State of California **Public Utilities Commission**
San Francisco

MEMORANDUM

Date: Jan. 13, 2014

To: The Commission
(Agenda Distribution List)

From: Julie A. Fitch
Chief of Staff, Commissioner Peterman

File No.: Agenda ID # 12650, Alternate to Agenda ID #12461

Subject: Alternate on Community Choice Aggregators Administering Energy Efficiency Programs (R.09-11-014)

In response to comments from parties, the following changes have been made to this alternate proposed decision:

Cost-effectiveness rules for community choice aggregators (CCAs)

- In response to comments from the utilities, and PG&E in particular, the language has been strengthened to ensure that similar CCA programs will be compared to similar IOU programs when assessing cost-effectiveness. CCA programs will not be held to a lower standard than similar IOU programs.
- This is consistent with ORA's original proposal for how to assess the cost-effectiveness of CCA program proposals.

Administrative cost caps for CCA programs

- Utility comments objected to allowing unlimited administrative costs for CCA portfolios in the first three years of operation.
- In response to those comments, CCA administrative costs will not be uncapped, but will be capped at 50% during the first three years of operation.
- Thereafter, CCA administrative cost limits will be the same as utility administrative cost limits. The limits are currently set at 10%.

Audit requirements

- For CCAs that elect access to funding only to provide programs to their own customers, the auditing requirements have been clarified to require that CCAs hire third-party auditors and submit those independent audits to the Commission. This requirement replaces the previous provisions that would have allowed for CCAs to audit themselves (a provision also present in the ALJ's PD).

Counting of savings from CCA programs towards goals

- Clarifies that savings from both CCA and utility programs will be counted towards the overall energy savings goals set by the Commission for each utility service territory.

The document also contains other minor corrections and clarifications in response to comments.

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ATTACHMENT

R.09-11-014: Alternate Proposed Decision Enabling Community Choice Aggregators to Administer Energy Efficiency Programs

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed decision (PD) of Administrative Law Judge Todd O. Edmister (mailed on October 31, 2013) and the alternate proposed decision (APD) of Commissioner Carla J. Peterman (mailed on December 13, 2013).

The PD and APD both find that Community Choice Aggregators (CCAs) should be eligible to become administrators of electric energy efficiency programs under Public Utilities Code Section 381.1.

The PD requires that CCAs propose portfolios that meet a cost-effectiveness threshold of a 1.0 benefit-cost ratio during its first three years and 1.25 thereafter. The PD also declines to allow the CCAs access to funding for natural gas programs.

The APD, by contrast, does not require a threshold ratio for cost-effectiveness of CCA programs. Instead, the APD commits the Commission to assembling cost-effective program portfolios overall in each program cycle, consistent with historical practice of requiring portfolio-level cost-effectiveness. Going forward, this portfolio cost-effectiveness requirement would be applied across all programs and all administrators within a utility service territory, while encouraging all administrators to maximize cost-effectiveness to the extent possible. In addition, CCA programs would be compared against similar utility programs as a benchmark of their cost-effectiveness.

The APD also allows CCAs higher administrative costs for the first three years of each CCA's administration of energy efficiency programs, to allow for start up and ramp up costs.

In addition, the APD allows CCAs to propose to access natural gas public purpose surcharge funding in the next portfolio funding cycle, and commits to evaluate whether and how the Commission may allow natural gas funding to flow to CCAs in that next portfolio application proceeding. Finally, the APD states openness to modifying this structure and framework should there be a significant change in the number of CCAs operating in California.

In all other ways, the APD is identical to the PD.

(END OF ATTACHMENT)

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER PETERMAN (Mailed 12/13/2013)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Examine the Commission's Post-2008 Energy Efficiency Policies, Programs, Evaluation, Measurement, and Verification, and Related Issues.	Rulemaking 09-11-014 (Filed November 20, 2009)

DECISION ENABLING COMMUNITY CHOICE AGGREGATORS TO ADMINISTER ENERGY EFFICIENCY PROGRAMS

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1. Summary

This decision determines how community choice aggregators (CCAs) will apply to administer energy efficiency programs. CCAs are henceforth eligible to administer energy efficiency programs under Cal. Pub. Util. Code Section 381.1(a)-(d)[1] subject to the same policies and standards as Investor-owned utilities (IOU) program administrators,[2] except as noted below. The Commission's goal is to make energy efficiency program administration more manageable by harmonizing the energy efficiency rules for CCA program administrators with those of IOU program administrators.

The one major area in which CCAs will have a different standard than IOU administrators is in the cost-effectiveness requirements. This is intended to allow CCAs to try innovative approaches to program design and to target harder-to-reach customer segments, in keeping with our state goals to achieve greater levels of deep and comprehensive energy savings. In this decision we continue our decision not to require a threshold cost-effectiveness standard for the CCA's portfolio; however we will compare the CCA's programs against similar programs in the IOUs' portfolios, in order to achieve fair and consistent approaches across administrators. The Commission will consider the CCA

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[1] All subsequent references to code sections are to the Cal. Pub. Util. Code unless otherwise noted.

[2] *See* generally, the Commission's Energy Efficiency Policy Manual (EE Policy Manual), http://www.cpuc.ca.gov/NR/rdonlyres/7E3A4773-6D35-4D21-A7A2-9895C1E04A01/0/EEPolicyManualV5forPDF.pdf.

proposals alongside IOU proposals and assemble a cost-effective portfolio overall in each utility's service territory, including programs of all administrators, for each funding cycle. In addition, new CCAs will have a ramp up period of up to three years before becoming subject to our existing lower caps on administrative costs.

We also put in place rules for CCAs to file advice letters to administer energy efficiency programs just for their own customers, under Section 381.1(e)-(f).

We also allow CCAs to propose in the next program portfolio cycle application, in addition to programs funded by electric non-bypassable surcharges, programs funded by the natural gas public purpose surcharge funds.[3] We will consider whether and how to allow access to natural gas funds in that subsequent proceeding.

In sum, this decision gives CCAs the chance to become full-fledged energy efficiency program administrators, and an initial start-up period to get up to speed. If a CCA opts not to avail itself of this opportunity, and still wishes to be involved in energy efficiency programs, it has other opportunities to provide energy efficiency services. It may proceed under Section 381.1(e)-(f), or as a program implementer rather than as an administrator. We also state an intent to revisit the rules and framework surrounding CCA participation in energy efficiency programs should the number of CCAs operating in California rise significantly.

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[3] Natural gas public purpose program surcharges are governed by Section 890.

2. Background

Phase II of this proceeding began on September 22, 2010 with the issuance of an Assigned Commissioner Ruling and Scoping Memo (Scoping Memo). The scope of Phase II includes developing procedures for community choice aggregators (CCAs) to apply to administer cost-effective energy efficiency and conservation programs.[4] The specific issues the Scoping Memo assigned to Phase II are:

(1) What should be the rules by which CCA programs gain access to energy efficiency funds, including, but not limited to, allowing CCA programs to independently administer such funds? (What the Scoping Memo termed the "access" issue).

What safeguards are appropriate to ensure that utilities administer energy efficiency funds fairly and not in a way that adversely affects CCA programs? (What the Scoping Memo termed the "safeguards" issue).

3. Discussion

3.1. The "Access" Issue

The Scoping Memo directed a workshop on the "access" issue. The workshop was held on September 27, 2010. On October 22, 2010, Pacific Gas and Electric Company (PG&E) filed and served a Joint Workshop Report (Joint Report) on behalf of itself, Southern California Edison Company (SCE), City and County of San Francisco (CCSF), Marin Energy Authority (MEA),

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[4] *See* Decision (D.) 03-07-034, Finding of Fact 2 and Ordering Paragraph 1.

Natural Resources Defense Council (NRDC), San Joaquin Valley Power Authority, and Women's Energy Matters (WEM).[5]

In response to the Joint Report, comments were filed on October 29, 2010, by MEA, NRDC, PG&E, San Diego Gas & Electric Company (SDG&E), Southern California Gas Company, SCE, The Utility Reform Network (TURN), and WEM. Reply comments were filed on November 4, 2010, by CCSF, the Division of Ratepayer Advocates, MEA, NRDC, PG&E, SDG&E, SCE, TURN, and WEM.

There matters stood until June 20, 2012. On that date, a ruling issued by the assigned Administrative Law Judge (ALJ) (June 20, 2012 ALJ Ruling) observed that "To date, the Commission has not taken any action on the issues outlined in the Joint Report or the comments and replies on it." The June 20, 2012 ALJ ruling also noted the Senate's passage of Senate Bill (SB) 790, and then called for new or "refresh[ed]" comments and reply comments from "[a]ny party interested in commenting on (1) the proposed funding formula and definitions of terms for CCA energy efficiency program administration elected under § 381.1(e) and (f); and/or (2) the appropriate procedures for CCAs to file energy efficiency program proposals for 2015." SCE, CCSF, MEA, PG&E, and

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[5] WEM subsequently moved to withdraw its name from the list of parties participating in the Joint Report, and separately moved for acceptance of an alternative report. We deny those motions. We take note, however, of WEM's concerns regarding the definition of "administration" in the Joint Report as if those concerns had been raised in WEM's comments (*see*, *e.g.*, Comments of The Utility Reform Network on Joint Report, at 2 (raising same issue)). In future "joint" reports, PG&E should identify disagreements such as this in any joint document PG&E prepares, just as PG&E noted in the Joint Report other items on which there was not consensus.

