

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

ENERGY DIVISION

**RESOLUTION E-4907**  
February 8, 2018

**R E S O L U T I O N**

Resolution E-4907. Registration Process for Community Choice Aggregators.

PROPOSED OUTCOME:

- This resolution would publish and implement a registration process for Community Choice Aggregators.

SAFETY CONSIDERATIONS:

- There is no impact on safety.

ESTIMATED COST:

- Potential unquantifiable bundled ratepayer savings due to elimination of cost shifting of resource adequacy costs.

By the Commission's own initiative.

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**SUMMARY**

The Commission through this Resolution proposes an informal process of review of Community Choice Aggregation (CCA) Implementation Plans pursuant to the requirements and directives of Public Utilities Code Section 366.2<sup>1</sup> and Decision (D.) 05-12-041. This process of review will coordinate with the timeline of the mandatory forecast filings of the Commission's Resource Adequacy program to ensure that newly launched and expanding CCAs comply with Resource Adequacy requirements, as established by Section 380, before they serve customers.

This Resolution will require Community Choice Aggregators (CCAs) to submit to a process that includes a timeline for submission of Implementation Plans; a

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<sup>1</sup> All further references are to the Public Utilities Code unless otherwise specified.

requirement to “meet and confer” between the CCA and the incumbent utility that can be triggered by either the CCA or the utility; a registration packet including a CCA’s service agreement and bond; and a Commission authorized date to begin service.

This resolution could delay the dates in which some CCAs serve customers but for a limited period of time in most circumstances no longer than one year and if a new or expanding CCA cannot comply with the new timelines the resolution creates a process where the CCA can still seek a waiver to serve customers within several months of approval of their implementation plans.

This Resolution, in part, is responsive to the directive of D.05-12-041 instructing the Executive Director to publish steps for the submission of Implementation Plans, and addresses the current rapid growth of CCA programs. The filing deadlines in this Resolution are intended to coordinate with the timeline for mandatory forecast filings in the Resource Adequacy program.

## **BACKGROUND**

### **Overview of Community Choice Aggregation**

In 2002 the State Legislature enacted Assembly Bill (AB) 117 (codified at Section 366.2), authorizing the creation of Community Choice Aggregators (CCAs). The Commission implemented the provisions of AB 117 in D.04-12-046, and D.05-12-041, among other Decisions.

D.05-12-041 directed the Executive Director to prepare and publish instructions for CCAs and utilities which would provide a forum for the CCA and the utility to understand the CCA’s implementation plans and to assure that the CCA is able to comply with utility tariffs. The instructions should include a timeline and descriptions of the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, and notice to CCAs of the appropriate Cost Responsibility Surcharge (CRS) and registration of CCAs.

After D.05-12-041, no CCA came into formation until 2010 with the launch of Marin Clean Energy. From 2010 to 2015, two CCAs launched serving approximately 135,000 customer accounts statewide. From 2016 to 2017,

CCA formation accelerated and 12 more communities launched or submitted CCA Implementation Plans to the Commission. As a result of this rapid growth in CCAs, it is appropriate now to address the directives of D.05-12-041 to create and publish processes for CCA implementation and registration.

### **Overview of CCA Implementation Plan Requirements**

Section 366.2 authorizes the aggregation of electric loads by CCAs and establishes the broad requirements for implementing a CCA program. Section 366.2 grants the Commission authority over CCA implementation, and includes directives on the policy requirements of CCA programs, necessary implementation documents, timing requirements and deadlines for CCA implementation.

Section 366.2(c)(8) establishes the authority of the Commission to designate a CCA's start date with consideration of the impact on the electrical corporation's annual procurement:

No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost recovery that must be paid by the customers of that proposed community choice aggregation program, and provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.<sup>2</sup>

### **Policy Requirements for CCAs**

Any CCA program must provide for universal access, reliability, equitable

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<sup>2</sup> Section 366.2(c)(8).

treatment of all classes of customers, and fulfill requirements established by state law or by the commission concerning aggregated service.<sup>3</sup>

Section 366.2(c)(4) states:

A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

- (A) Universal access.
- (B) Reliability.
- (C) Equitable treatment of all classes of customers.
- (D) Any requirements established by state law or by the commission concerning aggregated service, including those rules adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of the greenhouse gases emission performance standard to community choice aggregators.

