



**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Implement
Senate Bill 520 and Address Other Matters
Related to Provider of Last Resort.

R.21-03-011

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S OPENING
COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING
COMMENT ON PROCEDURAL PATHWAY TO ADDRESS APPLICATIONS
FOR PROVIDER OF LAST RESORT STATUS**

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SUMMARY OF RECOMMENDATIONS

CalCCA¹ recommends that the Commission issue a Decision:

- Adopting the Ruling’s proposed Procedural Pathway to close the proceeding and allow a non-IOU LSE to submit a Petition for Rulemaking twelve months prior to submitting an Application to serve as POLR; and
- Clarifying the Commission’s authority over a Designated POLR through the adoption of the Ruling’s proposed definition for “POLR-specific services” as those services “whose only purpose is to execute POLR responsibilities.”

¹ Acronyms used in this Summary of Recommendations are defined in the body of this document.

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California Community Choice Association² (CalCCA) submits these opening comments pursuant to the *Administrative Law Judge’s Ruling Seeking Comment on Procedural Pathway to Address Applications for Provider of Last Resort Status*³ (Ruling), dated May 28, 2025.

I. INTRODUCTION

At this time, none of CalCCA’s community choice aggregator (CCA) members seek to serve as a non-investor-owned utility (IOU) provider of last resort (POLR) (hereinafter referred to as a “non-IOU load serving entity (LSE) POLR” or a “Designated POLR”). CalCCA supports the approach set forth in the Ruling for the California Public Utilities Commission (Commission) to: issue a Decision (1) closing the proceeding now, but allowing a non-IOU LSE to submit a

² California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance of Southern California, CleanPowerSF, Desert Community Energy, Energy For Palmdale’s Independent Choice, Lancaster Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

³ Rulemaking (R.) 21-03-011, *Administrative Law Judge’s Ruling Seeking Comment on Procedural Pathway to Address Applications for Provider of Last Resort Status* (May 28, 2025).

Petition for Rulemaking (PFR) twelve months prior to submitting an application to serve as the Designated POLR; and (2) clarifying the Commission’s overall authority to regulate the Designated POLR pursuant to Public Utilities Code sections 216 and 387⁴. Such authority should be clarified, in part, through the definition of “POLR-specific services” proposed in the Ruling, *i.e.*, as those services “whose only purpose is to execute POLR responsibilities [*e.g.*, when a [LSE] fails, transferring that LSE’s customers to the POLR].” The other manner in which to clarify the Commission’s authority is to refrain from defining “Fully-severable services” or “Non-severable services.” There is no need for such definitions since all non-POLR-specific services are severable from POLR services, as demonstrated below and in CalCCA’s January 24, 2025, Reply Comments (CalCCA’s Reply Comments) in this proceeding.⁵

CalCCA therefore recommends that the Commission issue a Decision:

- Adopting the Ruling’s Procedural Pathway to close the proceeding and allow a non-IOU LSE to submit a Petition for Rulemaking twelve months prior to submitting an Application to serve as POLR; and
- Clarifying the Commission’s authority over a Designated POLR through the adoption of the Ruling’s proposed definition for “POLR-specific services” as those services “whose only purpose is to execute POLR responsibilities.”

II. THE PROPOSED PROCEDURAL PATHWAY SHOULD BE ADOPTED

The Commission should adopt the Ruling’s proposed procedural pathway as a reasonable solution to immediately satisfy the requirements of California Public Utilities Code section 387, while delaying the full build-out of the non-IOU LSE framework until a non-IOU entity seeks to become a POLR. While section 387 requires the Commission to develop threshold attributes for

⁴ All subsequent code sections cited herein are references to the California Public Utilities Code unless otherwise specified.