WEM filed opening comments in response to the June 20, 2012 ALJ Ruling. The same entities, plus NRDC and SDG&E, filed reply comments.

3.2. The Statutory Framework

Section 381(b) requires the Commission to "allocate funds collected pursuant to [Section 381(a)] . . . to programs that enhance system reliability and provide in-state benefits as follows: (1) Cost-effective energy efficiency and conservation activities." Section 381(a), in turn, has the Commission "require each electrical corporation" to collect a nonbypassable charge from the electrical corporation's distribution customers. The charge the electrical corporation collects is nonbypassable "to ensure that funding for the programs described in subdivision (b) . . . are not commingled with other revenues."[6]

Section 381.1 subjects CCAs to particular treatment related to their desire to administer energy efficiency funds. Section 381.1(a)–(d) allows CCAs to access energy efficiency funds from, and provide energy efficiency programs to, both their customers *and* other utilities' customers.

SB 790 (Stats. 2011, Ch.599.Leno) added subsections (e) and (f) to Section 381.1. These newer subsections allow a CCA to invoke an alternative Commission review process for programs funded by (and offered to) only the CCA's own customers.

We first discuss the rules governing subsections (a)-(d). We then turn to the rules governing subsections (e) and (f).

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[6] Section 381.1(a).

3.2.1. CCA Applications to Administer Energy Efficiency and Conservation Programs Under Section 381.1(a)-(d)

The Commission will review CCA applications to administer energy efficiency programs under Section 381.1(a)-(d). Section 381.1(a) directs the Commission to establish policies for all types of applicants, "including, but not limited to, a local entity that establishes a community choice aggregation program" to "apply to become administrators for cost-effective energy efficiency and conservation programs."[7] The one distinction Section 381.1 makes for CCAs versus other applicants appears in Section 381.1(d), which states:

> "The commission shall establish an impartial process for making the determination of whether a third party, including a community choice aggregator, may become administrators for cost-effective energy efficiency and conservation programs pursuant to subdivision (a), and *shall not delegate or otherwise transfer the commission's authority to make this determination for a community choice aggregator to an electrical corporation."*[8]

In sum, Section 381.1 requires the Commission to "establish an impartial process" to review CCA applications to become "administrators." The Commission may not delegate authority to an electrical corporation to determine whether a CCA applicant may become an administrator.[9]

To the uninitiated, this direction might seem straightforward enough. However, matters are more complex than they appear, as reflected in our prior

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[7] Section 381.1(a).

[8] Section 381.1(e) (emphasis added).

[9] *See* SB 790 Assembly Appropriations Committee Report (August 17, 2011 hearing).

interpretation in D.05-01-055 of the term "administrators" for purposes of Section 381.1. To understand this complexity requires a brief recapitulation of D.05-01-055.

In D.05-01-055, we distinguished the role of a program administrator from that of a program implementer. As we discussed at length in D.05-01-055, "energy efficiency administration encompasses all the functions related to the planning, oversight and management of energy efficiency programs, including decisions on what programs to fund with ratepayer dollars."[10] "[T]he term administration or administrative structure in [D.05-01-055] does not, however, include the various tasks associated with program delivery, *e.g.*, recruiting of customers and installation of measures. We refer to the entities that perform these functions as 'program implementers,' who operate under contracts/agreements with the entity or entities managing the entire portfolio of ratepayer-funded programs."

However in D.05-01-055, we also went on to say that where CCAs and other non-Investor-owned Utilities are concerned, "administrator" does not mean "administrator" in the sense of those who choose which programs to fund, and those who administer portfolios of chosen programs. For purposes of Section 381.1, we allowed CCAs and other non-IOUs to take on, at most, a "program implementer" role, stating:

> We interpret "administrator" in this context [referencing Section 381.1] to mean an entity implementing an energy efficiency program which is the subject of Section 381, which authorizes the expenditure of certain funds on energy efficiency programs. This contrasts with

[10] D.05-01-055 at 2.

> the Commission's energy efficiency policy manual which distinguishes "administrators" from "implementers."

With respect to CCAs in particular, in D.05-01-055 we stated:

> We reiterate our interpretation of "administrator" for purposes of [Section 381.1] as meaning "any entity implementing an energy efficiency program that is the subject of Section 382, which authorizes the expenditure of certain funds on energy efficiency programs." We believe this is consistent with the competing interests articulated in Section 381.1 as well as the requirements for handling ratepayer money, as discussed above.
> At the same time, we have recognized that "we may ultimately find that CCAs are appropriately independent agencies that should have considerable deference to use Section 381 funds" and have reserved broader issues about CCAs role and discretion for later determination. . . . *Nothing in this decision prevents us from modifying the process for allocating PGC funds to CCAs in the future.*[11]

We reaffirmed our definition of the term "administrator" for purposes of Section 381.1 on rehearing in D.05-07-046. In that decision, we reiterated that "[Section 381.1] does not grant non-IOUs the authority to hold, manage or control ratepayer funds collected for the energy efficiency programs," but did nothing to restrict our future options with respect to CCAs as far as distributing funds from non-bypassable electric distribution charges to them.[12]

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11 D.05-01-055 at 85-88 (footnotes omitted, emphasis added).

12 Section 381(a) requires the Commission to establish "a nonbypassable element of the local distribution service" to fund energy efficiency programs. The public goods charge (PGC) was the non-bypassable charge in place when we issued D.05-01-055, but it expired on January 1, 2012. In D.11-12-038, the Commission authorized additional electric procurement charges to ensure ongoing funding of all cost-effective electric energy efficiency, pursuant to other statutory mandates. IOUs track these charges in their Procurement Energy Efficiency Balancing Account (PEEBA), or in related accounts.

We now conclude that it is appropriate for CCAs to be EE program "administrators" in the same sense that IOUs are "administrators." To become administrators, CCAs may undertake program choice and portfolio management functions, in addition to or as an alternative to undertaking program implementation functions. CCAs need not apply to IOUs for energy efficiency funding, but should instead apply directly to the Commission for funding, as we discuss in more detail below.

In reaching this conclusion, we recognize that the IOUs have been and remain opposed to anyone other than themselves becoming "administrators." SCE argues that:

> Although the legislature has since adopted SB 790, as described below, based on California law, the legislature is presumed to be aware of the Commission's long standing interpretation of the word administrator in Section 331.1. Therefore, since the legislature took no active steps to change that definition when enacting SB 790, this definition must stand. The Commission cannot simply ignore its previous legal findings and reach a different conclusion on the legality of non-IOU energy efficiency program administration.

We are not persuaded. In adopting SB 790, the legislature was presumably aware not just of our interpretation of the word "administrator," but also of the debate around whether CCAs would submit energy efficiency programs to the Commission or to the IOUs. By enacting SB 790, and prohibiting us from delegating to IOUs the authority to review CCA energy efficiency applications, the legislature effectively put its hand on the scale in favor of CCAs applying to us for funding of programs CCAs administer, without IOU intermediation.

SCE's argument regarding our alleged "previous legal findings" precluding CCA program administration merit also lacks merit. There is only one conclusion of law (COL) in D.05-01-055 that discusses CCA programs. It expressly reserves to a later decision the question of how we would address CCA energy efficiency programs.[13]

SCE's underlying concern that directing EE funds to CCAs would violate the public trust, and so is illegal, is also misplaced. SCE contends that: "The Commission must retain regulatory jurisdiction over energy efficiency program administration to ensure that energy efficiency funds are properly spent," and that is what we have done here. This decision, by making CCAs largely subject to the same rules as IOUs, provides mechanisms to, as SCE requests, "ensure that energy efficiency funds are properly spent."[14]

As CCSF points out, "in *PG&E Corp. v. Public Utilities Commission*, 118 Cal. App. 4th 1174 (2004), the California Court of Appeals upheld the Commission's jurisdiction to enforce conditions placed on the establishment of non-jurisdictional entities -- public utility holding companies -- even though these conditions were not enshrined in a contract." The analogy is instructive insofar as it demonstrates that the Commission can have jurisdiction over what might otherwise be non-jurisdictional entities. We have before us an even easier case, as we have specific statutory authority in Section 381.1 to establish regulatory processes over, inter alia, CCAs. The one currently operating CCA - EA – does not dispute the existence of the Commission's regulatory

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13 D.05-01-055, COL 6: "Nothing in today's decision prevents the Commission from modifying the process for allocating PGC funds to Community Choice Aggregators in the future, or revisiting the question of whether CCA customers should be relieved of their responsibility for energy efficiency PGC and procurement surcharges if the CCA elects to take over these functions."

