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)

REPLY BRIEF OF LOCAL POWER

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A. INTRODUCTION

Local Power submits its Reply Brief in R.03-10-003. As most parties did not elect to follow Edison's outline, this Reply Brief dispenses with the outline to address key issues raised in the Opening Briefs.

B. COST ISSUES

1. RECOVERABLE COSTS

The Commission should clarify the restrictions placed on costs a utility may collect from CCAs, and reject proposals to collect costs that are not attributable to a single CCA.

SDG&E focuses on the word "ANY" in the provision, "It is further the intent of the Legislature to prevent ANY shifting of recoverable costs between customers" (SDG&E Reply Briefs with their emphasis, p.23) but ignores the word "RECOVERABLE" as if it were less significant, when it is in fact the crux of the matter.

As to what is recoverable, this language in AB117 is restrictive, as SDG&E admits, to costs that are "reasonably attributable" to a CCA. (SDG&E Reply Briefs, p.2). In certain cases, as when "(a)ny costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission.(PUC 366.2c17) Then AB117 defines that reasonable transaction costs shall in all cases be charged to ratepayers. 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 and at rates to be approved by the commission (PUC 366.2c17).

Thus, non-transaction costs or any costs CCA-related costs not reasonably attributable to any CCA should be excluded the definition of cost shifting, and the CCA's transaction-based costs should be derived exclusively from this group. Furthermore, AB117 provides that *either* the CCA *or* its customers shall have to pay these costs - thus the system for paying for these costs must be adaptable to either the ratepayers paying it (i.e. on monthly bills as they pay for all other services) or the CCA paying it (i.e. up front). *Thus, it is unlawful to suggest that the CCA should have to pay for all costs up front irrespective of its wishes, as this would obviate its option of having the ratepayers pay for the services that are essential to the service they have chosen as members of a community*.

PG&E has indicated support for all ratepayers to pay for basic implementation costs (PG&E Initial Briefs, p.53) agreeing with Local Power that such costs are not attributable to any one CCA (PG&E p.53). Local Power applauds this position and even supports the proposed true-up of the transaction charge, as it would be a charge born equally by all ratepayers and thus not threaten to prejudice a CCA's contracted rates relative to bundled service customer rates[1] But this true up underscores the importance of allowing "loans" as this form of true up is itself a "loan."

[1]- unlike the CCA CRS true up proposal, which could have unpredictable impacts on the ratio of cost-of service utility rates and considerably more risk-bearing ESP rates to a CCA - creating a conflict of interest for the utility to take unfair competitive advantage in violation of AB117's requirement that utilities "cooperate fully" with CCAs (PUC 366.2(c)9) rather than undermine them as competitors, which all three utilities have asserted they are.

PG&E proposes Exceptional Implementation Costs as a fourth category (PG&E Opening Briefs, July 9, 2004, p.55). These are defined as "services required to provide functionality beyond that of the basic implementation package." We support the principal that elements not contained in a CCA's implementation plan should be considered exceptional and be repaid by the CCA in the same manner s as all eligible costs - either by ratepayers on a monthly basis or their CCA up front, according to its choice.

Yet the utilities'position is inconsistent on what they consider forcing the ratepayers to "loan" the money to ratepayers whose communities do Community Choice. The utilities argue that the CCA "First Adopter" such as San Francisco in PG&E's service territory, Los Angeles County in Edison's service territory, or Chula Vista in SDG&E's service territory should pay for any such transaction costs reasonably attributable to the CCA - "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 and at rates to be approved by the commission.

2. REQUIRING CCAS AND FIRST ADOPTERS TO PAY FOR TRANSACTION COSTS UP-FRONT VIOLATES AB117.

PG&E opines that "CCAs should pay in advance for exceptional services and service establishment services. This is standard Commission-approved practice in many areas where the

utility does significant work for a customer"(Opening Brief, p.69). [2] PG&E would include new metering work among these, even though metering work is specifically required by AB117 (PUC 366.2c18). PG&E claims that "(i)f advance payment or adequate security is not required, then ratepayers generally are financing the CCA's operation by fronting the money"(PG&E Opening Brief, p.70).

A monthly payment option is required by AB117. In addition to establishing the option of paying up-front for transaction costs (by the CCA), AB117 requires that the option be maintained that these costs must be recoverable from the CCA ratepayers through their rates. It matters not so much whether ratepayers enjoy the benefit of a "loan" from the ratepayer revenue pool in order to amortize payments through the rates - clearly the Commission has set many precedents in which the electric utilities benefit from "loans" from the ratepayers, who finance their very existence. CCA ratepayers remain utility captive utility customers for a range of services (default service, all customer service, billing, metering) so there is nothing inconsistent with giving them the rights of ratepayers to benefit from the revolving loan fund. This should not be limited to OOR or distribution accounts because the utility continues under statute as provider of last resort. AB117 establishes a permanent relationship between customer and the utility:

