BEFORE THE
PUBLIC SERVICE COMMISSION
STATE OF NEW YORK

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In the Matter Regarding the Proceeding
on Motion of the Commission to Enable
Community Choice Aggregation Programs. CASE 14-M-0224

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Honorable Kathleen H. Burgess, Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York, 12223-1350

COMMENTS OF LOCAL POWER INC. ON CASE 14-M-0224

Local Power Inc. (LPI) is pleased to submit its comments on the New York Public Service Commission's (Commission's) White Paper and Order Instituting Proceeding and Soliciting Comments on a Motion of the Commission to enable Community Choice Aggregation (CCA) programs in the state of New York.[1] LPI has reviewed the Staff White Paper (White Paper) and hopes that our comments are constructive to the Commission's intention of making CCA a platform for the fulfillment of its "Reforming the Energy Vision" (REV), which we view as a re-restructuring effort to fix the failures of Direct Access in New York. This effort will enable the vast majority of customers and much of the load will receive meaningful retail service, and also provide a platform for "Utility 2.0", a service focused on energy efficiency in homes and businesses integrated with locally sited renewable generation that physically and commercially benefits the local people in the neighborhood, municipality and county or adjacent municipalities, known as Distributed Energy Resources (DER). DER is focused on renewables within substation service areas or at most regional facilities with local physical use, and also energy efficiency broadly construed as both lighting and customer-owned building automation, plus integration and sharing technologies such as microgrids and associated renewable energy storage such as customer-owned dynamic automobile chargers, flywheels, and electrolysis fuel systems.

LPI is very pleased that the Commission is considering CCA within the context of several proceedings to reform New York's energy industry and regulatory practices to promote

[1] Case 14-M-0224 (issued and effective December 15, 2014).

"deeper penetration of renewable energy resources such as wind and solar and wider deployment of distributed energy resources (DER)" and to "increase participation of and benefits for residential and small commercial customers in those markets, most notably the Commission's REV and Retail Markets proceeding,[2] in which LPI is also participating, and to which these comments are intended as an informational supplement.

While LPI staff has appeared twice in person at the Commission's headquarters to brief both staff and Chair Zibelman in the past six months, this document constitutes our first written comments to be submitted to the Public Services Commission as a whole, thus we feel that a brief introduction of our experience and qualifications regarding CCA is appropriate.

In New York State, LPI was engaged by Hudson Valley-based Citizens for Local Power (CLP) in 2013, drafting CCA legislation that was sponsored by Assemblymember Kevin Cahill. LPI's legislation, which Assemblymember Cahill filed in February, 2014, "(a)uthorizes certain municipalities to participate in a community-wide energy aggregation program where they can request bids, select an energy service provider, install energy efficiency measures and develop local renewable energy facilities to provide electric and/or gas supply services, including gas efficiency and renewable heating technologies to participating customers."[3] LPI has worked with CLP to engage the communities and local government officials of the Hudson Valley during the past year in addition to meeting with PSC chair Zibelman and staff working on the related REV and CCA proceedings.

LPI staff drafted the nation's first CCA legislation and law in Massachusetts in 1995[4] and has worked exclusively on CCA for twenty years. Local Power was formed as a grant-funded project in 1995[5] and incorporated in California in 2007 specifically for the

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[2] Case 14-M-0101 (issued April 25, 2014).

[3] See A08883/S07087 (filed February 27, 2014) Bill Summary, page 1. LPI's New York State CCA bill is numbered A08883, sponsored by Assemblymember Kevin Cahill and co-sponsored by Senator Sweeney as S07087 in the Senate. Other bill co-sponsors are Barrett, Skartados, Crespo, Moya, and Lupardo. This legislation would enshrine the "CCA 2.0" approach to CCA policy rules and procedures outlined in these comments, including detailed provisions on CCA access to utility data.

[4] Senate 447, 1995 (Montigny) and Chapter 164 of 1997.

