BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Portions of AB117 Concerning Community Choice Aggregation	Rulemaking 03-10-003 (October 2, 2003)

1 **PAUL FENN PHASE II REBUTTAL TESTIMONY**
2
3 **ON BEHALF OF LOCAL POWER**
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8 May 16, 2005
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REBUTTAL TESTIMONY OF PAUL FENN ON BEHALF OF LOCAL POWER

Q: Have you previously submitted testimony in this phase of the proceeding?

A: Yes, my Opening Testimony was distributed on April 28, and my Reply Testimony distributed on May 12 after Judge Malcolm granted my Motion to Accept Late Filing until that date.

Q: What is the purpose of this reply testimony?

A: I am responding to the direct and reply testimony submitted by other parties to this Community Choice Aggregation (CCA) rulemaking, particularly with respect to issues regarding the process for handling CCA implementation plans at the Commission, the "open season" for CCAs to declare their intent to provide service, tariff issues raised by the investor-owned utilities (IOUs) and other parties, including CCAs, and matters relating to the calculation of the CCA Cost Responsibility Surcharge (CRS). Failure to comment on any particular issue does not imply any position on such issues.

Q: Do you agree with the utilities' Reply Testimony on the Open Season issue characterizing you and others as "proposing that the entire risk of the uncertainty created in the utility procurement planning and the associated costs be shifted to bundled service customers on the grounds that: (1) the Utilities should magically know whether and when

1 a CCA Provider will commence serving customers, even though the CCA provider is not
2 willing to commit; (2) the utility's procurement-related costs resulting from this
3 uncertainty are the costs of CCA implementation and should be shared by all ratepayers;
4 and/or (3) the Utilities have sufficient reserve margins to accommodate the changes in
5 their bundled service load resulting from CCA formations" (May 9, 2005, 3-1).
6 A: No, I disagree with the first, but agree with the latter. First, it is clearly not a
7 matter of saying that "the Utilities should magically know whether and when a CCA
8 Provider will commence serving customers, even though the CCA provider is not willing
9 to commit." No party on record has suggested that magic is needed for utilities to
10 acknowledge the adoption of CCA resolutions, ordinances and implementation plan by
11 the utility. Given that utilities have some of the largest lobbying enterprises in local
12 government, indeed, it is somewhat disingenuous for the utilities to assume a posture of
13 helplessness and innocence with respect to CCA forecasting in the comments above.
14 AB117 establishes an orderly, step-by-step state-local public process for municipal
15 governments, in order to ensure an orderly process based on due diligence and the
16 preparation of expensive official documents, the most important of which is the
17 Implementation Plan, which can cost hundreds of thousands of dollars to prepare, and
18 months to duly adopt at a public hearing. Counsel for several parties to this proceeding,
19 among them the City of Chula Vista, in particular its locally elected city council and
20 mayor, have repeatedly pointed out that SDG&E's approved 2006-procurement plan
21 ignores Chula Vista's adopted 2004 Community Choice ordinance making the CCA's
22 intent to depart perfectly clear to the Commission and to SDG&E - yet the Commission
23 approved SDG&E's plan allowing a total omission of the fact that the ordinance had been

1 adopted pursuant to AB117. SDG&E is now in the process of negotiating contracts that
2 could impose new Exit Fees on Chula Vista electric ratepayers for between 5 and 10
3 years - and utility retained generation that could impose exit fees for decades.
4
5 As I indicated in my Opening Testimony, Commission protection against utility
6 overprocurement is basic consumer protection issue for both bundled service customers
7 *and CCA customers*. I will refer to an example. In the case of SDG&E, Sempra gas
8 holding Sempra, which is not state regulated under gas deregulation, would like to sell
9 its regulated electric affiliate. Under Commission process, costs and price volatility
10 associated with these fuels are passed directly through to electric consumers according to
11 the fuel charge pass through process. In the case of Chula Vista, a municipality that
12 approved a CCA ordinance in 2004 now face Sempra Gas fuel charge pass-throughs from
13 contracts with SDG&E's electric division on their monthly electric bills. Not only is this
14 affiliate transaction being allowed by the Commission in R.04-1-025 (in which I, Paul
15 Fenn, represented Ratepayers for Affordable Clean Energy in 2004), but holding
16 company Sempra is also being allowed to deliver the gas as co-developer of an LNG
17 terminal on California's coastline to receive imported overseas LNG - and sell it through
18 three Sempra subsidiaries to burn in new SDG&E gas-fired power plants and sell to its
19 electric customers, who but for the statutory opportunity of Community Choice are
20 captive customers of SDG&E under extremely weak Commission consumer protection.
21
22 For the Commission to allow SDG&E to proceed in contempt of Chula Vista's ordinance
23 with threatening new 5+ year power contract liability fully a year later, is itself deeply

