

Decision 05-12-041 December 15, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Portions of AB 117 Concerning Community
Choice Aggregation.

Rulemaking 03-10-003
(Filed October 2, 2003)

(See Appendix A for List of Appearances.)

**DECISION RESOLVING PHASE 2 ISSUES ON IMPLEMENTATION
OF COMMUNITY CHOICE AGGREGATION PROGRAM
AND RELATED MATTERS**

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**DECISION RESOLVING PHASE 2 ISSUES ON IMPLEMENTATION
OF COMMUNITY CHOICE AGGREGATION PROGRAM
AND RELATED MATTERS**

This order resolves outstanding issues in Phase 2 of this proceeding, the purpose of which is to implement a program to permit purchases of power by Community Choice Aggregators (CCA) for local residents and businesses. This order is issued in compliance with Assembly Bill (AB) 117 (2002 Stats., ch. 838), enabling cities and counties to form CCAs.

I. Summary and Background

CCAs are governmental entities formed by cities and counties to serve the energy requirements of their local residents and businesses. The state Legislature has expressed the state's policy to permit and promote CCAs by enacting AB 117.¹ AB 117 authorizes the creation of CCAs, describes essential CCA program elements, requires the state's utilities to provide certain services to CCAs, and establishes methods to protect existing utility customers from liabilities that they might otherwise incur when a portion of the utility's customers transfer their energy services to a CCA.

Cities and counties have become increasingly involved in implementing energy efficiency programs, advocating for their communities in power plant and transmission line siting cases, and developing distributed generation and renewable resource energy supplies. The CCA program takes these efforts one step further by enabling communities to purchase power on behalf of the community. Already, several cities and counties have either formed CCAs or have stated an intent to create them.²

¹ Pub. Util. Code §§ 218.3, 331.1, 366.2, 381.1, and 394.25.

² AB 117 refers to "CCAs" as the legal entities that are the subjects of its provisions. For some reason, the utilities have referred to CCAs as "CCA Providers." Because that term

Today's decision is the second decision issued in this proceeding to address ways to create a CCA program in compliance with AB 117. The Commission issued Decision (D.) 04-12-046 in Phase 1 of this proceeding that addressed rates and certain tariff and cost allocation issues. That order stated our intent to protect bundled utility customers from the possible cost impacts of CCA programs while seeking to establish reasonable costs for the utility services CCAs and their customers would require. AB 117 confers general jurisdiction over CCA program implementation, but requires the Commission to take certain actions to protect utility bundled customers and assure reasonable service to CCAs, actions that are incidental to our regulatory oversight of public utilities. The Commission has the authority to assert limited jurisdiction over certain CCA matters, including resource adequacy requirements, as discussed below.

Phase II considers the following broad issues:

1. **Commission jurisdiction over CCAs and CCA programs. "Vintaging" the Cost Responsibility Surcharge (CRS).** We establish a way to calculate the CRS for each generation of CCA in a way that recovers costs incurred on behalf of the CCA's customers but not more, also known as "vintaging." We adopt a calculation for each vintage of the CRS that is not controversial and do not permit the utilities to restrict a CCA's option to phase-in service to customer groups;
2. **The CCA's notification to the utility of its intent to serve customers.** We adopt an "open season" and discuss other ways of notifying the utility of the CCA's intent to purchase power for local customers and committing to relieving the utility and its remaining ratepayers of liability for power costs. Generally, we find that CCAs must make a binding commitment to be assured that the utility will stop purchasing power on behalf of its customers, that the utility

has no relevance to the statute and is not defined either by the utilities or the statute, we do not use it here and it may not be used in tariffs.

may not transfer its liability for load forecasting to the CCA and that we expect the utilities to work cooperatively with CCAs to minimize stranded power purchase liabilities. We also establish a collaborative process for refining departing load forecasts;

3. **The regulatory process for considering CCA implementation plans and registration.** Generally, we find that AB 117 does not provide us with authority to approve or reject a CCA's implementation plan or to decertify a CCA but to assure that the CCA's plans and program elements are consistent with utility tariffs and consistent with Commission rules designed to protect customers. We adopt a simple procedure for the filing of an implementation plan and a method of facilitating disputes between the utility and a CCA;
4. **Customer protections.** We adopt various customer protections, including how to treat service termination, partial payments and deposits, and customer notifications;
5. **Implementation rules and utility services to CCAs.** We adopt policies and rules for customer enrollment, scheduling coordination, call center operations, boundary meters, and customer switching,
6. **Service fees for utility services to CCAs.** We adopt utility charges and fees for such activities as opt-out processing, customer transfers of service, billing services, customer contacts, data processing and management, and confirmation letters to customers. Consistent with our order in Phase 1 of this proceeding, we adopt cost-based rates for services that impose costs on utilities that would not otherwise occur and which are not otherwise being recovered;
7. **Ratemaking for the CARE program.** We find that CCA customers should continue to receive the benefits of the CARE program and establish accounting for these subsidies;

8. **Application of Renewable Portfolio Standard (RPS).** We find that the Commission should decide in Rulemaking (R.) 04-04-026 how to apply the RPS to CCAs.

Attachment A summarizes this order in more detail. Attachment C is a copy of relevant portions of AB 117.

This decision permits the complete implementation of the CCA program in California. We also state our commitment to refining the rules for the program as we gain experience with it.

II. Procedural Background

The Commission opened this rulemaking on April 27, 2003 to implement certain provisions of AB 117 (Chapter 838, September 24, 2002), which added Pub. Util. Code §§ 218.3, 331.1, 366.2, 381.1, and 394.25 and permits local governments the opportunity to aggregate energy procurement on behalf of the citizens and businesses in their communities.

AB 117 involves Commission-jurisdictional utilities by requiring them to continue to provide distribution, metering and billing services to the CCA's energy customers, among other things. AB 117 also directs the Commission to ensure that the utilities are able to recover certain costs, including those associated with energy contracts signed by the state's Department of Water Resources (DWR) and the costs of providing ongoing services to CCAs and their customers. This rulemaking stated our intent to implement fully the requirements of AB 117 that pertain to CCAs.

Following a prehearing conference on November 26, 2003, and with the agreement of all active parties, the Commission bifurcated the proceeding so that the Commission would first consider issues relating to certain utility costs that would be assumed by CCAs and later consider issues more concerned with transactions between CCAs, utilities, and energy customers. The Commission

issued its first order, D.04-12-046, in December, 2004 resolving a variety of cost and rate issues. It subsequently held a second prehearing conference on March 30, 2005 and then evidentiary hearings in May 2005. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E) (together "Utilities") filed briefs jointly. The City and County of San Francisco (CCSF), the City of Moreno Valley, Community Environmental Council, the Local Government Commission, the County of Los Angeles and the City of Chula Vista (LA/CV) filed joint briefs and refer to themselves as "CCA Community and Supporters" (CCAs). Other parties that actively participated and filed briefs are the Office of Ratepayer Advocates (ORA), Community Environmental Council, Local Power, Toward Utility Rate Normalization (TURN), Energy Choice, Inc. (ECI).and the King's River Conservation District (KRCD). The California DWR consulted with the Commission on matters related to the delivery of "in-kind" power. Phase 2 of this proceeding was submitted on August 1, 2005 when reply briefs were filed.

III. Commission Jurisdiction over CCAs and the CCA Program

AB 117 establishes a program that permits cities and counties to create organizations called CCAs to provide certain utility services to local residents and businesses. The statute by necessity requires CCAs to rely on regulated electric utilities for a variety of services, such as metering and billing. This ongoing relationship between the CCA and the utility is essential partly because the utility retains the obligation to provide the CCA's energy customers with distribution and transmission services. The statute also specifies other obligations of the serving utility, such as offering customer notification services and customer information to the CCA. AB 117 directs this Commission to develop the rules, rates and policies that are required for the implementation of a

successful CCA program, and also to oversee certain aspects of it on a continuing basis. The statute also directs CCAs to submit certain documents and information to the Commission, among other things.

In the process of developing the CCA program in this proceeding, the question has arisen as to whether and the extent to which AB 117 grants this Commission jurisdiction over CCAs and, by implication, the cities and counties that create and oversee them. Indeed, almost every controversy in Phase 2 of this proceeding somehow implicates the extent to which the Commission may or should control CCA activities, whether by way of utility tariffs or independently.

As part of the debate over Commission jurisdiction, the Utilities discuss the many and sometimes complex inter-relationships they will have with CCAs and speculate on some of the consequences of those relationships. For example, they observe that the CCA has no obligation to serve its customers and may abandon its energy service at any time. Utilities argue AB 117 intended for the Commission to have broad authority over CCAs and did not limit the scope of the Commission's authority in this regard. As evidence of this legislative intent, the Utilities cite several sections of the statute that refer explicitly to the Commission:

1. The CCA must file an implementation plan and a statement of intent with the Commission;
2. The CCA must register with the Commission; and
3. The Commission must adopt rules for CCAs before CCAs may offer services.

The Utilities argue that the Commission has exercised authority over Energy Service Providers (ESPs) and utility holding companies and that this "derived authority" extends equally to CCAs.

ORA believes the Commission has “plenary” or “general” jurisdiction over public utilities only and that the Courts have distinguished between broad regulatory oversight on the one hand and more limited authority on the other. ORA observes that portions of AB 117 provide the Commission with certain authority over CCAs and believes that the Commission need not speculate further about the Legislature’s intent.

CCAs reply that the Commission’s role is primarily to “advise and assist” CCAs, which are entities of local government subject to open meeting laws and established procedures for public participation and information disclosure. As evidence that the Legislature did not intend for the Commission to assume jurisdiction over CCAs, CCAs observe that AB 117 requires an implementation plan in order to develop a cost responsibility surcharge (CRS) and that AB 117 does not require a CCA to submit changes to its implementation plan to the Commission. With regard to authority over CCAs, AB 117, according to CCAs, establishes responsibilities for the Commission that are primarily ministerial, for example requirements to notify the utility of a filed implementation plan, requesting additional information about the plan and requiring the CCA to register with the Commission.

The CEC, TURN and King’s River generally share the CCAs’ views on the authority AB 117 confers on the Commission over CCAs.

Discussion. In considering this Commission’s jurisdiction over CCAs and the implementation of CCA program, we rely almost exclusively on the guidance provided by AB 117, which is the only California statute that guides the development of a CCA program.³ Our review of AB 117 leads us to the general

³ Other statutes and our own decisions have addressed other areas of jurisdiction over CCAs and ESPs, for example, but not limited to the issue of resource adequacy requirements. (See e.g., D.05-10-042 and AB 380 (Ch. 367, Stats 2005) which, other

conclusion that our authority over CCAs is circumscribed. AB 117's provisions are generally either permissive with respect to CCAs or direct us to regulate the utilities that serve them. That is, we interpret AB 117's requirements for the CCA to file an implementation plan, to register with the Commission, and to comply with program rules to be conditions of receiving related utility services. Just as a residential customer may have to submit a deposit as a condition of utility service or an industrial customer may have to install a meter to receive utility service, CCAs must take certain steps to receive the utility services they will require to provide power to their customers. The conditions of service imposed on utility customers do not confer upon this Commission general jurisdiction over customers. In the case of CCAs, the rules and procedures AB 117 requires are for the purpose of assuring the availability of adequate information for the utility to provide service and for the Commission to satisfy itself that the CCAs plans will not compromise the utility's ability to provide services to CCA customers and utility bundled customers.

The Commission must adopt rules *for the utility* in order that it may provide adequate service to the CCA and its customers while simultaneously protecting utility bundled customers and the utility's system. Nothing in the statute directs the Commission to regulate the CCA's program except to the extent that its program elements may affect utility operations and the rates and services to other customers. For example, the statute does not require the Commission to set CCA rates or regulate the quality of its services. To the contrary, while providing very precise guidelines on a number of issues involving the utilities' services to CCAs and ways to protect utility customers,

things added Section 380 to the Pub. Util. Code and requires the Commission to consult with the ISO to establish resource adequacy requirements for all load-serving entities.

the statute does not refer to how the Commission might oversee the rates and services CCA's offer to their customers.

In support of their view that the Commission has broad and general jurisdiction over CCAs, utilities cite D.04-07-037 which found that the Commission has authority over ESPs as a result of statutory language authorizing the Commission to suspend or revoke an ESP's registration if an ESP were not financial capable of providing electric service. In the case of ESPs, the Commission has express statutory authority which AB 117 does not confer with regard to the CCA implementation program. In fact, the distinction is significant in that we must assume the Legislature would have explicitly granted us authority over these programs as it has in the case of ESPs if that is what it had intended. Instead, Section 394, which outlines how the Commission is to process ESP applications, explicitly exempts public agencies from its provisions.⁴ However, the Commission has the authority to exercise limited jurisdiction over non-utilities in furtherance of their regulation of public utilities (*See PG&E Corp. v. CPUC*, 118 Cal. App. 4th (2001) 1195-1201).

The utilities also analogize to our authority over utility holding companies, but such references are without merit. Our authority over holding companies derives from our authority over their regulated utility subsidiaries. No such circumstance or law exists with regard to the implementation of CCA programs.

We are confident that existing law protects CCA customers. Entities of local government, such as CCAs, are subject to numerous laws that will have the effect of protecting CCA customers and promoting accountability by CCAs.

⁴ Division 4.9 of the Public Utilities Code does address publicly-owned utilities, as does Section 9620, which specifically provides for resource adequacy requirements.

Under existing law, a CCA must conduct public hearings, operate within a budget and disclose most types of information to members of the public. To the extent that a CCA fails to consider the interests of its customers - who are local citizens - there is recourse in subsequent elections, the courts and before local government agencies. We are not convinced that our oversight would necessarily contribute anything in that regard, as long as utility tariffs provide adequate protections for the integrity of the utility system and bundled ratepayers are protected from costs that are attributable to CCA customers, as AB 117 requires.

Although we find that we do not have broad regulatory authority over CCA program implementation, we do have authority to subpoena information and witnesses, to require information from a CCA and to require its involvement in any relevant Commission inquiry, authority we have over any individual or entity whose acts or knowledge are germane to our regulatory obligations. As the utilities argue, we also retain a responsibility to assure that a CCA's policies, practices and operations do not compromise the operations of the utility or services to utility customers. We may affect those protections in the CCA program rules that will be incorporated into utility tariffs. At this time, we have no reason to believe that this approach is inadequate to protect utility customers.