[5] After leaving the Massachusetts Senate, LPI staff formed Local Power as a small business. American Local Power Project, its first project, was a public official education campaign, creating a national clearinghouse newsletter, web site and public education campaign that led to CCA laws in Massachusetts, Ohio and New Jersey. LPI staff wrote a newsletter, American Local Power News, which was printed and mailed to 2000 local municipal officials in California, Ohio, New Jersey, Massachusetts and several other target states considering electric industry restructuring following the adoption of California's "landmark" electric restructuring law, which

purpose of helping CCAs to form and implement a new business model that we like to call "CCA 2.0." Decades ago, LPI helped draft what could be called the older CCA 1.0 legislation in Ohio and New Jersey in the late 1990's[6] and finally drafted "next generation" CCA legislation – or "2.0" - for the state of California that was adopted in 2002,[7] which was focused on enabling a longer-term and more integrated form of power procurement with greater and earlier access to end user utility data, control of energy efficiency funds, ability to implement on-bill financing and other policy components to support a shift of focus away from merely "two dimensional" power procurement discounts and RPS acceleration, and towards program goals to which REV is perfectly aligned, specifically DER deployment, renewables and efficiency finance, and energy as a service. LPI participated actively in the California Public Utilities Commissions CCA proceeding and was the most highly compensated intervenor for contributions to the two major CPUC decisions on CCA in 2004 and 2005.[8] LPI was actively involved throughout the CCA formations in Marin, Sonoma and San Francisco, being engaged as consultants for program design by Sonoma (2006-11)[9] and San Francisco (2009-13),[10] and bidding unsuccessfully in Marin's Full Requirements RFP for retail electricity, transmission scheduling and local renewables build-out and energy efficiency programs implementation (2009).

LPI also participated actively in the political defense of CCA against hostile and anti-competitive actions by Investor Owned Utilities (IOU), particularly Pacific Gas & Electric (PG&E). With CPUC regulations completed in 2005, negative lobbying and campaigning by IOUs delayed the implementation of a CCA until 2009. In 2009-10 LPI formed and led the "No on Proposition 16" campaign with The Utility Reform Network, against a state-wide ballot initiative to materially eliminate CCA as an option for California municipalities. Prop. 16 was drafted and solely backed by PG&E, which was defeated, and political opposition ceased in 2012 when CEO Peter Darbee was retired after spending cumulatively over one hundred million dollars opposing CCA. Since, PG&E has scaled back resistance, but continues a strategy of cost shifting and regulatory

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excluded CCA despite lobbying efforts. California reconsidered and adopted LPI's CCA law in 2002.

[6] New Jersey's was approved in 2003 after a surprise last-minute killed CCA opt-out language when the original NJ legislation was approved during the efforts of Ratepayer Adcvocate Blossom Peretz, who championed opt-out and was cut out of the circle when legislators secretly deleted key opt-out language that is necessary for CCA to exist compared to conventional deregulation products based upon individual customer choice as opposed to community-wide choice through CCA.

[7] Assembly Bill 117 (Migden); Chapter 838, 2002.

[8] CPUC CCA Rulemaking R-03-10-003, Phase I and II Decisions (2004, 2005).

[9] LPI document post at http://localpower.com/SonomaCleanPower.html.

[10] LPI document post at http://localpower.com/CleanPowerSF.html.

exceptions to protect them financially from competition, primarily CCA. This IOU strategy has led to increased rates for smaller users and a less conservation focused incentive system within which large users are charged less – a strategy of dividing the market and leaving small, less attractive, customer classes to the competitive market. As we will elaborate below, this is the obverse of the redlining proposed by the initial Retail Wheeling bills that started electric industry restructuring in the early 1990s.

Finally, LPI staff members have intervened and testified as expert witnesses in several CPUC proceedings impacting CCA, such as California's investor-owned utilities' power procurement (2005), energy efficiency funds administration (2006), and finally at Pacific Gas & Electric's most recent General Rate Case (2012) proceeding. Thus, LPI is very familiar with the manner in which market design across multiple regulatory proceedings can impact the technical and economic feasibility not just of CCA, but of CCA 2.0.

