary Hearings	May 25 – June 2, 2005
Briefs	July 8, 2005
Reply briefs	August 1, 2005
Proposed decision	November 2, 2005
Workshop on proposed decision	November 22, 2005
Comments on proposed decision	November 22, 2005
Reply comments on proposed decision	November 29, 2005
Final Decision	December 15, 2005

### III. MAJOR ISSUES CONSIDERED IN THE CPUC RULEMAKING

Phase 1 of the proceeding was focused on the following broad category of issues:

- Cost responsibility surcharges
- Transactions costs
- Customer information issues

The major sub-issues within each of these broad categories and the noteworthy positions of parties are described in the remainder of this section.

#### **Cost Responsibility Surcharge (CRS) Issues**

The CRS will be a charge the utilities will assess on CCA customers in order to prevent the shifting of generation-related costs onto remaining utility customers that might result from transfer of electric service to a CCA. The CRS will include costs incurred by the California Department of Water Resources for contracts entered into during the 2000-2001 energy crisis as well as costs incurred by the utilities for generation and power purchase contracts.<sup>1</sup> AB 117 directed the CPUC to establish the CRS before it authorizes implementation of CCA, and the CPUC designated this phase of the proceeding to determine the methodology and issues surrounding the calculation of the CRS.

#### CRS Methodology

The three utilities' testimonies strongly emphasized the legislative intent of AB 117 to avoid cost shifting as a result of CCA activity, and generally the utilities took a very narrow view in their reliance on this term as it relates to the CRS.

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<sup>1</sup> CCA customers will also be responsible for the DWR bond charge, which is an existing charge that pays the costs of bonds issued by the DWR to cover past power purchase costs and the PG&E regulatory asset charge, which is an existing charge related to PG&E's emergence from bankruptcy. These charges may be included in the CRS or may be assessed separately, along with other delivery charges imposed by the utilities.

The utilities proposed a CRS methodology patterned after the CRS methodology that was adopted for direct access customers in 2002. This methodology, known as the CCA in/CCA out approach, attempts to quantify any cost increases that remaining utility customers might face as customers migrate to service by their CCA, and the CRS is calculated to insulate the remaining utility customers from these potential cost increases. The CRS would be set once per year on a forecast basis, and would be adjusted at the end of the year to true-up the forecast to actual costs.

Parties representing CCA interests advocated a more symmetrical approach to calculating the CRS, arguing that benefits as well as costs need to be considered in the calculation. Benefits might include 1) environmental benefits from the addition of new renewable generation over and above what the utilities would procure; 2) reductions in the utilities' costs of procurement and risk; 3) improved reliability and reduced transmission costs from addition of local generation driven by CCA implementation; and 4) the potential for lower market prices due to new power supplies developed by CCAs. The utilities opposed incorporating benefits as an offset to the CRS.

TURN supported providing an exemption to the CRS for a CCA's use of new renewable generation.

*Critical Issues:*

- CRS offsets for benefits associated with CCA formation and new generation investments by CCAs
- CRS exemptions for renewable generation

Transparency

A major concern expressed by CCA parties is the lack of transparency in the CRS calculation because the utilities refuse to disclose the input data needed for the calculation to potential CCAs. The utilities claim that the input data describing their generation costs and purchased power costs are confidential and must not be disclosed to "market participants" such as CCAs. Without access to the input data, it is impossible for CCA parties to verify the calculations to ensure that CCA customers are not overcharged or double charged for services that actually benefit the remaining customers of the utilities. The LGCC advocated an unbundled approach to calculating the CRS, so that all customers would be able to see the CRS on their bills. This approach would facilitate customer understanding of CCA as an economic alternative to service from the utility and would help ensure that the CRS calculation receives due scrutiny and oversight from a broad set of parties that traditionally participate in utility rate proceedings. The utilities uniformly opposed this proposal, arguing that it needlessly complicates the utilities' ratemaking process.

*Critical Issues:*

- Transparency of CRS calculations to enable verification of utility costs and incorporation of appropriate cost offsets

### CRS Caps

The CCSF advocated a cap on the CRS for PG&E's service territory, to be initially set at 1.5 cents per kWh. The cap would help reduce the uncertainty posed by the CRS, which otherwise can fluctuate dramatically from year to year, depending on conditions in the market. The CPUC would review the cap every two years. The utilities uniformly opposed this proposal, arguing that a cap would force remaining utility customers to "loan" money and otherwise subsidize CCA customers.

#### *Critical Issues:*

- Predictability of the CRS, capping
- Frequency of CRS updates

### New Utility Procurement

The utilities proposed that new contracts that they enter into prior to formation of a CCA should be included in the CRS calculation. PG&E argued that unless the CCA could demonstrate it had ample resources for at least the next five years, PG&E would need to be prepared to serve customers that might return to PG&E service and PG&E's ongoing procurement costs should be included in the CRS after the CCA is operational and serving customers. Parties generally agreed on the importance of coordinating CCA formation with the utilities' procurement process to avoid incurrence of additional stranded costs. SDG&E came up with an "open season" concept whereby once per year, future CCAs would make a commitment to begin serving customers on a date certain. The commitment must be sufficiently binding so that the utility would be able to cease procurement of mid- and long-term resources on behalf of the CCA customers. The CRS would depend upon the year in which the CCA made its commitment to CCA implementation during the open season process. Parties generally agreed the concept had merit but left the details of implementation to Phase 2.