Finally, we address the utilities' complaint that they "should not be forced to adopt the tariff changes drafted by the local governmental agencies" and that they, the utilities, "are the entities responsible for writing and administering their own tariffs." We remind the utilities that every party to our proceedings is entitled to comment on utility tariff proposals and to our full consideration of their views. Local governmental agencies participating in this proceeding have done nothing novel by objecting to utility tariff proposals and proposing their

own. More importantly, we most assuredly will order the utilities to modify their tariff language in ways they themselves did not propose if that tariff language is required to conform the tariffs with our view of the public interest, consistent with our statutory obligations and notwithstanding which party proposed them.

We proceed to address the scope our authority to implement each element of AB 117 with these broad principles in mind.

IV. The CCA Implementation Plan and the Process for CCA Registration (Utility Tariff Section F)

AB 117 sets forth several procedural steps that the CCA must take - and which involve this Commission -- prior to initiation of service by the CCA. Section 366.2(c) (3) requires the CCA to develop an "implementation plan" that provides a variety of information about rates, organizational structure, operations and third party power suppliers. The implementation plan is to be filed with this Commission "(i)n order to determine the cost recovery mechanism." The Commission must "certify" that it has received the implementation plan and other relevant information it has requested and then "provide the community choice aggregator with its findings" regarding cost recovery amounts required by Section 366.2 (d)(e) and (f). In addition, the CCA must "register" with the Commission and provide the Commission with additional information "to ensure compliance with basic consumer protection rules and other procedural matters."

The parties addressed the content of the implementation plan, its use, the Commission's role in reviewing and approving the implementation plan. They

also discussed the relevance of the requirement that CCAs register with the Commission.

The utilities view the implementation plan as a commitment by the CCA, and they believe this Commission should exercise its authority over the substance of such plan. They believe the Commission should be able to review the plan, inquire as to its contents, and, if necessary, disapprove the plan. They propose an advice letter process and its associated formal review and approval process. The utilities also believe the Commission has the authority to “decertify” a CCA’s authority to provide service and to entertain formal customer complaints against the CCA. As part of the registration process, the utilities and ORA propose each CCA submit a “provider service agreement” with the serving utility and, for those CCAs that are not scheduling coordinators, a signed agreement with an authorized scheduling coordinator.

The utilities argue that a local review and comment process required by AB 117 for a CCA’s implementation plan may not achieve the legislature’s general objectives of “detailing the process and consequences of aggregation.” They also suggest the Commission must oversee the type of information the CCAs provide in the Implementation Plan and to their potential customers. For example, the utilities believe the Commission should determine whether the Implementation Plan provides specific and adequate information about the CCA’s program structure and whether the program is adequately funded. They would have it include rates for all customer classes, describe how costs are allocated to different customer groups, and identify which third party suppliers are providing energy services and in what quantities.

CCAs respond that the utilities have interpreted AB 117 erroneously and argue that the Legislature never intended for the Commission to assume close

regulatory oversight of CCA operations. They argue that the Legislature has distinguished CCAs from private power sellers, which are subject to more specific regulatory procedures in Section 394. They argue that CCAs are subject to the Brown Act, which provides ample public procedures and consumer protections by requiring open meetings, public notice, and access to decision-makers and information relevant to agency operations. CCAs do not believe the Legislature intended the Commission to substitute its judgment for that of a public agency that is accountable to the community and relevant state and federal law. They also raise concerns that the procedures the utilities advocate would create an expensive and complex regulatory bar to establish community choice aggregation programs. CEC and Local Power make similar comments.

TURN generally shares the CCAs' views on the issue of the Commission's authority over the implementation plan, although it recommends an advice letter process to review an implementation plan, similar to the one the Commission has in place for local providers of 2-1-1 telephone services, as described in D.03-02-029.

Discussion. We begin by addressing the appropriate extent of our oversight of Implementation Plans. Consistent with our discussion on jurisdiction more generally, we defer to the express language of the statute. As a threshold matter, we find nothing in the statute that directs the Commission to approve or disapprove an implementation plan or modifications to it. Nor does the statute provide explicit authority to "decertify" a CCA or its implementation plan. While we agree with the utility that the Legislature could not have intended for the requirements regarding the Implementation Plan and modifications to it to be "a meaningless, perfunctory exercise," we do not agree

that the Legislature intended the Commission to treat CCAs like utilities, which is what the utilities suggest.

A general rule of statutory interpretation suggests that where a statute provides specific guidance -- in this case on the Commission's role and authority -- its silence in a related section or on related issues implies a limit on that role and authority. (*Louise Gardens of Encino Homeowners' Assoc. v. Truck Insurance Exchange, Inc.* 82 Cal. App. 4th 648 at 657). Here, the statute *does* require the CCA to file the plan here and gives the Commission authority to request information about the plan and to register the CCA. We assume that if the Legislature intended for us to regulate the CCA's implementation plan in other ways, the Legislature would have included explicit language in the statute with regard to its intent.

The Legislature's treatment of private power sellers - ESPs - is also instructive here. Section 394 sets forth an elaborate regulatory process for the registration of ESPs that seek to sell power to individual customers, a business relationship commonly referred to as "direct access." Section 394 requires ESPs to register with the Commission, to be subject to finger printing and a criminal background check, to file formal applications for authority to operate under certain conditions, and to prove technical, financial and operational ability as a precondition to the Commission's issuance of a license to operate. The Commission is explicitly provided authority to deny a license under certain circumstances and to revoke it. Section 394(a) explicitly exempts public agencies, such as CCAs, from its provisions. If the Legislature had intended the Commission to impose these types of procedures on CCAs, as the utilities suggest either directly or by inference, we must presume it would have so stated.

Since it did not, we must assume the Legislature intended a much more limited role for the Commission in its oversight of CCAs.

We may agree with the utilities that the implementation plan - or some other document - should disclose relevant information to CCA customers and prospective customers. However, we do not agree it is our job to determine what that information should disclose. Instead, we believe it is up to the CCA to comply with the statute. This view is supported by the Legislature's historical treatment of local governments that operate utilities for such commodities as electricity, sewage treatment and water. We have no evidence to suggest that utility operations performed by local government have failed to operate successfully absent strict state oversight. CCAs are government entities subject to specific statutes with regard to their operations, decision-making procedures and information disclosure. No one has claimed that those statutes are inadequate to protect local citizens and we choose not to second guess them.

Because we do not believe the AB 117 intended to give this Commission broad jurisdiction over CCAs, we reject the utilities' proposal to subject CCAs to the advice letter process, a formal administrative procedure that the Commission employs for the purpose of authorizing changes to the tariffs of regulated utilities. The procedure would require the formal adoption of a CCA's implementation plan at a public meeting following the filing of formal comments by parties, the issuance of a proposed resolution, and the filing of comments on the proposed resolution, a process that would take no less than 60 days and would probably take much longer. Nothing in the statute authorizes the Commission to conduct this elaborate and time-consuming procedure.

While we part company with the utilities on the issue of how much authority we have over CCAs and how much formal Commission process is

required or authorized by AB 117, we realize that the Commission has a role in assuring the CCA's operations comport with utility tariff requirements and rules, especially in the early years of the program while the utilities and CCAs are implementing an untested program. We also recognize that CCA operations or implementation plan modifications may not be consistent with the requirements of the utility's tariffs. We therefore adopt certain procedures to promote understanding and cooperative relationships between the utilities and CCAs.

In order to facilitate the smooth operation of the CCA where its policies, practices and decisions may affect the utility and its customers, we will direct 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 the CCA is able to comply with utility tariffs. We expect the process to be collaborative and, if required, facilitated by Commission experts. The process would be mandatory only 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 would implicate no approvals, either formal or informal, from the Commission. Where the CCA fails to conform to approved utility tariffs, the utility may, in fact *must*, decline to provide service to the CCA. If a utility refuses to facilitate the CCA's initiation of service, or declines to provide service to the CCA, it must inform the CCA of its reasons in writing. If the CCA believes it or its customers have been improperly refused utility service, whether before a CCA's service is initiated or in a case where the utility interrupts CCA services, the CCA may file a formal complaint with the Commission, which may be litigated or mediated using our usual procedures. We will direct each utility to include a description of this process in

its tariffs but we will not delay implementation of the Phase II tariffs or the CCA program generally while the informal process is being developed.

We will also direct our Executive Director to prepare and publish instructions for CCAs and utilities which would include 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. Attachment D provides an illustrative timeline for such activity. The process and the timeline shall be consistent with the statute and with this order. The CCA's registration packet shall include the CCA's service agreement with the underlying utility and evidence of insurance, self-insurance or a bond that will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting.

The procedures we adopt are designed to comply with AB 117 and facilitate a CCA's program while protecting utility customers. They will require a commitment by each utility and CCA to work cooperatively and in good faith. We are also aware of the particular responsibility of the utilities that is imposed by Section 366.2(c)(9), which requires the utility to "cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs." The failure of a utility to cooperate in good faith with a CCA could cause the CCA or utility bundled customers to incur unnecessary costs and create unnecessary customer confusion. In our role to regulate the utilities that are the subject of this subsection, if we find that a utility has failed to comply with Section 366.2(c)(9) or relevant Commission orders, we retain authority to impose substantial penalties on the utility and cooperate in any law suit that seeks material damages. Fortunately, at this point, we have no reason to assume that our authority will be required in this regard.

V. Consumer Protection

The utilities and the CCAs disagree about the extent to which AB 117 requires or permits the Commission to regulate consumer protections. The utilities interpret the statute broadly to require the Commission to promulgate a number of rules and to take action if the CCA fails to provide promised benefits to consumers, if rates are unexpectedly changed or where customers are defrauded. They propose CCA customers should be able to file complaints at the Commission and that CCAs be required to file annual reports. The utilities and ORA propose protections against “slamming” by CCAs, that is, the transfer of a customer to the CCA without authority.

CCAs object to the utilities’ broad interpretation of the statute and argue that the Commission has no jurisdiction over consumer complaint procedures, and protections against slamming and fraud.

Discussion. Many of the issues we resolved our Phase 1 order and those we address in this order are surely “consumer protection” in every sense of the word. The CRS protects utility bundled customers from assuming the costs incurred on behalf of CCA customers. The rates we set for CCAs are intended to protect CCA customers and utility bundled customers from having to subsidize each other. The operational requirements we order in utility tariffs protect CCA and utility customers from compromises to the engineered electrical system and the reliability of electrical service. As the statute requires, we establish procedures for notifying customers of the CCA’s program and their options for future electrical service.

On the other hand, we see a very limited role in other types of consumer protections for reasons we have already discussed with regard to the jurisdiction conferred by AB 117. Nothing in AB 117 suggests that we act as a forum to

negotiate or rule on disputes between CCAs and their customers. Many local governments provide utility services and we have no evidence to suggest their consumer protections are lacking. Section 394 exempts public agencies from submitting to the Commission's consumer complaint procedures, presumably because they have their own. Section 366 explicitly exempts CCAs from procuring a "positive written declaration" by the customer, a requirement for private aggregators and direct access providers intended to prevent "slamming." Moreover, if we impose elaborate slamming protections on CCAs, we wonder why the utilities should not be subjected to the same procedures.

For these reasons, we do not intend to act as a forum for CCA customer complaints and we assume CCA customers will have the same recourse for their electricity services as they have for other utility services provided by local agencies.

We agree with the utilities that we require certain types of information from CCAs in our role to oversee the electric system generally, including resource adequacy requirements, and there is no question of our authority to require relevant information from CCAs. The CCAs do not object to filing annual reports with certain types of information and we will direct them to provide such reports, such as those they would provide to their own local oversight agencies or bodies.

Finally, the utilities have proposed that their tariffs serve as a resource for CCA customers by specifying all program rules, including those over which we may not have authority. We have stated our intent to use utility tariffs to govern the relationship between CCAs and serving utilities. However, utility tariffs are not the appropriate place to govern relationships between CCAs and their customers. In general, utility tariffs may not regulate the activities of CCAs in

ways that are otherwise outside the scope of this Commission's authority, consistent with this order.

VI. Customer Notices (Utility Tariff Section H and Section I)

Section 366.2 (c)(13) requires the CCA to send notices to prospective customers so each customer is able to make informed decisions about whether to take service by the CCA or "opt-out" of CCA service and remain as a utility bundled customer. The law requires the CCA to send two notices before the switch-over and two notices after the switch-over.

The utilities presented a standardized notice to customers that is similar to the one the Commission requires ESPs to send direct access customers, pursuant to D.98-03-072. Utilities express concerns that CCAs cannot be relied upon to provide good information to customers and should not have discretion to create their own notices.

The CCAs propose that a CCA's notice be reviewed and approved by the Commission's public advisor to assure the notice is adequate and accurate. CCAs and King's River oppose the utilities' proposal to oversee the CCA's notices in any way. The CEC comments the list of items the utilities would include in the CCA's billing notice would confuse and overwhelm customers. Local Power advocates in favor of the Commission requiring the utilities to include CCA notices in utility bills.

Discussion. Section 366.2(c) (13) requires the CCA to notify customers of its plans to provide service and the customer's option to remain with the utility as a bundled customer. It also permits the Commission to order the utility to mail the notices, at cost, in regular monthly bills.

With regard to the type of information to be provided to customers in the notices, we have no reason to assume an agency of local government is incapable of complying with the statute and providing reasonable notice to potential customers. We appreciate the CCAs' willingness to work with our Public Advisor whose expertise in this area will help assure the notices are clear, complete and easy to understand.

We also direct the utilities to include in their tariffs a cost-based service that permits CCAs to include their customer notices in utility bills or, at the CCA's option, a similar mailing. We order these billings services because they may provide more efficient ways to notify customers than requiring the CCAs to mail notices separately. Because AB 117, a state statute, permits the Commission to require this service to CCAs, we do not address the relevance of the US Supreme Court's decision in *PG&E Co v. PUC* (475 US 1, 1986), which found that PG&E did not have to permit a third party to use the "empty space" in PG&E's monthly bills. Suffice to say, the information in CCA notices would directly affect PG&E's services to existing customers, would be a communication of a government agency, and would be reimbursed at cost, all of which distinguish the circumstances here from those presented to the Court in the *PG&E v. PUC* case. The information in the customer notices shall be limited to that required by Section 336.2(c)(13)(A).

We adopt the CCA's proposed tariff language that provides that the customer would become a CCA customer if the customer notice were to be returned to the utility unopened. AB 117 requires that every customer be served by the CCA unless the customer opts-out of the CCA's service. Because an unopened letter is not a proxy for a customer's opting out of CCA service, the customer must be assigned to the CCA. The customer will subsequently receive

effective notice of his assignment to the CCA in the bill and may choose to opt out at a later date.

We also direct the utilities to provide a tariffed service, at cost, that permits the CCA to notify customers of their opt-out-options.