1 troubling and verges on violation of PUC 366. (a) that "(the commission shall take actions as
2 needed to facilitate direct transactions between electricity suppliers and end-use customers.
3 Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that
4 each customer does so by a positive written declaration. If no positive declaration is made by a
5 customer, that customer shall continue to be served by the existing electrical corporation or its
6 successor in interest, except aggregation by community choice aggregators, accomplished
7 pursuant to Section 366.2."
8
9 Knowing itself to have approved a procurement plan of a utility that had ignored, indeed
10 defied, the entitlement of Chula Vista ratepayers to implement CCA through its adopted
11 ordinance, pursuant to 366.2(a)(1) of the Public Utilities Code, the Commission cannot
12 now stand aside and permit the utilities to put on the aspects of naive innocents who have
13 only magic to stop them from buying power for customers such as the customers in
14 Chula Vista or San Francisco, which has not only adopted an implementation plan, but
15 undertaken a long list of actions since 1999:
16
17 Not only is the "magic" rhetoric of the utilities Reply Testimony an outrage and violation
18 of AB117 requirement that utilities "cooperate fully" with CCAs in PUC 366.2(c)(9),
19 considering that the utilities are now soliciting five year and longer power purchase
20 agreements that directly threaten CCAs now seeking to depart from them, some of them
21 having spent hundreds of thousands of dollars by now. Moreover, the presence of the
22 "magic" rhetoric in Reply Testimony is deeply troubling and should be addressed as such
23 in Commission regulations for utility CCA CRS rules, and underscores the hazard of a
24 one-way gating process where the only option to an over-restrictive "open season"

1 process that no CCA can use is provision of only one cut off date for CCA CRS liability
2 based on one commitment by a CCA. Such an approach would spite six years of
3 continuous effort, with which PG&E is perfectly acquainted.
4
5 **In September, 1999,** the Board of Supervisors unanimously adopted a Resolution by
6 Supervisor Ammiano asking the California legislature to pass a Community Choice
7 Aggregation law. **In November 2001** voters approved an amendment, placed on the
8 ballot by the Board of Supervisors ("H Bond Authority" Ammiano) to the San Francisco
9 Charter San Francisco Charter Section 9.107.8), creating an unlimited, generic revenue
10 bond authority for the Board of Supervisors to issue to finance or refinance the
11 acquisition, construction, installation, equipping, improvement or rehabilitation of
12 equipment or facilities for renewable energy and energy conservation, said issuance to be
13 authorized by an ordinance of the Board. In particular, Mr. Ammiano announced plans to
14 solicit an energy service provider to install 50 Megawatts of solar photovoltaic capacity
15 within the jurisdictional boundaries of San Francisco. **In January, 2002** the San
16 Francisco Public Utilities Commission held a World Solar Industry Workshop, which
17 was followed by significant incremental solar photovoltaic installations at public
18 properties such as the Moscone Center. Subsequently, the Board of Supervisors has
19 adopted an ordinance creating the Generation Solar program, offering residents and
20 businesses assistance with solar photovoltaic purchasing. These programs have been
21 undertaken as pilot projects, in order to prepare city departments for a major, $ Billion
22 rollout of solar, wind, distributed generation, conservation and energy efficiency
23 technologies at hundreds of locations throughout San Francisco's 49 square miles. **In**