14 SCE's (U338-E) Opening Comments on Administrative Law Judge's Ruling, dated August 10, 2012 at 4.

authority over CCAs applying under Section 381.1(a)-(f).[15] CCSF similarly recognizes the Commission's enhanced oversight role over such applications.[16]

The Commission retains regulatory authority over energy efficiency funds directed to CCAs for energy efficiency programs under Section 381.1(a)-(d), and so we can direct their transfer to or remittance from (in, *e.g*., the case of unspent funds from the 2013-14 portfolios)[17] the relevant CCA without additional statutory authority. Thus, we have statutory authority to establish a process to ensure CCAs properly administer energy efficiency funds, and we accordingly condition funding of CCA administration of energy efficiency programs on our review and approval of CCA applications to us. Before we direct energy efficiency funds to CCAs, we will review the CCA portfolios. We do not see the processes we adopt here giving rise to the sorts of legal problems we envisioned

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[15] "MEA has already acknowledged in its opening comments that because the funds being provided through subsection § 381.1(a) are collected from all ratepayers, not just from the CCA's customers, the Commission has further regulatory discretion over CCA energy efficiency programs administered through this pathway." MEA Reply Comments on Proposed Formula, Definitions, and Procedures for Community Choice Aggregators to File Energy Efficiency Program Proposals for 2015 and Beyond, dated August 17, 2012, at 4.

[16] "Detailed Commission oversight is more justified in the case of an application, and in effect, the ALJ [June 20, 2012] Ruling provides for applications pursuant to subsection 381.1(a) to resemble those filed by the IOUs." Reply Comments of The City and County of San Francisco on the Administrative Law Judge's Ruling Regarding Procedures for Community Choice Aggregators to Administer energy efficiency Programs, dated August 17, 2012 at 6.

[17] *See* D. 12-11-015, at 134 (COL 12, requiring return to ratepayers of unspent funding authorized in that decision).

in D.05-01-055, in which we addressed proposals for a nearly wholesale turnover to third parties of decision-making authority for energy efficiency funding.[18]

We take cognizance of the admonition that SB 790 added to subsection (d) of Section 381.1, barring our delegation of review of CCA applications to the IOUs. CCAs are to apply directly to the Commission for administration of energy efficiency programs.

This brings us to the particulars of how to integrate CCAs into an administrator role for purposes of applications made pursuant to Section 381(a)-(d).

3.2.2. The Policy Manual

The Policy Manual is a Commission staff-prepared compendium of our decisions and resolutions relating to energy efficiency, and it also includes some additional staff-prepared gloss on those decisions. Commission staff has revised the Policy Manual periodically, updating it to incorporate regulatory changes that have come along since the most recent edition. It is a convenient reference for program administrators. It necessarily lags, however, behind our most recent actions (*e.g.,* our issuance of this decision).

Parties have questioned whether CCAs that are program administrators must comply with the Policy Manual. In comments, TURN expresses a

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[18] SCE brings to our attention the following quote from D.05-01-055, but fails to give the last portion of it appropriate weight: "[W]e must have the authority to hold the administrator(s) fully accountable for delivering energy savings without recourse to litigation. We believe that this authority is clearly established with our regulatory oversight of the IOUs, but considerably less certain *under the proposals for independent administration in this proceeding*." As we have just noted, the proposals at issue in D.05-01-055 involved far less oversight of energy efficiency funding recipients than the process we put in place here for CCAs.

generalized concern over requiring CCA compliance with the Policy Manual, while MEA and CCSF outright oppose it on the grounds that, because they are municipalities whose customers are also their voters, they are capable of setting fair policies for themselves in a way that IOUs are not. Conversely, NRDC and the IOUs urge requiring CCAs to comply with the Policy Manual.

Whether CCAs should comply with the Policy Manual is not really the right question. As we have discussed, the Policy Manual is not itself a Commission decision or resolution. The real question is whether CCAs should comply with the underlying Commission decisions and resolutions, and staff implementation of them. We conclude that they should.

Since CCAs will administer programs at the discretion and selection of the Commission, they should be subject to the Commission's policies and rules governing the energy efficiency funds overall. We intend to enforce uniform administrative standards to the maximum extent possible. CCAs may well be subjected to a form of regulation by their customer/voters, but the applications at issue here potentially include programs administered for, and drawing funds from, a larger pool of ratepayers. Therefore, we expect that CCAs will comply with our prior decisions and with staff implementation of them, as reflected in the Policy Manual, except to the extent that (a) something in the Policy Manual conflicts with this decision or (b) compliance is impossible because of some reason unique to CCAs as distinct from IOUs. We discuss particular requirements in more detail below.

3.2.2.1. Cost-Effectiveness

Several parties have queried whether the current cost-effectiveness criteria applicable to IOU portfolios should apply to CCAs. In D.12-11-015, the decision authorizing energy efficiency portfolios for 2013-14, we expressly declined to set a minimum threshold cost-effectiveness requirement for CCA proposals under Section 381.1(a). However, in that decision we stated that we intended to revisit the matter going forward; we have done so in this proceeding and decline to make a change to this determination, except as discuss further below.

Section 381.1 requires that energy efficiency programs be cost-effective. We have a long-standing practice of requiring this cost-effectiveness requirement to be met on a portfolio basis. In other words, each and every program is not required to be cost-effective, but all of the programs, taken together, must be cost-effective in each utility's service territory. This allows for flexibility to address at least two separate purposes: 1) reaching customers that may be more expensive to serve than the average, and 2) facilitating experimentation and innovation that may lead to the next generation of energy efficiency program designs.

While the portfolio cost-effectiveness requirement has historically been applied to each utility's portfolio, it is only relatively recently that we have had any non-utility administrators. Therefore, our rules may need to continue to evolve if more CCAs are formed in California and apply to take on more energy efficiency program administration and delivery responsibilities. We state explicitly our intent to revisit these rules should the number of CCAs operating in California increase significantly over the next few years.

In the meantime, while it may appear superficially simpler and easier to apply the same cost-effectiveness requirements to utilities and to CCAs, it may not serve our long-term purposes of finding ways to reach more customers and achieve deeper levels of energy savings to meet our climate change goals.

While utilities have a large customer base over which to balance relatively expensive programs with less expensive alternatives, and to achieve economies of scale with their program delivery, CCAs by nature are locally focused and may have limited customer types to whom to offer energy efficiency programs. For example, the geographic areas served by MEA have significantly higher than 50% residential customers, in some cases closer to 80%.

From the standpoint of serving customers effectively, it is not necessarily logical for the Commission to require a CCA in this type of situation to meet a threshold cost-effectiveness requirement by balancing, for example, its potential for serving harder-to-reach or more expensive customers with less expensive offerings for industrial customers, whose numbers may be limited in their particular geographic region.

In addition, there may be instances where it makes sense for a CCA to partner with an existing IOU program in order to drive more customer participation in existing programs and raise the overall level of savings achieved, without the need to duplicate infrastructure (for example, for processing of rebates for appliances or other efficiency measures).

For these reasons, we prefer to consider CCA program proposals submitted to the Commission alongside IOU portfolios, in order to select the best program portfolio overall in each utility's geographic territory, regardless of administrator. Therefore, we continue to decline to set a threshold cost-effectiveness ratio requirement for CCA programs.

However, we note that the Office of Ratepayer Advocates' (ORA's) suggestion to compare CCA programs with similar utility programs when assessing cost-effectiveness is a reasonable one. At the time that the Commission is considering CCA proposals we will look at comparable utility offerings to assess the reasonableness of the costs and benefits proposed by the CCAs. We will not set this as an absolute requirement, because it is not clear how we would or could set objective metrics up front, since many programs may differ slightly or have defensible reasons for differing in their estimates of both costs and benefits. However, to the extent applicable and reasonable, we will hold CCA programs to the same standards of cost-effectiveness as the similar IOU programs.

In addition, not setting a threshold cost-effectiveness level up front for CCA programs necessarily means that the burden will fall to the Commission and its staff to approve, in each program cycle and across all administrators in each territory, a portfolio of programs that is well designed and coordinated, and that meets the cost-effectiveness requirements overall.

This does not mean, however, that we will subject the CCAs to any lower level of scrutiny on the reasonableness of their proposed spending on programs, including administrative and other expenses. For a startup period, defined as the first three years that a CCA is a program administrator,[19] we will exempt the CCA from the 10% cap on administrative costs. However, we will cap the CCA administrative expenses during those first three years at no more than 50% each year. Thereafter, the CCAs will be limited in those expenses in the same manner as any other administrator. We also encourage CCAs to continue to target hard to reach markets and offer innovative programs, but also employ a mix of programs which will result in the best possible cost-effective energy efficiency portfolio.

[19] Measured from the mailing date of a Commission decision approving a CCA's first application to become a program administrator under Section 381.1.

Except for first-time applicants, we will review CCA proposals on the same timeline with IOU portfolios. First-time applicants may file their applications when prepared to do so.

The IOUs request that the Commission require "the CCA applicant, if proposing a resource program(s), also provide a contingency plan if its program(s) fails to meet energy saving and demand reduction goals."[20] We have not imposed such a requirement on the IOUs, and decline to do so with CCAs.

The IOUs have also raised the issue of CCA programs overlapping with IOU programs. PG&E asserts:

> that any duplication that creates customer confusion, unfairly treats one set of customers versus other customers, or uses ratepayer funds inefficiently is inappropriate. For example, MEA's proposals are duplicative of existing statewide low income programs (in 2012) and residential, multi-family, and commercial programs (in 2013-2014).[21]

We have no evidence that CCA programs would lead to any of the problems PG&E articulates in the quote above. For the moment, we merely note that we are aware of this possibility. In the absence of data, these concerns are merely speculative and do not warrant action now on our part.

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[20] Joint Utility comments at 8.

[21] Reply Comments of Pacific Gas and Electric Company (U 39 M) Regarding Procedures for Community Choice Aggregators to Administer Energy Efficiency Programs, dated August 17, 2012.