Further, we reject the utilities' proposal that customers with commodity contracts must opt-in to be served by the CCA. Section 366.2(c)(2) states clearly that "If no negative declaration is made by a customer, that customer shall be served through the community choice aggregator program." The statute makes no exception for customers with commodity contracts. The utilities must therefore cut-over such customers to be served by the CCA unless those customers have provided a declaration stating a wish to remain with the utility. Customers with contracts that provide for penalties for failure to fulfill the contract terms would be subject to those penalties if they fail to opt-out of service with the CCA. We encourage the utility and the CCA to inform such customers of the potential contractual impacts of taking service from the CCA.

Finally, we share the concerns of TURN and the CCAs that there is little if any benefit from permitting a battle for market share between CCAs and utilities. Of course, we expect utilities to answer questions about their own rates and services and the process by which utilities will cut-over customers to the CCA. However, if they provide affirmatively contact customers in efforts to retain them or otherwise engage in actively marketing services, they should conduct those activities at shareholder expense. We do not believe utility ratepayers should be forced to support such marketing.

VII. CRS Vintaging

In the Phase 1 order, D.04-12-046, we stated our preference for "vintaging" the CRS. The term as we use it here refers to a policy under which

the CRS is calculated separately for each generation of CCA thereby reflecting the specific liabilities associated with the customers of each CCA according to the date the utility ceases to procure power for CCA customers.

DWR informally presented a method for vintaging the CRS, which the parties appear to endorse. It would preclude cost-shifting by assuring that a CCA's customers pay for costs incurred on their behalf but not the costs of other CCA customers.

The utilities support the concept of vintaging and specifically propose the following:

- (1) Calculating the CRS as proposed by DWR/Navigant, which determines the difference between the hourly average cost of power in the utility's procurement portfolio and the market price;
- (2) The CRS should be calculated every year but only once a year and assigned to the CCA's customers according to the date of initial service by the CCA or according to the terms of the commitment the CCA makes to the utility;
- (3) Phase-ins should be completed within the first year, or CCA customers should be responsible for utility power liabilities until the phase-in is complete;
- (4) Each CRS should be calculated each year in the DWR revenue requirement proceeding;
- (5) Each CRS should be trued-up according to actual costs incurred two years prior, as information becomes available;
- (6) The CRS should include the costs of (a) "resource adequacy," even if those costs were incurred after the CCA's initiation of service because the utilities have a duty to serve; (b) the above-market costs of power contract obligations required by the state, such as qualifying facility (QF) contracts, even if they were

incurred after the CCA initiates service; (c) a share of the costs of power purchase contracts incurred to maintain transmission system reliability that are not recoverable through rates adopted by the Federal Energy Regulatory Commission (FERC).

- (7) CCAs must comply with Commission requirements as a condition of receiving a vintaged CRS.

ORA generally supports the utilities' vintaging proposals.

CCAs support vintaging but object to some of the utilities' related proposals. They strongly oppose the inclusion of any additional costs in the CRS, such as QF contract costs or resource adequacy costs. They also strongly oppose any limits on phase-ins, especially in cases where the phase-in would reduce costs for the utilities and/or the CCA. Finally, they oppose the inclusion of Renewable Portfolio Standard (RPS) contracts in the calculation of the CRS, arguing that they are already liable for RPS costs. TURN agrees with the CCAs that including RPS contracts in the CRS would result in an "inequitable commingling of utility and CCA RPS procurement."

Discussion. The purpose of CRS vintaging is to assure that a CCA's customers assume liability for stranded costs associated with power procured for them but not for those costs incurred on behalf of other CCA customers. The differing liabilities between CCAs would occur where CCAs initiate service of different dates or, more likely, commit to different in-service dates.

We adopt the DWR's method for calculating the CRS, which is based on the difference between the hourly average cost of power in the utility's procurement portfolio and the market price, and consistent with our decision in Phase 1 of this proceeding. No party objected to this methodology and many are now very familiar with it. We appreciate DWR's assistance with this effort. As

the utilities propose, a forecast using the DWR method would be adopted once a year in the proceeding used to develop DWR's revenue requirement, and then trued-up for the period two years prior as information about actual costs becomes available.

DWR observes that in R.02-01-011, the Commission is reconsidering the methodology for calculating the CRS as it applies to direct access and departing load. It recommends we state our intent to conform the CCA to whatever is adopted in that proceeding following the efforts of a working group to improve accounting of financial losses. We generally agree that the technical work in R.02-01-011 should be applied to CCAs to the extent it would reflect utility losses associated with CCA load migration. Section 1708 requires notice and opportunity to be heard prior to modify as a Commission order. We must, therefore first consider the matter formally as it applies to CCAs and intend to do so following a decision in R.02-01-011.

We do not agree with TURN and the CCAs that utility RPS contract costs should be excluded from the CRS. TURN and the CCAs suggest that since CCAs will not get any credit for utility RPS liabilities when they turn out to be priced below market, CCA customers should not have to pay for those liabilities when they are priced above market. While we recognize that CCAs will not get the benefit of utility RPS costs that are below market, this circumstance does not distinguish RPS costs from any other costs included in the CRS. The statute requires that we set the CRS so as to make bundled customers indifferent to the CCA's offering of service. Excusing CCA customers from RPS liabilities incurred originally on their behalf would force utility customers to make up the difference in violation of AB 117. For these reasons, we direct the utilities to include stranded RPS costs in the CRS calculation.

The CRS shall not be increased to account for cost increases associated with QF contracts that the utilities renew once the CCA is offering service. QF contract renewals should account for the load reduction associated with CCA operations, consistent with AB 117, which relieves CCA's utility power purchase liabilities incurred after the CCA initiates service.

The utilities also propose strict limitations on phase-in of CCA customers. We addressed the issue of phase-ins in D.04-12-049 where we stated,

the barrier to a pilot program or phase-in would not be the law but the possible additional costs of administering the cut-over of customers from the utilities to the CCAs that might occur, for example, as a result of differing load profiles and shifting procurement requirements, as ORA suggests. PG&E proposes a limited phase-in that might actually mitigate costs. We direct the utilities to propose tariffs that offer a phase-in at rates and charges that would recover such costs, consistent with other portions of this order addressing implementation and transaction costs. Their tariffs should permit the utilities to negotiate with the CCA to phase-in the CCA's program in ways that promote cost-savings, as PG&E suggests, and the associated cost savings should be reflected in the negotiated outcomes. (D.04-12-046.)

The utilities appear to have ignored the spirit if not the letter of this language on the subject of phase-ins. Instead of proposing ways to minimize costs, their tariff proposal permits them to charge unspecified rates for phase-ins. The tariff proposal also fails to recognize our view that the statute does not restrict phase-ins because it requires that all customers be cut-over within a year. As we stated in D.04-12-046, the statute does not restrict phase-ins in any way, including those applicable to residential customers. Accordingly, the utilities' tariffs may not include any language limiting phase-ins. The tariffs should specify the reasonable costs of phase-ins and each utility's obligation to

cooperate with CCAs to cut-over groups of customers in ways that minimize utility and CCA costs.

The utilities propose that if they are required to take on the responsibility of assuring resource adequacy for CCA customers, CCA customers assume the associated cost. D.05-10-042 found that CCAs will be subject to annual resource adequacy requirements and will be subject to penalties for failure to meet those requirements. The CRS should therefore include no costs related to resource adequacy other than those that may have been incurred on behalf of CCA customers before the date specified in a binding notice of intent, or the date customers are actually cut-over to CCA service.

We do not understand the significance of the utilities' proposal to make the CCA's compliance with Commission rules a condition of paying a CRS that reflects the CCA's liabilities. We interpret AB 117 to require us to develop a CRS for each CCA that avoids cost-shifting and we expect CCAs to comply with Commission rules. We find no reason to make the CCA's compliance with Commission rules a condition of paying a CRS that reflects CCA liabilities.

Finally, consistent with AB 117 and our view that CCA customers pay for those power purchase liabilities that we incurred on their behalf, we find that the customers of a CCA that has phased in its program would be charged a CRS according to the date of those customers' phase-in. To apply the CRS of the last phased-in year to all customers, as the utilities suggest, could subject existing CCA customers to new liabilities or require ratepayers to assume liabilities incurred on behalf of CCA customers, contrary to AB 117's prohibition against such cost shifting.

VIII. Open Season

The most controversial issue in this phase of the proceeding is the process for planning a CCA's cut-over and how to determine at what point the serving utility's power purchase liabilities will no longer be included in the CRS. The primary objectives of this process are to mitigate costs incurred by CCAs and the serving utilities and to provide a mechanism for coordinating a CCA's cutover. Our Phase 1 order, D.04-12-046, found that an open season would limit the CCA's liabilities for utility power purchases and provide information upon which the utility could rely about when to stop purchasing power for future CCA customers. The dispute is over the details of this commitment.

The utilities propose that in order to be relieved of prospective power purchase liabilities, the CCA must make a binding commitment to a five-year forecast of the CCA's load as of a date certain. This commitment would be made during an open season period between January 1 and February 15 of each year. The utilities would also require a Commission decision directing the utility to stop procuring load for the CCA's customer, arguing that this decision is needed to provide assurance to the utility that its procurement decisions would not be second-guessed at a later time. The CCA's five-year forecast could be modified during each year's open season without penalty. CCAs would be forgiven forecast errors within ten percent of the forecasted amounts to recognize the difficulty of estimating the load of customers deciding to remain with the utility. Forecasting errors outside of this deadband would be subject to penalties.

CCAs object to the utilities' proposal because it imposes forecasting liability on the CCA for utility load. The CCAs argue the resource adequacy forecasting process adopted in D.04-10-035 anticipates a forecasting and power purchase planning process that obviates the need for the duplicative and

punitive process the utilities propose as part of the open season. CCAs believe the utility proposal would make CCAs liable for forecasting errors even in cases where the utility actions were the cause of the CCAs' nonperformance.

TURN and CCSF proposed an open season process that provides (1) a specific cut over date for commencement of CCA service; (2) a list of the customer classes the CCA will offer service to; and (3) a cooperative load forecasting process. CCAs would be subject to fees only in the event that they failed to accept the transfer of customers on the specified date. The fees would be equal to the incremental cost to the utility of continuing to serve the customers.

Local Power objects to the concept of an open season generally. It argues that an open season unreasonably requires the CCA to assume risk. It argues that AB 117 requires the CCA to initiate service within 30 days of the date it signs a contract with the utility and that the open season creates a circumstance which is almost impossible for the CCA to accommodate.

Discussion. As a preamble to our discussion, we refer to D.04-12-048, which we issued in the long-term procurement proceeding the same day we issued the Phase 1 decision in this proceeding, and which states:

A CCA may execute a binding notice of intent with a commitment to a target date, at which the CCA is responsible for its own energy procurement and resource adequacy. If the CCA does so, its customer will not be responsible for stranded costs of any utility commitments entered into after the agreed upon date. However, if the CCA does not meet the target date, it will be liable for any incremental costs that the utility incurs in excess of its average portfolio cost to serve the load that the CCA is not able to serve. (Finding of Fact 29, D.04-12-048.)

The objective of a binding notice of intent is to transfer liability for customer power purchases from the utility to the CCA according to a specified

date and in so doing minimize the liabilities of all customers for stranded costs associated with power purchase commitments. While this latter objective sounds simple, its accomplishment may not be, given the many variables and contingencies inherent in the open season process.

The utilities propose a voluntary annual open season at which time CCAs would make that binding commitment. It would occur between January 1 and March 1 (or February 15, depending on the available date of the California Energy Commission's resource adequacy load forecast) and appears to require a standard format that would apply to all CCAs equally. We agree with the utilities that the open season provides a reasonable procedure for getting CCA binding commitments and we agree that they are necessary in order for the CCA to be assured of limiting its liability for utility power purchases.

We do not agree with Local Power and CCSF that the filing of an implementation plan or the creation of the CCA must automatically trigger changes in utility procurement practices. In some cases, the utility may be able to modify procurement strategies without imposing additional cost or risk on utility customers. As the utilities observe, however, if the CCA never initiates service, changes in procurement in other cases may ultimately be costly to utility customers. To the extent the CCA is willing to make a commitment, even tentatively, there may be ways to mitigate procurement costs. For example the CCA and the utility may enter into a preliminary agreement whereby the CCA assumes some liability for changes in power purchase strategies in exchange for relief from other risks. In all cases, the utility must reasonably manage procurement consistent with Section 366.2, which provides that CCAs must assume only the "net unavoidable costs" of utility power procurement. While we recognize the uncertainties the utilities face in trying to forecast load loss prior to

receiving a CCA's binding commitment, we also believe the utility should take reasonable steps to plan for that contingency, for example, by reducing long-term commitments until a CCA's plans are assured. In any case, the uncertainties of procurement planning are not novel and are addressed in considerable depth in proceedings relating to utility procurement plans and in accordance with other law.

We do not believe that AB 117 limits the Commission's discretion to adopt a process for a binding commitment between the utility and the CCA, as Local Power suggests. The statute certainly anticipates the Commission's adoption of the administrative elements of the program that are responsible and practical. An open season and the requirement for a binding commitment are reasonable tools for implementing the statute and recognize several elements of the statute designed to facilitate CCA operations while protecting utility customers. The binding commitment is a reasonable way to balance the interests of the utilities and the CCAs with regard to the parties' mutual understanding and the limitations on their respective liabilities. If a utility and a CCA are able to develop an agreement that is tailored to the more specific circumstances at hand, so much the better. With all of this in mind, we concur with the utilities and TURN that a CCA that declines to participate in the open season is liable for any power commitments made on behalf of its customers up to the date the CCA begins operations. An exception to this rule would be where the utility and the CCA can craft a binding commitment outside the open season that is tailored to the CCA's circumstances.

Although we adopt the utility open season proposal in concept, some of its details require modification. Specifically, we reject that portion of the proposal would require CCAs to assume the risk of utility load forecasts for five years,

which would be required under the utilities' proposal for the CCA to pay for any variations from forecasts for the departing load of CCA customers. This proposal effectively requires the CCA assume liability for utility forecasts, a risk that is properly the utility's. Currently, the utilities have information about the number and type of customers they serve and they forecast demand accordingly and, by all accounts, well. The utilities are adept at forecasting customer load because they have historic customer information and technical resources. The utilities routinely modify system load forecasts when they gain or lose customers, in light of changing usage patterns and other circumstances. The departure of CCA customers from a utility's system is no different from any other change in system load the utility may experience except that the lost load may be larger. When a group of customers transfers from the utility to the CCA, the utility still has the information and expertise it requires to forecast the change in its system load. The utility should assume responsibility for the final forecast of its total load, just as it assumes that responsibility today. Under this policy, the CCA retains responsibility to forecast its own load and assumes all risk and costs where the forecast and demand vary for its own customers.