Additionally, the implementation of a CCA program “shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation.”<sup>4</sup>

#### Implementation Documents and Requirements

Section 366.2 requires that CCAs submit an Implementation Plan and a Statement of Intent to the Commission and sets forth seven elements that Implementation Plans, and any subsequent changes to implementation plans, must contain.<sup>5</sup> Section 394.25(e) also requires that “an electric

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<sup>3</sup> Section 366.2(c)(4).

<sup>4</sup> Section 366.2(a)(4).

<sup>5</sup> Section 366.2(c)(3) requires that Implementation Plans and any subsequent changes to implementation plans must be considered and adopted at a duly noticed public hearing and must contain all the following: (A) An organizational structure of the program, its operations, and its funding. (B) Ratesetting and other costs to participants, (C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

service provider or community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees” in the event of an involuntary return of CCA customers back to bundled service.<sup>6</sup>

### Timing and Deadlines

The Public Utilities Code establishes requirements that direct the Commission how and when to respond to Implementation Plan filings. Within 10 days of an Implementation Plan filing, the Commission must notify the respective electrical cooperation of the filing.<sup>7</sup> Additionally, within 90 days of the filing of an Implementation Plan, the commission must “certify that it has received the plan” as well as provide the CCA with its findings regarding cost recovery.<sup>8</sup>

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(D)The methods for entering and terminating agreements with other entities. (E)The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures. (F)Termination of the program. (G)A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

<sup>6</sup> Regarding the bond requirement in Section 394.25(e), in 2007 the Commission established in Resolution E-4133 an interim bond amount of \$100,000. Currently the Commission is examining the permanent CCA bond calculation methodology in R.03-10-003.

<sup>7</sup> Section 366.2(c)(7) states:

Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).

<sup>8</sup> Section 366.2(c)(7).

Finally, the CCA “shall register with the Commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.”<sup>9</sup>

### **Overview of CCA Resource Adequacy Requirements**

As more CCAs launch, it is important to consider how a registration process interacts with a CCA’s compliance with its Resource Adequacy requirements.

All Load-Serving Entities (LSEs) are subject to Resource Adequacy (RA) requirements pursuant to Section 380. Section 380(k) defines LSEs to include CCAs. Additionally, D.05-12-041 in Conclusion of Law 19 states that “The utilities will not procure power on behalf of CCA customers as part of their resource adequacy planning.”

The Commission in D.04-10-035 adopted a protocol which required LSEs to submit load forecasts using their best estimates of future customers and their loads. The Commission established a preliminary load forecast submission timeline in D.05-10-042.<sup>10</sup>

There are two mandatory annual load forecast deadlines that an LSE must comply with in order to receive an annual RA obligation responsibility for the following year.<sup>11</sup> First, an LSE must file a preliminary load forecast by mid-April for the following calendar year. An LSE then must file a revised forecast in

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<sup>9</sup> Section 366.2(c)(15).

<sup>10</sup> D.05-10-042, page 83.

<sup>11</sup> D.04-10-035 adopted a protocol whereby LSEs are required to submit load forecasts using their best estimates of future customers and their loads. D.05-10-042 at page 83 specified the preliminary load forecast submission timeline and set April 15 as the date for the submission of preliminary load forecasts. D.11-06-022 at page 38 modified the year-ahead forecast timeline to include optional revisions to be submitted by Aug. 19th of each year. D.17-06-027 ordered that the revised August forecast be mandatory.

August.<sup>12</sup> The August forecast was intended to refine and improve the accuracy of April forecast.<sup>13</sup>

The timeline of RA load forecast submissions has practical implications for newly forming CCAs and expanding CCAs. If an existing or pre-operational CCA does not submit an annual load forecast, they are not allocated a year-ahead RA obligation for the following year. In this scenario, the incumbent utility remains responsible for that load and procures RA for those customers, even if those customers are about to be served by a CCA. This scenario is most likely to occur if a CCA launches or expands service to customers (or additional customers in the case of an existing, yet expanding CCA) after the RA annual load forecast deadlines without filing an annual load forecast.