I. SUMMARY

While LPI developed CCA as a tool for DER beginning in 2000, most of the original CCA laws were written in the mid-1990's when the focus of most legislative bodies was not DER development, but retail energy choice. CCA was originally put forward as a competitive market structure or platform – a form of retail choice - on which to develop DER and reduce greenhouse gas reductions, but its strongest selling points to that time was to provide a better basis for both greener power and cheaper power for the majority of energy users, and a majority of the energy demand. Early CCA laws, regulations and thinking continue to dominate the CCA discussion in Illinois and Ohio and even New Jersey, with most CCAs remaining focused on obtaining short-term discounts for their customers. Another prejudice of deregulation during the 1990s was the idea that market segmentation was a good idea. Early forms of restructuring were called "retail wheeling" and often involved only commercial and industrial customers having the option to opt-out of the utility service and receive power from other providers wheeled across the distribution grid under state approved tariffs. These were rejected as a form of cherry-picking, leaving the vast majority of business and residential customers under an old cost of service plus rate of return monopoly, while allowing a white flight of the largest, richest, most successful companies to negotiate for cheaper, new power plants owned by the likes of Enron.

A key market design criterion to justify competition is whether it includes the majority of customers . If it does not, the market design is flawed and not justifiable under basic regulatory maxims under the traditional regulatory compact. Community Choice Aggregation was adopted ultimately because it is the only market design that delivers

retail choice to all, including the poorest customers and the richest. The main power of CCA is to effectuate the opposite of market segmentation of redlining, and the bottom-feeder logic of deregulated energy companies that focus on high value customers, focusing public and ratepayer resources on the fewest and richest among residents and businesses. Massachusetts originated CCA as noted above.[11] The initial motivation and support for CCA in Massachusetts was an appreciation of how uniquely appropriate a market structure CCA is to DER. Categorically, CCA is aligned to systemic demand reduction through localization, real-time and onsite operation to aggregate operational and financial integration. Being procurement managers and not power suppliers, CCAs are uniquely poised to implement multiple parallel technology build-outs in a conventional and dense formation crossing between public and private infrastructure (such as microgrids). This describes precisely the process and nature of DER build-out at significant penetration levels. One should not think of it as simple DER technology randomly sited and operated in separately run, discrete operational schedules, but as multiple facilities under diverse ownership, but with automated operation designed for maximum avoided wholesale power and distribution cost value, and with Demand Response capabilities administered in real time with short term procurement and scheduling decisions as well as distribution planning. In order to have high penetration the market design must create dynamic market forces, not compromise to balance existing market forces.

New York's Energy Services Companies (ESCOs), which currently serve the Direct Access Market in New York, should be requested to adapt business models to the new environment, and be encouraged and educated to develop DER capabilities or form business consortia with other companies to come up with bundled DER retail energy products. If ESCOs are left behind by Commission CCA rules, they will merely regard CCA as new competition. Based on experience with the ESCOs the Commission should also approach DER companies to encourage them to form or enter into an alliance with an ESCO to create such a project. DER companies are as a rule more innovative and technology-focused than energy companies which are operated on a banking model, so DER companies represent not merely additional competitive suppliers to serve CCA 2.0 communities, but are arguably more prepared intellectually for the REV agenda. The middleman role played by ESCOs requires only capital to exist, which many DER

[11] Senate 447 (Montigny D-New Bedford, written by LPI staff prior to formation of Local Power, 1993-4, filed 1995) was the original form of CCA legislation, reflected in Chapter 164 of 1997. California's was adopted in 2002, with development on DER starting there with the introduction of a "meet or beat" rate paradigm with bidding focused on portfolio transformation schedule under RPS and MW capacity build-out requirements – Ordinance 447-07, 2004 using voter-approved Charter Amendment drafted by LPI staff 2001 – Charter Section 9.107.8, 2001, or "H Bonds").