> 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

[2] It is interesting to note here that PG&E is referring to CCAs as "customers," contradicting their position that CCAs are Load Serving Entities and competitors relative to the application of confidentiality rules to CCAs. (PG&E Witness Sandra Burns, June 7, 2004 Evidentiary Hearing, p.454 line 22 to p.455 line 27; also S.G.&E Witness Jim Magill, June 8, 2004 Evidentiary Hearing, p.542, lines 6-9))

> 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. (366.2c11)

Thus, all accounts should be available to provide the "loan" from bundled service customers to ratepayers participating in a CCA in order to facilitate the statutorily required option of having ratepayers pay for those costs on their electric bills, as all other costs under consideration are paid, including the Competition Transition Charge, the undercollection charge for costs associated with the 5% rate cap in AB1890, the DWR obligation, and the Edison/PG&E bailout charges - not to mention the bonds that now underwrite the budget crisis. With the total charged on the ratepayer's monthly credit line now approaching $100 billion, it would be wrong to deny ratepayers that dare to implement CCA access to these funds in transactions exponentially smaller than what the utility shareholders now routinely receive.

Finally, to exclude ratepayers from access to the funds that violates other sections of AB117 - first a requirement that utilities co-operate fully with CCAs that investigate, pursue or implement AB117 (PUC 366.2c9), and second, a requirement that the Commission "shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers"; and third, would violate the right of customers to aggregate (PUC 366.2a1) by requiring up-front payments in advance of investigation, pursuit or implementation, and (4) would violate the authority of CCAs, notwithstanding the Commission's actions, to negotiate with ESPs, as negotiation would be barred prior to an up-front payment to the utility.

C. INFORMATION ISSUES - BILLING AND LOAD DATA

1. CONFIDENTIALITY RULES DO NOT APPLY TO CCAS

PG&E indicates that "customers are concerned about maintaining the confidentiality of their utility information."" (PG&E Opening Brief, p.62). PG&E cites witness Barkovitch in saying that "customers want to be able to make the decision as to whom the information should be released. They want to have control over that."" (CCSF/Barkovitch, Tr.747). However, this does not in any justify electric utility access to the confidential data, and more specifically whether customers trust a for-profit, unelected investor-owned utility with their information more than they would trust it with a non-profit, elected, ratepayer-formed local government.

PG&E proposes applying the same confidentiality rules that apply to ESPs to CCAs, proposing that customer name, service and billing address, account number, and usage data be withheld until written consent of the customer or after the first 60 days of the opt out period have passed. (Opening brief, p.62). Yet AB117 requires that (t)he 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*." (PUC 366.2c13). Thus, PG&E's position clearly violates the intent of the legislature that CCAs have this information prior to the transfer of customers. Thus the 15/15 and 500 kw rule do not apply to CCAs.

Furthermore, AB117 specifically requires utilities to provide this data not only to CCAs upon enrollment, but to CCAs that are merely investigating CCA:

> "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" (My emphasis, PUC 366.2c9).

Unlike electric utilities but like the Commission, CCAs are formed for the specific purpose of protecting consumers:

> "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" (PUC 366.2c1).

Thus, in addition the CCA implementation plan containing consumer protection measures as PG&E points out (PUC 366.2c3E and PG&E Opening Brief, p.64), AB117 includes consumer protection among the specific purposes of CCAs. Thus, unlike utilities, which exercise unrestricted access to confidential customer data, CCAs may be trusted with unrestricted access to the data under Commission rules and procedures. Under this construction, Local Power agrees with PG&E's suggestion that "as part of its review of the CCA's implementation plan and registration materials, the Commission should assure itself that the CCA has adequate procedures to protect customer confidentiality." (PG&E Opening Brief, p.64).

PG&E proposes that if the Commission agrees CCAs must have the confidential information prior to enrollment, that release of the data be tied to the CCA's implementation plan and in particular the consumer protection measures relative to confidential data (PG&E Opening Brief, p.65). However, as in the proposal to delay release of the data until enrollment, this approach would violate AB117's requirement that the data be provided by utilities to CCAs that *INVESTIGATE, PURSUE OR IMPLEMENT*" CCA (PUC 366.2c9). Clearly the legislature intended CCA's that wish to ascertain whether to PURSUE or IMPLEMENT CCA would first INVESTIGATE the option, and would need the data ("including, but not limited to, data detailing electricity needs and patterns of usage") in order to identify specific opportunities that would justify PURSUING or IMPLEMENTING CCA. Thus, AB117 requires the utilities to make the data available to a CCA prior to completion of the Implementation Plan. Again, Local Power suggests that the Commission condition the release of confidential data to CCAs that have passed an ordinance such as San Francisco's (Ordinance No. 86-04, May 27, 2004) establishing a CCA.

The Commission has full discretionary authority to place restrictions on the use of released data, and in fact state agencies routinely trust local governments, which are themselves agencies of the state of California, with sensitive data. Local Power recommends that the Commission restrict CCAs from releasing confidential customer information to any party but an ESP, and delay this release authorization until after the enrollment of a CCA's customers after the 60 day opt out period, in order to assure adequate consumer protection. Thus, the CCA could investigate and pursue CCA prior to implementation, would be able to notify all aggregated customers of their

impending enrollment and opt-out opportunity, without any breach of confidentiality taking place.