⁵ See *California Community Choice Associations Reply Comments on Threshold Questions*, R.21-03-011 (Jan. 24, 2025), at 14-16 (CalCCA Reply Comments).

a Designated POLR, there is no deadline by which the Commission must do so. The Ruling’s proposed procedural pathway would result in the Commission issuing a decision that:

- 1) Provides a “framework for [the Commission’s] regulatory authority over a non-IOU POLR and the services it provides”;
- 2) Closes the instant proceeding; and
- 3) Directs any non-IOU entity that seeks POLR status to first file and serve a PFR at least 12 months before filing an application to assume POLR responsibilities.⁶

Upon receipt of a PFR, the Commission would “resume its consideration of the threshold questions and topic areas identified in the Scoping Memo.”⁷

As noted in CalCCA’s Reply Comments, none of CalCCA’s member CCAs have expressed near-term interest in taking over POLR services from the IOUs.⁸ Therefore, CalCCA agrees with the Commission’s proposed procedural pathway. The Commission should conserve its limited resources and the resources of other parties by refraining from going further than resolving the overall framework regarding Designated POLR service.

III. THE COMMISSION’S STATUTORY AUTHORITY OVER A NON-IOU LSE POLR EXTENDS ONLY TO “POLR-SPECIFIC SERVICES”

The Ruling questions “how and to what extent the Commission would regulate the services provided by a non-IOU LSE POLR.”⁹ The Ruling requests party comment on the following definitions to clarify its regulatory authority:

- **POLR-specific services:** Services whose only purpose is to execute POLR responsibilities [e.g., when a Load Serving Entity (LSE) fails, transferring that LSE’s customers to the POLR].
- **Fully-severable services:** Services that do not affect the provision of POLR services.

⁶ Ruling at 2-3.

⁷ *Id.* at 3.

⁸ See CalCCA Reply Comments, at 5.

⁹ Ruling, at 2.

- **Non-severable services:** Services that are neither POLR-specific nor fully severable.”¹⁰

CalCCA supports the Ruling’s approach to framing the overall regulatory authority of the Commission now, thereby establishing the scope of Commission regulation LSEs can expect if or when interest develops in Designated POLR service. Indeed, by providing clarity regarding the nature of the Commission’s authority over a Designated POLR—and confirming that it extends no further than a Designated POLR’s “POLR-specific services”—the Commission may well shape interest in the Designated POLR framework, even if that interest is limited now.

As described below, in defining the Commission’s authority over a non-IOU LSE POLR, the Commission need only adopt its definition of “POLR-specific services” because: (1) the plain language of Public Utilities Code sections 216 and 387 explicitly and unambiguously limits the Commission’s statutory authority over a non-IOU LSE to “POLR-specific services”; (2) the legislatively protected autonomy of CCAs must be preserved; and (3) “POLR-specific services” can be isolated and defined separately from all other CCA services. Defining “Fully-severable services” or “Non-severable services” is unnecessary and in all events these services will fall outside the Commission’s jurisdiction.

A. The Plain Language of Public Utilities Code Sections 216 and 387 Limits the Commission’s Statutory Authority Over a Non-IOU LSE to “POLR-Specific Services”

Public Utilities Code sections 216 and 387 provide the statutory framework for the Commission’s authority over a Designated POLR, restricting such authority to “POLR-specific services.” Section 387(j) states:

¹⁰ Ruling, at 3.

The commission shall supervise and regulate each provider of last resort, *as necessary*, as a public utility *for the services provided by the provider of last resort pursuant to this article to ensure the provision of electrical service to customers without disruption if a load-serving entity fails to provide, or denies, service to any retail end-use customer in California for any reason*. The commission may do all things that are necessary and convenient in the exercise of this power.¹¹

Section 387(j) therefore establishes that although the Commission is authorized to exercise a degree of regulatory supervision over a Designated POLR, the Commission's authority is *limited to that LSE's POLR-specific services*.

The Commission must give meaning to section 387(j)'s explicit statutory limitation when framing its regulatory authority over the Designated POLR. "It is a maxim of statutory interpretation that courts should give meaning to every word of a statute and should avoid constructions that would render any word or provision surplusage."¹² The legislature explicitly provided the Commission's ability to regulate POLRs "as necessary, as a public utility" *only* "for the services provided by the provider of last resort . . . to ensure the provision of electrical service to customers without disruption if a load-serving entity fails to provide . . . service[.]"¹³ The concluding clause of that statutory language therefore explicitly limits the Commission's authority to regulate the Designated POLR to *only* the Designated POLR's *POLR-specific services*, which are the services the Designated POLR must provide to ensure service without disruption if an LSE fails to provide, or denies, service to retail end-use customers.