companies now have, however the complexity of trading power is insignificant compared to the complexity of building and operating diverse onsite energy technologies in parallel. It should be thought of as a new kind of wireless power operator, appropriate because of the community-based location-specific orientation of a CCA as a legal public structure. The art of achieving CCA 2.0 concerns setting up a system so that cities with limited extra money to spend on consultants preparing complex programs can go to one or two government-sanctioned "market neutral" agencies to gather utility data. In this way, CCAs can receive adequate data in order to make the basic governance and policy decisions needed to go to market to request for proposals for power supply from an ESCO and a series of solicitations to DER developers and operators.

Above is a description of the work that Local Power Inc. has prepared in order to design a multi-year build-out and power substitution plan to ensure that forecasted power costs are supportable by the revenues being collected on remaining electric bills. Planning this 5-10 year transition to a significantly and materially local DER-based energy supply is needed so that the right amount of remaining grid power is anticipated years into the future, and the net bill impacts of varying wholesale costs and reduced demand is optimized to continue to meet or beat the prevailing utility and/or ESCO rates and bills. While LPI performs this modeling for CCAs, at the cost of hundreds of thousands of dollars, we recognize that this data would better be maintained and updated monthly by a state entity that has open channels and connections (in California, MDMA) with utility distribution and energy market data – and potentially at cost savings to municipalities. This is outlined below.

The energy cost model must show revenues by rate class so that site specific technologies locally applied can be predicted to offset the appropriate amount of revenue, and allocations of value to customers that choose financed DER products be credited and billed appropriately for their rate class. Thus, LPI recommends that NYSERDA, PSC or another established state-sanctioned agency prepare energy cost models for each IOU in New York State and keep it accurate in a database form in a manner made available to CCAs so that they can run DER build-out models through the energy cost model. Secondly, the accelerated development of DER depends upon the ability to tailor products and use the ratesetting and control of CCAs over rate design to offer site-appropriate, aggregate load-optimized products to ratepayers. Ideally, these functions would be fulfilled by one ESCO with multiple capabilities. While some ESCOs have limited DER development experience, CCA has inspired some CCA suppliers to partner with DER developers or pilot projects for some particular DER technology like photovoltaics.

CCA is above all a new platform for what was once called Integrated Resource Planning (IRP), when it was a regulation of utility procurement with emphasis on demand reduction. However, CCA faces a marketplace that has pursued the opposite direction, of dis-integration of procurement into products and niches. Renewables are state mandated, energy efficiency a subsidy, in many markets – a result of decades of "location neutrality"—delocalization of transmission cost allocations to statewide customers irrespective of who is served. Deregulation and liberalization have lowered the bar by reducing all democratic power over the industry, harming the economics of local business relative to imported resources. Reversing this trend is as important to the idea of resilience as blackout protection or backup systems. Local ownership, local businesses providing services versus large distant corporations, and local labor rather than commuters, are essential to true energy security and the sustainability of local economies under an increasingly uncertain global marketplace. The following sections provide detailed content by subject.

Market Design: Align Interests to REV Proceeding Outcome, Assign Appropriate, Real World Roles to Appropriate Parties [12]

The Commission should establish a truly, completely neutral DSP. There is a basic logic to having the utilities be the Distribution Service Provider (DSP). The core of the state's strategy is to create an appropriate role for the monopoly distribution owners. Therefore, it is a distribution enhancement or upgrade to build a new layer into the system which is not owned by the utility, but can reduce its costs, delays and rates by selecting sites that do not increase a distribution system upgrade schedule, while ultimately selecting sites for their onsite economic and carbon benefits and by reduced system-level wholesale power procurement costs. This allows the DSP to provide maximum DER benefits to the distribution system operator, but focus DER development on sites which provide both the distribution benefit *and* the larger benefit of displaced wholesale power procurement. No DER site selection should ever be allowed by the distribution grid owner - T&D Demand Response benefits limited and reflect only a small portion of the benefits of DER. T&D benefits are 5- 10% cost factors in delivered power, wholesale offsets create most cost effectively and achieve scaled pollution reduction benefits.