#### *Critical Issues:*

- Coordination of CCA formation and utility procurement practices
- Resource adequacy requirements of CCAs
- SDG&E's Open Season concept
- Nature of the binding commitment to CCA formation and consequences of not meeting the commitment
- CRS dependent upon year of CCA commitment ("vintaging")

### CRS Rate Design

The utilities had differing positions on whether the CRS should be the same rate for all electricity consumption for all customer classes or if the CRS should reflect subsidies that are inherent in the utilities' generation rates. A significant example of such subsidies is the reduced rates for residential customers for up to 130% of the monthly baseline allowance. Usage above this level is charged a much higher rate, and the rates of other customer classes are also set higher to help pay for the baseline rate subsidies. If the CRS is the same rate for all consumption and all customer classes, communities with predominantly low usage residential customers (e.g., some coastal communities) and few

commercial or industrial customers could find it difficult to provide service to their customers at rates competitive with the utilities' subsidized rates. On the other hand, communities with a disproportionate number of high usage residential customers and commercial/industrial customers would likely be able to offer service at rates lower than the utilities, all else being equal. SCE supported a uniform CRS rate applicable to all consumption. PG&E agreed but also proposed an alternative CRS rate that would better reflect the generation rate differences among the utilities' customer classes. The CRS would be set as a uniform percentage of the utilities' generation rates for each rate schedule. SDG&E proposed to go further by adjusting its generation rates to isolate all subsidies in separate non-bypassable charges that would become part of the utility delivery charges. Parties representing CCA interests did not provide testimony on CRS rate design.

*Critical Issues:*

- Impact of subsidies in utility generation rates on economics of individual CCAs

CCA Phase-In Proposals

LGCC and CCSF supported the CCA's ability to phase-in operation of their programs. Phasing would be beneficial in possibly reducing the utilities' implementation costs and generally minimizing risks arising from the transition to a new market structure. PG&E expressed openness to an operational phase-in period that would occur over months, rather than years. SCE and SDG&E opposed phasing as contrary to the universal service provisions of AB 117. CPUC made a legal determination that phasing-in of CCA service is permitted by law, Phase 2 would address the parameters and criteria by which phase-in proposals will be evaluated in the CCA's implementation plans.

*Critical Issues:*

- Legality of phasing
- Limits and criteria for phase-in proposals

Assumption of In-Kind MWh

CCSF, KRCD and CalCLERA expressed support for allowing CCAs to assume liability for DWR contract energy or other "in-kind" MWhs in lieu of paying elements of the CRS. Such an option would effectively put an upper bound on the CRS. The utilities opposed this concept, citing potential complexity.

*Critical Issues:*

- Ability for CCA to take DWR contract energy at cost in lieu of paying a portion of the CRS

**Transaction Costs Issues**

The Commission included in Phase 1 the issue of transaction costs, which relate to the utilities activities to implement CCA and their provision of metering, billing, notification, and other services to CCAs. However, the utilities were unable to provide accurate cost estimates prior to agreement on the detailed

processes that underlay and define the activities that will be performed by the utilities. These were scheduled to be addressed in Phase 2. The utilities provided no estimates of their costs to implement CCA; i.e., the systems and other changes needed to make CCA an option for all customers. The utilities did provide estimates of transactions costs related to billing, metering, notification, customer service, and provision of customer information, but stated that the estimates were informational only and the actual costs would be litigated in Phase 2.

During the period of workshops leading up to filing testimony and hearings, the utilities had jointly prepared a document proposing a set of detailed processes for community aggregation service. These “strawman” processes were used as the basis for the transaction costs estimates presented in Phase 1. Despite this common reliance on the strawman processes document, the utilities showed little consistency in their estimated costs and fees. The utilities identified a number of costs they expect to incur and associated fees, which can be broadly categorized as follows:

- Implementation Fees
- Fees Related to CCA Establishment
- Enrollment Fees
- Billing, Payment and Collection
- Monthly Account Maintenance Fee
- Interval Metering Fee
- Termination of CCA Program Fee
- Special Request Fee
- Information Fees

PG&E proposed that all customers pay its basic implementation costs and that implementation costs that go beyond a basic level be borne by the CCA requesting the service. Transactions costs would be paid by the CCA on a per transaction basis. SCE and SDG&E opposed PG&E’s proposal to spread basic implementation costs to all customers. Both utilities argued that all costs related to CCA must be paid by CCAs to avoid any cost shifting to remaining utility customers. SDG&E took the extreme position that all implementation costs, which could be in the millions of dollars, should be paid by the first CCA in SDG&E’s service territory.

CCA parties pointed out the anti-competitive implications of the utilities’ proposals and argued that fees applicable to CCAs should be no higher than the charges paid by direct access customers. LGCC stressed the need for consistency across utilities in establishing any justifiable fees.

#### *Critical Issues*

- Whether implementation costs should be shared by all customers or be paid by CCAs
- Illustrative nature of estimated transaction fees requires litigation in Phase 2
- Anti-competitive impacts of proposed fees

## Information Issues

In order to assess CCA feasibility and plan for CCA operations, a prospective CCA must have accurate load information for its potential electric customers. A prior CPUC decision ordered the utilities to provide aggregated customer and load information, broken out by customer class, to prospective CCAs.<sup>2</sup> A workshop was held on January 15, 2004 to explore additional information needs and desires of prospective CCAs. The utilities prepared a joint report summarizing the types of information requested by CCAs and categorizing the effort involved in producing the information as easy, moderate or difficult. The utilities also indicated that unless otherwise ordered by the CPUC, they would follow customer confidentiality rules that were implemented for release of customer data during the direct access rulemaking. The utilities would provide aggregate customer and usage data to prospective CCAs and would not provide customer-specific information, absent a written release from the effected customer. The release of aggregate data would be subject to the so-called "15/15" rule, which requires that data be aggregated to a higher level if there are fewer than 15 customers in a category or if one customer represents 15% or more of the total usage within the category.