D. STRAWMAN

1. PHASING The Strawman assumes no phasing of CCA service. The Commission should clarify that phasing is allowable on condition that it conforms to the universal access requirements of AB117 and that all residential customers are offered service.

2. IMPLEMENTATION PLAN. Because AB117 makes the implementation plan the basis on which a CCA CRS is calculated, the details of the plan are a phase I issue. It would be advisable for the Commission to clarify its expectations for the plan during Phase I, including "consumer protection procedures," as PG&E suggests (PG&E Opening Brief, p.69) and "rights and responsibilities of parties" which could be made to include details that will enable the Commission to determine the net costs of a CCA's load departure, improve the accuracy of forecasting for resource planning, and allow the Commission to minimize the creation of stranded costs in its electric utility procurement process ®.01-10-024), as requested by the Governor in his letter to President Peevey. (Exhibit 47, p.1).

E. CCA CRS

1. TREATING THE CCA AS A SINGLE CUSTOMER FOR PURPOSES OF THE DISTRIBUTED GENERATION (“DG”) RULES IS APPROPRIATE AND NON-DISCRIMINATORY

Local Power supports TURN's proposed treatment of a CCA as a "single customer" under the Customer Generation Departing Load decision (D.03-04-030), making CCA's eligible for a CRS exemption under a 1500MW and 3000MW cap. Whereas under Direct Access customers selected service under an opt-in mechanism involving individual contracts, CCA customers select service under an opt-out mechanism involving a single common contract. (PUC 366.2c15).

Within that single contract, CCA's must comply with the Renewable Portfolio Standard, and large scale renewable generation facilities such as solar photovoltaics, fuel cells and other D.03-04-030 compliant resources will be among the available resources with which to comply with this legal requirement.

As participation in the purchase from all DG facilities will occur within a single contract, CCA creates the opportunity to "reduce transaction costs to consumers" (PUC 366.2c1) through the installation of large scale ultra-clean distributed generation that is favored by the Commission. Because these facilities are components of the CCA's contract portfolio, they are in fact acting as a single customer for purposes of the DG rules.

PG&E objects that the CCA "would be metering and charging the customer for energy delivered," (Id., p.32), but in fact the CCA is prohibited by AB117 from metering and charging the customer - tasks which the utility controls exclusively (PUC 366.2c9). The very fact that PG&E meters and bills these customers does not change the formation of the CCA as a single purchasing entity with universal access, equitable treatment of all ratepayers, and common terms

and conditions. CCAs are a single customer and are entitled to the D.03-04-030 CRS exemptions.

2. CCA CRS TRUE UP VIOLATES AB117

A CCA CRS true-up has been proposed by the utilities as a solution to the forecasting uncertainty that is involved in calculating the CRS. While Local Power (Ex.44, p.23-4), Cal Clera/Cicchetti, p.14-15 and LGCC (Ex.28, p.38) have proposed a fixed CRS, PG&E claims that "given the unpredictability of future market conditions, determining a 'one time' rate would be contentious and protracted." PG&E Opening Brief, p.22).

First, this is a policy argument, not a legal argument. While determining a fixed CCA CRS may be controversial, it would be no less so than utility procurement, which rate-bases utility power purchase agreements and utility-retained generation based on forecasting at the expense and risk of bundled service customers.

Second, PG&E admits in the above quote that costs associated with market volatility are inherent to the market, not caused by CCA, any particular CCA, or any particular CCA's customer: Therefore, under AB117, sharing these costs associated with inaccurate forecasting in calculating a CCA CRS among all ratepayers would not constitute cost-shifting., but are, rather, costs that are intrinsic to having CCA as an option to all bundled service customers. As costs associated with future market volatility are not attributable to a CCA customer, they may not be included in the CCA CRS calculation.

Third but most important, the policy argument presented by PG&E is overridden by specific provisions in AB117 requiring a fixed CCA CRS.

a. AB117 FORBIDS A CCA CRS TRUE-UP

AB117 specifically requires the Commission to provide a CCA with a dollar figure CCA CRS following a 90 day implementation plan, information request and certification of a CCA's implementation plan. AB117 limits the CCA CRS to two forms:

> (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 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. (PUC 366.2 (f))

Both forecasts would thus have to estimate costs from utility undercollections and determine New World Procurement costs "equal to" existing electric purchase contract that are "attributable to the customer."

Both of these utility collections would be authorized at the discretion of the Commission:

> *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). (PUC Section 366.2(c)5)

Thus, AB117 hardwires the ability to recover a CCA CRS itself (subdivisions (d), (e), and (f)) to the implementation plan and other information the Commission requires of a CCA. Given that the CCA CRS will be tied to the specific proposal of the CCA, it follows that much of the data needed for estimating the actual impacts of a CCA load departure would be tied to these details. It would follow that the true-up being proposed would be based on the inaccuracy of the Commission's determination of the cost recovery mechanism based on a CCA's implementation plan pursuant to 366.2(c)5. This plan is mandated to include 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.
> (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.