DER economics depend more upon energy wholesaler trader in charge in real time short environments. Integration should be based on real-time power markets first and distribution systems second.

[12] As the CCA proceeding order instituting rulemaking defined CCA as part of and in relation to the REV proceeding, LPI is commenting on points of REV that directly impact CCA and vice versa, so there is some crossover here reflecting the Commissions final question 18 on page 21 of the white paper.

The power procurement manager should select, develop and operate sites, not the distribution utility. The best, lowest cost, meaning the highest economic potential for DER penetration in New York State, consists of a balance of T&D benefits based on a PSC tariff and actual real time power costs that are sold directly by a CCA to itself – localization, not merely Demand Response Tariff payments. It is critical that the PSC understand the core of economic feasibility rests not on T&D enhancement, but on onsite economic benefits and aggregate customer benefits from load reform that reduces the across the board cost of service to the peculiar load shape of any given CCA.

Customer uses should define the products, not utility uses to open the DER and ESCO market to the vast majority of customers, namely the small commercial and residential customers, those customers and not the utilities must ultimately receive physical service from those facilities, enjoy offset meter reductions for those customers, and ultimately be owned by those customers and ideally can, through a CCA using local developers and contractors, be designed, built, operated and maintained by local businesses and residents, too.

These are onsite power uses that include lower cost, more resilience, and customer share ownership benefits**.** DER site selection to reform aggregate load curves defines technology selection, such that all customers benefit from installed systems from a lower capacity charge factor, peak factor, fuel price factor-based costs and therefore both lower and more stable, predictable, and fixed rates years into the future rather than one month into the future, which defines New York State's current system.

Government, third party/wholesalers should be in placed in charge of site selection, design, building, operating, and maintaining DER. If utilitiy distribution system monopolies select sites or have administrative control over selection of winning contractors, there is a market power problem regarding DER developers or CCAs as "Competitors," a market design and deregulation theory failure that has had severe and negative impacts on the development of CCA and DER in California. Ultimately, that the DSP should not be in the DER business is no less true than the statement that the investor-owned utility needs unbundling and market neutrality relative to the availability of ESCO competitively priced supply for Direct Access to work. In the case of CCAs, the community-wide nature of the service is uniquely concerned with geographic localization and demand reduction and will be directly involved in development of DER in a manner that has optimal, multifarious benefits to the local cost of service, utility bills and maximum local DER development.

DER Operation should be under performance contract with procurement manager. Ideally the performance of DER must appear as a resource that is economically comparable to

and operationally dispatchable to reduce the need for competitively sourced power, such that the ESCO itself, or another contractor or staff chosen by the CCA, should plan, finance, select, design, build, operate, maintain and control performance of installed systems relative to planned wholesale procurement. This was the function of Integrated Resource Planning – that all the cost factors of a business model be internalized in the rates, which constitute the dominate price-point consumers use to evaluate energy products. The "utility of the future" will be created not through a new incentive to old companies, but new players whose business models are specifically focused on DER technology development.

In creating the cell phone industry, the key government support structure was not incentives to AT&T but the creation of new entities, the wireless operators, to acquire licenses and build out networks. Similarly, the Commission and state should view DER in the REV proceeding, not as technology that any party will develop, but one which will be built by dynamic new players. The Commission's major goal should be to align incumbents and provide a coherent commercialization platform upon which these new players may regard New York State's REV policy goals as a coherent marketplace. In recent years, major entities such as Google have entered the renewable energy business; presenting CCA on DER within regional contracts for power as indeed a uniquely revolutionary platform to make DER happen in an accelerated, parallel build-out rather than just another program layered onto the old system.