Although we reject the utilities' proposed requirement that CCA's assume risk for five years of forecasting departed load, we recognize the need and opportunity to minimize the risk of forecasting that is imposed on utility customers. TURN's proposal for a collaborative forecasting process appears to be a reasonable compromise with some modifications. TURN would require the CCA and the utility to work together to determine the load that would be transferred to the CCA. We understand the utilities' concerns that the collaborative forecasting process may not provide strong incentives for the CCA to work with the utility on developing a reasonable forecast. For that reason, the

open season rules should require the CCA to disclose which portion of each class of customers would be subject to a cut-over. As the utilities propose, the open season rules should also require the CCA to provide all relevant information about the number of customers to be cut-over, the rates, rate design and special contracts to facilitate forecasting. All of this information would be provided to the utility confidentially and, at the option of the CCA, subject to a nondisclosure agreement. As the utilities propose, where a CCA initiates service before or after the date of its commitment to the utility, the CCA will be responsible for all incremental costs incurred by the utility.

To account for the possible failure of the collaborative forecasting process, we also adopt TURN's proposal to establish default opt-out figures for the first year of the CCA's operation, which will spread the forecast risk of this type of uncertainty. Because we do not adopt the utilities' proposal for the CCA to assume forecast risk, the main purpose of the default opt-out percentage is to estimate the cost to the utility in the event a CCA misses its cut-over date. The default opt-out forecast will be 5% for residential customers and 20% for commercial and industrial customers unless the CCA and the utility agree to other amounts. The purpose of this collaborative forecasting exercise generally is to limit the risks of the utilities and the CCAs. If we find in the future that it fails to accomplish that goal, we will reconsider it.

Of course, utilities' bundled customers should not assume the risk for a CCA's failure to transfer customers on the date to which the CCA commits if the CCA is responsible. Where the CCA is responsible it should pay the utility's incremental cost of the delay that is related to power purchases. Where the CCA is not responsible, it should credit the CCA with the incremental cost of its power purchase losses. If the CCA believes the utility is at fault and the utility does not

agree with its culpability, the CCA should file a complaint seeking credit for power purchase costs. If the CCA seeks damages, it must file suit in a court of law because this Commission has no authority to award damages, as distinct from reparations, which are essentially refunds of billed amounts. In any of these cases, we encourage the CCA and the utility to seek assistance with alternative dispute resolution. If the CCA is not responsible for the delay, the extent of the utility's financial liability would be determined in the ratemaking proceeding that addresses procurement costs. The utility shall not be reimbursed for such costs absent a finding from the Commission that it may include such costs in rates. As TURN observes, the CCA and the utility may and should mitigate risk associated with forecasts by agreeing in advance that the party who has too much power will sell the power to the party who is short on power. We will direct the utility to include such a provision in its tariffs.

We agree with TURN that a CCA submitting a formal notice of intent under the open season tariff has automatically provided a "self-executing" notice that relieves the utility of its power supply obligations. Requiring a Commission order, which the utilities suggest, would unnecessarily add cost and delay to this process.

The CCA's proposal for the utility and other parties to keep a CCA's open season information confidential is reasonable. If knowledge of a CCA's cut-over date and costs were to become public, the CCA could be vulnerable to price gouging by potential power suppliers.

In sum, we find that a voluntary open season in which the utility and the CCA work cooperatively to reduce risk and stranded costs is reasonable. We encourage the utilities and CCAs to tailor their agreements to minimize costs and promote cooperation wherever possible. In the open season tariffs we adopt

today, the utilities are responsible for their load forecasts once the CCA has begun operations just as the CCA is responsible for its load forecasts, although we adopt measures designed to facilitate good utility forecasts. The CCA's open season agreement is a binding commitment under which it assumes all liability for delays in implementation except those attributable to utility actions. While voluntary, if the CCA chooses not to participate in the open season or to sign a more tailored binding agreement with the utility, the CCA must assume the risk for all utility power purchased up to the CCA's initiation of service. The CCA's binding commitment for an in-service date, in combination with the approaches we adopt today to mitigate risk, represent a reasonable middle ground that is sensible and fair to bundled customers, utilities, CCAs and their procurement customers. Attachment B, proposed by TURN and adopted herein with the minor exceptions we discuss, describes the open season and should be included in each utility's tariffs.

IX. Renewable Portfolio Standard

Section 399(12)(c)(2) requires the Commission to consider whether CCAs should be subject to renewable portfolio standards (RPS), that is, requirements for the amount of renewable resources included in the CCAs energy portfolio. The utilities argue that the CCAs should be subject to the same requirements as the utilities. CCAs believe that Section 399 is generally irrelevant because Section 387 requires RPS standards to be implemented and enforced by the local governing body of a public utility, which CCAs argue includes them.

As CEC suggests, we believe it is appropriate for the CCAs to identify in their implementation plans how they intend to comply with RPS requirements, although we defer to the statute on what the implementation plan requires. We

are considering the matter of the RPS standard's applicability to CCAs in R.04-04-026 and will resolve the matter there.

X. Other Tariff Rates and Services

Utility tariffs must specify the nature and types of services to be provided to the CCAs. We discussed these in general in D.04-12-046 and also how the utilities should set fees for CCA services. Generally, we found that the fees should be based on incremental costs. We determined that the utilities could not impose a fee where it was already recovering related costs as part of its revenue requirement. In such cases, we invited the utilities to implement CCA fees as part of general rate cases and reduce overall revenue requirement accordingly so that they were not recovering costs twice.

We address the controversies regarding utility CCA tariffs mindful that the purpose of those tariffs is to govern the relationships between CCAs and utilities, not CCAs and their customers, consistent with our previous discussion.

The following addresses controversies between the parties on several issues. Attachment A summarizes the adopted treatment of each tariff provision.

1. Treatment of New Customers

CCAs propose that customers moving into the area be automatically enrolled as CCA customers and that CCAs not be subject to the costs of the utility generating an associated CCA Service Request or "CCASR." Utilities respond that they must generate the CCASR or else the customer would be automatically assigned to the utility as a bundled customer.

The utilities also object to what they believe is the CCAs' attempt to subvert statutory requirements to notify new CCA customers of the opportunity to opt out during the first 60 days without penalty.

We agree with the CCAs that new customers be automatically assigned to

the CCA, which is consistent with AB 117's requirements that customers opt-out rather than opt-in. However, the utilities should be permitted to charge for the cost of each CCASR if they must generate one for a new customer.

Like the utilities, we interpret the statute to require notification to all customers - including those who initiate service after the CCA's initial cut over -- of their opportunity to opt-out of CCA service within 60 days of service without penalty. Consistent with our previous discussion of Commission jurisdiction, however, the statute requires the CCA to comply with the statute and does not provide either the Commission or the utilities with authority to enforce the statute. For that reason, the utility tariffs may not make this notification a condition of service.

2. Boundary Metering (Section O)

The utilities propose tariff language that requires the utility to install, maintain and calibrate metering devices. The CCAs propose to include tariff language that would permit their vendors to undertake these activities. Section 366.2(c) (18) gives this authority to the utilities. We therefore agree with the utilities that the CCAs' vendors should not be permitted to provide these services.

3. Customer Information

The utilities object to the CCAs' proposal for the utility to provide "all contact and energy usage data for all customers within the CCA's service territory" in advance of the CCA's mass enrollment process. The utilities believe the CCAs do not need this information because it might include information they do not need about customers who will ultimately opt-out of CCA service.

D.04-12-046 issued in Phase 1 of this proceeding directs the utilities to provide all relevant information to CCAs and prospective CCAs, consistent with

Section 366.2(c)(9). In that order we stated “AB 117 is clear in its intent to require the utilities to provide CCAs all customer and usage data even before the CCA begins offering service.” We have found that AB 117 does not permit the utilities to second guess a CCA’s request for relevant information and we will not revisit the issue here. The utilities’ tariffs, therefore, shall include a provision that permits CCAs to access all relevant customer information, consistent with D.04-12-046 and the tariffs filed in compliance with D.04-12-046.

4. Customer Switching Rules

The CCAs propose that a CCA customer that switches to utility bundled service should be committed to that service for one year rather than the three-year commitment required for ESP customers switching to bundled service. The utilities object to this proposal, believing it to be unlawful. They also object to the CCA proposal that distinguishes between customer sizes with regard to the amount of advance notification to the utility required of the customer. Customers with loads great than 200 kilowatt (kW) would have to give six months notice while smaller customers would need to provide only 30 days’ notice. The utilities state this distinction based on size is not applied to customers of ESPs and is therefore unlawful.

Section 366.2(c) (11) states that “customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers.” This language clearly provides that CCA customers are to be treated like direct access (DA) customers when they switch between procurement providers. Currently, a DA customer must make a three-year commitment to the utility when it returns to bundled service and notice requirements for switches to the CCA are the same for customers of all sizes. The utilities are correct that their tariffs for CCAs must

track these provisions.

5. The Utility-CCA Service Agreement

The utilities append a draft service agreement to their tariffs which would memorialize the understandings between the utility and the CCA prior to the CCA's initiating service. The proposed service agreement is comparable to the one we have adopted for ESPs and no party objects to it. We adopt it with the understanding that it is exemplary and may be tailored by the mutual agreement of the utility and the CCA to accommodate specific circumstances, as long as utility bundled customers would be no worse off as a result. The utilities included a draft service agreement as part of their open season proposal, which would be signed by the CCA and the utility before the CCA initiates service. Additionally, the utilities should modify their proposed Service Agreement to conform to the findings in this order and submit it with their proposed tariffs in compliance with this order

6. Call Center Fees

The utilities propose to charge CCAs "call center fees" when a CCA customer calls seeking information. The CCAs oppose these fees, believing the utilities are already reimbursed for such costs.

In Phase 1, we addressed the issue of call center costs and were not convinced that the utilities had demonstrated that the CCA program will increase call volumes. Moreover, the utilities are already reimbursed for call center operations. D.04-12-046 found that the "utilities should track and recover incremental call center costs by establishing an 800 number." In general, we found that costs already recovered in a utility's revenue requirement for an existing utility operation may not be the subject of CCA fees until the Commission has made revenue requirement adjustments in general rate cases.

The utilities have not yet tracked CCA calls and it is therefore premature for establishment of an 800 number and associated charge. Thus, the utilities misinterpret D.04-12-046 in arguing that it authorized recovery of these fees prior to presenting compelling evidence that the associated costs are incremental. We decline to include call center fees at this time and restate our policy that the utilities should address this matter in general rate cases where the proceeds from individual rates to CCA customers offset revenue requirements allocated to other customers and thereby make the rate change revenue neutral.

7. Opt-Out Fees

The utilities propose opt-out fees that would be charged to recognize the costs of processing a customer's decision to remain with the utility as a bundled customer.

CCAs object to being charged for opt-out fees because the utility is effectively getting a new customer, a situation the CCA should not have to subsidize. CCSF proposes that PG&E's service include an option for customers to opt-out using the internet and to reduce costs by providing the option to use a post card instead of a letter.

Utilities respond that a post card process is unlikely to save costs. PG&E does not have a system for processing post cards and would have to create a website for option. It is willing to explore the internet option and revise its tariffs at a later date.

The Commission addressed the issue of whether CCAs should pay for opt-out processing. D.04-12-046 determined that this is a cost that would not be incurred were it not for the CCA's program. AB 117 requires therefore that the CCA pay for the activity. We believe our finding in that decision was correct and it should not be relitigated here. The utilities are therefore entitled to charge opt-

out processing fees.

We will not require PG&E to revise its processing system to accommodate post cards because of the expense. We encourage PG&E to consider the use of the internet for opt-out notifications and revise its tariffs at a later date, as it suggests.

8. Customer Deposits, Partial Payments and Termination of Service

The parties were divided on the issue of how to deal with deposits, partial payments and termination of service. The utilities propose that customers' partial payments be allocated first to utility charges.

CCAs and TURN would prorate partial payments between CCA and utility services. TURN observes that the entities would then be in the same position with respect to collections and termination of service. TURN proposes a prorated allocation of deposits between the utility and the CCA as well so that CCA customers would not have the burden of providing two deposits, one for the CCA and the other for the utility.

The utilities oppose any allocation of partial payments to CCA services until all charges for utility disconnectable services have been paid. They argue the CCA/TURN proposal would promote disconnections by leaving utility disconnectable services unpaid. CCA services should not be considered disconnectable, consistent with existing Commission policy for ESPs.

We adopt the utilities' proposal that each entity collect its own deposits (although the CCA may collect the deposits using the utility's billing services). While this policy may require some customers to pay two deposits, we have consistently treated CCAs as stand-alone operations with ratemaking discretion. We adopt the utilities' proposal for partial payments as a reasonable way to protect customers from disconnections. Partial payments would be allocated

first to disconnectable services and then on a prorated basis to other utility and CCA services. Finally, the utilities should accept customers who fail to pay CCAs for their services, consistent with their obligation to serve and consistent with other tariff requirements regarding nonpayment.

9. CCASR Processing (Section M.11)

The utilities propose a 15-day lead time to process a switch over from the utility to the CCA where there is no need for urgent action, such as following an opt-out notice or where the customer is moving and no longer requires electric service. The CCAs propose a shorter three-day turn-around.

We agree with the utilities that it is reasonable to cut over a new CCA customers after the normal meter read day, which requires a 15-day lead time.

10. Changing Municipalities in the CCA Plan

In some cases, a CCA may wish to add or remove a municipality (that is, a city or county) from its service area. This could occur if a municipality decides to withdraw from participation in the CCA or where a city or county joins a CCA.

The utilities' proposed tariff includes a detailed description of how the CCA may add or remove a city or county. The CCAs object to this section, arguing that AB 117 does not require CCAs to go through elaborate procedures when a municipality joins or leaves a CCA.

The utilities are correct that the addition of or removal of a municipality from a CCA will affect utility operations, outstanding liabilities that would affect the CRS. For that reason, the utilities' tariffs should describe a process for recognizing the change in the CCA's membership and customer base. The utilities should modify their tariff proposal to conform to the findings we make in this order regarding CCA initiation of service, for example, the procedures for filing the implementation plan and the method for calculating the CRS. These

portions of the tariff should not require procedures or information not required of the CCA when it first files its implementation plan or initiates service, consistent with this order.

