

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

ENERGY DIVISION

RESOLUTION E-5258  
April 27, 2023

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

**Resolution E-5258. Effective Dates for the Expansions of Community Choice Aggregators: Central Coast Community Energy and East Bay Community Energy.**

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PROPOSED OUTCOME:

Set January 1, 2025, as the earliest possible effective date for the expansions of service planned by Central Coast Community Energy and East Bay Community Energy.

SAFETY CONSIDERATIONS:

There are no safety considerations associated with this Resolution.

ESTIMATED COST:

There are no costs associated with this Resolution.

This Resolution is issued pursuant to Public Utilities Code Sections 366.2 and 366.3.

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**SUMMARY**

This Resolution sets the earliest effective date for when two Community Choice Aggregators (CCAs) may expand service. Central Coast Community Energy (CCCE) and East Bay Community Energy (EBCE) each submitted to the Commission Implementation Plan Addenda to expand their service territory, with an earliest possible effective date for expanded service in January 2024. While Commission Staff (Staff) certified receipt of the Implementation Plan Addenda pursuant to Public Utilities

Code Section 366.2(c)(7),<sup>1</sup> Staff did not confirm their proposed earliest possible effective date for expanded service.

In this Resolution, the Commission sets January 1, 2025, as the earliest possible effective date for each CCA to expand service, subject to modification by further Commission order.

CCCE and EBCE have each failed in the past to procure the required amount of capacity based on their existing customer load, as demonstrated by numerous citations issued for violations of the Commission's Resource Adequacy program. These procurement failures coincided with periods of extreme electricity scarcity, including in 2021 and 2022, and ultimately contributed to impermissible cost shifting from the CCAs to customers of investor-owned utilities (IOUs). The Commission has a statutory duty to ensure that the implementation of CCA programs does not result in such cost shifting.

The Commission cannot conclude at this time that the implementation of CCCE and EBCE's planned expansions will not cause further cost shifting in 2024. Accordingly, consistent with Sections 366.2(a)(4) and 366.3, the Commission cannot confirm the proposed effective dates in 2024. Instead, the Commission establishes January 1, 2025, as the earliest possible effective date for the implementation of CCCE and EBCE's expansions, subject to revision by a further Commission order.

## **BACKGROUND**

The Commission received two CCA expansion plans that are addressed in this resolution.

- On December 7, 2022, CCCE informed the Commission of Addendum Number 4 to its Implementation Plan,<sup>2</sup> which proposes to expand service to the City of Atascadero, with an earliest possible effective date in January 2024.

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<sup>1</sup> All subsequent code section references are to the Public Utilities Code unless otherwise noted.

<sup>2</sup> Available on the CCCE website at <https://3cenergy.org/wp-content/uploads/2022/12/Addendum-No.-4-to-the-CCCE-Community-Choice-Aggregation-Implementation-Plan-.pdf>.

- On December 8, 2022, EBCE informed the Commission of Addendum Number 2 to its Implementation Plan,<sup>3</sup> which proposes to expand service to the City of Stockton, with an earliest possible effective date in January 2024.

Under Public Utilities Code Section 366.2(c)(7), the Commission must certify receipt of CCA implementation plans within ninety days. Accordingly, on March 8, 2023, Staff issued letters that certified receipt of the above-mentioned addenda but did not confirm the proposed effective dates.

### Applicable Statutes and Commission Decisions

Customers in California are entitled to aggregate their loads as members of CCA programs.<sup>4</sup> CCA formation, through the filing of an implementation plan, is subject to certain requirements and restrictions, described primarily in Sections 366.2(a) and (c). Chief among the restrictions is a clear prohibition on cost shifting. Section 366.2(a)(4) requires that, “The implementation of a community choice aggregation 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.” Section 366.3 contains a similar proscription:

Bundled retail customers of an electrical corporation shall not experience any cost increase as a result of the implementation of a community choice aggregator program. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

Like all Load Serving Entities (LSEs), CCAs are obligated to ensure reliability and comply with the Commission’s Resource Adequacy program. As part of their implementation plans, Section 366.2(c)(4) requires CCAs to provide for reliability and for “any requirements established by state law or by the commission concerning aggregated service,” among other things. Regarding Resource Adequacy specifically, Section 380(e) states:

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<sup>3</sup> Available on the EBCE website at [https://res.cloudinary.com/diactiwk7/image/upload/v1670611946/EBCE\\_Addendum\\_2\\_CCA\\_Implementation\\_Plan\\_120822\\_e2sqja.pdf](https://res.cloudinary.com/diactiwk7/image/upload/v1670611946/EBCE_Addendum_2_CCA_Implementation_Plan_120822_e2sqja.pdf).