In testimony, PG&E revealed that it is also screening out all data from customers with peak demands of 500 KW or greater from the aggregate information it is providing to prospective CCAs. This is pursuant to the "500 KW rule" from direct access. SCE is not following this practice and is including the data for large customers in the aggregated data provided to prospective CCAs. Both SCE and PG&E agreed to provide customer-specific information to the CCA, once the CCA begins serving customers. Consistent with its overall posture in this proceeding, SDG&E staked out an extreme position that it would not disclose the identities of the CCA's customers, even after the CCA begins serving the customers.

Through testimony and cross-examination, CCA parties made a strong case that CCAs require - and must be provided by law - accurate information about their potential customers.

### *Critical Issues:*

- Availability of accurate information on customer usage at an aggregate level
- Applicability of the 15/15 and 500 KW rules to CCAs
- Availability of customer-specific information before and after CCA formation

## Other Issues

During hearings, the ALJ suggested that in order to expedite completion of the proceeding, she would consider beginning Phase 2 prior to her issuance of a

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<sup>2</sup> Appendix C of D.03-07-034

proposed decision in Phase 1. Phase 2 would address the “nuts and bolts” of how CCAs operate, ensure consumer protections, and interact with the utility. Some of the key issues to be resolved in Phase 2 include:

- The detailed processes, costs, and fees authorized for the utilities’ CCA implementation activities and utility transactions with CCAs (e.g., metering, billing, CCA establishment, notifications, enrollments, account maintenance, termination)
- Rules and formats for notifying customers of CCA service and customer opt-out opportunities
- Rules for switching customers to CCA service, processing customer opt-outs, and returning CCA customers to utility service
- Customer reentry fees and bonding requirements imposed on CCAs
- CCA phase-in mechanisms and guidelines
- CCA consumer protection obligations
- CCA implementation plan requirements (possibly)

#### **IV. CPUC PHASE 1 DECISION SUMMARY**

On December 16, 2004, the Commission issued its decision in Phase 1 of CCA Rulemaking, R.03-10-003. The Decision (D.04-12-046) generally struck a reasonable balance between the goals of facilitating formation of CCA programs and protecting the utilities and remaining utility customers from cost shifting that might arise from CCA implementation. The decision ordered interim tariffs that will enable interested cities and counties to implement CCA programs in 2005. The final tariffs would be litigated in Phase 2 of the rulemaking.

The decision expressed disappointment that the utilities attempted to delay resolution of key costing issues to Phase 2, despite the clear direction from the Commission to litigate these issues in Phase 1. The decision adopted an interim cost responsibility surcharge and ordered the utilities to establish interim tariffs, substantially identical to the existing Direct Access tariffs, effective January 1, 2005 to enable CCAs to begin procuring power for their local residents and businesses. This would pave the way for local governments to submit implementation plans prior to final resolution of Phase 2 issues, and begin operating their programs under the interim tariffs.

Final tariffs conforming to the policies articulated in the Phase 1 decision were ordered to be filed within 60 days of the final decision and would be considered in Phase 2 of the rulemaking. Although the procedural schedule for Phase 2 had not yet been established, a pre-hearing conference was scheduled for January 25, 2005.

The following is a summary of the key issues decided by the Commission in Phase 1.

##### **Implementation and Transaction Costs**

Implementation costs are those associated with the utilities’ activities of setting up the CCA program and the infrastructure required to maintain and operate it.

“Basic” implementation costs are to be charged to all ratepayers. The Decision rejected the proposals of SCE and SDG&E to charge CCAs for all implementation costs, finding that such a proposal would act as a barrier to CCA formation and that all customers receive the benefit of implementing the state’s express policy to enable CCA as an option. The costs of specific specialized services will be charged to the individual CCA that request such services. The utilities were to file tariffs accordingly.

The Decision approved an incremental costing methodology to assess transaction fees, which are services provided to CCAs for billing and the customer notification process. Fees are to be based on the additional costs incurred by the utilities to provide service to CCAs. No charge will be allowed if a service is already covered in rates, at any level. The Decision rejected utility arguments that fees should be charged to CCAs even in the instance where no additional utility resources are needed to provide the service. The Commission found that the utilities would receive windfall (income?, profit?) by charging for services already recovered in rates. In their next General Rate Cases, the utilities may propose charges to CCA for transaction services that are currently included in utility rates, and in such cases should propose offsetting reduction to other rates.

The Decision ordered that the incremental costing method should reflect operational cost savings expected from CCA formation. The Decision stated that an adequate record does not exist to quantify broader CCA benefits on the state’s energy infrastructure (i.e., supply side benefits of CCA generation); however, parties may raise this issue in the future if they are able to present reasonable methods for estimating these benefits, supported by an adequate record.

The utilities were ordered to file transaction cost tariffs within 60 days of the Decision for consideration in Phase 2. Changes to the transaction fees will be considered prospectively in General Rate Cases (3-year cycle), and there will be no true-up for actual costs. In the meantime, Direct Access tariffs can be used for utility transactions with CCAs pending approval of final CCA tariffs. Within 60 days of the order, the utilities were to file interim CCA tariffs substantially identical to the current Direct Access tariffs.

The Decision rejected utility arguments that CCAs should have to pay for infrastructure development and other services in advance, finding that CCAs can be considered customers of the utilities and such advance payment requirements are unprecedented.