11. Confirmation Letters (Section J.4)

The utilities propose to send prospective CCA customers a formal notification of the change in the customer's service to the CCA. The utilities propose to charge the CCA for this notice. Each customer notification would be billed to the CCA at a rate of \$.40 per customer, and would be levied for each customer that did not opt-out of the CCA's service. The utilities believe this notice will reduce customer confusion and assure that the customer has intended to change service to the CCA. The CCAs object to this notification and being billed for it, observing that it could cost a city like San Francisco as much as \$140,000.

During the period before the CCA's initial cut-over, customers will receive four notices of their opportunity to opt-out of CCA service. Although the utilities argue that such a notice is required to inform the customer of a changed account number, we find such information may be reasonably provided in the first relevant bill, or where the customer requires it at an earlier date, the utility may provide it in response to a telephone call. It would be inefficient to provide such notices to all customers in order to serve the interests of a few. If a utility can in the future provide evidence of a costly or pervasive problem in this regard, we will reconsider our decision. We find no compelling justification for the utility's additional notification with its associated cost, which could be substantial and provides no particular benefit to the CCA or its customers in light of other notice requirements. We reject this utility proposal.

12. Schedule Coordinator Requirements (Section B.c.3)

The utilities propose tariff language that would require each CCA to identify its scheduling coordinator(s) to the ISO and, where the CCA fails to provide such information to the ISO, the utility would have discretion to return the CCA's customers to bundled service. The Utilities argue that if a CCA's scheduling coordinator significantly under-schedules a CCA's electric load, the California Independent System Operator (ISO) will need to schedule energy on behalf of the CCA. The ISO would charge the costs of this service to other market participants, including the Utilities' bundled service customers, by way of the "Unaccounted For Energy (UFE) charge." The Utilities state that the under-scheduling of energy has occurred on several occasions when ESPs have lost their scheduling coordinators, and believe that CCA under-scheduling would unlawfully shift costs from CCA customers to bundled service customers.

The CCAs state they are not ESPs and AB 117 does not anticipate such strict oversight of CCA operations.

Discussion. AB 117 does not require CCAs to identify their scheduling coordinators to the utilities and, as we have already discussed, utility tariffs govern the relationships between CCAs and utilities, not, in this case, CCAs and the ISO. The ISO is responsible for managing its relationship with each load serving entity's scheduling coordinator, including those of CCAs. In the event that a CCA's scheduling coordinator under-schedules energy, the ISO imposes tariffed charges on the scheduling coordinator, which then passes these costs to the load serving entities. Therefore, these fees are assumed by the CCA's customers, not bundled customers. If there is some likelihood that irresponsible scheduling coordinators create liabilities for the system, the ISO is the appropriate entity to address this problem through its tariffs. Indeed, as the

utilities recognize, the ISO already requires load serving entities to provide information about scheduling coordinators. The utility tariffs should not include any language that addresses scheduling coordinators or the CCAs' relationships with the ISO.

13. Load Aggregation (Section B.8)

The utilities object to the CCAs' proposal to permit CCA customers to aggregate load without reference to existing utility tariff restrictions. It is unclear from the record how, if at all, unrestricted private aggregation by CCA customers might affect utility operations and be affected by existing tariffs. We presume CCA's are proposing to permit their own customers to aggregate load and that the utilities object on the basis that private aggregation (that is, "direct access") is prohibited for any customers except those already aggregating load. We will consider this issue at a future time if the CCAs or the utilities wish to clarify the matter. For the time being, we adopt the utilities' language on this topic, which permits private aggregation by CCA customers only to the extent its implementation does not conflict with utility tariffs.

14. Notice of Program Implementation

The utilities propose that the Commission set the "earliest possible date" for each individual CCA's service initiation. They also propose the first CCA provide them with six months advance notice in order to have time to affect the system changes necessary to implement the overall program.

The CCAs propose language that is more specific, requiring implementation no later than 30 days after the Commission's notice of receipt of the CCA's implementation plan, or the local government's adoption of a CCA implementation plan, or the Commission's stated "earliest possible implementation date" or a mutually-agreed upon date, whichever is later.

In proposing these differing conditions for program implementation dates, the utilities and the CCAs interpret Section 366.2(c)(8) differently. The utilities appear to believe the Commission's finding with regard to the CCA program's "earliest possible implementation date" means a date applicable to the initiation of service by each CCA. The CCAs appear to interpret that subsection as referring to the date the entire program could go into effect. The subsection 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." Because the statute is vague as to its meaning, we find the CCA and the utility interpretations are reasonable and apply the statute's provisions in the context of our overall program design.

Because we have declined to issue an order approving an implementation plan for each CCA or one that directs a utility to stop procuring power for a CCA, we apply Section 366.2(c)(8) by herein finding that the earliest possible implementation date for the CCA *program* was the effective date of the tariffs filed pursuant to D.04-12-046 in Phase 1 of this proceeding. The utilities shall immediately undertake to affect the system changes required to satisfy the tariffs as soon as it receives a binding commitment from a single CCA. It should complete its work within six months for the first CCA in its territory. The earliest possible implementation date for a CCA's provision of service would be the date of the completion of all tariffed requirements, but no later than six months after notice from the first CCA or the date the CCA and the utility agree is reasonable. In no event may the utility delay the initiation of CCA

service once the utility has implemented the required processes and infrastructure and the CCA has fulfilled tariffed requirements.

15. Electronic Data Interchange Testing (Section F.5.d)

The utilities propose to charge individual CCAs the cost of Electronic Data Interexchange (EDI) testing, which SCE estimates will take up to 100 hours. The CCAs object to paying for this testing process.

D.04-12-046 and AB 117 require that each CCA pay the costs of program implementation activities attributable specifically to that CCA. EDI testing is one such activity. The utility tariffs should therefore require each CCA to pay for EDI testing within reason.

16. Specialized Service Request (Section E.1)

The utilities propose to charge hourly rates for specialized services, that is, those that are requested by an individual CCA and are not otherwise priced out in the tariffs. The CCAs would prohibit the utilities from charging for services that are not provided to other commodity service providers.

D.04-12-046 found that utilities should charge CCAs the incremental costs of providing services to them. The utilities tariff proposals to charge for specialized services appear consistent with this principle and we adopt them.

17. Metering Fees

PG&E proposes charging CCAs \$9.28 per interval meter per month for “Meter Data Management Agent Meter Data Posting.” CCAs object to the level of the fee, arguing that \$6.13 of it is for software license point that PG&E does not need.

PG&E’s witness clarified that the software license point is required and is an incremental cost the utilities will incur. The CCAs appear to have confused

data processing requirements with physical metering requirements. We adopt the utilities' proposed metering fees.

**18. Involuntary CCA Service Termination
(Tariff Section T.1, T.2, T.3)**

The utilities propose tariff provision that would permit the utilities to terminate a CCA's service to customers for a variety of reasons, among them, failure to comply with tariff requirements, failure to conform operations to the Implementation Plan, failure to comply with ISO requirements and in response to a Commission order "decertifying" the CCA. The CCAs propose removing all of this language, arguing the utilities should not have authority to determine when a CCA program should be terminated, especially since CCAs will be competitors of utilities.

Utility tariffs traditionally permit the utilities to deny service under certain explicit conditions. Those they would include in their CCA tariffs are far too vague and would provide the utilities with far too much discretion. For example, the utilities could conceivably terminate an entire CCA program for the CCA's failure to update a customer's records within three days or because of a miscommunication with the ISO. The termination of a CCA program could be extraordinarily expensive to the utility, the CCA and customers, and create enormous customer confusion and ultimately litigation. For that reason, and because CCAs are competitors as well as customers of the utilities, we will not permit the utilities broad discretion in this area. We will not permit the utilities to include any language in the tariffs that provides the utilities with discretion to terminate a CCA's service with the exception that the utility may terminate service in the event of a system emergency or where public health or safety is involved (Section T.3). Otherwise, the tariffs should specify that if the utility seeks to terminate service to the CCA it shall do so only following a Commission

order directing the utility to terminate service. Utility requests to the Commission to terminate a CCA's service should specify the reasons for the requested termination, the impacts of the termination, and the expected impacts if the CCA's service is not terminated. We agree with the utilities that the costs of notice to customers of a lawful termination should be billed to the CCA (Section T.2)

19. Net Metering

CEC proposes the utility tariffs for CCA explicitly permit net metering for CCAs and their customers who install renewable energy. CEC proposes also that the details of this tariff offering be worked out at a later date, preferably between the CCAs and the utilities. The utilities object to CEC's proposal, arguing that it is vague and could be costly to other customers.

Net metering effectively requires the utility to pay the customer the utility's full retail price for power that is produced by the customer but sent into the utility grid. Currently, we permit net metering for certain renewable projects. We have recently addressed this issue in R.04-03-017, where we are developing policies for distributed generation in general and our Self-Generation Incentive Program (SGIP) in particular. We believe that proceeding is the appropriate venue for deciding issues relating to renewable project net metering and decline to make any decision here about whether CCAs and their customers would qualify for net metering. In that regard we would consider whether it is appropriate for utility bundled customers to pay for the high cost of net metered power produced by CCA customers.

20. Rate Ready Billing

PG&E proposes a "rate ready" billing service to the CCAs that would provide information on CCA rate structures. PG&E's proposal for "rate ready"

billing permits the CCA to send rate information to the utility, which in turn calculates the rate for each rate tier.

CCAs object to PG&E's proposal for rate ready billing because it would not provide the customer with accurate billing information unless the CCA offered a two-tiered rate. The CCAs believe this is unreasonable since the utilities offer a five-tiered rate structure. CCAs propose that PG&E's rate ready service include the option for CCAs to elect to have PG&E bill each of the CCA's rates, notwithstanding the number of tiers charged for the commodity portion of the bill.

CCAs also object to PG&E's bundling this service and charging \$.70 per bill per month, arguing that its proposal is contrary to D.04-12-046, which required unbundling for billing services.

PG&E's rate ready service is an optional offering. If PG&E and a CCA can agree to a reasonable modification to this offering, we have no objection to it, as long as it is offered at cost. Otherwise, CCA's may subscribe to the PG&E's "bill ready" service, described in a subsequent section.

21. Services Funded by Bundled Rates (Section B.2)

CCAs propose to include tariff language that would require the utilities to continue to provide CCA services supported by bundled rates "until such time that those funds and/or service obligations are transferred to a CCA or another agency by a competent jurisdiction." The utilities oppose this language as unnecessary and unclear as to its purpose.

The utilities under our jurisdiction must continue to provide tariffed services until the Commission finds to the contrary. There is no reason to include such language in the tariffs and we concur with the utilities that it should not be included in them.

22. California Alternative Rate for Energy (CARE) Discount

The Utilities believe that eligible CCA customers should receive CARE discounts as if they had remained on bundled service, and propose ratemaking for this policy should be implemented in future rate design proceedings. The Utilities also propose that CCA customers receiving a CARE discount be exempt from paying the CARE surcharge portion of the Public Purpose Program (PPP) charge in addition to the DWR Bond charge, as utility CARE customers are. The CARE discount would be applied to all billing elements but would be credited to every customer's distribution charges. SDG&E proposed the continuation of its separate CARE line-item, calculated as if the customer were a bundled service CARE customer.

The CCA parties do not object to the utility proposals.

Discussion. The CPUC has had a long standing commitment to support low income programs such as the CARE program. As such, we believe that it is good public policy that all of California's qualifying electric customers reap the benefits of this program by receiving the CARE discount. Thus, we order the Utilities to continue to provide CARE discounts to all qualifying CCA customers as the utilities propose. The discount would apply to all elements of a customer's bill, including the CCA portion, but the discount would be applied only to the distribution rate. The utilities would calculate the generation portion of their CARE discount using their own generation rates. Bundled customers would not be subsidizing CCA customers because all customers pay for the CARE discount through either the public purpose program charge or their distribution rates (or, in the case of SDG&E, a separate line item that applies to all customers). We adopt the utility proposals for ratemaking treatment of these proposals, whether as part of distribution rates for PG&E and SCE or as a separate line-item in

SDG&E's case. We agree with the utilities that the discount should not be reflected in the CRS.

CCAs may design rates which provide additional discounts to low income customers, a ratemaking matter that would be at the discretion of the CCA.

23. "In-Kind" Power

D.04-12-046 issued in this proceeding expressed interest in the idea of a CCA assuming liability for DWR power contract obligations for which the CCAs would be paying for as part of the CRS. The benefit of such an assumption of liability would be the potential for cost-savings for CCAs. This issue came up again in this phase of the proceeding, although the practicalities of this concept appear to remain unresolved. The DWR has expressed concerns about the administrative and legal hurdles that may arise. We restate our policy here that if DWR and a CCA can make a reasonable arrangement to take DWR power that would otherwise be undeliverable, or in some other way minimize power contract liabilities, we encourage them to do so but will rely on the parties to work out such arrangements.

24. Bill Ready Billing

An alternative to rate ready billing is "bill ready" service, under which the CCA provides all relevant billing information for each customer.

The utilities offer "bill ready" services to ESPs although apparently none take the service from PG&E because PG&E manually processes the information, which is expensive.

The CCAs object to PG&E's alternative "bill ready" service because they believe the \$2.15 per customer monthly charge is exorbitant, as much as 15% of the average customer's procurement bill. CCAs state that extrapolating from this

number suggests PG&E would need to hire 88 additional full time staff to serve the City of San Francisco's billing needs.

We agree with the CCAs that PG&E should develop an automated billing system that permits "bill ready" services, which SDG&E and SCE already have in place. It is unreasonable to expect a party to spend \$2.15 a month per customer for this service, considering that SDG&E charges \$.22 cents per month for the same service and SCE charges \$.44 cents per customer per month. Moreover, we directed PG&E to provide bill ready services to ESPs in D.97-10-087, more than eight years ago. Although PG&E argues that we never directed it to provide "automated" services, PG&E may assume we required a service that was reasonably priced and using the most efficient technology.

We herein direct PG&E to develop an automated bill ready service for CCAs and ESPs within 12 months. PG&E agrees that it intends to do so. PG&E may charge the same rate as charged by SCE for this service. If PG&E can demonstrate in its general rate case that the amount is below incremental costs, we will consider increasing it. The costs of initial changes to the billing system should be included as part of the revenue requirement assumed by all ratepayers, consistent with D.04-12-046, since the cost would be incurred on behalf of all CCAs - and also ESPs - rather than on behalf of a single CCA.

X. Future CCA Issues

The CCA program is new in California and there is little experience with such a program anywhere. Our order today and the parties who contributed to it have sought to anticipate every contingency on the one hand and permit some flexibility on the other with the expectation that the utilities and CCAs may be able to tailor operational arrangements according to circumstances in ways that promote program efficiency and fairness. We recognize, however, that a CCA's

operation may affect customers, utilities and the power system in ways we cannot today anticipate.