1 **March, 2002**, San Francisco also adopted Resolution 158-02 directing the City to
2 commit to a greenhouse gas pollution reduction of 20% below 1990 levels by the year
3 2012. **In December, 2002**, San Francisco adopted an Electricity Resource Plan calling
4 for the development of 107 Megawatts of load reduction through electricity load
5 management and efficiency measures, 31 Megawatts of in-City solar energy, 72
6 Megawatts of small-scale distributed generation such as fuel cells in San Francisco and
7 150 Megawatts of new wind energy imports by 2012, as well as new natural gas powered
8 generation needed to close over 420 megawatts of power generating facilities at Hunters
9 Point and Potrero power stations. **In September, 2003**, the Local Agency Formation
10 Commission ("LAFCO") accepted a report from R.W. Beck indicating that Community
11 Choice Aggregation may be a feasible method of benefitting consumers and developing
12 renewable energy resources, conservation programs and energy efficiency. **On May 21,**
13 **2004** the San Francisco Board of Supervisors unanimously adopted (ordinance 86-04,
14 Ammiano, signed by Mayor Newsom on May 27, 2004), and it went into effect on June
15 27, 2004. The Energy Independence Ordinance is the governing document ordering
16 preparation of and outlining the structure of this Implementation Plan, and also ordering
17 City agencies to present a draft Request for Proposals (RFP) for amendment and adoption
18 by the Board of Supervisors. Ordinance 86-04 also ordered City and County departments
19 to request all appropriate billing and load data from PG&E, resulting in the delivery of
20 some incomplete aggregate data. **On December 8, 2004**, the Board of Supervisors
21 unanimously approved a resolution (Ammiano, Resolution 757-04), creating a
22 Community Choice Aggregation Citizen’s Advisory Task Force "to advise the City on 1)
23 the goals and preparation of a CCA Implementation Plan, 2) the use of Proposition H

1 Bonds to accelerate the use of renewable energy, conservation and energy efficiency in
2 the CCA program, and 3)the requirements in the CCA bid solicitation process, and 4) the
3 evaluation of bids. Furthermore, Resolution 757-04 affirmed that Ordinance 86-04
4 "called for the development of 107 Megawatts of load reduction through electricity load
5 management and efficiency measures, 31 Megawatts of in-City solar energy, 72
6 Megawatts of small-scale distributed generation such as fuel cells in San Francisco and
7 150 megawatts of new wind energy capacity by 2012, as called for by the Electricity
8 Resource Plan adopted by San Francisco in December 2002." **On February 5, 2005**, the
9 Board of Supervisors approved a Resolution (Mirkarimi, Resolution 131-05) urging the
10 SFPUC to explore, based on findings of the Local Agency Formation Commission
11 ("LAFCO") reports, implementation of Community Choice Aggregation on Treasure
12 Island. **On March 29**, **2005** the Board of Supervisors approved a Resolution (Mirkarimi,
13 Resolution TBD) approving a "Protest Letter to the California Public Utilities
14 Commission and the Procurement Review Committee Regarding Approval of Proposed
15 Pacific Gas & Electric Power Purchase Agreements and Energy Efficiency Programs." **In**
16 **April and May, 2005**, in order to supplement ongoing agency efforts, the San Francisco
17 Local Agency Formation Commission has formally requested a Draft Implementation
18 Plan from Paul Fenn, who is the Board of Supervisors' first appointment to the Citizen's
19 Advisory Task Force on Community Choice Aggregation (CCA Task Force). Ordinance
20 86-04 also ordered City departments to prepare a corresponding draft Request for
21 Proposals within three months of the Board's adoption of this plan, The CCA Task Force
22 will help draft the RFP, review ESP bids and make a recommendation to the Board of
23 Supervisors. **On May 13, 2005** the San Francisco Local Agency Formation Commission