<sup>4</sup> Under section 366.2(c)(1), CCAs are not able to aggregate load served by publicly owned utilities.

Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission. The commission shall exercise its enforcement powers to ensure compliance by all load-serving entities.

The Commission has unambiguous statutory authority to set the effective date for CCA implementation plans. Section 366.2(c)(8) states:

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.

In Resolution E-4907, adopted on February 8, 2018, the Commission faced a similar challenge to the one that is presented by these CCAs' proposals to expand service: a risk that the implementation of CCA service was causing cost shifting. At the time, CCA launch and expansion schedules were not aligned with the Resource Adequacy program, resulting in Resource Adequacy purchases made by IOUs for CCA load, for which the IOUs were unable to recover the costs through the Power Charge Indifference Adjustment.<sup>5</sup> In part to address this kind of cost shifting, in E-4907 the Commission required CCA implementation plans to be filed at least one year before the requested effective date. In comments on E-4907, some CCAs argued that the requirement pushing out CCA start dates would have a "significant negative impact."<sup>6</sup> In response, the Commission reasoned that while "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."<sup>7</sup>

Confidential Information

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<sup>5</sup> E-4907 at 7.

<sup>6</sup> Id. at 15.

<sup>7</sup> Id. The City and County of San Francisco filed an application for rehearing, challenging Resolution E-4907. In Decision 18-07-046, the Commission denied rehearing, made certain modifications to E-4907 for clarity, and reaffirmed the Resolution's substantive proscriptions, including the extended implementation timeline.

When an LSE violates the Resource Adequacy program, the Commission's current practice is to treat certain information regarding the violation as confidential, including the amount of any procurement deficiency and the month in which the deficiency occurred. Staff is considering changes to the treatment of this information.<sup>8</sup> Here, however, current confidentiality practices are maintained. As such, this Resolution includes two redacted confidential appendices: Appendices 1 and 2, with records regarding CCCE and EBCE's Resource Adequacy program violations, respectively. CCCE and EBCE will be provided with an unredacted copy of the appendix pertaining to its violations upon request, as each entity should already be in possession of the records pertaining to its compliance. Accordingly, confidential appendices will remain confidential at this time.

In comments on this Resolution, CCCE and EBCE shall state the basis on which they contend all or any of the information contained in the confidential appendices should remain confidential.

### **Resource Adequacy Program Violations**

As adopted in Decision 05-10-042, the Resource Adequacy program requires procurement on both a year-ahead and month-ahead timeframe and imposes penalties on LSEs that fail to meet their procurement requirements or fail to comply with certain administrative requirements.

CCCE and EBCE have failed to meet Resource Adequacy program obligations on numerous occasions. These CCAs received the following citations for Resource Adequacy program violations all of which were paid by the CCA. (This list includes citations against Monterey Bay Clean Energy, which changed its name to CCCE in 2020):

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<sup>8</sup> Energy Division Proposals for Proceeding R.21-10-002 at pages 28-29 (Jan. 20, 2023).

**Table 1: Resource Adequacy Citations<sup>9</sup>**

<b>Energy Citation Number</b>	<b>Date Issued</b>	<b>Company</b>	<b>Citation Amount</b>
E-4195-0092	8/28/2020	Monterey Bay Community Energy	\$ 336,663
E-4195-0096	2/4/2021	Monterey Bay Community Energy	\$ 1,101,031
E-4195-0103	10/4/2021	Central Coast Community Energy	\$ 1,121,899
E-4195-0106	10/5/2021	Central Coast Community Energy	\$ 1,612,963
E-4195-0114	4/8/2022	Central Coast Community Energy	\$ 2,075,878
E-4195-0126	9/16/2022	Central Coast Community Energy	\$ 25,000
E-4195-0127	9/21/2022	Central Coast Community Energy	\$ 506,098
E-4195-0051	2/27/2019	East Bay Community Energy	\$ 1,552,589
E-4195-0077	3/10/2020	East Bay Community Energy	\$ 614,618
E-4195-0095	2/5/2021	East Bay Community Energy	\$ 1,486,034
E-4195-0101	6/28/2021	East Bay Community Energy	\$ 5,000
E-4195-0102	10/26/2021	East Bay Community Energy	\$ 652,530
E-4195-0104	10/5/2021	East Bay Community Energy	\$ 1,171,094
E-4195-0129	9/30/2022	East Bay Community Energy	\$ 878,587