We expect CCAs may initiate service to local customers in the next year or two. Experience with their operations will undoubtedly provide experience and information about the policies and rules we adopt today. We intend for that experience to inform future inquiries and decision-making on CCA issues. Accordingly, although we close this proceeding today, we intend to initiate a new rulemaking to review the program within a year of the initiation of the first CCA's operation. In the meantime, we encourage CCAs and utilities to bring to our attention problems with existing tariffs, rules or policies adopted today. They may do so by consulting with our technical staff or filing petitions to modify orders issued in this proceeding. We will also entertain motions to reopen this proceeding and consider specific issues.

XI. Comments on Proposed Decision

The proposed decision of ALJ Malcolm in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Commission's Rules of Practice and Procedure. Comments were filed on November 22, 2005 and reply comments were filed on November 29, 2005. The final order adopted by the Commission contains several clarifications to the ALJ's proposed decision and a number of substantive changes.

XII. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

Findings of Fact

1. Section 394 specifies regulatory procedures for the oversight of energy service providers but does not articulate similar requirements for CCA program implementation.

2. Although the Commission has the authority to assert limited jurisdiction over certain CCA matters, entities of local government, such as CCAs, are subject to numerous laws that will have the effect of protecting CCA customers and promoting accountability by CCAs. Existing laws applicable to CCAs would protect customers by requiring CCAs to conduct open meetings, disclose relevant information to the public and be accountable to elected officials, the courts and voters.

3. The Commission may protect utility bundled customers and utility systems by requiring the utilities to include relevant conditions of service to CCAs in utility tariffs.

4. The Commission's advice letter process is not required in order to process a CCA's implementation plan and registration with the Commission.

5. Disputes between CCAs and utilities may be able to be resolved by way of an informal facilitation or mediation procedure.

6. D.04-12-046 issued in Phase 1 of this proceeding and this order establish numerous consumer protections anticipated or required by AB 117.

7. A cost-based utility offering to include CCA customer notices in utility bills could be an efficient and effective way of notifying customers of the CCA's future plans to provide procurement services.

8. An unopened letter notifying a customer of the option to opt out of CCA service is not a proxy for a customer affirmatively declining to take CCA service.

9. AB 117 does not distinguish customers with utility commodity contracts from other customers with regard to its requirement that customers who do not opt-out of CCA service be served by the CCA.

10. Utility marketing of procurement services to CCA customers and providing information about a CCA's services and rates to customers may create conflicts of interest and costs that may not be offset by benefits.

11. "Vintaging" a CRS is the process of calculating a CRS that reflects the power purchase liabilities incurred on behalf of a specific group of customers. Because power purchase liabilities change over time, CRS vintaging would be conducted at regular intervals to reflect those changes.

12. DWR's method for calculating the CRS calculates the difference between the hourly average cost of power in the utility's procurement portfolio and the hour market price.

13. RPS costs originally incurred on behalf of CCA customers are not distinguished by AB 117 from any other type of costs for purposes of calculating the CRS.

14. The purpose of a binding notice of intent between a CCA and a utility for a CCA in-service date is to minimize utility power purchases that might later become stranded when the CCA initiates service. This notice of intent would commit the CCA to assuming any power purchase liabilities that the utility may incur if the CCA does not initiate service according to the terms of the notice.

15. A voluntary open season may provide an opportunity for CCAs to minimize risk associated with CRS amounts and for the utility to limit its exposure to the risk of purchasing unneeded power.

16. Imposing liability on utility bundled customers for all power purchases made after the date of the creation of a CCA or its filing of an implementation plan, absent a binding commitment, may require bundled customers to pay for power reasonably purchased on behalf of CCA customers.

17. Requiring a CCA to assume the risk of a load forecast for five years effectively shifts the risk from the utility to the CCA for part of the utility's forecasting activities. The utilities routinely adjust forecasts to account for lost load.

18. Open season rules that require the CCA to provide relevant information about its future customers, rate design, rate levels and services to the utility would help mitigate forecast risk.

19. A collaborative process whereby the utility and the CCA work together to develop a forecast of departing load, would help mitigate forecast risk.

20. Establishing default opt-out figures for the forecast of the first year of the CCA's operation would spread the risk for this type of forecasting uncertainty.

21. The CCA and the utility could mitigate risk associated with forecasts by agreeing in advance that the party who has too much power will explore selling the power to the party who is short on power.

22. In anticipation of the risk that a CCA's cut-over date is delayed, the CCA and the utility may be able to mitigate costs with a reciprocal agreement whereby the party who has too much power will sell it at cost to the party that is short.

23. A Commission order relieving a utility of its duty to procure power for prospective CCA customers after the utility and the CCA have filed a binding notice of intent would unnecessarily add cost and delay to the CCA program.

24. R.04-04-026 is considering the extent to which CCAs must comply with RPS requirements.

25. The utilities make a convincing case that they will incur costs when new customers are added to the CCA's customer base.

26. Direct access customers currently must provide six months advance notice before returning to the utility as a bundled customer and must make a three-year commitment to taking bundled utility service.

27. Tailoring the utility-CCA service agreement or the binding notice of intent to recognize specific circumstances may improve operational efficiency.

28. D.04-12-46 found the utilities may not charge CCAs for call center services until those costs are unbundled in a general rate case because the utilities are already recovering such costs as part of their revenue requirements.

29. Permitting customers to opt-out of CCA service over the internet may reduce the costs of processing that customer election.

30. Requiring the utilities to provide for a single deposit for the CCA and the utility puts the utility in the position of setting rates for the CCA.

31. Where no need for immediate action is required, there is no justification for requiring the utilities to switch over a customer from the utility to the CCA within days.

32. If a municipality is added to or removed from the CCA, the utility's operations and the CRS could be affected.

33. CCA customers do not require five notices of their option to opt-out of utility service and the costs of a fifth notice, as the utilities propose, would be substantial.

34. The ISO has tariffs that would require certain types of information from and fees for load serving entities, such as CCAs.

35. Private aggregation could affect utility operations in ways that are unexplained by the parties to this proceeding.

36. The utilities incur costs when they conduct EDI testing.

37. Utilities may incur costs when they provide “special” (non-tariffed) services to CCAs.

38. PG&E’s proposed meter data management agent meter (MDMA) data posting fee includes the cost of software and physical meter reading.

39. The utilities’ proposed tariff provisions regarding their right to terminate CCA service without the consent of the CCA are vague and provide the utilities with too much discretion.

40. D.04-12-046 required the utilities to unbundle billing services. PG&E has not proposed an unbundled billing service that would permit CCAs to provide adequate information to customers about rates. Its proposed rate for billing service is not unbundled.

41. D.04-12-046 required that a utility’s general body of customers should assume the costs of system changes required to serve CCAs, consistent with AB 117.

Conclusions of Law

1. AB 117 provides for limited jurisdiction over CCA program implementation. The statute’s provisions for participation in the CCA program are generally either permissive as to the CCA or govern the Commission’s regulation of the utilities in the way they offer services to the utilities or structure CCA rates so as to protect utility bundled customers.

2. Although relevant portions of AB 117 do not confer general regulatory oversight of CCAs, the Commission has the authority to exercise limited jurisdiction over non-utilities in furtherance of their regulation of public utilities, including resource adequacy. (*See PG&E Corp. v. CPUC*, 118 Cal. App. 4th (2001) 1195-1201.

3. Commission has authority to subpoena information and witnesses, to require information from a CCA and require its involvement in any relevant Commission inquiry, whenever germane to the Commission's obligations under AB 117.

4. AB 117 does not require the Commission to approve, disapprove, decertify or modify a CCA's implementation plan. AB 117 requires the CCA to file an implementation plan with the Commission and to register with the Commission before initiating electricity service to customers.

5. The Executive Director should implement a process under which disputes between a CCA and a utility may be facilitated or mediated, as required and as set forth herein.

6. The Executive Director should develop and publish instructions for CCAs and utilities that would include a timeline and describe the procedures for submitting and certifying receipt of the CCA's implementation plan, notice to customers, notice to CCAs of the appropriate CRS, and registration of CCAs. The process and timeline should be consistent with AB 117 and this order.

7. Each CCA registration packet should be required to include (1) the CCA's service agreement with the serving utility; and (2) evidence of insurance or a bond that will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting.

8. The use of the term "fully cooperate" in Section 366.2(c)(9) is reasonably interpreted to mean that utilities shall facilitate the CCA program and a CCA's efforts to implement it to the extent reasonable and in ways that do not compromise other utility services.

9. AB 117 circumscribes the Commission's role in establishing protections for the customers of CCAs.

10. Utility tariffs are generally not appropriate vehicles for regulating the protections CCAs offer to their customers.

11. AB 117 permits the Commission to order the utilities to include CCA customer notifications in the utility's bills.

12. AB 117 requires that every customer offered service by the CCA be served by the CCA unless the customer affirmatively declines CCA service. The statute does not make exceptions for bundled portfolio service customers, direct access customers or new customers.

13. Utility tariffs should provide that every customer who does not affirmatively decline CCA service shall be served by the CCA, including customers with commodity contracts and customers whose service notification letters are returned unopened.

14. Utilities' ratepayers should not be required to support in rates utility marketing activities related to services to CCA customers.

15. AB 117 requires the CRS include all stranded costs for power originally purchased by the utilities on behalf of CCA customers and does not make exceptions for RPS costs.

16. The CRS should include all stranded utility RPS liabilities originally incurred by the utilities on behalf of CCA customers.

17. The CRS should be calculated yearly and then trued-up for the period two years prior as information about actual utility procurement costs becomes available.

18. The utilities' proposed tariffs should not require that all customers be served by the CCA within a year of the date the CCA first offers service and should charge for these customer service phase-ins according to cost.

19. The utilities will not procure power on behalf of CCA customers as part of their resource adequacy planning.

20. The utilities' plan to create a voluntary open season and a binding notice of intent that specifies a CCA operational date is reasonable with the conditions set forth herein.

21. The CRS should not be modified to reflect cost liabilities associated with QA contract renewals or modifications negotiated after the initiation of CCA service.

22. The utilities and CCAs should work collaboratively to develop forecasts for load the utilities will lose when a CCA initiates service. Utility tariffs should require that CCA's provide information about services, rates and customer groups on a confidential basis, to facilitate the development of a forecast.

23. A utility should not be permitted to impose risk on the CCA for the utility's own load forecasts once the CCA has initiated service.

24. A collaborative process whereby the utility and the CCA work together to develop a forecast of departing load, would help mitigate forecast risk.

25. For purposes of estimating liability when a CCA's cut-over date is delayed, the utilities should assume default opt-out figures for the forecast of the first year of the CCA's operation of 5% for residential customers and 20% for industrial and commercial customers unless the utility and the CCA agree to other numbers.

26. Because the utility is responsible for its load forecasts, the purpose of this tariff provision should be to estimate cost liability when the CCA's cut-over date is delayed.

27. The CCA and the utility should explore options for mitigating risk associated with forecasts by agreeing in advance that the party who has too

much power will sell the power to the party who is short on power. Utility tariffs should be required to include a provision whereby the utility offers to explore whether purchasing power from the CCA at cost or at market rates would mitigate risks or cost, in the event the CCA's cut-over date is delayed.

28. Utility tariffs should provide that in the event the CCA delays the cut-over date from that in the binding notice of intent, the incremental costs of delay associated with power purchases are to be charged to the CCA.

29. Utility tariffs should provide that in the event the CCA's cut-over date is delayed due to acts or omissions of the utility, the utility or its ratepayers shall assume the cost of the delay associated with power purchases. The utility should enter related costs into a memorandum account and should not include such costs in rates until and unless it is authorized to do so by the Commission. In the event the utility does not agree to its culpability, the CCA's remedy is to file a formal complaint seeking credit for the costs of delay associated with power purchases. If the CCA seeks damages, its remedy is to file suit in a court of law.

30. A binding notice of intent signed by the CCA and which specifies a date for the CCA's initiation of service, which specifies phase-ins where planned, should automatically relieve the utility of its obligation for purchasing power for the CCA's customers as of the specified service initiation date.

31. Utility tariffs should provide that the CCA's open season information is to remain confidential at the option of the CCA in order to assure the CCA is in a reasonable bargaining position with respect to power sellers.

32. Utility CCA tariffs should not address the extent to which CCAs must comply with RPS standards.

33. The utilities should be permitted to charge the CCASR fee when new customers are added to the CCA's customer base.

34. AB 117 requires the CCA to notify new customers of their opportunity to opt-out of CCA services.

35. New customers should be automatically assigned to the CCA unless the utility receives an opt-out request. A new utility customer should be referred to the CCA, which would describe the opt-out process.

36. Section 366.2(c)(18) gives authority to the utilities to install, maintain and calibrate metering devices. Permitting third-party vendors to conduct these services would be contrary to the statute.

37. Section 366.2(c)(9) requires the utilities to provide all relevant customer information to CCAs and prospective CCAs and the Commission has found that the statute does not permit the utilities to determine the types of customer information required by CCAs and prospective CCAs. Utility tariffs therefore may not limit access to such information.

38. Section 366.2(c)(11) requires that customers returning from the CCA to the utility be subject to the same terms and conditions applicable to returning direct access customers. Therefore, utility tariffs should require a six-month advance notification by the customer and a commitment for three years of bundled utility service.

39. Utility tariffs should not include call center fees until they are unbundled from the revenue requirement and otherwise approved in a general rate case consistent with D.04-12-046.

40. Utility tariffs should include fees that reflect the costs of processing a customer who has opted out of CCA service, consistent with AB 117 which requires individual CCAs to assume the costs attributable to their programs.

41. Utility customer deposits and CCA customer deposits should be determined by the utility and the CCA respectively and should be collected separately.

42. Partial payments should first be applied to services that would be disconnected for non-payment in order to protect customers from disconnection. Remaining payment amounts should be allocated on a pro rata basis between the services of the CCA and the utility that may not be disconnected for non-payment.

43. Utilities should be required to serve a CCA customer that fails to pay for CCA services.

44. Utility tariffs should require the utility to switch over a customer from the utility to the CCA within 15 days.

45. Utility tariffs should anticipate the impacts of a CCA adding or removing a municipality from the CCA's operations. The tariffs should conform this order with regard to the process for filing an implementation plan and should not require more information or procedures than this order requires when the CCA first files the implementation plan.

46. The utilities should not notify customers of their change in service to the CCA, which is the subject of two CCA notices. The utilities may include this information in their regular bill inserts but may not charge CCAs or CCA customers for it.