A True-Up of this charge is forbidden by the section of AB117 that describes the Commission's certification of the implementation and assignment of a cost recovery mechanism to a CCA's implementation plan:

> "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).)" (My emphasis, PUC 366.2c7).

Furthermore, subsection section f that is referenced (PUC 366.2f) indicates, again, that New World Procurement-related CRS *costs must be EQUAL TO the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer.." (See above for full quotation)* Thus, AB117 requires that the assignment of a CCA CRS to a CCA's implementation plan be a number - a *dollar figure.*

b. CCA CRS TRUE-UP PREVENTS TRANSACTIONS BETWEEN CUSTOMERS AND ESPs

PG&E claims that "the unsubstantiated assertion that CCA cannot be effectuated without a fixed CRS is extremely suspect":

> "because the resource mix (and cost of generation) between the utility and any CCA will not necessarily be the same, the utility's generation costs and the CCA costs are unlikely to move in tandem. Merely fixing one variable (the CRS) would not materially aid in attempting to make long term rate comparisons." (PG&E Opening Brief, p.23).

This is a rather bizarre argument resting on the grounds that no long-term rate comparison can be made anyway, so why not add greater uncertainty than there already is. In fact, CCA ratepayers will rationally compare rates of their ESP to utility rates, and will rationally determine and accept responsibility for the conditions of their service as they compare in the long run to utility services. The CCA CRS is not part of this choice, but, rather, a surcharge attached to the choice which a CCA needs to be fixed in order to make that rational, calculated decision. A fixed CCA CRS is a basic requirement of any CCA negotiating with an ESP. Without knowledge of a fixed CCA CRS , no CCA will know how an ESP's agreed upon rates will impact its members' electricity bills, and a rational choice between bundled service and an ESP's proposed service would be obviated in violation of AB117.

Whereas pursuant to AB57 and SB 1976 utilities may rate base their power contracts or utility-retained generation, CCA ESPs will shoulder a far greater risk in providing service at agreed upon rates, terms and conditions, and therefore require transparent knowledge of electric bill impacts for the duration of their contracts. Thus, the Commission is required to provide a dollar figure CCA CRS, not subject to true-up, pursuant to the statutory order that it facilitate transactions between CCAs and ESPs:

> "The commission shall take actions *as needed to facilitate direct transactions between electricity suppliers and end-use customers*". (PUC 366a).

A CCA CRS true-up would effectively prevent negotiation between ESPs and CCAs, and would violate the AB117 requirement that consumers be informed of the terms and conditions of a CCA program during the opt-out process.

c. TRUE UP VIOLATES CONSUMER PROTECTION STANDARDS

Unlike Direct Access, which employs an opt-in method in which each consumer affirmatively chooses a new supply, CCA employs an opt-out method in which the local governing board of a municipality or joint powers agency evaluates the offerings of Electric Service Provider on behalf of ratepayers (PUC 366.2a2) and makes a decision on their behalf. Whereas DA could and did cherry pick large and affluent customers, and excluded low -income ratepayers from participation as well as the vast majority of small residential and business ratepayers, CCAs have universal access requirements (PUC 366.2c4A) and must offer service to all residents (PUC 366.2b). As local city councils are making the affirmative decision by passing an ordinance (PUC 366.2c 10Aand 366.210B) to switch service on behalf of these more vulnerable customers, price transparency and stability are essential to negotiating CCA contracts.

> A community choice aggregator may group retail electricity customers to *solicit bids, broker, and contract for electricity and energy services* for those customers. (PUC 366.2c1).

Thus, fundamentally, a true-up violates basic consumer protection standards. State law requires that CCA customers be notified of the switch and the opportunity to opt out of the CCA.

> 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. (PUC 366.2c13A).

Providing “terms and conditions” to a ratepayer considering whether to opt out is part and parcel of facilitating transactions between ratepayers aggregating their load through CCA and ESPs. The Commission is therefore required to ensure that the “terms and conditions” enable a consumer to judge rationally whether the net electric bill im pacts of a CCA program will be positive or negative. A true-up would prevent this judgement, inserting radical uncertainty into the net electric bill impacts of the services offered, and is therefore unlawful.

A true up would undermine the ability of CCAs comply with the Renewables Portfolio Standard law (SB1078, 2002-Sher). Parties agree that CCAs must comply with the RPS law, under which CCAs must procure according to a scheduled mix from the current statewide level of 13% to 20% by 2017 - an eight percent increase RPS compliant resources in the electric mix.

Given that the vast majority of the existing renewable resources are recently tied up in utility procurement contracts, RPS compliance will certainly mean the development of renewable resources and energy efficiency, which is also authorized in great detail by AB117.

d. TRUE UP PREVENTS CUSTOMER-OWNED GENERATION, EFFICIENCY AND CONSERVATION

A true up in the CCA CRS would impede the ability of CCAs to build customer-owned generation, conservation, resource efficiency and RPS acceleration requested by both the Governor (Exhibit 47, p.1) and the Commission-adopted Energy Action Plan:

1. "optimizing energy conservation and resource efficiency and reducing per capita electricity demand";
2. "(a)ccelerate the state's goal for renewable resource generation to 2010":
3. "(p)romote customer and utility owned distributed generation. (Energy Action Plan, Adopted May 8, 2003 by the CPUC, April 30, 2003 by the CEC, and April 18, 2003 by the CPA, p.2).