The above table contains public information regarding CCCE and EBCE’s Resource Adequacy compliance history. The penalty for administrative violations, such as when an entity submits a required filing late, is assessed in \$1,000 and \$500 increments,<sup>10</sup> while penalties for procurement deficiencies are calculated based on a penalty price for each kilowatt not procured, for instance a summer system deficiency is penalized at \$8.88/kw-month.<sup>11</sup> Given the citation amounts listed above, Table 1 demonstrates that both CCCE and EBCE have failed to comply with Resource Adequacy procurement requirements. Additional detail on the specific amount, types, and timing of, deficiencies, which the Commission currently treats as confidential, is provided in Confidential Appendix 1 for CCCE, and Confidential Appendix 2 for EBCE. Based on their pattern of deficiencies, information regarding which is detailed in Confidential Appendices 1 and 2, Staff has concerns regarding the ongoing ability of these CCAs to meet their Resource Adequacy obligations.

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<sup>9</sup> <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/consumer-protection-and-enforcement-division/documents/ueb/energy-citations/feb-2023-ueb-energy-citations.pdf>

<sup>10</sup> See D.11-06-022, Appendix B.

<sup>11</sup> D.20-06-031 at Ordering Paragraph 20.

While all of the above-mentioned citations were paid, payment of a Resource Adequacy violation does not fully redress harms caused by a failure to meet Resource Adequacy program requirements, most notably the CCA's failure to timely procure the required level of capacity. Rather, penalties are intended to deter non-compliance, and payments on citations are remitted to the State general fund. The penalty amounts do not reflect the cost to other ratepayers when an entity fails to procure as required to maintain reliability, nor do they provide a mechanism to reimburse ratepayers for cost shifting that may be caused by an entity failing to meet its Resource Adequacy requirements.

## DISCUSSION

In the summer of 2022, California experienced an extreme heat event that led to a record level of electricity load and, but for extraordinary and expensive measures, could have caused rolling blackouts.<sup>12</sup> California relied on every megawatt of power that could be made available to keep the lights on in the September 2022 heat event. At the same time, both CCCE and EBCE, as well as other LSEs, failed to procure the capacity they were required to procure under the Resource Adequacy program.<sup>13</sup> Since the electric system had fewer capacity resources than it would have had all CCAs met their Resource Adequacy obligations, we find that these CCAs' procurement failures exacerbated the stressed electricity system conditions and as discussed further below, contributed to cost shifting from CCAs onto bundled IOU customers.<sup>14</sup>

In Decision 21-03-056, due to concerns with maintaining system reliability in the summers of 2021 and 2022 in the event of extreme weather events, the Commission directed the State's three IOUs to procure resources above what they were already required to procure under their Resource Adequacy obligations — generally referred to herein as “incremental excess resources.” This authorized procurement was intended to be incremental to, and in excess of, Resource Adequacy procurement that LSEs are required to undertake to meet their customers' electricity needs.<sup>15</sup> In Decision 21-12-

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<sup>12</sup> See generally, California Independent System Operator, Summer Market Performance Report: Sept 2022 (Nov. 2, 2022), available at <http://www.caiso.com/Documents/SummerMarketPerformanceReportforSeptember2022.pdf> .

<sup>13</sup> Other CCAs, as well as some electric service providers (ESPs) were also deficient in 2022.

<sup>14</sup> The deficiencies also shifted costs onto other Resource Adequacy compliant CCAs and ESPs.

<sup>15</sup> Resource Adequacy requirements are based on expected peak demand and a planning reserve margin; in D.21-12-015 the Commission established a higher “effective” planning reserve margin for the IOUs in directing the incremental excess resource procurement.

015, the Commission built off its prior decision and required the IOUs to continue procuring incremental excess resources to ensure reliability in the summers of 2022 and 2023.<sup>16</sup> Authorization for this additional procurement is still in effect for Summer 2023, and the Commission is considering a proposal by Staff to again extend the requirement for IOUs to procure incremental excess resources for 2024.<sup>17</sup>

The Commission authorized the incremental excess resource procurement to be made on behalf of all customers, and therefore the cost for the procurement was authorized to be recovered from all IOU distribution customers, which includes CCA, ESP, and IOU customers. The incremental excess resources were not intended to be used to backfill failures by specific LSEs to fulfill their responsibilities to procure required capacity. Instead, these sources were intended to be in addition to the capacity ordered under the Resource Adequacy program, so as to improve system reliability should an extreme weather event occur.