47. Utility tariffs should not govern the relationships between CCAs and the ISO and utilities should not be permitted to stop serving a CCA on the basis of its relationship with the ISO except by order of the Court, the Commission or the FERC.

48. Utility CCA tariffs should permit private aggregation to the extent its implementation does not conflict with other utility tariffs following notice by CCA of an intent to offer service.

49. Pursuant to Section 366.2(c)(8), the earliest possible implementation date for the CCA program was the effective date of the tariffs filed pursuant to D.04-12-046 in Phase 1 of this proceeding.

50. The utilities should be ordered to immediately effect the system changes required to satisfy their CCA tariffs following notice by a CCA of an intent to offer service.

51. The earliest possible implementation date for a CCA's provision of service should be the date of the completion of all tariffed requirements but no later than six months following notice by a CCA to offer service or the date the CCA and the utility agree is reasonable, whichever is later, unless an order of the Commission or a letter from the Executive Director states otherwise.

52. Consistent with AB 117 and D.04-12-046, the utilities' tariffs should specify a cost-based charge for EDI testing conducted on behalf of CCAs.

53. Utility tariffs should include charges, based on incremental costs, for special services.

54. The utilities proposed fees for metering services are reasonable except to the extent set forth herein.

55. Utility tariffs should not permit the utility to terminate a CCA's service without the express approval of the CCA unless the utility has an order of a court, the Commission or the FERC. Where continued CCA service would constitute an emergency or may substantially compromise utility operations or service to bundled customers, the utility should seek an emergency order from the Commission. In such cases, the assigned ALJ, in consultation with the

assigned Commissioner, should be authorized to issue a ruling providing interim authority for the utility to terminate a CCA's service. The utility should also be authorized to serve CCA customers temporarily where the ISO has notified the utility that customers otherwise not be served and following consultation with the CCA, consistent with rules applicable to direct access customers.

56. The utility's cost to notify CCA customers of a lawful termination of CCA service should be charged to the CCA because these are costs that would not be incurred except for the CCA's provision of service.

57. PG&E should be ordered to unbundle its billing services and rates as set forth herein. It should be permitted to charge no more than SCE's rate for "rate ready" billing services until and unless it can demonstrate that its unbundled billing services cost more than that rate.

ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall file tariffs in compliance with this order no later than 60 days from the effective date of this order.

2. The tariffs filed by PG&E, SDG&E, and SCE in compliance with this order shall be identical to those they submitted in this proceeding and shall not include any provision, language or rate other than the changes required or authorized herein.

3. Utility tariffs shall conform to the rules for an open season as specified in Attachment B of this order.

4. Pursuant to Section 366.2(c)(8), the earliest possible implementation date for the CCA program was the effective date of the tariffs filed pursuant to

Decision (D.) 04-12-046 in Phase 1 of this proceeding. The utilities shall immediately effect the system changes required to satisfy the tariffs.

5. The earliest possible implementation date for a Community Choice Aggregator's (CCA) provision of service is the date of the completion of all tariffed requirements or the date the CCA and the utility agree is reasonable, whichever is later, unless a Commission order or letter from the Executive Director states otherwise.

6. Utility tariffs shall not permit the utility to terminate a CCA's service without the express approval of the CCA unless the utility has an order of a court, the Commission or the Federal Regulatory Commission. Where continued CCA service would constitute an emergency or may substantially compromise utility operations or service to bundled customers, the utilities shall seek an emergency order from the Commission. In such cases, the assigned administrative law judge (ALJ), in consultation with the assigned Commissioner, is hereby authorized to issue a ruling providing interim authority for the utility to terminate a CCA's service in this or any successor docket.

7. The assigned ALJ shall convene a workshop or other appropriate forum to assure the tariffs filed by the utilities pursuant to Ordering Paragraph 1 are in conformance with this order.

8. In order to facilitate the smooth operation of the CCA where its policies, practices and decisions may affect the utility and its customers, the Executive Director shall develop and publish the steps of an informal process of review, as described herein, 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. The process shall 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 process for resolving disputes over operational issues prior to initiation of services, as set forth herein.

9. Where the CCA fails to conform to approve utility tariffs, the utility shall decline to initiate service to the CCA. If a utility refuses to facilitate the CCA's initiation of service, or declines to provide service to the CCA, it shall inform the Commission and CCA of its reasons in writing. If the CCA believes it or its customers have been improperly refused utility service, whether before a CCA's service is initiated or in a case where the utility interrupts CCA services, the CCA may file a formal complaint with the Commission, which may be litigated or mediated using our usual procedures.

10. The Executive Director shall 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. The process and the timeline shall be consistent with the statute and with this order. The instructions shall require that the CCA's registration packet include the CCA's service agreement with the underlying utility and evidence of insurance, self-insurance or a bond that will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting.

11. The ALJ assigned to Rulemaking (R.) 04-03-017 shall initiate consideration of net metering in CCA territories within 60 days of the effective date of this order.

12. The ALJ assigned to this proceeding shall provide an opportunity for parties to comment on whether the Commission should adopt refinements to the

CCA CRS methodology that are adopted for DA/DL customers in R.02-01-011 or any successor proceeding.

13. This proceeding remains open for the Commission's consideration of implementation issues that may arise prior to the finalization of utility tariffs ordered herein and prior to the initiation of service by the first CCA

This order is effective today.

Dated December 15, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
JOHN A. BOHN
Commissioners

Commissioner Dian M. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.

ATTACHMENT A
Page 1 of 5
SUMMARY OF ADOPTED TARIFF ELEMENTS

Section	Utilities' Proposal	CCAs' Proposal	Adopted
III. Commission Jurisdiction Over CCAs and the CCA Program	AB 117 intended that the Commission have authority over the CCA.	AB 117 does not give the Commission jurisdictional authority over the CCA's, but rather, it gives the Commission ministerial responsibilities over the CCAs.	AB 117 does not confer upon the Commission authority over CCAs or their customers.
IV. CCA Implementation Plan and the Process for CCA Registration (Utility Tariff Section F.)	The Commission should be able to review this plan, inquire as to its content, and if necessary, disapprove of the plan; an advice letter process and its associated formal review and approval processes should be adopted.	Legislature did not intend for the Commission to assume the close regulatory oversight of CCA operations that the Utilities propose.	AB 117 does not give the Commission discretion to approve or disapprove a CCA implementation plan. The Commission's Executive Director will develop steps for an informal process that will assure that the CCA is able to comply with Utility tariffs.
V. Consumer Protection	The Commission should adopt rules that will enable it to take action if the CCA unexpectedly changes its rates, defrauds customers, or takes part in unauthorized transfer of customers to CCAs, known as "slamming."	The Commission has no jurisdiction over consumer complaints of rates, fraud or "slamming."	The Commission will not provide a forum for negotiating or ruling on disputes between CCAs and their customers; section 394 exempt public agencies from submitting to the Commission's consumer complaint procedures.
VI. 1. Customer Notice (Utility Tariff Section H. & I.)	Customer notice should be similar to the noticed required by ESPs.	CCAs' notice should be reviewed and approved by the Commission's public advisor.	Customer notices will be approved by the Commission's Public Advisor; the Utilities shall give the CCAs the option to include these notices in the Utilities' bills.
VI. 2. Customer Notice – Commodity Contracts (Utility Tariff Section H. & I.)	Customers with commodity contracts must opt-in to be served by the CCA.	Customers with commodity contracts must opt-out of the CCA program.	Customers with commodity contracts must opt-out of the CCA program.
VI. 3. Customer Notice – Marketing Service (Utility Tariff Section H. & I.)		Utilities should not be permitted to market their services.	Utilities shall not market their services to CCA Customers.

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SUMMARY OF ADOPTED TARIFF ELEMENTS

VII. 1. CRS Vintaging	Support CRS vintaging.	Support vintaging the CRS – but oppose the inclusion of additional costs and the inclusion of Renewable Portfolio Standard (RPS) contracts into the CRS calculation.	The CRS shall be vintaged; the Utilities' RPS contract costs shall be included in the CRS calculations; however, resource adequacy costs incurred by the Utilities after the CCA's cut-over date shall not be included in the CRS calculation.
VII. 2. CRS Vintaging – Phase-ins	Phase-ins should be completed within the first year; otherwise, CCA customers should be responsible for power Utility power liabilities until the completion of the phase-in period.	The Utilities should not be permitted to limit phase-ins.	The phase-in period cannot be limited.
VIII. Open Season	The CCA must make a binding commitment to a five-year forecast of the CCA's load, which can be modified during each year's open season.	Object to the Utilities' proposal; CCSF calls for a cooperative load forecasting process.	A voluntary open season is reasonable. CCA's should disclose the portion of each customer class that is subject to a cut-over and to provide all relevant customer information, subject to a nondisclosure agreement, such as: the number of customers, rate design, special contracts.
IX. Renewable Portfolio Standard	CCAs should be subject to the same requirements as the Utilities.	PU Code Section 387 requires RPS standards to be implemented and enforced by the local governing body of a Public Utility, which should include CCAs.	The CCAs need to identify in their implementation plans how they intend to comply with the RPS requirements. This matter will be resolved in R. 04-04-026
X. 1. Treatment of New Customers	The Utility must generate a CCASR for all customers, otherwise these customers will be assigned to the Utility's bundled service.	New customers should automatically be enrolled as CCA customers and not be subject to CCASR costs.	New customers must be automatically assigned to CCAs and pay for each CCASR, if it is necessary.
X. 2. Boundary Metering (Utility Tariff Section O.)	The Utilities should install, maintain and calibrate metering devices.	CCAs' vendors should undertake boundary metering activities.	The Utilities shall install, maintain and calibrate metering devices – not the CCAs' vendors.
X. 3. Customer Information	The Utilities do not need to provide contact and energy usage data for all customers within the CCAs' service territory in advance of the mass enrollment process.		The Utilities must provide to the CCAs all customer and usage data before the CCAs begin offering service.

ATTACHMENT A

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SUMMARY OF ADOPTED TARIFF ELEMENTS

X. 4. Customer Switching Rules	Believe that the CCAs' proposal is unlawful.	CCA customers that switch to Utility bundled service should be committed to that service for one year.	CCAs returning to Utility bundled service must make a three-year commitment to the Utility.
X. 5. The Utility-CCA Service Agreement	Do not object to this service agreement.	Do not object to this service agreement.	The draft service agreement appended to the Utilities' tariffs can be tailored by mutual agreement between the Utility and the CCA and will memorialize the CCA's initiation of service.
X. 6. Call Center Fees	CCA customers need to pay these fees whenever they call the Utility seeking information.	Oppose these fees because the Utilities are already reimbursed for such costs.	Call center fees will not be collected from CCA customers at this time; Utilities should address this in general rate cases.
X. 7. Opt-Out Fees	Should be charged (decision is not clear on whether opt-out fee should be charged to the CCA or to the customer wishing not to opt out).	Object to the Utilities' proposal.	CCAs need to pay for the Opt-Out Fees.
X. 8. a. Customer Deposits	CCA customers should pay deposits separately to the CCA.		Each Utility and each CCA needs to collect its own deposit.
X. 8. b. Partial Payment	Partial payments need to first be allocated to pay off services for which customers could be disconnected.	Support prorating partial payments between CCA and Utility service.	Partial payments should first be allocated to paying for dis-connectable services and then, on a prorated basis, to other utility and CCA services.
X. 8. c. Termination of Service	CCAs should not be permitted to return a customer to the Utility for nonpayment.		CCAs may not return a CCA customer for to Utility bundled service for nonpayment of CCA services.
X. 9. CCASR Processing (Utility Tariff Section M. 11)	Utilities need a 15 day lead-time to process a switch-over request when matter is not urgent.	Utilities should take three days to process a switch-over.	A 15 day lead-time is appropriate to switch-over a customer.
X. 10. Changing Municipalities in the CCA Plan	The Utilities' tariffs include a detailed description of how the CCA may add/remove a City or County.	The CCAs object to this section of the Utilities tariffs.	The Utilities' tariffs should include a process for recognizing a change in CCA's customer base
X. 11. Confirmation Letters (Utility Tariff Section I.7)	Requires that the Utility send a formal notification of customer service, for which it would charge \$0.40 per customer, levied on each customer that does not opt-out of the CCA's service.	No Utility notification is required.	This additional notification is not necessary.

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SUMMARY OF ADOPTED TARIFF ELEMENTS

X. 12. Scheduling Coordinator Requirements (Utility Tariff Section B. 3. c)	CCA must identify its scheduling coordinator(s) to the ISO.	AB 117 does not require the CCAs to identify their scheduling coordinator(s).	Utility tariffs may not require the CCAs to identify their scheduling coordinator(s).
X. 13. Load Aggregation (Utility Tariff Section B.8)	Object to the CCAs' proposal.	Would allow CCA customers to aggregate load without reference to existing tariff restrictions.	Private aggregation is permitted to the extent its implementation does not conflict with Utility tariffs.
X. 14. Notice of Program Implementation	A six month advance notice should be given to the Utility by the first CCA that provides service.	The CCA's service implementation should occur no later than 30 days after the Commission' notice of receipt of the CCA's implementation plan.	Immediate action must be taken by the Utilities in order to make the system changes required once the tariffs are completed or there is a Utility/CCA agreement; prior notice by a CCA is unnecessary.
X. 15. Electronic Data Interchange Testing (Utility Tariff Section F.5.d)	CCAs need to pay for EDI testing.	Object to paying for the EDI testing process.	Each CCA needs to pay for EDI testing.
X. 16. Specialized Service Requests (Utility Tariff Section E.1)	Supports charging hourly rates for specialized services to a CCA.	Utilities should not charge for services that are not provided to other commodity service providers.	The Utilities can charge for specialized services at cost based rates.
X. 17. Metering Fees	Would charges CCAs \$9.28 per interval meter per month.	Object to paying \$9.28 per interval meter per month.	CCAs need to pay \$9.28 per interval meter per month.
X. 18. Involuntary CCA Service Termination (Utility Tariff Section T.2)	The costs of notice to customers of termination should be billed to the CCA.		The costs of notice to customers of termination should be billed to the CCA.
X. 18. Involuntary CCA Service Termination (Utility Tariff Section T.3)	Utilities should be allowed to terminate a CCA's service for various reasons, including failure to comply with tariff and ISO requirements.	The Utilities should not have authority to terminate CCA service.	The Utilities cannot include language in their tariffs that gives them the discretion to terminate a CCA's service, except in the event of an emergency.
X. 19. Net Metering	Object to the net metering option for CCAs and their customers.		Net metering should be addressed in R. 04-03-017.
X. 20. Rate Ready Billing	PG&E limits CCA's rate structures to two tiers; SDG&E and SCE offer billing service that is not opposed by CCAs.	Object to the PG&E's proposal; prefer an option to elect to have PG&E bill each of the CCA's rates.	PG&E shall develop a billing service that is unbundled, similar to SCE's and SDG&E's respective billing service.