3.2.2.2. Evaluation, Measurement, and Verification (EM&V)

In D.05-01-055, the Commission split evaluation activities along two tracks: (1) "impact evaluation" that assesses program performance (conducted by the Commission); and (2) "process and market characterization studies" that support program improvement (conducted by the IOUs).

The Commission retained the ultimate responsibility for evaluating, measuring, and verifying program impact. The Commission determines how much energy a program actually saves, and the Commission assesses actual program benefits and costs.

To promote uniformity, and to ensure cost-effectiveness, the same rules for the EM&V should apply to all program administrators, CCAs and IOUs alike. For reference, Commission staff shall include CCA-administered programs in the scope of its evaluation.

As is common practice amongst the IOU administered programs, CCAs may also undertake their own process evaluations and market studies in conjunction with Commission oversight in the same manner as authorized for IOU energy efficiency projects pursuant to D.12-11-015 and D.10-04-029.

3.2.2.3. Energy Efficiency Funding Sources

Funding for energy efficiency programs in IOU (and so in CCA) service territories comes from two sources:

(1) Non-bypassable charges from electric distribution rates, which the IOUs track in their respective PEEBAs and

(2) Gas Public Purpose Program (Gas PPP) Surcharges.

In D.11-12-038, to avoid rate shifts amongst customers, the Commission ordered the IOUs to fund the PEEBA by collecting on the basis of usage, just as they had collected the Public Goods Charge before its expiration. This also parallels the treatment of the Gas PPP surcharge. As a result, the IOUs collect the charges that fund the PEEBA and the Gas PPP on a non-bypassable basis from all customers, including CCA customers. For example, PG&E, not MEA, collects the money that funds the EE programs that MEA administers.

With respect to charges for electricity savings programs, Section 381 requires that utilities collect non-bypassable charges to fund energy efficiency programs through electricity distribution rates. The IOUs collect distribution rates including non-bypassable charges from all customers in the IOUs' service territories, even those served by CCAs; CCAs do not provide distribution services. If and when we approve future CCA applications to administer energy efficiency programs, we may direct IOUs to transfer funds to CCAs at approved levels for approved energy efficiency programs.

Section 381.1(a)-(d) speaks only to the non-bypassable charges collected by "each electrical corporation," *i.e.*, those tracked in the PEEBA. It is our policy that gas funds should pay for gas efficiency programs, and electric funds should pay for electric efficiency programs. In D.09-09-047, we stated that "For the combined utilities, PG&E and SDG&E, the portfolio budgets should split the electric and gas cost recovery according to an expense ratio aligned with the portfolios for savings/budgets. This method was adopted under D.05-09-043 for PG&E and equates to roughly 85% electric and 15% gas."[22]

CCAs are not combined utilities. They are responsible solely for electric "generation procurement activities on behalf of"[23] their customers. They provide

[22] D.09-09-047 at 319.

[23] Section 366.2(a)(5).

no gas commodity or service. The code section that provides funding for CCA energy efficiency administration, Section 381.1 deals only with programs funded with electric revenues, as Section 381 provides for funding through a non-bypassable charge that *electrical* (not gas) corporations collect.

However, we recognize that CCAs can and may wish to administer programs with both natural gas and electricity savings components. In many cases, it is logical and more cost-effective to address one program design to the combined task of saving both electricity and natural gas rather than present customers with multiple program offerings. While our historical policy and general equity principles suggest that electricity funding should be generally used to support electricity savings programs, and natural gas funding should be generally used to support natural gas savings programs, we see no apparent obstacles to allowing CCAs to apply to receive natural gas PPP surcharge funding for their programs.

However, we note that this suggestion has not been developed by parties on the record of this proceeding. Therefore, during the next funding cycle, we will allow CCAs to propose programs that include support from natural gas PPP surcharges, but we will not guarantee any funding from that source until the concept is fully vetted in that application proceeding. In particular, the mechanics of funding access are different on the gas side with the involvement of the State Board of Equalization in funds collection. However, when the applications are considered, the Commission will develop a record and decide whether and how natural gas PPP surcharge funds may be accessed by CCAs.

3.2.3. Application Details

For the 2013-14 portfolio, we directed CCAs to file proposals as an application. Going forward, we will continue to review any CCA application under Section 381.1(a)-(d) through the application process, not via advice letter.

CCAs should, in general, be subject to the same timing for applications to the Commission as the IOUs. CCSF observes in its comments that "requiring CCAs to wait until the next portfolio cycle would be unfair and would deprive CCAs of the ability to access energy efficiency funds during the crucial start-up and initial opt-out periods." MEA echoes this concern.[24] In recognition of this concern, we adopt an exception to this general rule. A CCA may make its first application to administer energy efficiency programs at any time it is prepared to do so. Thereafter, subsequent CCA filings should be on the same schedule as IOU filings.

CCA applications will be subject to the same requirements as to contents as those of IOUs. CCAs should consult with Commission staff early in the process for additional guidance in developing the application, as well as review the Policy Manual.

3.2.4. Election Option Under Section 381.1(e) and (f)

As noted previously, SB 790 modified Section 381.1 to give CCAs two options for energy efficiency program administration. We have already discussed the first option. The second option is that the CCA could "elect" to

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[24] Marin Energy Authority's Comments on Proposed Formula, Definitions, and Procedures for Community Choice Aggregators to File Energy Efficiency Program Proposals for 2015 and Beyond, dated August 10, 2012, at 4.

become an administrator for cost-effective energy efficiency and conservation programs, subject to Commission certification of a plan. Options available under Section 381.1 for CCAs to administer energy efficiency programs are quite distinct from each other. Assembly Bill 117 established the application option in 2002. The election option was added to Section 381.1 in 2011 by SB 790. Pursuant to SB 790, the application option available to "any" prospective non-IOU third-party energy efficiency administrator is "subject to an aggregator's [CCA's] right to elect to become an administrator pursuant to [the election option under] subdivision (f)." (Section 381.1(a).) SB 790 thus subordinates a third-party's application to a CCA's right to elect to administer energy efficiency programs for its customers.

PG&E argues that because "the PGC expired by its own terms on January 1, 2012 . . . and thus PG&E is no longer collecting any PGC or energy efficiency funds that are subject to 'election' by CCAs under Sections 381.1(e) and (f)."[25] This argument is unavailing. As CCSF has noted, Section 381.1(e)'s election provisions depend, not on the PGC as such, but rather on the establishment of "a non-bypassable charge authorized by the commission" for energy efficiency programs. The PGC has expired, but the commission has authorized the PEEBA, another "non-bypassable charge," to fund electricity energy efficiency programs.

The apparent purpose of SB 790's additions to Section 381.1 is to give CCAs – and only CCAs – a simpler route to become the administrator of EE and

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[25] Opening Comments of Pacific Gas and Electric Company (U 39 M) on Procedures for Community Choice Aggregators to Administer Energy Efficiency Programs, dated August 10, 2012 at 3.

conservation programs. SB 790's addition of the "election" option under subdivisions (e)–(g) to Section 381.1 thus stands in marked contrast with the preexisting, more discretionary opportunity for "any party" to "apply" to be an EE program administrator under subdivision (a). This new language underscores the two distinct options available to a CCA seeking to administer EE funds and highlights the Legislature's desire to greatly simplify the process by which CCAs can administer EE programs for their own customers.

For program year 2012, MEA requested funding under sections 381.1(e) and (f). Resolution E-4518 certified MEA's plan and set forth general rules concerning filings under Section 381.1(e) and (f). We find that those rules are still appropriate to certify a CCA's plan and we restate them in this decision.

We find that the resolution process is reasonable and appropriate for certifying a CCA plan filed pursuant to Section 381.1(e) and (f). To place a plan before the Commission, CCAs should file an advice letter that (in addition to meeting the substantive requirements we set forth below) conforms to the Tier 3 Advice Letter provisions of General Order (GO) 96-B. Such a proposed plan will thereafter be subject to the process applicable to Tier 3 Advice Letters as set out in GO 96-B. The advice letter is not to be considered either effective or approved until a Commission resolution, or decision if necessary, actually approves the CCA's plan. (*See* GO 96-B, General Rule 7.3.1.) CCAs should serve their advice letters on the service list from the nearest IOU's pending energy efficiency plan application proceedings, or, if no such proceeding is pending, on the service list from the last such proceeding.

We detail below what the Commission will consider in evaluating such CCA filings.

3.2.4.1. Funding Determination

First, we establish whether the funding requested in the CCA's proposed plan is within the forecasted maximum amount of funds the CCA would be eligible to collect. To determine the maximum amount, we will use the formula proposed in the June 20, 2012 ALJ ruling to consider MEA's plan, as follows: CCA maximum funding = Total electricity energy efficiency nonbypassable charge collections from the CCA's customers – (total electricity EE nonbypassable charge collections from the CCA's customers * % of the applicable IOU portfolio budget that was dedicated to statewide and regional programs in the most recently authorized program cycle).

Commenting parties had no objection to this formula *per se*, but differed over the particulars of the inputs, as we discuss below.

3.2.4.2. Total Energy Efficiency Collections from CA Customers

In the event of a CCA filing a proposed plan under Section 381.1(e and f), we direct Commission Staff to determine, in coordination with the relevant IOU and CCA, the actual and forecasted amounts of non-bypassable charges likely to be collected from the CCA's customers over a reasonable collection period to fund energy efficiency programs.