As a result, the utilities incur short-term power purchase costs for the customers of CCAs in their launch or expansion year. Utilities procuring for CCAs in their first launch or expansion year creates a cost shifting challenge. D.11-12-018 excluded power purchase transactions less than a year in term from the total portfolio calculation of the Power Charge Indifference Adjustment (PCIA). Consequently, Resource Adequacy contracts of over one year are captured by the PCIA, but Resource Adequacy contracts of less than one year are not captured by the PCIA. Therefore, such costs are borne by bundled customers, potentially resulting in millions of dollars annually of stranded costs and potentially in contravention of the indifference requirement of Section 366.2

Energy Division issued data requests to PG&E confirming the existence of stranded costs. Responses to these data requests were confidential because of the market-sensitive information they contain. The Commission does not rely on those responses in making the determinations made herein.

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<sup>12</sup> Although D.11-06-022 modified the year-ahead forecast timeline to include optional revisions to be submitted by Aug. 19th of each year, later D.17-06-027 (OP 7) ordered that the revised August forecast be mandatory. The exact date of the August deadline varies by year.

<sup>13</sup> D.17-06-027, Finding of Fact 11.

Public information illustrates the scale of load migration happening in the year-ahead RA program. Existing and new CCAs that were not a part of the year ahead 2018 RA process but plan to serve load in 2018 would have been allocated a System Peak RA requirement of approximately 3,616 MW and a local RA requirement of approximately 1,793 MW. These year-ahead RA requirements were met by the utilities that currently serve these customers. Some of these costs are recovered by the PCIA, however, any contracts less than one year are not captured by the PCIA and are borne by remaining bundled customers. Due to the confidentiality of utility's market position, the proportion of those contracts that are less than one year cannot be disclosed publicly.

In addition, if the California Independent System Operator (CAISO) procures back-stop capacity through its capacity procurement mechanism (CPM), it appears based on the CAISO's tariff language these costs will be allocated only to those LSEs that exist at the time of the designation (annual designations would occur in December, before the compliance year). It is not yet clear if the PCIA addresses this potential cost-shifting issue.

## **DISCUSSION**

D.05-12-041 ordered the Executive Director to develop and publish two distinct processes in Ordering Paragraphs (OP) 8 and 10 of that Decision.

### D.05-12-041 Ordering Paragraph 8 Implementation

**Ordering Paragraph 8 requires the Executive Director to develop and publish the steps of an informal process of review that provides a forum for the CCA and the utility to understand the CCA's Implementation Plans and assures that the CCA is able to comply with the utility's tariffs.**

The goal of this "forum" is to "facilitate the smoother operation of the CCA where its policies, practices, and decisions may affect the utility and its customers."<sup>14</sup> The operation and launch of a CCA program inherently requires logistical coordination between the utility and the CCA, and many CCA-utility

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<sup>14</sup> OP 8, D.05-12-041.



partnerships must engage in these kinds of information-sharing discussions to facilitate smooth transitions to CCA service.

In order to comply with the directive of Ordering Paragraph 8, at the request of either the CCA or the utility, the parties must “meet and confer” as soon as reasonably practical. If the first attempts at resolution are not successful, the parties are required to meet in person. Should the parties be unable to reach consensus after the in-person meeting(s), either party may request that Energy Division assist by sponsoring a moderated in-person discussion between the parties. Such a request should come in the form of a request to the Director of Energy Division explaining the general nature of any unresolved issues regarding CCA compliance with utility tariffs. During the “meet and confer” parties shall discuss the contents of the CCA’s Implementation Plan and any relevant issues with compliance with utility tariffs.

#### D.05-12-041 Ordering Paragraph 10 Implementation

**Ordering Paragraph 10 of D.05-12-041 requires the Executive Director to prepare and publish instructions for CCAs and utilities that includes a timeline and describes the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to CCAs of the appropriate Cost Responsibility Surcharges (CRS), and registration of CCAs.**

#### Adopted Timeline for 2019 and Beyond

Appendices A and B of this Resolution include a timeline of the CCA registration process, including the timeline adopted by this Resolution.