Unlike electric utility procurement and Utility Retained Generation, which under AB57 and Decision 04-01-050 (January 22, 2004) will win pre-approval to rate base power purchase agreements and even power plants without traditional Commission review of contracts and severely restricted access even to forecasting data, customer owned generation and the efficiency and conservation elements of CCA (PUC 381.1) will depend on a contract between the CCA and its chosen ESP (PUC 366.2c15). Security on this contract will be subject to a 120 day opt-out process (PUC 366.2c11 and 366.2c13) by aggregated ratepayers. A CCA CRS true-up would insert a radical additional uncertainty into CCA contracts that include customer-owned generation, conservation or energy efficiency components, potentially making such contracts impossible to negotiate, in violation of AB117.

3. CCA CRS SHOULD NET COSTS VERSUS BENEFITS TO BUNDLED SERVICE CUSTOMERS

PG&E has indicated that benefits from CCAs that implement a 40% Renewable Portfolio Standard should not be credited to CCAs based on three reasons.

a. Benefits are Material. PG&E claims that the benefits may not materialize or if they do bundled service customers may not benefit (PG&E Opening Brief, p.25). Yet, as with the assignment of costs to a CCA's implementation plan, "materialization" depends on the signing of a contract by the CCA, at which point it becomes legally binding to all parties. Meanwhile, the Commission has discretion to determine the dollar value of the benefits associated with the implementation plan.

b. Benefits are Comparable and Commission has Discretion to Make Determination. Second, PG&E claims that proponents have not compared this benefit to utilities actions to determine whether bundled service customers would benefit (*Id*). Again, the Commission has discretion to compare the relative benefits and determine the net CCA CRS.

c. Benefits Offset Costs, Not an "Incentive." Third, PG&E claims that if the benefit does exceed the utility's actions, an adjustment to the CRS may not be the best means of "providing the appropriate incentive" (*Id.*). But the credit was not proposed as an "incentive"[3] but rather as a simple means of employing the Commission's standard "net" definition of costs in the term "cost-shifting" so that "costs" covered by a CCA CRS will indeed by "attributable" to a CCA customer based on that plan, and therefore be consistent with AB117. The Commission need not be concerned with incentives but with fairness and compliance with state law.

[3]The utilities are indeed seeking "shareholder incentives" before they will offer such "benefits" that CCAs are seeking voluntarily

PG&E suggests that "to the extent that the Commission chooses to create incentives for certain public policy actions they should apply equally to CCAs and utilities on a systematic and uniform basis." (*Id.*, p.26) This is a curious double error in reasoning. First, PG&E is confusing a CCA CRS calculation method with the creation of a shareholder incentive framework - a different issue entirely. Second, under a net CCA CRS calculation, because the benefits of a net CCA CRS would go to CCA customers, so any credit from greener utility procurement, being paid for by utility ratepayers, would not lawfully go not to PG&E shareholders, *but to all bundled service customers.*

PG&E disputes that CCAs have offered benefits in other states or that California CCAs already in formation would offer the benefits they have promised:

> The Commission should be extremely wary of claims that somehow an unregulated CCA is likely to be more benevolent to bundled ratepayers than an equivalent Commission-regulated utility....Instead, there has been no proof (other than stated intentions) that CCA either has provided these benefits in the past or will do so in the future." (*Id*., p.30)

Indeed, San Francisco has passed an ordinance *requiring* its implementation plan and Request for Proposals to include bidding requirements that qualifying ESPs build a massive renewables far above the levels required by the RPS law or proposed by PG&E, installing 360 Megawatts of solar, wind, efficiency and conservation for a CCA with 650 MW base load (San Francisco Ordinance 86-04, May 27, 2004). In Ohio, the 900,000 customers now being served through CCA include 650,000 customers whose switch from coal and nuclear to natural gas and

renewables- powered generation resulted in a net 75% pollution reduction, and a 33% greenhouse gas reduction, virtually making them comply with the Kyoto treaty - all with no rate increase.

PG&E's position is a self-fulfilling prophesy. If San Francisco and the dozen California cities seeking a 40% RPS (which is a 28% increase over current levels rather the 8% mandated by SB1078) face an unfair CCA CRS that does not reflect the massive benefits of their programs to bundled service customers, they may indeed never materialize. However, if these benefits are reflected in the CCA CRS, early studies indicate they will be successful with no need for increased rates.

4. A LIMITED CRS EXEMPTION SHOULD BE GIVEN TO LOAD THAT IS SHOWN OR DEEMED TO HAVE BEEN EXCLUDED FROM THE LOAD FORECASTS

AB117 specifically requires that CRS for DWR and utility contracts be limited to actual costs that are attributable to the actual customers who are being charged through their CCA. While 366.2(d) (1) indicates that "It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers" for Department of Water Resources contracts, it also indicates that CCA customers "should bear a *fair share* of (DWR) electricity purchase contracts." 366.2(e)(1) indicates that CCA customers should pay "A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs" meaning the fair share of bond charges is what they would otherwise have paid had they not participated in a CCA. Finally, 366.2(e)(2) provides that a CCA customer should pay for "(a)ny

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." Because the load at Norton base was not included in the DAR's forecasts, the DAR did not enter into power electricity purchase contracts on behalf of loads associated with Norton, and incurred neither bond charges nor other costs related to these customers. Therefore, the load at Norton should be exempt from the DAR component of the CRS.