Section 381.1(e) speaks only to the source of a CCA's funding ("…funds collected from the aggregator's electric service customers and collected through a non-bypassable charge authorized by the commission …."). It is silent as to whether the period of fund collections that a CCA is eligible to receive must be the same as the period in which a CCA plans to spend these funds to administer programs.

PG&E "does not agree with defining 'Collections' to include funds collected or reasonably expected to be collected from the date of filing of a CCA's energy efficiency proposal." PG&E would limit "Collections" in "include [only] funds collected or reasonably expected to be collected from the date of Commission approval of the CCA proposal." PG&E is concerned about CCAs gaming the timing of their applications to collect revenues while proposed plans are pending.

Nothing in the statute requires that CCAs administering energy efficiency programs pursuant to the election option are entitled only to funds collected from the date the Commission certifies the CCA's plan. The Commission is therefore able to order that IOUs transfer the energy efficiency funds collected from a CCA's customers from a date the Commission deems reasonable for the plan period.

Funding collection and program periods do not always correspond for IOU programs, and we see no compelling reason to ensure they do so in consideration of CCA proposals. Notably, the IOUs' collection periods and their energy efficiency funds expenditure periods do not necessarily match – in fact, the IOUs collect non-bypassable energy efficiency charges on an ongoing basis with changes to the charges lagging behind changes in approved funding levels. IOUs often collect more money than they spend in the early years of an energy efficiency program cycle, and conversely, often collect less money than they spend in the latter years as energy efficiency program expenditures ramp up. We decline to impose different requirements for CCAs than for IOUs here.

Similarly, at the back end of each portfolio cycle there may be unspent or uncommitted funds left over from the sun-setting portfolio. As to disposition of such amounts, we likewise decline to treat CCAs differently from IOUs. We permit IOUs to carry such funds across portfolio periods. As MEA points out, there is no reason why the Commission should not extend such an opportunity to CCA program administrators as well.[26]

3.2.4.3. Funding Exclusions

Section 381.1 (e) states:

> The impartial process established by the commission shall allow a registered community choice aggregator to elect to become the administrator of funds collected from the aggregator's electric service customers and collected through a non-bypassable charge authorized by the commission, for cost-effective energy efficiency and conservation programs, ***except those funds collected for broader statewide and regional programs authorized by the commission***. (Emphasis added.)

CCSF expresses concern that "the IOUs will have an incentive to characterize as many programs as possible as 'statewide' or 'regional' in order to limit the funds available to CCAs."[27] CCSF requests us to look closely at: "1) which programs truly are statewide and regional programs, and 2) which approaches legitimately benefit from a more local approach."[28] In contrast,

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[26] MEA Reply Comments on Proposed Formula, Definitions and Procedures for [CCAs] at 6.

[27] Comments of The City and County of San Francisco on The Administrative Law Judge's Ruling Regarding Procedures for Community Choice Aggregators to Administer Energy Efficiency Programs, dated August 10, 2012, at 3.

[28] Comments of The City and County of San Francisco on The Administrative Law Judge's Ruling Regarding Procedures for Community Choice Aggregators to Administer Energy Efficiency Programs, dated August 10, 2012, at 3.

PG&E generally agreed with the ALJ's proposed definitions of "Statewide programs" and "Regional programs."[29]

In determining which programs were considered "regional" and "statewide" in nature, we find it reasonable to adopt the funding formula and definitions proposed in the June 20, 2012 ALJ ruling. The definitions provided in that ruling, which we adopt here, are as follows:

- "Regional Programs" - Programs offered to all eligible customers throughout an individual IOU's service territory in which a CCA is offering service, but not necessarily offered in other IOU service territories. This includes state and institutional government partnerships. This does not include any programs that are offered only in a geographic subset of an IOU territory.
- "Statewide Programs" – Programs, as defined and designated by the Commission, that are offered throughout the four IOU service territories on a generally consistent basis. Evaluation, Measurement and Verification budgets are included in statewide programs, as these budgets are overseen by Commission staff across all four IOUs on a consistent basis.

In order to calculate the funding exclusion, the Commission will review the relevant IOU's most recently approved portfolio budget, and sort programs into three categories: (1) "Regional Programs,"(2) "Statewide Programs," or (3) "Other." We will look at each program's rules to decide the appropriate categorization.[30] Thus as defined, the statewide and regional program budgets

[29] Opening Comments of Pacific Gas and Electric Company (U 39 M) on Procedures for Community Choice Aggregators to Administer Energy Efficiency Programs, dated August 10, 2012, at 6-7.

[30] We note that the on-bill financing was approved as a "local program" as that term is in PG&E's Application 08-07-031, approved as modified in D.09-09-047. But, because the on-bill financing program meets the definition of a regional program as set forth in this resolution, we categorize it as such herein.

will be determined as a percentage of the overall portfolio, and the eligible collections calculated according to the formula above. As examples from the 2013-2014 IOU portfolios, Zero Net Energy Pilot and SCE's County of Los Angeles Energy Efficiency Partnership and Non-Residential Sustainable Portfolios programs should also be treated as regional programs and excluded from the calculation.

As with plans under Section 381.1(a)-(d), some CCA programs under subsections (e)-(f) may have both electric and gas components. As discussed above, gas funds should pay for gas efficiency programs, and electric funds should pay for electric efficiency programs. To fund programs under Section 381.1(e)-(f), CCAs are only eligible to receive non-bypassable charges collected by electrical corporations. They are, accordingly, limited to requesting funds for electric energy efficiency programs.

3.2.4.4. Review of CCA Proposed Energy Efficiency Plans

Pursuant to Section 381.1(f), the Commission must certify that a CCA plan meets six criteria, specified in paragraph (f)(1)-(6) of the statute.[31] Accordingly,

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[31] "(f) A community choice aggregator electing to become an administrator shall submit a plan, approved by its governing board, to the commission for the administration of cost-effective energy efficiency and conservation programs for the aggregator's electric service customers that includes funding requirements, a program description, a cost-effectiveness analysis, and the duration of the program. The Commission shall certify that the plan submitted does all of the following:

1. Is consistent with the goals of the programs established pursuant to this section and Section 399.4.

2. Advances the public interest in maximizing cost-effective electricity savings and related benefits.

Footnote continued on next page

we will review each plan and make findings on each criterion. We discuss each criterion in the following subsections.

3.2.4.4.1. Consistency with the Goals of the Programs Established Pursuant to Section 381.1 and Section 399.4

Section 381.1 encourages the administration of cost-effective energy efficiency and conservation programs by CCAs and other non-IOU administrators. Section 399.4(a) states that prudent energy efficiency investments should continue to be made in order to "produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid." IOU energy efficiency programs currently authorized by the Commission must satisfy these criteria, and it is reasonable to expect that any future CCA program activities will do the same.

3.2.4.4.2. Advances the Public Interest in Maximizing Cost-Effective Electricity Savings and Related Benefits

Section 381.1(f)(2) requires this Commission to make a finding as to whether a CCA's plan "advances the public interest in maximizing cost-effective

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3. Accommodates the need for broader statewide or regional programs.

4. Includes audit and reporting requirements consistent with the audit and reporting requirements established by the commission pursuant to this section.

5. Includes evaluation, measurement, and verification protocols established by the community choice aggregator.

6. Includes performance metrics regarding the community choice aggregator's achievement of the objectives list in paragraphs (1) to (5), inclusive, and in any previous plan.

electricity savings and related benefits," in order to certify (or not) the plan on the basis of whether that condition is met. It is reasonable and appropriate to make this determination by referring to current Commission rules and policies governing energy efficiency cost-effectiveness. As stated in the energy efficiency Policy Manual: "This Commission relies on the TRC as the primary indicator of energy efficiency program cost effectiveness, consistent with our view that ratepayer-funded energy efficiency should focus on programs that serve as resource alternatives to supply-side options."

Any potential CCA program plans should find ways to maximize cost-effectiveness as measured by the TRC test. For the first three years, we will also exempt CCAs from administrative cost caps. Thereafter, CCAs will be subject to the same cost-effectiveness tests as IOUs. However, as above with respect to CCA applications to administer energy efficiency programs under Section 381.1 (a)-(d), we decline to set a threshold TRC value requirement for CCA-administered programs.

3.2.4.4.3. Accommodates the Need for Broader Statewide and Regional Programs

A CCA should include in its plan marketing and branding strategies to minimize customer confusion, and to otherwise distinguish between planned-for CCA programs and any similar statewide or regional programs that may also be ongoing during the time the proposed CCA programs will be in place if approved.

3.2.4.4.4. Includes Audit and Reporting Requirements Consistent with the Audit and Reporting Requirements Established by the Commission Pursuant to Section 381.1.

The CCA should contract with a third party to conduct financial and management audits of its energy efficiency programs and provide a copy of the independent audits to the Commission upon request. The financial audit will consist of a review of the financial statements of the CCA's energy efficiency operations to determine that the statements are accurate, complete, and consistent with Commission policy and standard accounting practices. The management audit will assess the CCA's management procedures and the effective use of resources in implementing the energy efficiency portfolio.