The IOUs successfully procured incremental excess resources. The amount of incremental excess resources procured varied by IOU and by month (June thru October), as shown in public Excess Resource reports available on the Commission website.<sup>18</sup> For September 2022, when California experienced a prolonged extreme heat event and hit the highest peak electric demand of all time on the California Independent System Operator grid, the IOUs collectively procured 2,280 MW of incremental resources, the costs for which are paid for by all IOU distribution customers.<sup>19</sup> But, rather than being available to provide their full reliability benefits for all customers, these resources were needed to help make up for September 2022 Resource Adequacy obligation deficiencies of LSEs. Collectively, CCAs overall were deficient by 943 MW in September 2022, over 40% of the incremental excess resource procurement for that month.<sup>20</sup>

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<sup>16</sup> Energy Division Proposals for Proceeding R.21-10-002 at pages 6-8 (Jan. 20, 2023).

<sup>17</sup> Energy Division Proposals for Proceeding R.21-10-002 at pages 6-8 (Jan. 20, 2023).

<sup>18</sup> See Excess Resource Reports: Resource Adequacy Compliance Materials (ca.gov) <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource-adequacy-homepage/resource-adequacy-compliance-materials>

<sup>19</sup> Id.

<sup>20</sup> As noted above, certain ESPs were also deficient during this period of time, however their deficiencies are not included in this total.



What happened in September 2022 is illustrative. The incremental excess resources procured by the IOUs functioned as a backfill (i.e., made up for other LSE deficiencies) rather than being available to provide the full system reliability benefit that was intended. In other words, the deficient LSEs were able to “lean on” the incremental excess resource procurement undertaken by the IOUs at the Commission’s direction and paid for by all ratepayers. We therefore find that the incremental excess resources were used in part to support Resource Adequacy-deficient CCAs and ESPs, including CCCE and EBCE, instead of supplying the full intended benefit which would have accrued to all customers.

Additionally, due to capacity shortfalls in the summer of 2022, the State of California had to employ expensive, extraordinary measures to avoid blackouts, including emergency procurement and the use of the Emergency Load Reduction Program at a cost of \$2,000/MWh. The expense associated with these measures, as well as the cost of the incremental excess resource procurement, was allocated to all customers. Had each deficient CCA met its Resource Adequacy obligations, some of these expensive measures paid for by all customers might have been avoided, or at the very least, the cost associated with them could have been reduced.

Given the history and pattern of Resource Adequacy deficiencies by CCCE and EBCE, we find they contributed to cost shifting onto IOU bundled customers. Moreover, the Commission has concerns regarding their ongoing ability to meet Resource Adequacy requirements and is not aware of any evidence that demonstrates that the risk of unlawful cost shifting continuing has been adequately mitigated. Further, while CCCE and EBCE paid the citations issued in Table 1, such payments are remitted to the State general fund and do not reimburse ratepayers for cost shifting that may be caused by an entity failing to meet its Resource Adequacy requirements. There is no mechanism in place to repay ratepayers of other IOUs who incur costs for capacity purchased to backfill when other LSEs are short and have failed to meet their Resource Adequacy requirements.

The Commission is therefore unable to conclude at this time that the implementation of CCCE and EBCE’s proposed expansions will not cause further unlawful cost shifting, in violation of Public Utilities Code Section 366.2(a)(4) and 366.3. Absent adequate mitigation of the risk of ongoing or future cost shifting, the Commission cannot confirm the 2024 effective dates proposed by the CCCE and EBCE. Instead, the Commission finds that January 1, 2025, is the earliest possible effective date on which these CCAs

may begin expanded service, unless the Commission acts to revise the earliest effective dates pursuant to a further Commission Order. We find that it is reasonable to set an earliest effective date of January 1, 2025 in order to allow the Commission to take further actions to ensure expansion of these CCAs will not cause impermissible cost shifting onto IOU customers.