1 voted to approve a Community Choice Aggregation Implementation Plan (SFIP) with
2 recommendation to the Board of Supervisors, which will take up the SFIP in coming
3 weeks. Local Power will introduce this document as evidence during the planned June
4 R.03-10-003 evidentiary hearings.
5
6 All counted, San Francisco, as with many CCAs now funding preparation if
7 Implementation Plans (e.g., Oakland City Council has authorized $180,000 for
8 preparation of an IP, Berkeley $100,000), has undertaken a series of deliberate actions
9 over several years with a continuous policy direction. Compared to Direct Access, the
10 speed of action is much slower and subject to a deliberative state-local process. But
11 unless the Commission actually uses this opportunity to guide the process, this
12 opportunity for an orderly system will have been missed. The utilities' position is a self-
13 fulfilling prophesy; if the only alternative to an over burdensome Open Season process is
14 a one-way, single cut-off approach that places the entire burden on CCAs, then indeed
15 the Commission will have no information because it will not be looking as carefully at
16 Implementation Plans if they are not taking the statutory responsibility of "presenting
17 findings regarding cost recovery" based on an IP, as AB117 specifically requires.
18 Certainly, PG&E has the basis more reliable than magic to predict the
19
20 I will refer the Commission to my Opening Testimony, which proposes a three step
21 gating process based upon the adoption of an ordinance, Implementation Plan, and final
22 binding commitment.
23

1 The Open Season cannot replace a responsible policy for CCA CRS liability.
2 Indeed, we do assert that "the utility's procurement-related costs resulting from this
3 uncertainty are the costs of CCA implementation and should be shared by all ratepayers."
4 The statutory authority of the Commission to create CRS liability for CCA customers,
5 AB57 (Chapter 837 of 2002) does not preempt the statutory right of CCAs to depart from
6 electric procurement in a manner that limits CCA CRS liabilities, as stated in the
7 Commission's D.04-12-046 limitation of such liabilities to reasonably entered into and
8 unavoidable contracts.
9
10 Finally, I agree with the Opening Testimony of other witnesses in R.03-10-003 that the
11 Utilities have sufficient reserve margins to accommodate the changes in their bundled
12 service load resulting from CCA formations. As the Commission has already decided in
13 R.04-12-046, planning for CCA load departures is not inconsistent with normal practices
14 of CCAs relative to Direct Access, making utilities accountable to a criterion that limits
15 CCA CRS liabilities to utility contracts that are "reasonably" entered into and
16 "unavoidable." There is more inherent flexibility in the utility procurement than the
17 utilities' testimony indicates, and the statutory requirement that a utility cooperate fully
18 with a CCA requires the utility to be equally flexible with CCAs.
19
20 Again, there are statutory provisions for these steps to be taken with the Commission's
21 active participation that provide the utility with a basis, far better than magic, to predict
22 when a load departure will occur if CCA negotiations are successful:
23

1 1. A CCA ordinance,

2 2. a CCA's adoption of an Implementation Plan,

3 3. Receipt of notice from the Commission informing the utility that the CCA

4 program is in effect pursuant to PUC Section 366.2(c)(6)

5 4. Receipt of Commission notice the program will commence in 30 days pursuant

6 to 366.2(c)(15) that "Once the community choice aggregator's contract is signed, the

7 community choice aggregator shall notify the applicable electrical corporation that

8 community choice service will commence within 30 days."

9

10 Again, as the CCA's intentions become incrementally clearer from one step to the next,

11 utilities must fully integrate CCA load forecasting as a standard element in its annual

12 procurement process and exercise not only its annual forecasting capabilities but also

13 provide the flexibility that it enjoys in its own procurement activities.

14

15 Q: Do you have comments on the utilities' Reply Testimony discussing Local

16 Power's proposed Open Season process?

17

18 A: I do . The utilities characterized "the main theme" of my opening testimony as

19 being "that the Commission should facilitate CCA implementation at any cost to bundled

20 service customers, and this can be justified by classifying such costs as "implementation

21 costs" which by statute can be imposed on all ratepayers. The Utilities disagree. AB 117

22 is clear that the Utilities should implement CCA and the Commission should adopt the

23 necessary rules to support the implementation of the CCA programs, but not at the

24 expense of bundled service customers." (Utilities Reply Testimony, May 9, 2005, 3-10).