In our view, the optimal market design would have the utility DSP providing distribution system load pocket data and transacting DER and DR, and another state agency providing municipalities investigating CCA with (1) aggregate energy cost modeling based on utility tariffs and end-use meter data and (2) individual end use meter data presented in a GIS format.

Market Design: CCA Integration

Access to all data except names with addresses converted into coordinates. CCAs that create strategies around DER development have access to detailed end use meter data needed for individual site dynamic load considerations as well as aggregate load and system level volumetric data in order to create cost models for retail electricity service, create DER technology and condition selection criteria, and plan for parallel provision of power and build-out of DER resources.

Whereas in the initial states approving CCA were concerned only with wholesale power procurement and therefore required aggregate and customer class data only, CCAs with DER development at center stage of their policy goals require distributed data at the

individual end use customer meter data early on in the formation process. Because DER technologies are renewable and able to be sized to demand, the assessment and locally based specifications for economic and technical potential of DER technologies involves a reverse-engineered marketing process in which tailored products are offered rather than technology marketing.

Again, market design seeking to maximize economic feasibility of penetration must create the greatest value proposition to the end use customer hosting and physically using the power generated, as opposed to exported power on net metering tariffs, which are equally blind to locational energy use. DER development must find the delta, or economic "sweet spot" between onsite economic optimization and aggregate economic optimization in site selection, within which the T&D benefits in a Demand Response tariff are mixed in with wholesale power costs and aggregate load duration curve reform, volumetric surcharge costs and customer utility bill offsets for an optimal balance between passive customers who simply do not opt-out and opt-up customers who sign up for financed local DER product ownership and on-bill benefits.

In order to achieve CCA 2.0 and realize REV goals, Commission rules and procedures for CC should use the following basic structure:

- **Governanc**e – Implementation Plan decisions should contain major program parameters.
- **CCA Control of Rates** – No caps or requirements, no limits on exit fees outside existing state law
- **Enrollment** – Full spectrum of customers should be included under the opt-out requirement.

II. STAFF WHITE PAPER COMMENTS

The Commission staff's CCA White Paper appropriately underscores the prioritization of DER as a framework for CCA policy, and focuses on strengthening the market power of the vast majority of customers that fall under the categories of residents and small businesses.

The Commission staff correctly observes that CCA could extend the same benefits of electricity choice to aggregated small customers that it currently provides large commercial and industrial customers.[13] The Commission also recognizes the relationship between achieving scale and load stability:

[13] Commission Staff White Paper, page 5.

"Without a guarantee of sufficient scale of participation, aggregators may not be able to negotiate prices or terms that are substantially better than offers available to individual customers."[14]

But there appears to be a presumption that large commercial and industrial customers should also be separated from the opt-out based services offered by CCAs, as if to enshrine the redlining resulting from New York's partly failed retail electricity market. It is critical that the Commission recognize how important inclusion of large commercial and industrial (C&I) customers, as a well as government loads, for two major factors impacting cost of service to a CCA, specifically both scale and load shape/duration curve. The white paper appropriately and importantly seeks "deeper penetration" and "wider deployment" of DER resources.[15] Deeper penetration of DER depends on two major factors: first the cost of installed capacity being in inverse proportion to the economically feasible penetration rate, and second, the technical capacity to interconnect on a DER build-out schedule – limitations like customer-financing subscription rate, site acquisition and utility interconnect, local permitting, state and federal permitting if any is required. The participation of commercial (C&I) customers significantly augments and enhances the ability of a CCA to provide residential and small commercial customers with DER benefits. Foremost, including large C&I customers balances the daily and seasonal load shapes with daytime peaking vs. night-time residential peaking, as a typical case. As local renewables have temporally constrained hours and seasons of generation, low cost is designed through optimal matching of onsite renewable resources with onsite demand patterns.