#### Billing Costs

The Decision found that there will be incremental billing costs rightfully charged to CCAs. These costs should not include the costs of mailing bills, for example, since this activity would not be incremental. To the extent that additional postage is required due to inclusion of an extra page for the CCA charges on the bill, these additional costs are appropriately charged to the CCA. The Decision

orders the CCA billing fees to be “unbundled” so that CCAs are not charged for billing processes and customer services that are unrelated to CCA services.

#### Call Center Costs

The Commission found that the utilities did not make convincing cases that call center activity will increase due to CCA formation, and CCAs should not be charged for customer calls to utilities at this time. Utilities may seek fees in their next General Rate Case if higher call center costs related to CCAs are demonstrated. Additionally, each utility can establish an 800 number dedicated to CCA related calls so that any incremental call center costs can be tracked and charged to CCAs.

#### Opt-Out Provision and Re-entry Fees

The Decision ruled that startup costs to implement the opt-out provision should be charged individually to CCAs because these are associated with implementing each CCA program and are not infrastructure development costs. The Commission found that the CCA has a legal obligation to notify customers and may elect to use the utilities’ opt-out notification services. The utilities can charge CCAs for their costs to create, mail or otherwise facilitate a CCA’s notifications.

The cost of transferring customers back to utility service from CCA service should not be assumed by the CCA. The Decision states that CCAs should not have to assume the cost of activities that ultimately deprive the CCA of a customer. A re-entry fee, defined as the administrative cost of switching a customer back to bundled service, would be a customer liability once it becomes a bundled service customer. The Commission deferred to Phase 2 the issue of whether large customers returning to utility service would also be liable for any incremental costs of procurement and reliability that the utility incurs.

The Decision authorized the utilities to provide advance notice to customers providing basic information about what the CCA will do, how it may affect relevant customers and their service options, and the pending release of confidential customer information to the CCA. The cost associated with preparing and communicating the notice should be borne by all ratepayers. The utility notices must be reviewed by the Commission’s Public Advisor office to ensure that the notices may not be misconstrued as a marketing tool for utility services.

#### *Implications:*

- Decision to spread implementation costs to all ratepayers reduces startup cost for CCA programs.
- Incremental costing methodology is theoretically sound but will be difficult to verify the utilities’ proposed incremental costs.
- Startup costs related to opt-out process that will be charged to individual CCAs are not well-defined and will have to be litigated in Phase 2.

## Cost Responsibility Surcharge (CRS)

The Decision determined that the CRS will be charged directly to customers, not to the CCA. The CRS components include 1) costs associated with power contracts and bonds entered into by DWR during the energy crisis; 2) utility power costs, including those of utility retained generation, purchased power and other commitments in approved resource plans; and 3) Competitive Transition Charge (CTC) and historic revenue under-collections and credits applicable to the customers at the time the CCA transferred the customers. The Commission found that the CRS should not include any avoidable costs, such as Independent System Operator (ISO) charges for ancillary services.

The Decision approved the indifference charge (CCA-in/CCA-out) methodology, similar to the one adopted for direct access and municipal/self-generation “departing” load. The CCA CRS is to be calculated separately from the Direct Access CRS and will not be subject to a cap. The CRS applies to new and existing customers that take service from the CCA. The CRS should incorporate any refunds to or credits associated with the accounts, bond charges and power purchase contracts that are subject to CRS treatment.

The CRS will initially be set at 2.0 cents per kWh, subject to true up in 18 months or sooner if the utilities’ forecast of CRS is 30% higher or lower than that amount. Thereafter, the CRS will be forecast and trued-up on an annual basis. The Decision states that the 2.0 cents per kWh interim amount will be in addition to the already unbundled charges associated with the DWR bonds and charges for historical utility under collections.<sup>3</sup>

The Decision ordered each utility to develop a forecast of the CRS for their service area within 60 days of the Decision, and provide work papers to all parties in the proceeding. Each cost component shall be calculated and identified separately. Elements of work papers that are confidential shall be provided subject to a standard non-disclosure agreement. Utilities should explain how each component conforms to this decision to Energy Division staff and any party so requesting that information. Energy Division will consider requests for a workshop to discuss the information the utilities and DWR provide.

The Decision provided a CRS exemption for Norton Air Force Base due to exclusion of that load from the SCE forecast used by DWR when it procured power for SCE customers. The exemption applied only to the DWR power cost component of the CRS.

### Vintaging and Utility Resource Plans

The Decision defers to Phase 2 the issue of whether the CRS should be “vintaged”, meaning that the CCA would assume liability going forward for only those DWR and utility liabilities that were current at the time the CCA began its operations. If a vintaging policy is adopted, there would be different CRS charges applicable to CCAs depending upon the year that the CCA began

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<sup>3</sup> Adding these components results in a total interim CRS of approximately 3.1 cents per kWh for PG&E and 2.5 cents per kWh for both SCE and SDG&E.

servicing customers. Utility procurements made after the CCA is serving customers will not be included in the CRS. The Decision found that vintaging would generally be equitable but expressed a concern that vintaging would result in a complex regulatory process requiring administration of many CRS charges, each of which would be updated annually. The Decision requested parties to jointly develop a proposal that balances accuracy, equity among different generations of CCAs, administrative simplicity, and certainty for CCAs and the utilities. The Decision also stated the Commission's anticipation that the CCA's CRS liability would terminate at some point.

The Commission found that the utilities should not sign contracts where available information suggests the power might not be needed. The utilities should incorporate CCA load losses into their planning efforts, just as they would include any other forecast variable related to expected changes in supply or demand. These issues will be addressed in more depth in the utilities' resource planning applications and related dockets.