5.CRS EXEMPTION FOR ELECTRIC UTILITY PROCUREMENT IS NEEDED

The exemption should be even broader. The principle proposed by Mr. Clarke of IDA. is that unforecasted load should be exempt from a CRS because DAR costs are not attributable to such load. Clearly, this principle should be applied in all instances. Whereas DAR obligations were incurred by a state agency acting to relieve Pacific Gas & Electric, Southern California Edison and San Diego Gas & Electric of their historic obligation to serve their customers (and thus also the regulatory compact itself) in the middle of a government crisis, New World utility procurement is a new process conducted pursuant to Assembly Bill 57 (Wright, 2002), which was signed by Governor Davis on September 24, 2002 - the same day he signed AB117. AB117 itself is very clear that CRS obligations associated with utility procurement shall be limited to *costs associated with a particular customer*. 366.2 (f) provides that a retail end-use customer purchasing electricity from a CCA shall reimburse the utility that previously served the customer

for (1) " The electrical corporation's unrecovered past under collections for electricity purchases, including any financing costs, *attributable to that customer*, that the commission lawfully determines may be recovered in rates" and (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 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." Thus, the utility CRS to be imposed on CCA customers for both under-collection and New World Procurement are statutorily limited to costs associated with each customer, and must have been avoidable - meaning costs associated with over-procurement by utilities are not recoverable from CCA customers.

6. A CCA CRS EXEMPTION IS NEEDED TO PROTECT AGAINST CONFLICT OF INTEREST BY UTILITIES CONSIDERING CCAS AS THEIR COMPETITORS

Witnesses from PG&E, Edison and SDG&E have each indicated that they consider CCAs to be their "competitors." In particular, PG&E witness Sandra Burns indicated that "while PG&E does not necessarily view CCAs as competitors in an adversarial sense, PG&E does recognize that there may be healthy competition in seeking to reduce customer cost," and classes them as "Market Participants" alongside Electric Service Providers and other sellers of power. SDG&E and Edison's witnesses have made similar statements, ignoring AB117's *assertion that "Customers shall be entitled to aggregate their electric loads as members* of their local

community with community choice aggregators (emphasis added, PUC 366.2. (a) (1)), and also that "(n)otwithstanding 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.*" (Emphasis added, PUC 366.2 (c))(1)). This presents a serious legal conflict for the utilities, because the officers of PG&E, Edison and SDG&E have a fiduciary responsibility to their shareholders to maximize their return on investment. If the utilities view CCAs as competitors, the utilities have an incentive to over-procure in order to deliberately create stranded costs and an increased CCA CRS, in order to prevent CCA load departures. Yet AB117 requires that "(a)ll electrical corporations shall *cooperate fully* with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs" (PUC 366.2(c)(9). As the utilities have said they view CCAs as competitors, they put themselves in the position of violating their fiduciary responsibility to their customers, or violating the law. As AB57 authorizes procurement without Commission review of contracts, a dangerous situation could face the commission unless it establishes mechanisms with which to prevent over-procurement. With the potential advent of shareholder incentives, this problem becomes deeper. Thus a CCA CRS exemption is not only appropriate but needed.

7. A CCA CRS EXEMPTION FROM COSTS ASSOCIATED WITH UTILITY OVER-PROCUREMENT WOULD NOT VIOLATE THE COST-SHIFTING PROVISIONS OF AB117

While AB117 has provisions that express the principle of avoiding cost-shifting from CCA customers to bundled service customers, it clearly does not intend for this principle to be applied according to a gross cost, but rather a net cost, definition, as it is in all CPUC ratemaking proceedings. For example, while 366.2(a) 17 provides that "(a)n 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," it also indicates that "*(a)ny costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers*, as determined by the commission. Thus, AB117's principle of avoiding cost-shifting does not mean that bundled service customers should not bear any of the costs associated with CCA in general, and may not be used simply to charge a CCA wherever there is a cost associated with CCA's in general.

8. A CCA CRS EXEMPTION FROM CERTAIN KINDS OF ELECTRIC UTILITY PROCUREMENT WOULD NOT BE BARRED BECAUSE OF THE "INDIFFERENCE PRINCIPLE" FROM DIRECT ACCESS

The principle of indifference does not govern CCA and should be modified to reflect changes introduced by AB117. First, because AB117 section 366.2(a)(3)(b) provides that "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," and section 366.2(c)(4)(A) requires that CCA implementation plans include provisions for "universal access," CCA customers are statutorily required to include all bundled service customers in a CCA jurisdiction who do not

opt-out of the CCA program. Unlike Direct Access, under which cherry picking of customers with optimal loads was allowed and widely practiced, CCA's are subject to universal service requirements, thus CCA customers are by definition indistinguishable from bundled service customers, and are entitled to the same protection against cost shifting from utility over-procurement that bundled services customers deserve. Second, because Section 366.2(c)(9) provides that "(e)lectrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs," CCA customers, unlike DA customers, are statutorily required to remain utility customers for all utility services, and as such are entitled to the same protection against cost shifting from utility over-procurement that is enjoyed by bundled service customers.