In Resolution E-4907, the Commission acted to prevent one type of cost shifting, by requiring coordination of the timeline of the Resource Adequacy compliance framework with the approved effective dates for CCA service, to ensure CCA compliance with Resource Adequacy requirements. Here, we find it is necessary to address a new and distinct type of cost shifting that is resulting from LSEs who fail to procure their required capacity under the Resource Adequacy program. In setting the January 1, 2025 earliest possible effective date, the Commission is acting pursuant to its statutory authority requiring it to ensure that the implementation of CCA programs do not result in cost shifting and in recognition of the need to address the statutory scheme as a whole.

### **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. Any comments are due within 20 days of the date of its mailing and publication on the Commission's website and in accordance with any instructions accompanying the notice. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

**FINDINGS**

1. In D.21-03-056 and D.21-12-015, the Commission directed the Investor-Owned Utilities to purchase incremental excess resources for 2021, 2022, and 2023, due to concerns with maintaining system reliability during extreme weather events, the costs of which are or will be paid for by all Load Serving Entity customers.
2. The Investor-Owned Utilities successfully procured incremental excess resources, procuring 2,280 MW for September 2022, a critical summer month.
3. In the summer of 2022, California experienced an extreme heat event that led to a record level of electricity load and, but for extraordinary and expensive measures, including the incremental excess resource procurement, could have caused rolling blackouts.
4. Community Choice Aggregators Central Coast Community Energy and East Bay Community Energy submitted Implementation Plan Addenda to expand their service territories, with an earliest possible effective date for expanded service in January 2024.
5. Central Coast Community Energy and East Bay Community Energy have each failed to comply with Resource Adequacy procurement requirements on numerous occasions, as documented in Confidential Appendices 1 and 2, including in 2022.
6. Due to Resource Adequacy program procurement deficiencies in 2022, incremental excess resources, paid for by all Load Serving Entity customers, functioned in part as backfill to make up for specific Load Serving Entity deficiencies, rather than being available to provide the full system reliability benefit that was intended, which caused a cost shift.
7. Community Choice Aggregator Resource Adequacy procurement failures exacerbated the 2022 stressed electricity system conditions, requiring greater reliance on expensive and extraordinary measures, and thereby contributed to cost shifting onto bundled Investor-Owned Utility customers.
8. While Central Coast Community Energy and East Bay Community Energy paid fines for their Resource Adequacy program violations, the fines do not reflect the cost to other ratepayers when an entity fails to procure as required to maintain reliability, nor do the fines reimburse ratepayers for cost shifting that may be caused by an entity failing to meet its Resource Adequacy requirements.
9. Based on the history and pattern of Central Coast Community Energy and East Bay Community Energy's Resource Adequacy deficiencies, and how Resource Adequacy deficiencies can lead to cost shifting, Central Coast Community Energy and East Bay Community Energy have contributed to cost shifting onto Investor-Owned Utility bundled customers.

10. The Commission has concerns regarding the ongoing ability of Central Coast Community Energy and East Bay Community Energy to meet Resource Adequacy requirements and is not aware of any evidence that demonstrates that the risk of cost shifting continuing has been adequately mitigated.
11. Pursuant to Public Utilities Code Section 366.2(a)(4) and 366.3, it is unlawful for the implementation of a Community Choice Aggregator program to result in costs being shifted onto Investor-Owned Utility customers.
12. Because the Commission cannot conclude that Central Coast Community Energy and East Bay Community Energy's planned expansions will not cause further cost shifting, it would be unreasonable to confirm the proposed effective dates in 2024.
13. It is reasonable to set an earliest effective date of January 1, 2025 for Central Coast Community Energy and East Bay Community Energy's planned expansions in order to allow the Commission to take further actions to ensure the expansions will not cause impermissible cost shifting.
14. The records of East Bay Community Energy and Central Coast Community Energy's Resource Adequacy program violations are included in confidential Appendices 1 and 2. The Commission's current practice is to treat much of the information regarding Resource Adequacy violations as confidential. Accordingly, the confidential appendices marked "[REDACTED]" in the redacted copy, should not be made public upon Commission approval of this resolution.

**THEREFORE, IT IS ORDERED THAT:**

1. Central Coast Community Energy and East Bay Community Energy may not implement their plans to serve expanded service territory, as identified in their implementation plan addenda, in 2024.
2. The earliest effective date for Central Coast Community Energy and East Bay Community Energy's proposed expansions is January 1, 2025, unless the date is modified by further order of the Commission.

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 April 27, 2023; the following Commissioners voting favorably thereon:

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Rachel Peterson  
Executive Director

**CONFIDENTIAL**  
**APPENDIX 1**

**CONFIDENTIAL**  
**APPENDIX 2**