The Decision ordered the utilities to provide information about the components of the CRS and to provide a tariffed service to CCAs that would unbundle the components of the CRS on CCA customer bills.

#### Credits for In-Kind Power

The Decision deferred to Phase 2 the issue of the extent to which CCAs can or should be able to take power from existing DWR or utility contracts. The Decision stated that as a general matter, the Commission believes a CCA should have the opportunity to take delivery of any portion of a DWR or utility contract for which it pays through the CRS. On the other hand, the Decision found the record in Phase 1 was not sufficient for the Commission to be sure what this might entail. Accordingly, the Commission deferred further consideration of this matter to subsequent workshops or hearings in Phase 2 of this proceeding.

#### *Implications:*

- Interim CRS enables expedited CCA formation but the amount is higher than our expectations of actual CRS costs. The interim amount will likely be trued up by 2006 based on the forthcoming utility cost forecasts.
- Interactions between the CRS, utility resource plans and CCA formation will require further litigation in Phase 2.
- If CCAs wish to receive credits for in-kind power, CCA advocates need to present a proposal for consideration in Phase 2.

#### **Baseline Subsidy**

The Decision found that the Commission will not require CCAs to implement residential "baseline" usage subsidies in their rate structures and that CCAs are government entities that can be entrusted to design cost allocation according to the needs of their local communities. Although the Commission originally included the baseline rate issue within the scope of this proceeding, the Decision found that the baseline issue goes beyond the costs and revenues related to the

CCA program and is more appropriately addressed in utility rate proceedings. The utilities were ordered to propose ways to allocate the costs of the baseline subsidy in other ratemaking proceedings, such as a general rate case, rate design window proceeding, or a baseline application.

Implications:

- Utility rate design proposals that shift costs and subsidies from generation rates to delivery rates or that shift generation costs among customer classes impact CCA economic viability by changing the utility rates against which CCAs will compete.
- CCAs should monitor and, where appropriate, participate in utility ratemaking proceedings that implicate their programs.

### **Open Season**

The Decision expressed support for SDG&E's proposed "open season" concept for CCAs to coordinate start-up with the utility procurement process. The open season process would require the potential CCA to make a binding commitment to begin serving the load at a specified date. In this way, the utility would be able to cease advance procurement of resources for the load that will be served by the CCA in the future.

The Decision ruled that the details of this proposal should be addressed in Phase 2. The Decision stated that CCAs should be responsible for risks associated with forecasting errors (presumably with respect to when the CCA begins operations or the loads that the CCA will serve). The utilities were ordered to propose tariff fees that reflect the costs of forecasting errors or non-performance attributable to the CCA.

The Decision stated that the issue of whether and how the utilities have obligations to CCA customers as "providers of last resort" is a matter being considered in a different proceeding (R.04-04-003). The Decision directed the utilities to submit draft tariffs for such services as back-up power and balancing services and stated the Commission would address these matters further in Phase 2.

*Implications:*

- Interactions between the CRS, utility resource plans and CCA formation require further litigation in Phase 2.
- CCA cost responsibility for forecasting errors need to be litigated in Phase 2.
- Costs for back-up power and balancing services are not defined and must be litigated in Phase 2.

### **Access to Customer Data**

Local Governments that are investigating or pursuing CCA have the right to detailed billing and load data without it being aggregated or masked in any way. To demonstrate the local government is investigating CCA and requires access

to customer information, the mayor or chief county administrator must sign a letter attesting that the city or county is investigating or pursuing status as a CCA. The prospective CCA must sign nondisclosure agreements for any confidential information that is not masked or aggregated. The decision requires that the CCA must not use the data for any purpose other than to facilitate provision of energy services.

The utilities were authorized to include language in their tariffs that the CCA indemnify the utility from liability associated with release of customer information, as long as the utility provided the information responsibly and according to Commission rules, orders and approved tariffs. The CCA will indemnify the utility from liabilities associated with the CCA's disclosure of confidential information where the utility has taken all reasonable steps to prevent such disclosure.

The utilities must provide all data requested by the CCA at cost, and utilities may not determine what information is relevant as long as the utilities are reimbursed for the reasonable costs of providing the information. The Decision confirmed that the data currently provided at no cost pursuant to D.03-07-034 will continue to be provided free of charge.

*Implications:*

- Aggregate customer data is sufficient for base case feasibility assessment, but CCAs should obtain customer billing information prior to submitting an implementation plan.

**Phase-In**

The Decision found that CCAs can legally phase-in their programs, and the decision to establish a phase-in or pilot implementation should be determined by the CCA. The Commission found that a phase-in or pilot program may impose additional costs on the utility that can be recovered in tariffs from CCA. On the other hand, some phase-in plans may reduce costs. The Decision ordered the utility to propose tariffs to permit the utilities to negotiate with CCAs regarding phase-in plans that might reduce costs.

The Decision stated the Commission will not determine which customers CCA should serve. The Decision found that AB 117 does not prohibit a CCA from offering service to a portion of customers in its territory, with the exception that it must offer service to all residential customers (presumably the transfer of residential accounts could be phased-in without violating the residential "must-offer" requirement).

*Implications:*

- Phase-in can significantly reduce implementation risk by enabling a pilot program to work out bugs before rolling the program out to all customers.
- Phase-in can help eliminate cash outflow that might otherwise occur in the early years of implementation.