3.2.4.4.5. Includes EM&V Protocols Established by the CCA

Section 381.1(f)(5) requires the CCA to establish its own EM&V protocols. The Commission's role is to certify that a CCA's plan includes EM&V protocols. That said, we encourage CCAs to use the same CPUC EM&V requirements that apply to other energy efficiency programs. In its advice letter, the CCA should describe clearly and completely the EM&V protocols it will use.

3.2.4.4.6. Includes Performance Metrics Regarding the CCA's Achievement of the Objectives Listed in Paragraphs (1) to (5), Inclusive, and in Any Previous Plan

The CCA should provide reports that meets the requirements and format the Commission has established for IOUs and RENs, as set forth in the Policy Manual (in the current edition, at Chapter V, and in Appendix D).

3.3. The "Safeguard" Issue

Events have overtaken our consideration of "safeguard" issues in this proceeding. Since the parties filed their comments in late 2010, we have adopted a Code of Conduct and Enforcement Mechanisms Related to Utility Interactions with Community Choice Aggregators, Pursuant to SB 790 (D.12-12-036). That decision broadly safeguards the interests of CCAs vis. IOUs. The rules we adopted in D.12-12-036 include a rule specifically prohibiting use of program funds "for inducing the local government not to participate in a community choice aggregation program." (Rule 17.) D.12-12-036 also establishes an expedited complaint procedure that CCAs can invoke in response to an alleged rules violation, including "a violation of an electrical corporation's obligation to cooperate fully with community choice aggregators or community choice aggregation programs." These rules address the specific concerns intervenors raised in this proceeding.

In view of D.12-12-036, we do not see a need to adopt special safeguards relating exclusively to energy efficiency programs. If alleged IOU misuse of energy efficiency funds should again become an issue, a mechanism is in place to respond to those allegations.

4. Categorization and Need of Hearing

In initiating the subject rulemaking, we initially categorized this proceeding as quasi-legislative, and determined that hearings would not be necessary. We subsequently recategorized the proceeding as ratesetting.

We affirm the categorization of the proceeding as ratesetting, and the determination that hearings are not necessary.

5. Comments on Proposed Decision

The alternate proposed decision of Commissioner Peterman in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were timely filed on January 2, 2014 by

LGSEC, MEA (or Marin Clean Energy), PG&E, SCE, and SDG&E and SoCalGas (jointly). Reply comments were timely filed on January 7, 2014 by CCSE, MEA/MCE, and PG&E.

Many of the comments by all parties filing comments are similar to the arguments made originally in the record of this proceeding. Those comments are already addressed in the body of this proceeding. In this section, we address only those comments that are new and/or in response to which we have made changes in this decision.

5.1 Comments re: both (1) applications under Section 381.1 (a)–(d) and (2) advice letters under Section 381.1 (e)–(f)

5.1.1 Definition of regional programs

Section 381.1, at subsections (a)(3) and (f)(3) requires that an administrator's "proposed program [or submitted plan]… accommodates the need for broader statewide or regional programs." MEA is concerned that the definition of "regional" programs in this decision locks CCAs out of providing the most cost-effective programs, which tend to be regional or statewide . MEA proposes a definition of "regional" that would include only programs offered in more than one IOU service territory.

The real issue here is how CCAs should "accommodate" statewide and regional programs, as Section 381.1 requires. MEA's suggestion seems to implicitly assume that a requirement that CCAs "accommodate" such programs means that CCAs cannot administer them. Hence MEA's request that we define "regional" in a way that presumably excludes many programs from its ambit – thereby opening up MEA and other CCAs to balance their portfolios with higher-TRC programs.

We will not adopt MEA's proposed definition of "regional," which essentially makes "regional" co-extensive with "statewide." We will, however, clarify that "accommodate" can mean more than just ceding the field to the IOUs. If CCAs want to uindertake regional or statewide programs for their customers, or for customers within their footprint (reserving to a later day the questions of customers outside of the CCA's footprint), we see no prohibition on their doing so in Section 381.1. There are obvious practical implications to allowing CCAs to administer regional and statewide programs, including whether and how to deal with overlap between an IOU and CCA offering. We will address these issues if and when they arise in the context of particular programs and applications or advice letters, rather than attempting to address them in the abstract now.

5.1.2 Counting of savings towards goals

Until now, we have implicitly treated CCA portfolios as part of IOU portfolios. The IOUs have asked that we clarify that CCA savings will still count against IOU goals, even though CCAs are separate administrators.

We clarify that the savings goals are determined on a service territory basis. Therefore, for example, goals set for PG&E's territory are not necessarily goals that must be achieved only by programs administered by PG&E. As clarified in their comments, PG&E's expectation is that savings achieved by programs administered by CCAs would count toward the service territory goals, but not necessarily the IOU-specific goals. We agree. Each administrator's savings achievements should count toward the goals set for the relevant service territory for which goals are set.

5.1.3 Cost-effectiveness requirements

The IOUs, in their comments, generally object to the CCAs not having a cost-effectiveness threshold requirement for their portfolios. The reasons for this are discussed extensively in this decision and we do not reiterate them here. However, PG&E, in its comments, constructively leans towards ORA's proposal to have a CCAs program proposals compared against similar IOU programs, for cost-effectiveness purposes, in order to have an "apples to apples" comparison of programs. We agree that this proposal is fair and reasonable. Thus, we have strengthened the language in this decision to state that in cases where CCAs propose programs that are similar to IOU programs, we will use the IOUs programs' cost-effectiveness showings as a benchmark against which to compare CCA programs, allowing for differences if present. But we will not hold similar CCA programs to a lower cost-effectiveness standard than similar IOU programs, even though the CCA portfolios are not required to meet a specific cost-effectiveness threshold overall.

5.1.4 Administrative cost caps

The IOUs, in their comments, generally object to there being no cap on administrative costs for CCAs in their first three years of program administration. Our purpose in not imposing the 10% limit in the first three years was to allow for startup costs that are normally associated with the beginning of program administration. However, we agree with the IOUs that having no limit on administrative costs may be too permissive and send the wrong signal about cost containment and administrative economy. Therefore, we will impose a 50% limit on administrative costs in the first three years of program administration for each CCA, after which they will be subject to the same existing administrative cost cap as the IOUs (currently set at 10%). The decision has been modified accordingly.

5.1.5 Use of funds collected from electricity customers to pay for gas programs

SCE, SDG&E, and SoCalGas support the decision's determination that gas funds should pay for gas efficiency measures, and elecric funds for electric efficiency measures.

MEA argues that although this decision would allow CCAs to propose to access natural gas public purpose funds, they should also be allowed to utilize electricity funding to pay for gas programs. MEA cites extensively to D.11-10-014 for the proposition that such "fund shifting" is not only permissible, but mandatory.

MEA reads D.11-10-014 too broadly. Indeed, it is partly in order to foreclose such a broad reading that we restate here our policy that money from electricity customers fund electricity programs, and money from gas customers fund gas programs generally.

We issued D.11-10-014 in response to Senate Bill 87, which, among other things, authorized transfer of "up to $155,000,000 from the Gas Consumption Surcharge Fund" to the state's General Fund, and was chaptered on June 30 2011. If the full amount by law was transferred, there would only be approximately $21.6 million of the fiscal year 2011-2012 collections remaining in the Fund.

Faced with the unacceptable prospect of having virtually no funding for gas energy efficiency programs in an emergency situation, we found that "we may as a matter of policy allow unspent electric EE funds to be used to make up for the loss of gas PPP funds." We went on the say that: "This decision has no precedential value for future decision-making and is limited to the unique and unprecedented issue here, where the Legislature has for the first (and hopefully only) time authorized the transfer of gas PPP funds to help backstop state General Fund deficits." Moreover, when the state courts enjoined the SB 87 transfer, we vacated D.11-10-014 in D.12-10-026. Accordingly, it is inapposite here, and MEA ought not to have cited it. While nothing in Section 381 et seq. absolutely prohibits fund shifting (and nothing in this decision is to the contrary), D.11-10-014 is express that it was to be a one-time departure from our general policy of not shifting funds.

MEA also asserts that limiting funding to electric programs leads to discriminatory treatment vis. IOU program administrators. This complaint is not well taken, and is belied by PG&E's reply comments that state that MEA currently is receiving a proportion of gas funding to support its programs today.

5.1.6 Disposition of unspent/uncommitted funds

This decision permits CCAs to roll unspent and uncommitted fund forward towards subsequent portfolios. PG&E requests that we require unspent or uncommitted funds either be returned to the relevant IOU for return to ratepayers, or credited against the IOU's subsequent revenue requirement (also reducing a future payment to the CCA).

If a CCA has money left over after a portfolio cycle, it must either use that money in the next cycle, or remit it back to the relevant IOU. If returned, then the IOU must then credit the funds to ratepayers. If not returned, however, treatment of the carry-forward by the CCA should be symmetric with how an IOU treats analogous carry-forward funds. In other words, if an IOU would decrease its revenue requirement to account for a carry forward of funds for a program it administers, it could do so for a CCA remittance as well.

We are not prescribing any particular formula, timing, or process here, just establishing a general guideline. Exactly how this plays out is something we will need to resolve in practice.

5.2 Comments re: only advice letters under Section 381.1 (e)-(f)

5.2.1 Audit requirements

The IOUs call for us to impose the same audit requirements on CCAs as we impose on IOUs. The only requirement for audits in the PD arises out of Section 381.1(f)(4). That subsection requires that any "plan" submitted under subsection (e): "Includes audit and reporting requirements consistent with the audit and reporting requirements established by the commission pursuant to this section." The requirement, then, is that the auditing requirement be "consistent" with those for the IOU, not that they necessarily be identical (though that would also appear permissible).