9. OTHER PARTIES THAT ARE SPONSORING PROPOSALS IN THIS PROCEEDING FOR EXEMPTIONS FROM COST RESPONSIBILITY SURCHARGES

Apart from IDA., The Utility Reform Network (TURN) supported the establishment of a "credit" for CCAs that develop eligible new generating resources, similar to the exemption given to customer generation departing load (TURN, Florio Reply Testimony, pp.11-12). The California Clean Energy Resources Authority (Cal-CLERA) proposed that cost responsibility surcharges be reduced based on various factors (Cal-CLERA, Cichetti Opening Testimony, pp.20-22). The Local Government Commission coalition (LGCC, Monsen Opening Testimony, pp.25-28) suggested it may be appropriate for the CPUC to provide limited exemptions to CCA programs (LGCC, Monsen Opening Testimony, pp.25-28).

10. BENEFITS TO BUNDLED SERVICE CUSTOMERS SHOULD BE INCLUDED IN A CRS CREDIT ESTABLISHED ACCORDING TO THE INFORMATION REQUIRED BY THE COMMISSION IN A CCA'S IMPLEMENTATION PLAN

As I indicated in my opening testimony, the current crop of CCA's now spending funds on implementation have set a goal of a minimum 40% Renewable Portfolio Standard. Whereas the 20% RPS law will result in an 8% increase under California's current statewide average of 12% renewable in the mix, the CCA cities'40% RPS will result in a 28% increase. Clearly, this will have a significant beneficial impact on bundled service customers in the form of freeing up thousands of Megawatts of transmission capacity for use by bundled service customers, eliminating the need for new transmission to meet regional growth, eliminating the need for substation and line upgrades, and decreasing the likelihood of blackouts for bundled service customers. A more specific example is illustrative. The City and County of San Francisco has already indicated in its recently adopted CCA ordinance that it will not accept bids that do not include 360 Megawatts of new wind, solar, energy efficiency and conservation measures for a customer base that ranges from 650 Megawatts to 850 Megawatts of load. With a minimum of 211 Megawatts of this being installed on the distribution side of PG&E's substations, this CCA will make at least 211 Megawatts of transmission capacity available to bundled service customers in the South Peninsula that are served by the same PG&E transmission line. These sorts of benefits are tangible and should receive a commensurate CRS credit.

11. THE CPUC'S DISCRETION IN GRANTING EXEMPTIONS TO COST RESPONSIBILITY SURCHARGES

IDA. witness Thomas Clarke (Prepared Testimony, p.4) is correct in saying that CPUC Decision (d.) 03-04-030 established the legal framework for analyzing the CPUC's discretion in granting exceptions to the CRS, in particular that "AB 117 gives the Commission the authority for imposing a 'fair share' of cost responsibility on customers (D.03-04-030, p.39). I also agree with Mr. Clarke that "(t)he CPUC's determination of "fair share" appears to turn on whether load was reasonable assumed to be included in the underlying load forecast used by DAR to support its power purchases." (Clarke Prepared Testimony, p.5).

12. OTHER CRS EXEMPTIONS THE CPUC SHOULD USE ITS DISCRETION TO GRANT TO CCA CUSTOMERS

As I stated in my Opening Testimony (Paul Fenn, Local Power, April 15, p. 4), the Commission should limit CCA CRS obligations according to an annual "Integrated Resource Calendar" (IRC) under which the Commission can plan, triage and coordinate between CCA load departures and electric utility procurement according to a uniform schedule. We propose that the Commission employ an IRC to circumscribe and annually modify its utility procurement forecasting, AB57 authorizations and energy efficiency funds allocations based on annual CCA notifications/compliance with the IRC including specific planning and implementation deadlines that are specified in my testimony. Under such a process, we have proposed that the Commission limit AB57 electric utility procurement authorizations to allow 5-10% of statewide aggregate investor-owned utility customer load to depart from electric utility procurement each year (Paul Fenn, Local Power, April 15, 2004, p.11). At a minimum, the Commission should use its discretion to exempt CCA's and CCA customers from any electric utility procurement that would

encroach on this 5-10% CCA load departure window. In addition, the Commission should use its discretion to exempt CCA's and CCA customers from any electric utility procurement authorized after a CCA has approved an ordinance as outlined in section 366.2(c)(10) (A) for an individual municipality or county, and 366.2(c)(10)(B) for Joint Powers Agencies formed by multiple municipal and/or county jurisdictions.