## **Load Profiles**

The Decision ruled that system-wide class load profiles will be used for the CRS, scheduling and settlement to prevent cost shifting that might occur through use of CCA-specific load profiles. The Decision stated the Commission may reconsider the use of area specific load profiles for these purposes, if the Commission or the FERC eventually unbundle utility systems by region.

While area load profiles would not be used for scheduling electricity or calculating the CRS, the Commission found that such data might provide useful information to the CCA for other purposes. The Decision ordered the utilities to propose tariffs to develop an estimation of a CCA's load profile at cost, consistent with SDG&E's proposal to adjust the system average load profile by use and climate.

### *Implications:*

- Because load profiles are used in the calculation of the CRS as well as in the procurement of electricity, the net impact of using area specific load profiles in lieu of class average load profiles is undetermined.
- It may be appropriate to reassess the use of area specific load profiles after resolution of the more significant issues in the early years of CCA implementation.

## **Boundary Metering**

The Decision ordered the utilities to propose tariffs to provide metering at CCA boundaries at the utilities' costs of providing such metering to CCAs.

### *Implications:*

- The practicality of boundary metering is questionable due to the configuration of utility distribution circuits and the ability for customers to opt-out of the CCA program.

## **V. CPUC PHASE 2 DECISION SUMMARY**

### **Introduction**

The CPUC issued its final decision (Decision) in Phase 2 of the proceeding on December 15, 2005. Many of the issues in the case follow from the overarching issue of CPUC jurisdiction over Community Choice Aggregators (CCAs). The Decision finds that the CPUC's authority over CCA is narrowly circumscribed by AB 117 and that the Commission's primary role is to regulate the service the utility provides to the CCA and its customers. The Decision finds: "Nothing in the statute directs the Commission to regulate the CCA's program except to the extent that its program elements may affect utility operations and the rates and services to other customers."

## **Implementation Plan and CCA Registration**

The Decision finds nothing in the statute that directs the CPUC to approve or disapprove an implementation plan or modifications to it. Nor does that statute provide authority to “decertify” a CCA or its implementation plan. It is not the CPUC’s job to determine what information should be disclosed in an implementation plan, but rather it is up to the CCA to comply with the statute.

The Decision rejects the proposal for submission of an implementation plan to follow the advice letter process applicable to the utilities. In order to facilitate smooth operation of the CCA where its policies may affect the utility and its customers, the Decision directs the CPUC’s Executive Director to develop an informal review process for the CCA and the utility to understand the implementation plan and the CCA’s ability to comply with utility tariffs. The process would be mandatory at the request of either the utility or the CCA; however, it would implicate no approvals, either formal or informal, from the CPUC. Utilities are to include a description of the process in their tariffs.

The CPUC Executive Director is directed to prepare and publish instructions for CCAs and utilities regarding a timeline and procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to the CCA of the appropriate CRS, and registration of CCAs. An illustrative timeline is included as an attachment to the Decision.

The CCA’s registration packet is to include the CCA’s service agreement with the utility and evidence of insurance, self-insurance or a bond that will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting. Utilities are directed to cooperate fully with the CCA, as required by AB 117. The Decision emphasizes the CPUC’s authority to impose substantial penalties on the utilities if they fail to do so.

## **Consumer Protection**

The Decision finds a very limited CPUC role for consumer protection other than those issues that would impact utility customers, such as requiring payment of a CRS. The CPUC would not intermediate between a CCA and its customers, finding no evidence that utility services provided by local governments lack in consumer protections. The CPUC will require certain types of information from CCAs, including annual reports such as those they would provide to their own local oversight agencies or bodies.

The Decision finds the tariff should govern the relationship between CCAs and the serving utilities, not between CCAs and their customers.

## **Customer Notices**

The Decision finds that CCAs are responsible for ensuring customer notices comply with AB 117, and notes the CCAs' willingness to work with the CPUC's Public Advisor to assure notices are clear, complete and easy to understand.

The Decision directs the utilities to include in their tariffs a cost-based service for including customer notices in utility bills. The content of notices included in utility bills is limited to the information required by AB 117 (PU Code Section 336.2(c)(13)(A)).

Customer notices that are returned as unopened mail will not prevent the customer from being automatically enrolled in the CCA program. AB 117 requires that every customer be served by the CCA unless the customer opts out. The Decision rejects the utility proposal that customers with commodity contracts with the utility must opt-in to be served by the CCA, finding this proposal to be contrary to statute. Finally, utilities are prohibited from using ratepayer funding to market their services. Utilities may answer questions about their own rates and service and the process by which customers will be cut-over to the CCA, but utilities may not provide information about CCA rates or services or affirmatively contact customers in efforts to retain them, except at shareholder expense.

### **CRS Vintaging**

The CRS will be determined based on the utility supply portfolio that exists at the time the CCA either begins serving customers or the date stated in a binding notice of intent provided pursuant to the Open Season process. The DWR indifference fee method is adopted, consistent with the Phase 1 decision. The CRS will be adopted on a forecast basis once a year in the proceeding used to determine the DWR revenue requirement. It will be trued-up for the period two years prior as information about actual costs becomes available.

The Decision rejects CCA arguments that the utilities' contracts executed to meet the renewable portfolio standards should be excluded from the CRS calculation. The Decision finds that such a proposal would violate the principle that remaining utility customers are held indifferent to CCA formation.

The Decision reiterates its finding in the Phase 1 decision that the statute does not restrict phasing of program implementation in any way. The utilities' tariffs may not include any language limiting phase-ins. The tariffs should specify the reasonable costs of phase-ins and each utility's obligation to cooperate with CCAs to cut over groups of customers in ways that minimize utility and CCA costs. Customers of a CCA that has phased in its program would be charge a CRS according to the date of those customers' phase-in.