The Prior Timeline in Appendix B reflects the current practice of CCA registration. The statutory deadlines in the Prior Timeline were established in Section 366.2. However, several milestones in the Registration process did not have deadlines defined by statute. These milestones are represented as “undefined” in the Prior Timeline. D.12-05.041 included an illustrative registration timeline based on statutory deadlines associated with CCA implementation.<sup>15</sup>

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<sup>15</sup> D.05-12-041, Attachment D.

The Adopted Timeline modifies the Prior Timeline and the Illustrative Timeline (proposed in D.05-12-041 Attachment D) in several respects. First, the Adopted Timeline includes a deadline by which Implementation Plans must be received in order for CCAs to serve new load beginning January 1 of the following year. The goal of this requirement is to assist the proposed CCA in securing the certification and registration within enough time to file its preliminary load forecast by mid-April in order to serve load the following calendar year.

Second, the Adopted Timeline includes the Meet-and-Confer option for the CCA and the utility to discuss how the CCA will conform its operations to the utility's tariff requirements. Third, the Adopted Timeline includes the deadlines for submission of CCA RA load forecasts in the year prior to a CCA beginning to serve load. Fourth, the Adopted Timeline includes a deadline by which the CCA must submit its Registration Packet and receive confirmation of registration.

In order to coordinate the launch of a new or expanding CCA with the RA requirements, the Implementation Plan and Statement of Intent must be submitted to the Commission on or before January 1 in order to serve load in the following year.<sup>16</sup>

These requirements are authorized by Section 366.2(c)(4), which requires a CCA to “provide for universal access, reliability, equitable treatment of all classes of customers, **and any requirements established by state law or by the commission concerning aggregated service.**”<sup>17</sup> Additionally, Load-Serving Entities, including CCAs, must comply with RA requirements pursuant to Section 380(a). Current RA rules require all LSEs to file an annual load forecast if they plan to serve load in the following year. Additionally, Section 366.2(c)(8) also supports this action and compels the Commission to “designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.”

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<sup>16</sup> For example, a new or expanding CCA intending to serve new load in 2020 must submit its Implementation Plan on or before January 1, 2019.

<sup>17</sup> Section 366.2(c)(4), emphasis added.

Thus, in order to comply with the year-ahead RA process, Implementation Plans, including Implementation Plans of an existing CCA that expands its territory, must be received by January 1 in order to serve load in the following year

Adopted Timeline for Transition Year Only (2018)

**a. CCAs that filed by December 8, 2017**

Prior to the mailing of the draft of this Resolution on December 8, 2017, the following Implementation Plans were submitted to the Commission:

1. Los Angeles Community Choice Energy
2. East Bay Community Energy
3. Redwood Coast Energy Authority Expansion to the City of Ferndale
4. Monterey Bay Community Power
5. Pioneer Community Energy
6. City of Rancho Mirage
7. Valley Clean Energy Alliance
8. City of Solana Beach
9. City of San Jose
10. MCE's expansion to the unincorporated areas of Contra Costa County; the cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the towns of Danville and Moraga

Collectively these Implementation Plans represent approximately 3,600 MW of new CCA load for 2018. This resolution has no effect on these 10 Implementation Plans or expansions

**b. CCAs that filed after December 8, 2017**

Following the mailing date of this Resolution on December 8, 2017, the following Implementation Plans have been submitted to the Commission:

1. Desert Community Energy
2. King City
3. Riverside CCA
4. Silicon Valley Clean Energy's Expansion to Milpitas
5. Los Angeles Community Choice Energy's Expansion to serve an additional 21 cities

Collectively these additional Implementation Plans represent approximately 1700 MW of new CCA load that CCAs express a desire to serve in 2018. These five CCAs are impacted by the new timeline adopted in this resolution and may serve load no sooner than January 1, 2019, assuming all deadlines set forth below are met, unless these CCAs apply for a waiver from this resolution to serve customers in 2018 as set forth in section (c) below.