13. CCA CRS EXEMPTIONS ON COSTS ASSOCIATED WITH UTILITY PROCUREMENT AUTHORIZED AFTER A CCA HAS APPROVED AN ORDINANCE PURSUANT TO AB117 WOULD NOT CAUSE COST SHIFTING AS DEFINED IN AB117

As indicated above, AB117 specifically limits CCA CRS obligations for utility procurement to contract costs that are "equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer," (PUC 366.2(f)(1) and 366.2(f)(2)). Thus AB117's definition of "cost shifting" relative to CCA CRS is the same as it is relative to implementation or transaction costs, but in the case of the CCA must be a number ("equal to") and must be attributable to the customer herself.

As I have repeatedly cited, AB117 provides that costs associated with CCA in general that are not reasonably attributable to a particular CCA "shall be recovered from ratepayers, as determined by the commission." (PUC 366.2(c)(17)). Thus, bundled service customers may pay for costs associated with CCA in general - that is, costs which are inherent to having CCA as a permanent recourse to bundled service customers under California law. Because AB117 requires that every CCA to prepare and pass an ordinance to implement CCA, to prepare and file a detailed

implementation plan with the Commission and wait 90 days to receive certification and a CRS from the Commission ((366.2(c)(3)), then undertake a 120 day opt-out period for notification of customers and opt-out prior to the actual transfer of customers, the utility procurement costs and risks associated with this time lag are not attributable to the CCA's customers, but are, rather, inherent costs associated with CCA in general. Accordingly, these costs should be born by all bundled service *customers*, who under AB117 have an interest in maintaining their "entitlement" to aggregate (PUC 366.2(a)) and depart utility procurement - and in this sense will benefit from the availability of CCA as a permanent recourse to high electric utility rates that may be incurred by electric utilities pursuant to AB57. Given that it is AB57, not any historical "regulatory compact" or "obligation to serve" (both of which were abrogated by the utilities when the state assumed their obligation to serve California ratepayers at great expense in 2001) that now authorizes utility procurement, it is clearly in the interests of ratepayers to have this recourse, and logical that they would bear the costs of maintaining Community Choice in order to keep it available to them. Considering that CPUC Decision 04-01-050 on January 22, 2004 also formally eliminated Commission review of electric utility procurement contracts, replacing it with a surrogate "procurement review committee," the diluted regulatory authority of the Commission over electric utility procurement may not provide adequate protection for residents, emphasizing the fact that bundled service ratepayers need Community Choice as a permanent option, and should bear any CCA-related costs that are not attributable to a specific CCA or to a specific customer. In particular, the incremental added cost associated with an electric utility entering into short-term contracts in order to make room for a CCA which has provided notice, and at minimum for 5-10% of it customer load to depart each year, should be born by bundled service customers - the cost of having CCA as a recourse.

14. COMMUNITY CHOICE ORDINANCE PROVIDES VALUE FOR ELECTRIC UTILITY PROCUREMENT PLANNING

Because the Commission has discretion to apply a CCA CRS exemption under certain circumstances, it has the implied authority to define under what conditions it will grant CCAs exemptions, including notification requirements in both the statutorily required CCA ordinance and the statutorily required CCA implementation plan. The CCA ordinance approved by San Francisco provides a useful example of how a CCA ordinance might provide the Commission and the utility with basic planning tools. Attached, please find the City and County of San Francisco's "Ordinance establishing a Community Choice Aggregation Program," (San Francisco Ordinance Number 86-04) passed by the San Francisco Board of Supervisors on May 11, and signed by Mayor Gavin Newsom on May 27 (Attachment 1). This document not only declares San Francisco a CCA, but it also includes a number of specific bidding requirements. First, the ordinance indicates that an Electric Service Provider's prices must include the cost of installing 150 Megawatts of n new wind capacity, 107 Megawatts of load reductions from new conservation and energy efficiency installations, and 104 Megawatts of new Distributed Generation such as fuel cells including 31 Megawatts of solar photovoltaic cells. The ordinance specifies that the Electric Service Provider, not the CCA, must post a bond or demonstrate insurance to cover the potential cost of an involuntary return of customers to Pacific Gas and Electric. Finally, the ordinance establishes a nine-month schedule for adopting an Implementation Plan and Request for Proposals that are consistent with the ordinance. These details offer significant planning tools to the Commission and Pacific Gas & Electric in their AB57 procurement process - tools that eliminate uncertainties (and related costs) associated with a particular CCA. The Commission has

discretion to improve on the San Francisco ordinance template in order to eliminate any other uncertainties (and related costs) associated with a particular CCA. Should it do so, any remaining costs from utility procurement would be not associated with any particular CCA, but would rather be costs that are inherent to having CCA as a bundled service customer entitlement - and thus may be born by bundled service customers without causing cost shifting as defined by AB117.

X. Conclusion

Local Power looks forward to further clarification of these issues in coming weeks,

Respectfully,

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CERTIFICATE OF SERVICE

I certify that the following is true and correct:

On July 23 2004, I caused to be served an electronic copy of the attached:

Reply Briefs of Local Power

on all known parties to R.03-10-003, or their attorneys of record, for whom an e-mail address has been provided.

Executed this 23rd day of July, 2004, at Oakland, California.

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R.03-10-003
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