The CRS should include no costs related to resource adequacy or renewals of contracts with Qualifying Facilities other than those that may have been incurred on behalf of CCA customers before the date specified in a binding notice of intent, or the date customers are actually cut over to CCA service.

The Decision notes that the technical work underway in R.02-01-011 to refine the CRS calculation applicable to direct access and municipal departing load customers should be applied to CCAs to the extent it would reflect utility losses associated with CCA load migration. The Commission will not revise the CRS methodology for CCA customers without providing parties the opportunity to be heard, and the Decision states the Commission's intent to consider the matter formally following a decision in R.02-01-011.

### **Open Season**

The primary objectives of the open season process are to mitigate costs incurred by CCAs and the serving utilities and to provide a mechanism for coordinating a CCA's cut-over. The Decision draws from language in the Long Term Resource Planning Proceeding (D.04-12-048) to allow the CCA to commit to a date on which responsibility for customer power purchases will transfer from the utility to the CCA. The Open Season is strictly voluntary and will occur annually from January 1 to February 15 or March 1, depending upon the timing when the CEC resource adequacy forecasts are due.

To participate in the Open Season, the CCA must make a binding commitment to serve customers on a specified date and be subject to costs if it fails to meet its commitment. The Decision permits negotiated agreements between the CCA and the utility to assume some liability for power purchase strategies in exchange for relief from other risks. In all cases, the utility must manage procurement consistent with AB 117 (PU Code Section 366.2), which provides that CCAs must assume only the "net unavoidable costs" of utility power procurement.

The Decision eliminates the requirement proposed by the utilities for a binding five year forecast. The Open Season rules should require the CCA to disclose which portion of each customer class would be subject to cut-over. The CCA will be required to disclose all relevant information about the number of customers to be cut-over, the rates, rate design and special contracts to facilitate forecasting. The information would be provided to the utility under confidentiality protections and subject to a nondisclosure agreement.

CCAs will be liable for the utility's incremental costs related to failure of the CCA to transfer customers on the dates included in its binding commitment, except for delays attributable to utility actions. Where the CCA is not responsible for the missed cut-over, the utility is to credit the CCA with the incremental cost of its power purchase losses.

If the Open Season collaborative forecasting process fails, the Decision adopts TURN's proposal to use default opt-out percentages for the first year of the CCA's operations. The Decision establishes default opt out percentages of 5% for residential customers and 20% for non-residential customers. The purpose of the default opt-out percentages is to estimate the cost to the utility in the event a CCA misses its cut-over date.

The notice of intent will be “self-executing” and relieve the utility of its power supply obligations. Additional CPUC orders to that effect are unnecessary.

The Decision includes an Open Season Tariff as an attachment, which is to be included in utility tariffs.

### **Renewable Portfolio Standard**

The CCA should identify in its implementation plan how it intends to comply with the RPS, although the CPUC defers to statute on what the implementation plan requires. The manner by which the CCA will participate in the RPS is being considered in another CPUC proceeding, R.04-04-026.

### **Other Tariff Rates and Services**

#### *1. Treatment of New Customers*

New customers will be automatically assigned to the CCA. Utilities are permitted to charge for the cost of switching the customer to CCA service via a CCASR, if one must be generated for a new customer. The statute requires new customers must be notified twice within the first 60 days of service of their opt-out rights. Neither the CPUC nor the utilities have the authority to enforce the statute, and for that reason, the utility tariffs may not make this notification a condition of service.

#### *2. Boundary Metering*

The statute requires all metering to be performed by the utilities. CCA vendors are not permitted to provide these services.

#### *3. Customer Information*

The Decision reiterates the Phase 1 ruling that AB 117 does not permit a utility to second guess a CCA’s request for relevant information. Utility tariffs are to include a provision that permits CCAs to access all relevant customer information, consistent with the Phase 1 Decision.

#### *4. Customer Switching Rules*

Customers that return to bundled service must do so under the same conditions as applicable to returning direct access customers. Such customers will be required to remain on bundled utility service for a three year period, consistent with current direct access rules.

#### *5. Utility-CCA Service Agreement*

The service agreement proposed by the utilities is adopted as exemplary and may be tailored by mutual agreement of the utility and the CCA to accommodate specific circumstances. The utilities should modify the proposed service agreement to be consistent with the order.

#### *6. Call Center Fees*

The Decision finds that the utilities have not yet tracked CCA calls to establish that such calls will impose incremental costs, and it is therefore premature to

establish an 800 number for purposes of charging CCAs for customer calls. The Decision declines to adopt the utilities' proposed charges for customer calls to the utility regarding CCA, and directs the utilities to raise this issue in their general rate cases.

#### *7. Opt-Out Fees*

The utilities are entitled to charge fees for processing customer opt-outs. PG&E will not be required to revise its processing system to handle post cards due to the expense. PG&E is encouraged to consider internet options for processing opt-outs and revise its tariffs at a later date, as it suggests.

#### *8. Customer Deposits, Partial Payments and Termination of Service*

The Decision finds that CCA services should not be considered disconnectable, consistent with existing Commission policy for ESPs. Each entity is to collect its own deposits from customers, where applicable, and the CCA may collect the deposits using the utility's billing services. Partial payments would be allocated first to disconnectable services and then on a prorated basis to other utility and CCA services. The CCA may return a CCA customer for nonpayment of CCA services.

#### *9. CCASR Processing*

The Decision agrees with the utilities that a 15-day lead time is reasonable to process a switch from the utility to the CCA where there is no need for urgent action, such as when a customer is moving or following an opt-out notice.