Energy Division will complete an expedited review of the Implementation Plans submitted by the five CCAs above as well as any additional Implementation Plans and registration packages received on or before March 1, 2018. Energy Division will complete its review by April 13, 2018. CCAs certified by April 13, 2018 must submit their registration packets (including signed service agreements and bond) no later than April 20, 2018 so that those CCAs are certified and registered before the Resource Adequacy annual load forecast deadline in April 2018. This will allow these CCAs to serve load in 2019.

**c. Waiver Process**

Any new or expanding CCA may request a waiver from the timelines set forth in this resolution in order to begin service in that new or expanded territory prior to January 1, 2019. To request a waiver either:

- A. The CCA and utility in whose service territory the CCA intends to begin service shall jointly submit a Tier 1 Advice Letter no later than 75 days prior to the RA compliance month in which the CCA wishes to begin service. This Advice Letter shall provide notification that the utility and CCA mutually agree (via payment, allocation of RA or a combination thereof) that they have addressed RA requirements and cost responsibility concerns raised by the intra-year load migration for 2018.<sup>18</sup> Notification of agreements must include what categories of RA for what periods are being satisfied; or,
- B. If no agreement is reached, the CCA shall file a Tier 1 Advice Letter no later than 75 days prior to the RA compliance month in which the CCA wishes to begin service. This Advice Letter shall provide notification that the utility and the CCA are unable to reach agreement to address the RA requirements and cost responsibility concerns raised by the intra-year load migration for 2018, and shall state that the CCA agrees to be bound by a future Commission determination in the RA proceeding (R.17-09-020) regarding cost responsibility for intra-year load migration, subject to appellate rights under the Commission's Rules. The CCA then shall file a

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<sup>18</sup> Any allocation of RA can be a portion of a contract, a group of contracts, a pro rata share of the portfolio, or a combination thereof in addition to other forms of payment not identified.

motion in the RA proceeding seeking such a determination within 60 days of the submittal of the Advice Letter. Submittal of this Advice Letter allows the CCA to begin service in 75 days later and shifts RA responsibility from the utility to the CCA.

#### CCAs Forming in Small and Multi-Jurisdictional Utility Territories

Should a CCA form in a Small and Multi-Jurisdictional Utility (SMJU) territory, various procedural, cost-shifting, and other potential issues will be presented. Those issues are not being addressed in this Resolution, but the Commission expects to address these issues in an as yet determined forum.

#### Procedural Components for CCA Implementation Plans

##### Procedure for Submission and Certification of Receipt

This Resolution adopts a new deadline for submission of Implementation Plans. Implementation Plans will be submitted to the Director of the Energy Division both via email and a hard copy on or before January 1<sup>19</sup> in order to serve load in the following year.<sup>20</sup> Within 90 days of receiving an Implementation Plan, the Energy Division will certify that the plan assuming it meets all requirements.

##### Notice to Customers

This Resolution adopts no changes for Notice to Customers. Implementation Plans shall include the timing of notices sent to utility customers who will be transitioned to CCA service.

##### Notice to Customers of the Appropriate Cost Responsibility Surcharge (CRS)

This Resolution adopts no changes for Notice to Customers of the Appropriate CRS. The current Cost Responsibility Surcharge (CRS) has three major components: the Department of Water Resources (DWR) Bond Charge, the Competitive Transition Charge, and the Power Charge Indifference Adjustment (PCIA).

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<sup>19</sup> Except for 2018, where plans may be submitted by March 1, 2018.

<sup>20</sup> For 2018, Energy Division will certify plans by 4/13 if received by 3/1/18 as long as plans are reasonably complete and meet all requirements.

CCAs shall include in their Implementation Plans how they will notify customers of the applicable CRS. The PCIA methodology is currently under reconsideration in R.17-06-026.

### Registration of CCAs

This Resolution adopts two new deadlines for CCA registration. First, this Resolution requires that a CCA submit its registration packet to the CPUC within 90 days of filing its Implementation Plan. Second, this Resolution requires that if the Registration Packet is complete, the CPUC will confirm the CCA's registration within 120 days of the CCA submittal of its Implementation Plan assuming it meets all requirements.

To register, a CCA must submit its registration packet including a signed service agreement with the utility and a bond pursuant to Section 394.25 (e). The interim bond amount was set to \$100,000 in Resolution E-4133 (2007) and the amount of the bond is currently under consideration in R.03-10-003.