1 The utilities mischaracterized my Opening Testimony. I never suggested that facilitation
2 occur "at any cost," nor did I suggest that bundled service customers should pay for it.
3 First, I stated, and repeat, that all customers, including both the customers that depart
4 from the CCA, and the bundled service customers, should share in the same
5 implementation cost. Second, I have provided a detailed three-step process which would
6 require the utility to cooperate in an appropriate way in response to a CCA's prevailing
7 level of specificity. I also provided recommendations for requirements in an
8 Implementation Plan so that it could be used to provide a basis for a utility to predict
9 CCA load departures based on the increasing commitment of a CCA at each step.
10 Therefore, the utilities' suggestion that I am indifferent to cost minimization totally fails
11 to answer my Opening Testimony, which provided for the very means of minimizing
12 costs related to utility over-procurement relative to a CCA seeking to depart in its service
13 territory.
14
15 Third, the utilities directly contradict state law by saying that AB 117 requires the
16 Commission to adopt rules for implementation of CCA programs "not at the expense of
17 bundled service customers." (Utilities Reply Testimony, May 9, 2005, 3-10). In point of
18 fact, AB117 provides specifically that with implementation costs, "(a)ny costs not
19 reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as
20 determined by the commission" (PUC Section 366.2(c)(17). Thus, indeed, AB117
21 specifically requires that a CCA not be forced to pay implementation costs that are not
22 attributable to it. This is indeed a right of the CCA consumer not to have costs shifted
23 onto it, as the Commission decided it must protect against in D.04-12-046. Thus, the

1 utilities Reply Testimony both contradicts AB117 while pretending to cite it, and
2 contravenes stated Commission policy adopted in Phase I of this proceeding.
3
4 Q: Do you have a response to the utilities' Reply Testimony regarding your Opening
5 Testimony on the five year commitment required of CCAs that elect to participate
6 in the utilities' proposed Open Season process?
7
8 A: Yes, I do. The utilities say that my testimony incorrectly states that the Utilities
9 "have suggested that CCAs be required to make a five-year commitment to
10 resource adequacy." What I meant by this was that the utilities' proposed Open Season
11 process would require the CCA to provide a binding five-year load forecast, and face
12 substantial penalties in the event there are forecasting errors resulting from higher utility
13 costs. My point was that for the Open Season to actually be an *option* to CCA Providers
14 who are interested in mitigating their CRS to commit to serving a certain amount of load
15 before they actually commence serving customers, the option must be adapted to the
16 reality of the energy markets. A five year binding forecast is unreasonable and
17 prohibitive, and will only ensure that no CCA ever "chooses" the option because its
18 minimum requirements are unrealistic, even arbitrary. Under the utilities' proposal, the
19 only real option to CCAs would be to submit to liabilities and obligations for any and all
20 utility procurement up until a CCA actually has an ESP who can assume risks such as
21 forecasting risk. Taken together, the utilities' Open Season provision and its all or
22 nothing, one-way, blind procurement-based reply to my proposal on the role of the

1 Implementation Plan in limiting CCA CRS liability, constitute a Catch-22 policy for
2 CCAs in California, and must be rejected.
3
4 Q: Do you have any comments on the utilities' Reply Testimony on your Opening
5 Testimony concerning use of the Implementation Plan to limit CCA CRS liability?
6
7 A: Yes, the utilities responded to my proposal that, consistent with its
8 interpretation of PUC Section 366.2©)(5), procurement by the Utilities for
9 CCA Providers' customers should be bound to the filing of the CCA
10 Providers' implementation plans. In particular, the utilities responded to my position that
11 "full cooperation" by the Utilities entails the reflection of CCA activities, such as passing
12 of an ordinance by the city or county and the filing of an implementation plan, in
13 forecasting their bundled service customers' load. The utilities ignored the subtlety of a
14 three step process, again flattening it into a single, blind maneuver, saying "as noted in
15 the Utilities' and TURN's opening testimony, the Commission in Decision 04-12-048
16 already found that these activities are not sufficient for the Utilities to exclude the CCA
17 Providers' load from their planning process." Again, I never suggested such an abrupt
18 one-step as "excluding." Rather, I proposed that the definition of "reasonably" entered-
19 into and "unavoidable" contract be conditioned on (1) the utility's reflection of a CCA
20 ordinance in its procurement plan and (2) the utility's limitation of procurement to one
21 year contracts once the implementation plan is certified by the Commission.
22