The deision appropriately allows CCAs flexibility to individually establish auditing procedures under subsection (f)(4). Section 381.1's requirement of "consistency" does not require identical procedures. The process under subsections (e)-(f) is designed to be simpler for CCAs than an application under (a), and so allowing CCAs some latitude to depart from precise compliance with IOU auditing requirements is appropriate.

However, the IOUs do have a point in suggesting that CCAs should not be allowed simply to audit themselves. The IOUs suggest having Commission staff audit CCAs; however that has staffing and resource implications for the Commision's audit staff. Instead, we have modified this decision to require that the CCAs hire a third party to conduct the audits that will be submitted to the Commission, which will result in more independence than a self-audit might produce.

5.2.2 The form of the filing

MEA takes issues in its comments with the decision's requiring of a Tier 3 advice letter for a plan under subsections (e)-(f). However, MEA's request that the "CCA election process pursuant to Section 381.1(e)-(f) should be pursuant to a compliance filing subject to review and disposition by resolution" is exactly the process that a Tier 3 advice letter contemplates.[32]

PG&E, by contrast, supports this requirement, and asks us to restate that the full Commission rather than Commission staff will decide whether to approve the advice letter. Again, this is already what a Tier 3 advice letter requires, and we decline to restate what is already in our General Orders.

5.3 Comments re: the "safeguards" issue

MEA requests in its comments, without discussion, that we appoint an "executive level" ombudsman to oversee disputes between CCAs and IOUs. We have no record on this proposal, and decline to order such an approach now. We already have an extensive set of protections in place specifically for CCAs, as identified in the decision, as well as a more general set of dispute resolution services available. We also desire not to set a precedent of assigning duties to specific staff in Commission decisions; this is a management function. We have many regulations that impact competitors but do not assign specific staff to mediate those inevitable tensions. Instead, if MEA encounters specific obstacles, they may discuss with relevant staff, as they would currently.

6. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Todd O. Edmister is the assigned ALJ in this proceeding.

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32 See General Order 96-B, Energy Industry Rule 5.3.

Findings of Fact

1. We have no evidence that CCA programs create customer confusion, unfairly treat one set of customers versus other customers, or use ratepayer funds inefficiently.

2. To promote uniformity, and to ensure cost-effectiveness, the same rules for EM&V should apply to all program administrators, CCAs and IOUs alike.

3. CCAs may also undertake their own process evaluations and market studies in conjunction with Commission oversight in the same manner as authorized for IOU energy efficiency projects pursuant to D.12-11-015 and D.10-04-029.

4. Funding for energy efficiency programs in IOU (and so in CCA) service territories comes from two sources: Non-bypassable charges from electric distribution rates, which the IOUs track in their respective PEEBAs; and, Gas PPP Surcharges.

5. The PGC has expired, but the commission has authorized another "nonbypassable charge" to fund electricity energy efficiency programs.

6. The IOUs collect the charges that fund the PEEBA and the Gas PPP on a non-bypassable basis from all customers.

7. In part this collection is done because most of the programs funded from these funds are implemented on a statewide basis, and it is both inefficient and impractical to separate out benefits to just participating CCA customers.

8. The IOUs collect distribution rates, including non-bypassable charges from all customers in the IOU's service territories, even those served by CCAs. CCAs do not provide electric distribution service.

9. It is common practice amongst the IOU administered programs to undertake their own process evaluations and market studies in conjunction with Commission oversight.

10. CCAs should file their initial application to administer energy efficiency programs when prepared to do so. Subsequent filings should be on the same schedule as IOUs.

11. CCAs will operate programs at the discretion and selection of the Commission, and they should be subject to the Commission's policies and rules governing the energy efficiency funds overall. We intend to enforce uniform administrative standards to the maximum extent possible. The CCA applications we authorize here are eligible to include a larger pool of ratepayers than just a CCA's own customers.

12. Requiring CCAs to wait to apply to administer energy efficiency funds until the next funding cycle could deprive CCAs of the ability to access energy efficiency funds during the crucial start-up and initial opt-out periods.

13. It is our policy that gas funds should pay for gas efficiency programs, and electric funds should pay for electric efficiency programs. In D.09-09-047, we stated that "For the combined utilities, PG&E and SDG&E, the portfolio budgets should split the electric and gas cost recovery according to an expense ratio aligned with the portfolios for savings/budgets. This method was adopted under D.05-09-043 for PG&E and equates to roughly 85% electric and 15% gas.

14. CCA applications should be subject to the same requirements as to contents as those of IOUs.

15. For program year 2012, MEA requested funding under Sections 381.1(e) and (f). Resolution E-4518 certified MEA's plan and set forth general rules

concerning filings under Section 381.1(e) and (f). We find that those rules are still appropriate to certify a CCA's plan.

16. The resolution process is reasonable and appropriate for certifying a CCA plan filed pursuant to Section 381.1(f).

17. Energy efficiency programs currently authorized by the Commission must satisfy the requirements of Section 381.1 that programs be cost effective on a portfolio basis in each utility service territory. IOU energy efficiency programs currently authorized by the Commission must also satisfy the requirements of Section 399.4(a), which states that prudent energy efficiency investments should continue to be made in order to "produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid."

18. Section 381.1(f)(2) requires this Commission to make a finding as to whether a CCA's plan "advances the public interest in maximizing cost-effective electricity savings and related benefits," in order to certify (or not) the plan on the basis of whether that condition is met. It is reasonable and appropriate to make a determination of compliance with Section 381.1(f)(2) by referring to current Commission rules and policies governing energy efficiency cost-effectiveness which apply to the entire portfolio of programs approved by the Commission in each utility service territory.

19. Any potential CCA program plans should find ways to maximize cost-effectiveness.

20. Events have overtaken our consideration of "safeguard" issues in this proceeding. Since the parties filed their comments in late 2010, we have adopted a Code of Conduct and Enforcement Mechanisms Related to Utility Interactions

with Community Choice Aggregators, Pursuant to SB 790 (D.12-12-036). That decision broadly safeguards the interests of CCAs vis. IOUs.

Conclusions of Law

1. The energy efficiency portfolios of a CCA should be exempt from the current 10% cap on administrative costs for the first three years[33] that the CCA is a program administrator; however, during the first three years the CCA should be subject to a 50% cap. Thereafter, the CCA program administrator should be subject to the same cost caps as IOU program administrators. This policy will allow the CCA to establish itself and explore a cost-effective mix of energy efficiency programs, while protecting ratepayers over the long term.

2. Section 381.1 requires energy efficiency programs to be cost-effective. Commission practice has always been to consider this cost-effectiveness on a portfolio basis in each utility service territory. This should also apply to CCA programs considered in combination with IOU programs, such that the Commission is responsible for ensuring approval of a cost-effective portfolio overall in every funding cycle in each utility service territory, regardless of administrator.

3. Public Utilities Code Section 381(b)[34] requires the Commission to "allocate funds collected pursuant to [Section 381(a)] . . . to programs that enhance system reliability and provide in-state benefits as follows: (1) Cost-effective energy efficiency and conservation activities." Section 381(a), in turn, has the

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[33] Measured from the mailing date of a Commission decision approving a CCA's first application to become a program administrator under Section 381.1.

[34] Hereafter all references to code sections are to the Public Utilities Code unless otherwise noted.

Commission "require each electrical corporation" to collect a nonbypassable charge from the electrical corporation's distribution customers. The charge the electrical corporation collects is nonbypassable "to ensure that funding for the programs described in subdivision (b) . . . are not commingled with other revenues."

4. We lack statutory authority under Section 381.1 to mandate payment to CCAs of gas public purpose funds for programs that CCAs administer pursuant to Section 381.

5. CCAs may be eligible to apply for natural gas PPP surcharge funds authorized under Section 890. The Commission should consider this option during the next portfolio cycle application if and when a CCA proposes it.

6. Section 381.1 subjects CCAs to particular treatment related to their desire to administer energy efficiency funds. Section 381.1(a)–(d) allows CCAs to access energy efficiency funds from, and provide energy efficiency programs to, both their customers and investor-owned utilities' customers.

7. SB 790 (Stats. 2011, Ch.599, Leno) added subsections (e) and (f) to Section 381.1. These newer subsections allow a CCA to invoke an alternative Commission review process for programs funded by (and offered to) only the CCA's own customers. SB 790 subordinates a third-party's application to a CCA's right to elect to administer energy efficiency programs for its customers.

8. Section 381.1(a) directs the Commission to establish policies for all types of applicants, "including, but not limited to, a local entity that establishes a community choice aggregation program" to "apply to become administrators for

cost-effective energy efficiency and conservation programs."[35] The one distinction Section 381.1 makes for CCAs versus other applicants appears in Section 381.1(d), which states:

> The commission shall establish an impartial process for making the determination of whether a third party, including a community choice aggregator, may become administrators for cost-effective energy efficiency and conservation programs pursuant to subdivision (a), and shall not delegate or otherwise transfer the commission's authority to make this determination for a community choice aggregator to an electrical corporation.