Once a bond has been submitted, Energy Division will issue a registration letter confirming completion of all registration requirements. After a potential or expanding CCA has fulfilled the above requirements, it may initiate service to its new customers no earlier than the service date authorized by this Resolution.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. The draft Resolution was mailed for Comments on December 8, 2017.

The deadline for comments was extended to January 11, 2018 and reply comments were allowed seven days later.

Over 60 comments and reply comments were received from the public, including numerous individual stakeholders as well as organizations. Of those comments, the majority opposed this resolution. The Joint Utilities (SDG&E, SCE and PG&E), TURN, ORA, and the Coalition of California Utility Employees generally

supported Resolution E-4907, with some caveats. Comments primarily focused on the following topics: timing, policy effects, and due process.

### **Timing**

Many comments expressed opposition to Draft Resolution E-4907 and urged the Commission to delay action on Resolution. Many comments stated that Commission consideration of the Resolution in January or February 2018 presented too short a time period for adequate review and analysis.

Resolution E-4907 was held from the January 11, 2018 Commission meeting and scheduled for the February 8, 2018 Commission meeting. The deadline for comments was extended from December 29, 2017 to January 11, 2018. Reply comments were accepted with a deadline of January 18, 2018. The Commission is satisfied that it has provided adequate time for comment and has the information that it needs to decide the issues presented by this resolution.

### **Policy Effects**

Some opposing commenters cited the significant negative impact to nascent CCA programs and expanding CCAs for 2018 and for 2019. They asserted that Draft Resolution E-4907 places substantial and unnecessary burdens on newly forming CCAs. Numerous stakeholders stated that communities invested significant time and resources to launch CCA programs and that these communities would be unfairly harmed in delaying a CCA's service date. Delay of service to new load represents a delay in associated revenues and program benefits according to some commenters. Many asserted that the proposed timeline was arbitrary.

Although Resolution E-4907 may delay some CCAs' desired date to begin service, any such delay would be for a finite period and for the purpose of avoiding unlawful cost shifting. Section 366.2 (c) (8) requires:

No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, **taking into consideration the**

**impact on any annual procurement plan of the electrical corporation that has been approved by the commission. [emphasis added.]**

Here, Resolution E-4907 designates the earliest possible effective date, taking into account the year-ahead requirements of the Resource Adequacy program in conjunction with our responsibility to avoid shifting costs onto bundled customers. Resource Adequacy is a key component of annual procurement planning and a responsibility of all Load-Serving Entities. The timeline requirements adopted by Resolution E-4907 are allowed by Section 366.2 (c) (8). Revisions to the resolution adjust compliance dates to ensure that the new provisions are consistent with the requirements of Section 366.2(c)(8) that the commission designate the earliest possible effective date for implementation of a community choice aggregation program.

### **Due Process**

Numerous commenters assert that the resolution violates their due process rights. We disagree. The changes in the CCA timeline made by this resolution are an exercise of authority the Commission has had since 2002. Section 366.2(c)(8) establishes the authority of the Commission to designate a CCA's start date with consideration of the impact on the electrical corporation's annual procurement. The Commission could have set a start date/timeline for a CCA in a letter certifying its Implementation Plan. There is no substantive difference here, where the Commission is simply setting that start date/timeline for all CCAs.

Ordering Paragraph 10 of D.05-12-041, moreover, requires the Executive Director to "prepare and publish instructions for CCAs and utilities that includes a timeline and describes the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to CCAs of the appropriate CRS, and registration of CCAs." This resolution effectuates that order.

Commenters assert that there was no opportunity to be heard. We disagree. Comments on draft resolutions are normally afforded about 20 days to comment.<sup>21</sup> Here, in response to requests from commenters, additional time was

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<sup>21</sup> Compare section 311(g)(1) with California Public Utilities Commission, Rules of Practice and Procedure (Rules), Rule 14.5.



afforded for comments. In addition, reply comments, while not normally allowed, were allowed.