Had the legislature not intended the emphasized language to be a limitation on Commission authority, there would be no reason to include it at all in section 387(j). Instead, the legislature could have simply directed that once an entity becomes a Designated POLR, the

¹¹ Cal. Pub. Util. Code § 387(j) (emphasis added).

¹² *Tuolumne Jobs & Small Bus. Alliance v. Superior Court*, 330 P.3d 912, 1038 (Cal. 2014).

¹³ Cal. Pub. Util. Code § 387(j).

Commission has authority to regulate that entity as a “public utility.” That broader regulatory authority would necessarily include the ability to supervise the Designated POLR’s POLR-specific services. So, to give meaning to ***all of section 387(j)***, as California law requires, the Commission must recognize that its ability to regulate a Designated POLR is ***limited*** to “POLR-specific services.”

The other statutory provision affected by SB 520¹⁴, section 216(a)(2), supports this conclusion:

A provider of last resort, as defined in Section 387 . . . is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part ***regarding providing that service.***¹⁵

Like section 387(j), this statutory provision is expressly limited by its concluding clause. Once again, the legislature determined that a Designated POLR is a “public utility” merely for the purpose of the Designated POLR’s POLR-specific services, as the non-IOU LSE that becomes POLR is a “public utility” ***only*** “regarding providing that service.”¹⁶ This interpretation gives meaning to all of section 216(a)(2), as the Commission must.¹⁷ This interpretation also harmonizes section 216(a)(2) with the Commission’s expressly limited authority under section 387(j), as California law directs.¹⁸

¹⁴ Senate Bill No. 520 (SB 520) (Hertzberg, Chapter 408, Statutes of 2019).

¹⁵ Cal. Pub. Util. Code § 216(a)(2) (emphasis added).

¹⁶ *Id.*

¹⁷ *Id.* § 387(j) (emphasis added).

¹⁸ See, e.g., *ZB, N.A., and Zions Bancorporation v. Superior Court*, 448 P.3d 239, at 248 (Cal. 2019); *Tuolumne Jobs*, 330 P.3d at 1038.

B. Any POLR Framework Must Preserve the Legislatively Protected Autonomy of Non-IOU LSEs By Limiting the Commission’s Jurisdiction to POLR-Specific Services

Limited Commission authority is also consistent with existing Commission oversight—and consistent with California law—over CCAs. CCAs are obligated to comply with certain procurement and reliability obligations (including the Commission’s Resource Adequacy (RA), Integrated Resource Planning (IRP), and Renewable Portfolio Standards (RPS) programs), but CCAs are not subject to the Commission’s rate, procurement, or financial oversight in the same manner as IOUs because, as public agencies, they are directly responsive to their customers. CCAs are also subject to numerous legal restrictions on public agency operations, including ratemaking.¹⁹

The public agency accountability and other provisions of State law ensuring that CCA charges remain in line with the reasonable costs of CCA service are analogous to the Commission’s review of IOU rates and services and displaces the need for the same sort of regulatory supervision the Commission exercises over the IOUs. The need for extensive Commission jurisdiction is further reduced by the fact that POLR service is and should be rare and time limited. It only occurs in the case of returned load, and then only for a limited period of time before returned customers are either folded into the default provider’s “normal” non-POLR service options, or returned customers depart POLR-service for a separate service option.

¹⁹ As set forth in Public Utilities Code § 366.2, CCAs are formed for the purpose of aggregating the electrical load of interested customers in their service territory to procure electricity and energy services on those customers’ behalf. Similar to municipal utilities, CCAs are public agencies. Their governing boards are comprised of local elected officials from the cities and counties that form the CCA. CCA governing boards exclusively set the rates for their electricity services. In addition, as public agencies, CCAs are subject to California open meeting, public record, and conflict of interest laws such as the Ralph M. Brown Act, the Public Record Act, and the Political Reform Act. CCA governing boards set electrical rates for their customers within a public process that already provides for decisions made in the public interest, with transparency, public participation, and public agency accountability.