9. In D.05-01-055, for purposes of Section 381.1, we allowed non-IOU entities to take on, at most, a "program implementer" role, stating:

> We interpret "administrator" in this context [referencing Section 381.1] to mean an entity implementing an energy efficiency program which is the subject of Section 381, which authorizes the expenditure of certain funds on energy efficiency programs. This contrasts with the Commission's energy efficiency policy manual which distinguishes "administrators" from "implementers."

10. With respect to CCAs in particular, in D.05-01-055 we stated:

> We reiterate our interpretation of "administrator" for purposes of [Section 381.1] as meaning "any entity implementing an energy efficiency program that is the subject of Section 382, which authorizes the expenditure of certain funds on energy efficiency programs." We believe this is consistent with the competing interests articulated in Section 381.1 as well as the requirements for handling ratepayer money, as discussed [earlier in D.05-01-055].

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[35] Section 381.1(a).

11. We have recognized in D.05-01-055 that "we may ultimately find that CCAs are appropriately independent agencies that should have considerable deference to use Section 381 funds" and reserved broader issues about CCAs role and discretion for later determination.

12. We reaffirmed our definition of the term "administrator" for purposes of Section 381.1 on rehearing in D.05-07-046. In that decision, we reiterated that "[Section 381.1] does not grant non-IOUs the authority to hold, manage or control ratepayer funds collected for the energy efficiency programs," but did nothing to restrict our future options vis. CCAs as far as distributing funds from non-bypassable electric distribution charges to them.

13. It is appropriate for CCAs to be energy efficiency program "administrators" in the same sense that IOUs are "administrators."

14. We have specific statutory authority in Section 381.1 to establish regulatory processes over CCAs.

15. Public Utilities Code Section 381.1(e) requires the Commission to establish an impartial process to allow a CCA to elect to become administrator of funds collected from the CCA's electric service customers through a non-bypassable charge authorized by the Commission for cost-effective energy efficiency and conservation programs except those funds collected for broader statewide and regional programs authorized by the Commission.

16. To promote uniformity, and to ensure cost-effectiveness, the same rules for EM&V should apply to all program administrators, CCAs and IOUs alike.

17. Public Utilities Code Sections 381.1(e) and (f) require that the Commission certify a CCA's energy efficiency plan, approved by the CCA's governing board, if it contains funding requirements, a program description, a cost-effectiveness analysis, and the duration of the program, and if it: (1) is consistent with the

goals of programs established pursuant to Public Utilities Code Sections 381.1 and 399.4; (2) advances the public interest in maximizing cost-effective electricity savings and related benefits; (3) accommodates the need for broader statewide or regional programs; (4) includes audit and reporting requirements consistent with those established by the Commission pursuant to Public Utilities Code Section 381.1; (5) includes evaluation, measurement, and verification protocols established by the CCA; and (6) includes performance metrics regarding the CCA's achievement of the objectives listed in paragraphs (1) through (5) of Public Utilities Code Section 381.1(f) and in any previous plan. Public Utilities Code Sections 381.1(e) and (f) do not: prescribe the method of calculating the funding levels; prescribe the method of determining cost-effectiveness; define "cost-effective energy efficiency electricity savings and related benefits;" define "regional programs; prescribe requirements for the auditing and reporting requirements, for evaluation, measurement, and verification protocols, or for performance metrics."

18. It is reasonable and appropriate to make a determination under Public Utilities Code Section 381.1(f)(2) as to whether a plan advances the public interest in maximizing cost-effective electricity savings and related benefits by referring to current Commission rules and policies governing energy efficiency cost-effectiveness.

19. The apparent purpose of the 2011 SB 790's addition of subdivisions (e) – (g) to Section 381.1 is to give CCAs – and only CCAs – a simpler route to become the administrator of energy efficiency and conservation program funds collected by the electric utilities through non-bypassable charges. SB 790's addition of the "election" option under subdivisions (e) – (g) to Section 381.1 thus stands in marked contrast with the preexisting, more discretionary opportunity for "any

party" to "apply" to be an energy efficiency program administrator under subdivision (a).

20. Pursuant to SB 790, the application option available to "any" prospective non-IOU third-party energy efficiency administrator is "subject to an aggregator's [CCA's] right to elect to become an administrator pursuant to [the election option under] subdivision (f)." (Section 381.1(a).)

21. Section 381.1(e)'s election provisions depend, not on the Public Goods Charge (PGC), but rather on the establishment of "a nonbypassable charge authorized by the commission" for energy efficiency programs.

22. As with plans under Section 381.1(a)-(d), some CCA programs under subsections (e)-(f) may have both electric and gas components. Gas funds should pay for gas efficiency programs, and electric funds should pay for electric efficiency programs.

23. CCAs should be allowed to propose programs to be funded out of natural gas public purpose program surcharges to be considered by the Commission in the application process for the next funding cycle.

24. Pursuant to Section 381.1(f), the Commission must certify that a CCA plan meets six criteria, specified in paragraph (f)(1)-(6) of the statute.

25. Section 381.1 encourages the administration of cost-effective energy efficiency and conservation programs by CCAs and other non-IOU administrators. Section 399.4(a) states that prudent energy efficiency investments should continue to be made in order to "produce cost-effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid."

26. Section 381.1(f)(2) requires this Commission to make a finding as to whether a CCA's plan "advances the public interest in maximizing cost-effective

electricity savings and related benefits," in order to certify (or not) the plan on the basis of whether that condition is met.

27. Section 381.1(f)(5) requires the CCA to establish its own EM&V protocols. It is reasonable for CCAs to use the same CPUC EM&V standards that the Commission applies to other energy efficiency programs.

28. The Commission should remain open to reconsidering its CCA energy efficiency requirements and rules as more CCAs become operational in the state and gain experience administering and delivering energy efficiency programs.

O R D E R

IT IS ORDERED that:

1. Community Choice Aggregators that wish to administer conservation and/or energy efficiency programs under California Public Utilities Code Section 381.1(a)-(d) shall file an application with the Commission to do so.

2. Community Choice Aggregators' applications to administer conservation and/or energy efficiency programs under California Public Utilities Code Section 381.1(a)-(d) must comply with the Commission's prior decisions and resolutions regarding the content of investor owned utility applications to administer conservation and/or energy efficiency programs under California Public Utilities Code Section 381.1(a)-(d), to the extent that this decision does not supersede them.

3. Community Choice Aggregators' (CCAs) program portfolios are not required to meet a certain cost-effectiveness threshold, but will be considered in comparison to similar utility programs, when assessed by the Commission in its review. The Commission will not hold CCA programs to a lower standard than similar utility programs in each portfolio. The Commission will ensure that every

portfolio assembled in each funding cycle, for each utility service territory, meets the cost-effectiveness requirements prescribed by law.

4. A Community Choice Aggregator, for three years from the date we approve its first application to administer conservation and/or energy efficiency programs under California Public Utilities Code Section 381.1(a)-(d), is exempted from the Commission's 10% cap on administrative expenses but is subjected to a 50% cap on administrative expenses during the first three years. Thereafter, CCA's subsequent portfolios must meet the same requirements to limit administrative expenses as investor-owned utility program administrators.

5. First-time Community Choice Aggregators (CCAs) applying to administer conservation and/or energy efficiency programs under California Public Utilities Code Section 381.1(a)-(d) may file their applications at any time. Thereafter, CCAs will be subject to the same timing for applications to the Commission applies to the Investor-owned Utilities.

6. Commission staff shall include Community Choice Aggregators - administered programs under California Public Utilities Code Section 381.1(a)-(d) within the scope of its evaluation, measurement, and verification activities.

7. Community Choice Aggregators (CCAs) that elect to administer conservation and/or energy efficiency programs for just their own customers pursuant to Section 381.1(e) and (f) shall file a proposed plan via an advice letter that conforms to the Tier 3 Advice Letter provisions of General Order 96-B. Such a proposed plan will thereafter be subject to the process applicable to Tier 3 Advice Letters as set out in General Order (GO) 96-B. The advice letter is not to be considered either effective or approved until a Commission resolution, or decision if necessary, actually approves the CCA's plan. (*See* GO 96-B, General

Rule 7.3.1.) CCAs shall serve their advice letters on the service list from the nearest Investor-owned Utilities pending energy efficiency plan application proceedings, or, if no such proceeding is pending, on the service list from the last such proceeding.

8. The Community Choice Aggregators (CCAs') advice letter shall contain information sufficient for the Commission to certify that a CCA plan meets six criteria, specified in Section 381.1(f)(1)-(6).

9. The Community Choice Aggregators (CCAs) shall employ a third party auditor(s) to conduct independent financial and management audits of its energy efficiency programs and provide a copy of the audits to the Commission. The financial audit shall consist of a review of the financial statements of the CCA's energy efficiency operations to determine that the statements are accurate, complete, and consistent with Commission policy and standard accounting practices. The management audit shall assess the CCA's management procedures and the effective use of resources in implementing the energy efficiency portfolio.

10. Community Choice Aggregators (CCAs) submitting applications to administer programs pursuant to Section 381.1 shall be eligible to receive funding for electricity savings programs. CCAs may also propose to administer programs that utilize natural gas public purpose program surcharges in the next program portfolio application. The Commission will consider whether and how to implement access to natural gas surcharge funding in that subsequent proceeding.

11. Rulemaking 09-11-014 is closed.

This order is effective today.

Dated ______________________________, at San Francisco, California.