Finally, two additional changes were made in response to comments. First, the deadline to submit Implementation Plans in 2018 has been moved forward to March 1, 2018, allowing several additional CCAs to begin service in 2019. Second, CCAs that desire to serve in may request a waiver if they reach an agreement with the incumbent utility to resolve RA cost-shifting concerns. These changes provide greater flexibility to CCAs on the date they can begin service.

### **FINDINGS AND CONCLUSIONS**

1. Ordering Paragraph 8 of D.05-12-041 requires that the Executive Director develop and publish the steps of an informal process of review that provides a forum for the CCA and the utility to understand the CCA's implementation plans and assures the CCA is able to comply with utility tariffs.
2. Ordering Paragraph 8 of D.05-12-041 requires that the forum be mandatory at the request of either the utility or the CCA and where the request is presented in writing with a recitation of disputed items or areas of concern. The process shall implicate no approvals, either formal or informal, from the Commission. Utility tariffs shall describe the meet and confer process for resolving disputes over operational issues prior to initiation of services.
3. The Commission should develop and publish the steps of an informal process of review that provides a forum for CCAs and utilities as directed in Ordering Paragraph 8 of D.05-12-041.
4. Ordering Paragraph 10 of D.05-12-041 requires the Executive Director to prepare and publish instructions for CCAs and utilities that includes a timeline and describes the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to CCAs of the appropriate
5. The Commission should prepare and publish instructions for CCAs and utilities that includes a timeline and describes the procedures for submitting and certifying receipt of the Implementation Plan, notice to customers, notice to CCAs of the appropriate Cost Responsibility Surcharge (CRS), and

registration of CCAs. Cost Responsibility Surcharge (CRS), and registration of CCAs.

6. CCAs must comply with the Resource Adequacy requirements as set forth in Public Utilities Code Section 380 before beginning service.

**THEREFORE IT IS ORDERED THAT:**

1. Within 14 days of the effective date of this Resolution, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E), shall update their tariffs and submit Tier 2 Advice Letters with the adopted timeline and procedures listed in Appendix A.
2. Prospective or expanding Community Choice Aggregators who have not yet submitted an Implementation Plan as of December 8, 2017 shall file their Implementation Plans pursuant to the adopted timeline and procedures listed in Appendices A and B and fulfill the Resource Adequacy portion of Appendices A and B prior to initiating service to customers unless they receive a waiver from the Commission as described in Paragraph 3 below. This Resolution is not retroactive.
3. Any new or expanding CCA may request a waiver from the timelines set forth in this resolution in order to begin service prior to the deadlines in Appendices A and B. To request a waiver either:
  - A. The CCA and utility in whose service territory the CCA intends to begin service shall jointly submit a Tier 1 Advice Letter no later than 75 days prior to the RA compliance month in which the CCA wishes to begin service. This Advice Letter shall provide notification that the utility and CCA mutually agree (via payment, allocation of RA or a combination thereof) that they have addressed RA requirements and cost responsibility concerns raised by the intra-year load migration for 2018. Notification of agreements must include what categories of RA for what periods are being satisfied; or,

- B. If no agreement is reached, the CCA shall file a Tier 1 Advice Letter no later than 75 days prior to the RA compliance month in which the CCA wishes to begin service. This Advice Letter shall provide notification that the utility and the CCA are unable to reach agreement to address the RA requirements and cost responsibility concerns raised by the intra-year load migration for 2018, and shall state that the CCA agrees to be bound by a future Commission determination in the RA proceeding (R.17-09-020) regarding cost responsibility for intra-year load migration, subject to appellate rights under the Commission's Rules. The CCA then shall file a motion in the RA proceeding seeking such a determination within 60 days of the submittal of the Advice Letter. Submittal of this Advice Letter allows the CCA to begin service in 75 days later and shifts RA responsibility from the utility to the CCA.
4. Commission staff will process Implementation Plans pursuant to the adopted timeline and procedures listed in Appendices A and B.
  5. The Commission will revisit this process, if necessary, depending on the outcome of R.03-10-003 or successor proceedings.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on February 8, 2018; the following Commissioners voting favorably thereon:

/s/TIMOTHY J. SULLIVAN  
TIMOTHY J. SULLIVAN  
Executive Director

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners

## Appendix A: Adopted CCA Registration Timeline and Procedures

<b>Date</b>	<b>Action</b>
<b>Day 1, Year 1</b> (On or before January 1 Year 1) <sup>22</sup>	(1) The prospective or expanding CCA submits its Implementation Plan to Energy Division and serves it on the R.03-10-003 Service List, on the R.16-02-007 Service List, and on the R.17-09-020 Service List, or successor proceedings.
<b>Day 1 - 10, Year 1</b>	(1) The CPUC notifies the Utility servicing the customers that are proposed for aggregation that an implementation plan initiating their CCA program has been filed.
<b>Day 1 - 60, Year 1</b>	(1) The CCA provides a draft customer notice to CPUC's Public advisor.  (2) Within 15 days of receipt of the draft notice, the Public Advisor shall finalize that notice and send it to the CCA.
<b>DAY 1 - 90, Year 1</b> <sup>23</sup>	(1) The CPUC sends a letter confirming that it has received the Implementation Plan and certifying that the CCA has satisfied the requirements of an Implementation Plan pursuant to Section 366.2(c) (3). This letter informs the CCA about the cost recovery mechanism as required by P.U. Code Section 366.2(c)(7).  If and when the CPUC requests additional information from a CCA, the CCA shall respond to CPUC staff within 10 days, or notify the staff of a date when the information will be available.  (2) The CPUC provides the CCA with its findings regarding any cost recovery that must be paid by customers of the CCA in order to prevent cost shifting. (P.U. Code Section 366.2 (c) (7).)

<sup>22</sup> For Plans to be submitted in 2018 to serve load in 2019, this deadline is extended to March 1, 2018.

<sup>23</sup> For Plans submitted by March 1, 2018, CPUC will complete review by April 13, 2018.

	(3) The CCA and the Utility should Meet-and-Confer regarding the CCA’s ability to conform its operations to the Utility’s tariff requirements.
<b>DAY 1 – 90, Year 1<sup>24</sup></b>	(1) The CCA submits its registration packet to the CPUC, including: a. Signed service agreement with the utility, and b. CCA interim bond of \$100,000 or as determined in R.03-10-003
<b>Day 90 – 120, Year 1<sup>25</sup></b>	(1) If the registration packet is complete, the CPUC confirms Registration as a CCA.
<b>April, Year 1</b>	(1) The CCA submits its year ahead Resource Adequacy forecast (P.U. Code Section 380)
<b>August, Year 1</b>	(1) The CCA submits its updated year-ahead RA forecast
<b>October Year 1 (75 days before service commences)</b>	(1) CCAs submit their Monthly load migration forecast for the Resource Adequacy program, filed about 75 days prior to the compliance month.
<b>Within 60 days of the CCA’s Commencement of Customer Automatic Enrollment</b>	(1) The CCA shall send its first notice to the prospective customers describing the terms and conditions of the services being offered and the customer’s opt-out opportunity prior to commencing its automatic enrollment. (P.U. Code Section 366.2 (c) (13) (A))
<b>Within 30 days of the CCA’s Commencement of Customer Automatic Enrollment</b>	(1) The CCA shall send a second notice to the prospective customers describing the terms and conditions of the services being offered and the customer’s opt-out opportunity prior to commencing its automatic enrollment. (P.U. Code Section 366.2 (c) (13) (A)) (2) Once notified of a CCA program, the Utility shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process. (P.U. Code Section 366.2 (c) (16))
<b>January 1, Year 2</b>	(1) CCA begins service.
<b>Following the CCA’s Automatic Customer Enrollment</b>	(1) The CCA shall inform participating customers for no less than two consecutive billing cycles that:  a. They have been automatically enrolled into the CCA program and that each customer has the right to opt out of the CCA program without penalty. (P.U. Code Section 366.2 (c) (13)(A)(i).)

<sup>24</sup> For 2018, the bond and signed service agreement must be submitted by April 20, 2018.

<sup>25</sup> For 2018, the CPUC will confirm registration by April 27, 2018.

	<p>b. Terms and conditions of the services being offered. (P.U. Code Section 366.2 (c) (13)(A)(ii).)</p>
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Appendix B: Schematic Comparison of Prior and Adopted Timelines for CCA Registration Process