#### *10. Changing Municipalities in the CCA Plan*

The Decision finds it appropriate that the utility tariffs address provisions for changes in the CCA's membership (i.e., additions or deletions of cities or counties in a CCA program). The reason is that changes in CCA membership will affect utility operations and outstanding liabilities that would affect the CRS.

#### *11. Confirmation Letters*

There is nor compelling justification for the utilities to send a confirmation letter because customers will already receive two opt-out notices following their cut-over to CCA service.

#### *12. Scheduling Coordinator Requirements*

Consistent with the view that utility tariffs govern the relationships between CCAs and the utilities, it is not appropriate for the tariff to require the CCA to identify its scheduling coordinator. This is a matter between the CCA and the Independent System Operator.

#### *13. Load Aggregation*

Private aggregation (direct access) is permitted by CCA customers only to the extent its implementation does not conflict with utility tariffs.

#### *14. Notice of Program Implementation*

AB 117 requires the CPUC to determine the earliest possible implementation date for a CCA to begin service. The Proposed Decision finds that the earliest

possible date for the program was the date upon which the tariffs filed pursuant to the Phase 1 Decision were effective.<sup>4</sup> The utilities are directed to undertake to affect the system changes required to satisfy the tariffs, once the utility receives a binding commitment from the first CCA in its service territory. The utilities are to complete their work within six months. The earliest possible implementation date for a CCA's provision of service is the date of the completion of all tariffed requirements, but no later than six months after notice from the first CCA or the date the CCA and the utility agree is reasonable. In no event may the utility delay the initiation of CCA service once the CCA has fulfilled tariffed requirements.

*15. Electronic Data Interchange Testing*

The cost of EDI testing should be paid by the CCA, and utility tariffs should require each CCA to pay for EDI testing within reason.

*16. Specialized Service Requests*

The utilities proposed to charge hourly rates for services not otherwise priced out in the tariffs. The utilities tariff proposals to charge for specialized services appear consistent with the principle to charge CCAs the incremental costs of providing service to them and are therefore approved.

*17. Metering Fees*

PG&E's proposed fee for Meter Data Management Agent (MDMA) Meter Data Posting of \$9.28 per interval meter per month is appropriate. The CCA's assertion that this fee is too high is rejected because the CCAs appear to have misunderstood the basis for the cost in their criticism of the charge.

*18. Involuntary Service Termination*

The utilities' tariff proposals to terminate a CCA's service under certain conditions are far too vague and would provide the utilities with too much discretion. Utilities are not permitted to include any language in the tariffs that provides the utilities with discretion to terminate a CCA's service with the exception that the utility may terminate service in the event of a system emergency or where public health or safety is involved. Otherwise, the utility that seeks to terminate a CCA service must obtain an order from the Commission directing the utility to terminate service. The request must include the reasons for the requested termination, the impacts of the termination, and the expected impacts if the CCA's service is not terminated. The cost of lawful terminations should be billed to the CCA.

*19 Net Metering*

The issues of net metering should be decided in a different CPUC proceeding, R.04-03-017.

*20. Rate Ready Billing*

CCA parties proposed PG&E's rate ready billing service collect the CCA's charges, notwithstanding the number of tiers charged for the commodity

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<sup>4</sup> This date was February 14, 2005.

portion of the bill. PG&E had proposed a rate ready billing service that would limit the rate structures it would bill for a CCA. For residential customers, PG&E would only allow for two tiers, even though the utility itself uses a five tier rate structure. The Decision finds that PG&E's rate-ready billing service is optional, and the CPUC would not object to modifications desired by CCAs if provided at cost. Otherwise, CCAs can use the "bill-ready" billing service, similar to what is offered by SCE and SDG&E.

#### *21. Services Funded by Bundled Rates*

Additional tariff language proposed by the CCAs that would require utilities to continue providing CCA services that are supported by bundled rates are not necessary. Utilities must continue to provide tariffed services until the CPUC finds to the contrary.

#### *22. California Alternative Rate for Energy (CARE) Discount*

The CARE discount provides reduced rates for qualifying low income customers. The utilities should continue to apply the CARE discount to all qualifying CCA customers. The discount should be calculated using all elements of the customer's bill as if the customer took bundled service from the utility, but the discount should be applied only to the distribution rate. The discount should not be reflected in the CRS. CCAs can design rates that provide additional discounts if they so choose.

#### *23. In-Kind Power*

The Decision restates the policy from the Phase 1 Decision that parties are encouraged to make arrangements for assignment of DWR contract power if the power would otherwise be undeliverable or if this in some other way would minimize power contract liabilities. The CPUC will rely on the parties to work out such arrangements.

#### *24. Bill Ready Billing*

PG&E should automate its billing system for accommodating bill-ready billing so that its costs can be brought in line with those of SCE and SDG&E. PG&E is directed to develop the service within 12 months and may charge the same rate as charged by SCE for this service (44 cents per account per month). If PG&E can show its incremental costs are higher than this in its next General Rate Case, the CPUC will consider increasing the charge. The costs of initial changes to the billing system should be paid by all ratepayers, consistent with the policy expressed in the Phase 1 Decision.

### **Future CCA Issues**

Because CCA is a new program, the CPUC intends to initiate a new rulemaking to review the program within a year of the initiation of the first CCA's operation. In the meantime, CCAs and utilities are encouraged to bring to the CPUC's attention problems with existing tariffs, rules or policies adopted in this order. This may be accomplished by consulting with the CPUC's technical staff or by filing petitions to modify orders issued in this proceeding.