Section 387(j) contemplates a continuation of the Commission’s existing authority over non-IOU LSEs. The legislature has authorized the Commission a degree of expanded regulatory authority over a Designated POLR, but the statute is explicit that this expanded authority should *only* encompass POLR-specific services. The Commission must comply with that explicit legislative mandate when structuring the Designated POLR Framework.

C. The Commission Need Only Adopt the Ruling’s Definition for “POLR-Specific Services”

Regardless of the structure created by the Designated POLR to provide POLR service, the *only* services the Commission will have the ability to regulate are those defined by statute, which are “*the services . . . to ensure the provision of electrical service to customers without disruption if a load-serving entity fails to provide, or denies, service to any retail end-use customer in California for any reason.*”²⁰ As described in CalCCA’s Reply Comments,²¹ there are feasible avenues through which a Designated POLR can elect to offer distinct POLR services. The Application of a non-IOU LSE to serve as POLR is the appropriate venue to determine these specifics. Nothing in California law forecloses that ability.

The Commission will fulfill its regulatory role under sections 216(a)(2) and 387 by regulating the POLR-specific services of a Designated POLR only. “Fully severable services” will be those that are *not* POLR-specific services, and “Non-severable services” will not exist given the Designated POLR will be able to isolate and define the services need to provide the limited POLR services to customers. Therefore, the only defined term necessary to frame the Commission’s regulatory authority over a Designated POLR is the Ruling’s “POLR-specific services,” which should be adopted.

²⁰ *Id.* (emphasis added).

²¹ CalCCA Reply Comments, at 15-16 (describing three alternative structures for a non-IOU LSE to provide “POLR-specific services”).

IV. CALCCA COMMENTS ON QUESTIONS POSED IN THE RULING

1. **Comment on the definitions below. What edits, if any, do you propose to the definitions? Is this list mutually exclusive and collectively exhaustive of the services a POLR provides? If not, please provide examples of services that are not covered by any of the definitions below or could reasonably be covered by more than one definition. Provide the policy and statutory bases for your response.**

Please see Section III., above.

- a. **POLR-specific services: Services whose only purpose is to execute POLR responsibilities [e.g., when a Load Serving Entity (LSE) fails, transferring that LSE's customers to the POLR].**

The Commission should adopt this definition of "POLR-specific services," as set forth in Section III., above.

- b. **Fully-severable services: Services that do not affect the provision of POLR services.**

Adopting a definition of "Fully-severable services" is unnecessary, as set forth in Section III., above.

- c. **Non-severable services: Services that are neither POLR-specific nor fully severable.**

Adopting a definition of "Non-severable services" is unnecessary, as set forth in Section III., above.

2. **What is the best procedural path that accomplishes the goals of (1) meeting statutory guidance, (2) providing parties with near-term guidance on important issues (which, as proposed in this ruling, would be limited to the Commission's framework to regulate non-IOU POLR services), (3) providing a path to resolve the issues identified in the Scoping Memo, and (4) preserving Commission and party resources until those issues are immediately relevant?**

The Commission should adopt the Ruling's suggested procedural path, as set forth in Section II., above.

- a. **Do you support the approach described in the Procedural Path Forward section? What changes would you propose to that approach?**

CalCCA supports the Ruling's suggested procedural path, as set forth in Section II., above.

- b. Would you recommend an alternative path? If so, please describe your alternative proposal and explain how it achieves the four goals described above.**

CalCCA would not recommend an alternative path.

- i. If you propose for the Commission to resolve all the issues in the Scoping Memo immediately, set forth the basis for this position and your position on how to resolve the core issues that need to be resolved prior to a non-IOU entity filing an application to serve as a non-IOU POLR.**

Not applicable, as CalCCA supports the Ruling's suggested procedural path, as set forth in Section II., above.

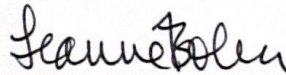
- ii. If you recommend addressing the issues at a later date, explain how the Commission should decide to resume consideration of those issues.**

Not applicable, as CalCCA supports the Ruling's suggested procedural path, as set forth in Section II., above.

V. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the opening comments herein and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,



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