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SUMMARY OF ADOPTED TARIFF ELEMENTS

<p>X. 21. Services Funded By Bundled Rates (Utility Tariff Section B. 2)</p>	<p>The language that contains this proposal is unnecessary.</p>	<p>The Utilities should include language in their tariffs that provide CCA services supported by bundled rates until funds/service obligation is transferred to a CCA.</p>	<p>The Utilities must continue to provide tariffed services until the Commission decides otherwise – however, there is no reason to include such language in the Utilities’ tariffs.</p>
<p>X. 22. California Alternative Rate of Energy (CARE) Discount</p>	<p>CCA customers should receive the CARE discounts; ratemaking for this policy should be implemented in future rate design proceedings.</p>	<p>Do not object to the Utilities’ proposal and believe that the CARE discount should be addressed in each CCA’s respective tariff filing.</p>	<p>The Utilities should continue to provide CARE discounts to all qualifying CCA customers.</p>
<p>X. 23. “In-Kind” Power</p>			<p>DWR and interested CCAs can seek reasonable arrangements to take DWR power.</p>
<p>X. 24. Bill Ready Billing</p>	<p>PG&E offers a manual version of this service; SDG&E and SCE offer an automated version of this service.</p>	<p>Objects this service from PG&E because it is too expensive.</p>	<p>PG&E shall develop an automated billing system that is akin to the system implemented by the other two Utilities, within 12 months; PG&E may charge the same rate as SCE charges for this service.</p>

(END OF ATTACHMENT A)

ATTACHMENT B
Page 1 of 4
Rule [23.2/27.2]
Community Choice Aggregation (CCA) Open Season

Participation in this Rule by a Community Choice Aggregator (CCA) is voluntary. The purpose of this rule is to provide [Utility] with early notice of the planned implementation date of a CCA program.¹

A CCA may elect to participate in the Open Season, as defined below, for the purpose of mitigating the Cost Responsibility Surcharge (CRS), as designated in Schedule CCA-CRS, that would apply to that CCA's customers absent its participation in the Open Season, and to enable the coordination of resource planning activities of [Utility] and the participating CCA. Nothing in this Rule shall be construed to modify the requirements of Public Utilities Code Section 366.2(d), (e) and (f).

A. CCA Open Season

The CCA Open Season will be from January 1 through [February 15, or March 1 if Load Serving Entity Load Forecast submittals to the California Energy Commission (CEC) are due May 1 or later] of each year.

1. Binding Notice of Intent (BNI)

During the Open Season CCAs will be allowed to submit to the California Public Utilities Commission (Commission) and [Utility], a Binding Notice of Intent (BNI) to serve specified customer classes on a specific date. [Utility] can then rely upon the BNI in making procurement decisions to meet its load and resource adequacy requirements, and enable the coordination of resource planning activities of [Utility] and the CCA submitting the BNI (Participating CCA). The BNI shall indicate, in specific detail, the classes of customers to which the CCA intends to offer service.² The BNI shall be self-executing, in that [Utility] may rely on such notice to modify its procurement activities without further action by the Commission. Participating CCAs will be exempt from any CRS related to [Utility] procurement contracts and generation assets acquired after the BNI is submitted. [Utility] will assume liability going forward for those utility procurement and generation obligations assumed after the Participating CCA has provided its BNI. A CCA that elects not to participate in an Open Season

¹ Nonparticipation in this rule by a CCA in no way relieves [Utility] of its obligation to engage in sound resource planning and to cooperate fully with any potential CCA program implementation.

² Pub. Util. Code § 366.2(b) requires CCAs to offer service to all residential customers within its jurisdiction.

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Rule [23.2/27.2]
Community Choice Aggregation (CCA) Open Season

assumes liability for net unavoidable utility and Department of Water Resources procurement and generation obligations that were in place until the time the CCA began its operations.

The specified date will refer to the first day that the CCA assumes responsibility for the purchase of the electrical power requirements of CCA customers transferred from Utility service during CCA mass enrollment. By submitting the BNI, the Participating CCA will be bound to accept [Utility] transfer of customers that have not opted-out, subject to provisions in Section B, for electrical power supply services on that date, which will be the first day of the CCA mass enrollment period. The CCA will develop, in consultation with [Utility], a load forecast for the year it intends to commence service, as described in Section 3 below. Participating CCAs assume responsibility for the planning and purchase of its customers' electrical power requirements as provided for in the CCA load forecast. The load forecast will be used to enable the coordination of resource planning activities of [Utility] and the CCA.

2. CCA Forecast

Each Participating CCA shall meet and confer with [Utility] upon submission of its BNI to develop a Load Forecast for the CCA for the year it commits to commence service. To the greatest extent possible the Participating CCA and [Utility] shall collaborate in developing this load forecast by providing the following information: the CCA's description of the customer classes or subsets of the customer classes to which it intends to offer service; a description of the terms and conditions of CCA service; CCA/[Utility] rate forecasts for the year the CCA commences service, [Utility] estimates of bundled customers who do not qualify for CCA mass enrollment including [Utility] updates on near-term efforts to promote programs that would increase this category of customers; and information either the CCA or [Utility] has received regarding customer intent to opt-out of the CCA program. This CCA Load Forecast will be used to adjust [Utility's] bundled load forecast for submittal to the Commission in its Long Term Procurement Plan and to the CEC by [Date to be determined in R.04-04-003] of each year, for resource adequacy verification. The CCA Forecast will be considered final on the date submitted to the CEC, subject to modifications described below in Section B, Adjustments to Forecasts. Such forecast must include the same information and be provided in the same format as required by the CEC or the Commission in accordance with the requirements established for the resource adequacy and integrated energy policy report filings. The CCA Forecast must include the forecast number of customers by rate class that the CCA expects to serve. Unless the CCA and [Utility] otherwise agree, the CCA Load Forecast shall be based on the default assumptions regarding the percentage of customers in the various classes that may opt out of CCA service established by the Commission.

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Rule [23.2/27.2]
Community Choice Aggregation (CCA) Open Season

3. CCA Default on Binding Notice of Intent

If the CCA fails to commence service on the date stated in the Binding Notice of Intent, or fails to offer service in good faith to all classes of customers stated in that Notice, the CCA will be required to reimburse [Utility], upon demonstration in a filing with the Commission, for any incremental costs associated with utility procurement, as described in Section 6 below, resource adequacy penalties, or any other utility costs that are incurred as a result of CCA's default. However, the CCA or its customers will not be subject to any costs incurred by the Utility as a result of the CCA's failure to commence service on the date specified if the reason for that non-performance relates to a failure of the utility to meet its commitments to the CCA.

4. Potential Penalties for Deviating From CCA Binding Notice of Intent

If the CCA fails to meet its commencement of service date or fails to offer service in good faith to all customer classes stated in the Notice of Intent, [Utility] shall make a filing with the Commission detailing the incremental costs it incurred as a result of the CCA's failure to fulfill its commitment, for Commission determination of a CCA penalty. The potential penalty to the CCA shall not exceed the would-be transferred load that [Utility] must continue to serve times the difference between [Utility]'s incremental per/kWh cost of acquiring the energy and capacity to serve the load not served by the CCA, and the average cost of [Utility]'s procurement portfolio. This penalty will be calculated on a per day basis for every day that the CCA deviates from the date provided in its Binding Notice of Intent. The CCA shall not be entitled to a credit if [Utility]'s per/kWh cost of serving the load not served by the CCA is below the average cost of [Utility]'s procurement portfolio.

B. Adjustments to Forecasts

In a subsequent Open Season that takes place prior to the CCA commencing service to its customers, the Participating CCA may update its service commencement date. To the extent the CCA and [Utility] have collaborated on the load forecast as described above, the CCA and [Utility] shall provide updates to load forecasting data, such as projected rate or service changes, as they become available in advance of the CCA commencement date. This data shall be used solely to refine the collaborative load forecast when necessary. The CEC may also make adjustments to the CCA's Forecast as part of its review of all Load Serving Entity forecasts in the resource adequacy process. The CCA must satisfy [Utility] credit worthiness standards (which may include provision of adequate security or other assurance) to cover the amount of any potential penalties.

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Rule [23.2/27.2]
Community Choice Aggregation (CCA) Open Season

C. Open Season Phase-In Requirements

In the event a CCA elects to phase-in its service and participate in the Open Season, the CCA shall provide in its Binding Notice of Intent the schedule by which it intends to phase-in service. The CCA shall be required to accept the transfer of customers on the dates provided for each phase of its implementation unless it provides an adjustment in a subsequent Open Season period. The CCA load forecast shall reflect the incremental changes in CCA load as a result of phasing implementation. All other provisions of the Open Season tariff, including penalties for default and confidentiality, apply to participating CCAs that elect to phase-in implementation.

D. CCA Open Season Participation Confidentiality

Due to both the binding nature of the CCA commitment to serve customers on a specified date and the potential penalties a CCA may incur if it fails to fulfill its responsibility to prepare for timely commencement of service under this tariff, there is a potential to create market power for suppliers responding to a CCA's solicitation to provide electric power services. In order to prevent the possibility that participation in this tariff may create market power for potential CCA suppliers, all information concerning CCA participation in this tariff will be confidential. Use of information provided by either the CCA or [Utility] for purposes of load forecasting shall be limited solely for the purposes of the collaborative load forecast. Access to load forecasting information shall be restricted to authorized CCA/[Utility] staff assigned to prepare the load forecasts for submission to the CEC, and the Commission and CEC staff assigned to review such forecasts.

(END OF ATTACHMENT B)

ATTACHMENT C
ASSEMBLY BILL 117
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AB 117

Public Utilities Code

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice program available, that customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest.

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of 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.

(D) The methods for entering and terminating agreements with other entities.

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(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.

(4) 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.

(5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (d), (e), and (f) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (d), (e), and (f).

(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed, within 10 days of the filing.

(7) 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).

(8) 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.

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(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) (A) A city, county, or city and county that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter shall do so by ordinance.

(B) Two or more cities, counties, or cities and counties may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A).

(11) Following adoption of aggregation through the ordinance described in paragraph (10), the program shall allow any retail customer to opt out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

(12) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.

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(13) (A) The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the community choice aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the community choice aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.

(14) The community choice aggregator shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

(15) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

(16) Once notified of a community choice aggregator program, the electrical corporation 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.

(17) An electrical corporation shall recover from the community choice aggregator any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms

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and at rates to be approved by the commission.

(18) At the request and expense of any community choice aggregator, electrical corporations shall install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community aggregator at the aggregator's expense. To the extent that the community aggregator requests a metering location that would require alteration or modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be born by the community aggregator.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with Section 80000) of the Water Code and Section 360.5, and is therefore declaratory of existing law.

(e) A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with

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the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

(h) Notwithstanding Section 80110 of the Water Code, the commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (g). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section 80110 of the Water Code.

(i) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

(2) The commission shall not authorize community choice aggregation until it submits a report certifying compliance with paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(3) The commission shall not authorize community choice aggregation until it has adopted rules for implementing community choice aggregation.

(j) The commission shall prepare and submit to the Legislature, on or before January 1, 2006, a report regarding the number of community choice aggregations, the number of customers served by community choice aggregations, third party suppliers to community choice aggregations, compliance with this section, and the overall effectiveness of community choice aggregation programs.

(END OF ATTACHMENT C)

ATTACHMENT D
COMMUNITY CHOICE AGGREGATION PROGRAM
IMPLEMENTATION PLAN
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Below is a description of the sequence of steps that will be taken by the CCA, and the California Public Utilities Commission, in the CCA implementation process. Note the day that the CCA files its implementation plan will demark "day one" of the implementation process. Parties should also note when submitting their implementation plan that the Open Season will be held from January 1st through February 15th of each year; if the Load Serving Entity's forecast submittal to the California Energy Commission is due on May 1st or later, the Open Season will be extended to March 1st.

DAY 1:

- (1) The CCA is to submit two copies of its implementation plan to the CPUC's Energy Division, in addition to servicing a notice on all parties to the R.03-10-003 service list.

DAY 1 - 10:

- (1) The CPUC will notify the Utility servicing the customers that are proposed for aggregation that an implementation plan initiating their CCA program has been filed. (P.U. Code Section 366.2 (c) (6))

DAY 1 - 60:

- (1) CCA is to provide a draft customer notice to CPUC's Public advisor.
- (2) Within **15 days** of the CCA providing a draft notice to the CPUC's Public Advisor, the Public Advisor shall finalize the CCA notice.

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COMMUNITY CHOICE AGGREGATION PROGRAM
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DAY 1 - 90:

- (1) The CPUC will certify that it has received the implementation plan, including any additional information that the CPUC deems necessary in order to determine a cost-recovery mechanism. (P.U. Code Section 366.2 (c) (7))
 - a. If and when the CPUC requests additional information from a CCA, the CCA shall respond to the staff within **10 days**, or notify the staff of a date when the information will be available.
- (2) The CPUC will provide 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))
- (3) The CCA and the Utility may engage in a facilitation process with regards to the CCA's ability to conform its operations to the Utility's tariff requirements.

WITHIN 60 DAYS OF THE CCA'S COMMENCEMENT OF ITS AUTOMATIC CUSTOMER ENROLLMENT:

- (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))¹

¹ The CCA may request that the CPUC approve and order the Utility to send one or more of the notifications called for in P.U. Code Section 366.2 (c) (A) in the Utility's normally scheduled monthly billing process. The Utility would be entitled to recover from the CCA all reasonable incremental costs it incurs related to the notification(s). (P.U. Code Section 366.2 (c) (B)).

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COMMUNITY CHOICE AGGREGATION PROGRAM
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WITHIN 30 DAYS OF THE CCA'S AUTOMATIC CUSTOMER ENROLLMENT:

- (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) The CPUC will send a letter to the CCA, copied to serving Utility, notifying it that it has been registered as a CCA. (P.U. Code Section 366.2 (c) (13) (A))
- (3) Once the CCA contract is signed, the CCA shall notify the applicable Utility that CCA service will commence within 30 days. (P.U. Code Section 366.2 (c) (15))
- (4) 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))

FOLLOWING THE CCA'S AUTOMATIC CUSTOMER ENROLLMENT:

- (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))
 - b. Terms and conditions of the services being offered. (P.U. Code Section 366.2 (c) (13)(A)(ii))

(END APPENDIX D)

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