1 The utilities also says the Commission has indicated that a binding notice of intent is
2 required of the CCA Providers to "exclude" CCA load from procurement. This I do not
3 contest, but regard the binding commitment the last of three steps.
4
5 As the last of three, the binding commitment would be made when a CCA has already
6 solicited and entered into a contract with an ESP. Conversely, if a CCA wishes to
7 commit an ESP to a rate schedule in advance, a year in advance would not be reasonable,
8 and I do not believe an ESP would sign an agreement at firm rates more than six months
9 in advance of the transfer of customers.
10
11 So under this model, participating in an Open Season would only exclude CCA load for a
12 negligible period of time, whereas a successful system will depend upon an annual
13 process that offers earlier "gates" in the CCA implementation schedule of departure prior
14 to the binding commitment. My testimony has underscored the importance of limiting
15 CCA CRS liability gradually, the ordinance softly, the Implementation Plan firmly.
16
17 A system that forces a choice between binding commitment/cutoff or major CCA (vs.
18 ESP) forecast risk assumption will fail to facilitate CCA negotiation with ESPs, because
19 CCAs would not be able to transfer forecasting risk to an ESP within a standard industry
20 time frame. Requiring either too much advance commitment from the CCA, or else
21 refusing their procurement to be limited in any way by the Implementation Plan, the
22 utilities are essentially proposing that the Commission make implementation of AB117

1 subject to the prerogatives of AB57, though they were signed by the Governor on the
2 same day.
3
4 Perhaps that is where the utilities confuse my testimony, thinking I misunderstood the
5 rule to meaning the CCA would bind itself to five years of resource adequacy. Rather, I
6 meant that making a 5 year binding commitment cannot be undertaken by a CCA until it
7 has a 5 year contract with an ESP. That is why the Commission gives CCAs the option of
8 requiring an ESP to assume risks, such as the resource adequacy requirement of LSEs,
9 and also why AB117 allows CCAs to require ESPs to cover the risks associated with
10 contract failure by posting a bond or demonstrating insurance. The utilities' proposed
11 Open Season proposal would requires a CCA exercising this "option" to assume all risks
12 associated with a forecast that is unlikely to be qualified to make, because it requires the
13 commitment to be made before the CCA has an agreement with an ESP.
14
15 Again, the utilities play ignorant of these variables, these bases for forecasting and
16 procurement flexibility, as if there is nothing they can do short of "exclude" a CCA's
17 load from their planning process when the CCA has a contract.
18
19 Indeed, AB117 expected that utilities would have a contract only 30 days before
20 customer transfer, as described in 366.2 (c)(15). Yet, if a CCA wishes to exercise its
21 option of requiring its ESP to assume basic risk management role, the option of placing
22 risk management on the ESP, whether for the load forecast risk, opt-out rate, or other

options, an Open Season rule that prohibits a CCA from choosing to pursue such an approach is contrary to adopted law and regulation.

The utilities have not even attempted to respond to my actual Opening Testimony, which indicated that such an all or nothing approach is irresponsible and inconsistent with current utility procurement practices.

Q: Do you have comments on the utilities' reply testimony on your proposal to limit utility procurement to one year upon certification of a CCA IP?

A: Yes, the utilities say they "do not have any problem with following Local Power's recommendation, if desired by the Commission, as long as the associated incremental costs resulting from the CCA Provider not eventually implementing its program are directly imposed on that CCA Provider." Again, the utilities treat costs associated with the need for an incremental step by step process to minimize errors, as if they were created by each particular CCA. Again, AB117 says that implementation costs not associated with "a CCA" must be recovered by all ratepayers, not imposed on the CCA ratepayers. That is why, in my Opening Testimony, I proposed that costs that are directly attributable to a CCA's negligence or incompetence (as opposed to market conditions) could be made to pay. However, CCAs that act diligently, follow implementation plan guidelines, and act in good faith, may not be forced to pay for these implementation costs according to AB117.

1 The utilities testify that my argument "is inconsistent with AB 117, particularly PUC
2 Section 366.2 (c)(17) that "[a]ny costs **not** reasonably attributable to a community
3 choice aggregator shall be recovered from ratepayers, as determined by the
4 Commission." (emphasis added). Th utilities testify "(t)here is no ambiguity here that
5 when a CCA Provider passes an ordinance, files an implementation plan and then decides
6 not to form, any resulting costs are attributable to the CCA Provider and should be paid
7 by that CCA Provider." The utilities are consistent with their own logic here; they have
8 held that the CCA ordinance and Implementation Plan are an inadequate basis on which
9 to exclude CCA load.
10
11 The utilities complain that my proposals for considering CCA penalties in cases of
12 extreme negligence or taking legal options "are not feasible alternatives and should be
13 ignored." Yet these options are standard procedures for such cases, and cannot be
14 ignored.
15
16 Q Can you respond to the utilities' rejection of your proposed concepts that might
17 be used to allocate power to CCA Providers, for the reason that "here are no
18 details offered as to how any of these options would be implemented, and no
19 specific proposal is set forth for Commission consideration in this proceeding."
20 Yet I have proposed methods, and the utilities do not discuss them at all, claiming
21 that my proposals " ignore many practical and legal problems and do not provide
22 a basis for Commission and parties' consideration of Local Power's proposals."
23 This is untrue, they would not violate any law, and the utilities do not name a

1 single law or even Commission rule that would be violated by the methods I
2 propose. Therefore the utilities' assertion should be rejected.
3
4 Q: Do you have a response to TURN's Reply Testimony on your proposal to limit
5 CCA CRS liability based on an Implementation Plan?
6 Y: Yes, Mr. Florio states that "the implementation plan may or may not meet the
7 requirements of a notice of intent, depending upon whether or not it contains a
8 *binding commitment* to a specific date and the set of customer classes to which
9 service will be offered. Again, like the utilities, Mr. Florio does not respond to the
10 actual substance of my proposal, namely that the manner of limiting obligations is
11 to avoid overprocurement, and the best way to do that is to limit utility
12 procurement in accordance with a three step process of CCA Ordinance, CCA IP,
13 and CCA Binding Commitment. I am not proposing the IP as the Binding
14 Commitment, as Mr. Florio seems to perceive. Rather, I am proposing that it
15 precede the Binding Commitment, and by limiting procurement in advance,
16 avoiding much higher cost errors than the marginal cost of short term contracts.
17 Finally, Mr. Florio responds to the assertion that such as cost would not be a CRS, but
18 would be an implementation cost, provided that it is not directly attributable to the CCA,
19 as per PUC Section 366.2(c)(17). He describes the exit window as a CCA's "free
20 option" to pursue the program described in its implementation plan or abandon it,
21 depending upon bids received from ESPs ***after*** the plan has been certified by the
22 Commission. Such a free option is not really free, however – it has real value to the
23 recipient and imposes costs on the entity providing the option."

1 I agree that it would create a cost, but I assert that PUC 366.2(c)(17) specifically
2 requires that such costs be born by all ratepayers. Furthermore, I assert that such an
3 approach is the only reliable way to avoid overprocurement. Given that utilities are in the
4 business of managing their portfolios regarding an inherently imperfect load forecast, the
5 use of short contracts is standard. In fact, the utilities have preferred one year contracts
6 over long contracts since 1998, and only now are soliciting multi-year contracts for the
7 first time. Thus, the cost associated with utility management of procurement uncertainty
8 is not unique to CCA, much attributable to any particular CCA.

9 In this case , it is not true that "the utility and its remaining bundled service customers
10 would bear the costs of providing such an option to the CCA and its potential customers."
11 I have proposed rather that all ratepayers share this implementation cost. Therefore it si
12 not the type of cost shifting that is forbidden by AB 117. While providing such
13 optionality has a real cost," and Mr. Florio admits it a "fact that such cost is 'the result of
14 the marketplace itself' such that 366.2(c)(17) would not define it as cost-shifting.

15

16 Q: Does this conclude your Rebuttal Testimony?

17 A" Yes, it does.

1 **CERTIFICATION OF SERVICE**
2 **R.03-10-003**
3
4

5 I, Julia Peters, certify that on this day May 16, 2005, I caused copies of the attached
6 REBUTTAL TESTIMONY OF PAUL FENN ON BEHALF OF LOCAL POWER to be
7 served on all parties by emailing a copy to all parties identified on the service list
8 provided by the California Public Utilities Commission for this proceeding, and also by
9 delivering an original and six copies to the Docket office.
10
11 Dated: May 16, 2005 at Oakland, California.
12
13 ____________________________
14 DECLARANT

R.03-10-003

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