The white paper acknowledges the value of CCA on the ESCO side, but is less clear about the unique potential for DER and REV goal realization:

"The potential benefits of CCA programs include price stability for a fixed contract term, the potential for lower prices and more favorable terms, and the ability to design a program that reflects local preferences and needs, including a preference for cleaner power sources. CCA programs also have the potential to enable ESCOs to secure a large number of customers at relatively low marketing costs, thereby creating the scale to accelerate deployment of value-added services such as home energy management."

It is important that, here again, the PSC's paper identifies the importance of scale for the success of DER products within a CCA, and that the CCA is uniquely able to achieve such a scale.

[14] Commission Staff White Paper, page 6.
[15] Commission Staff White Paper paragraph 1, page 1.

In addition to creating inherent mutually cost-reducing benefits for both small and large customers though community-wide aggregation, commercial and industrially loads also add scale of DER impact in terms of localization footprint, as they typically consume disproportionate amounts of electricity and heating fuels compared to all other customers. Losing even a few large customers often means losing significant volumes of demand and pollution being caused within CCA boundaries. Excluding commercial and industrial load trivializes or makes more shallow the DER opportunity that CCA uniquely offers. By increasing the volume of revenue and financial security (add load balancing benefits, etc.) of the CCA and benefits to be shared across customer classes, C&I customers are crucial to successful CCAs, as Sonoma and Marin have shown in California. Not only do CCA laws allow CCAs to service commercial and industrial customers, but most who do, including California, include them on an opt-out basis too. Like New York, California has significant Direct Access participation by large commercial and industrial customers, who in a CCA have a choice between Direct Access service and CCA service.

CCAs are not allowed to "take customers" from ESCOs during their contracts, but do compete with them directly when their contracts expire and they otherwise would return to Default Service. In fact the largest customers in CCA territory are disproportionately beneficial to the exercise of market power by smaller customers, particularly in smaller municipal environments such as the Hudson Valley. Excluding them shrinks the scale of CCA impact drastically, and thus reduces availability of competitive products to small customers, and raises the costs and thus limits the penetration potential of DER in general, both to large and small customers. This presence of a competitor for C&I business from CCAs also represents an increase in competition, downward pressure on price, incentive for CCAs and ESCOs to offer C&I customers renewable and efficiency products and services – an enhancement of the overall market conditions.

Indeed, Sonoma Clean Power began its countywide service in 2014 with large commercial customers only. As a result, the CCA could begin service and quickly develop cash reserves as the smaller customers were phased in during the following year.

Sonoma as a model for CCA governance:

Sonoma Clean Power is a good precedent and example for conceptualizing a DER CCA in New York State, both because it is rural but includes small cities, and because Sonoma Clean Power is the most focused on the development of local renewables and demand-side programs such as Demand Response. In fact, most CCAs form small new agencies to manage and implement programs, and must build up internal capacity as part of DER planning – including a balance sheet for purposes of long-term investment and DER financing. As in Sonoma, cities and smaller communities in New York will likely enter

into inter-municipal agreements to form new CCAs with increased investment power based upon increased startup cash flow allowed by these cooperative structures.
The Commission should view CCAs focused on DER as public start-ups that need their formation process, which is based upon community engagement, public hearings and potentially a public vote, to result in a capacity to manage and plan power procurement and DER development in parallel. The staff white paper presents a "lighter" version of this in describing CCA formation as simply a relationship between a city council and consultants:

"Except as otherwise specified, references in this Order to municipalities include (a) municipalities as defined in the General Municipal Law §2 and (b) groups of municipalities. In addition, many of the functions discussed could be performed by consultants acting on behalf of municipalities or groups of municipalities."[16]

DER development depends upon the CCA establishing stable revenue and cash reserves to qualify to issue financing to build out DER. First and second year build-out are also achieved through long-term power purchase agreements with DER developers, but scaling out into multiple parallel small format development pathways depends upon phasing-in load and planning to sign agreements to lock-in rates, and local permitting, local contractors and local labor management, are part and parcel of a robust DER build-out, and the CCA's preparedness to build out DER is based upon the scale of revenues captured and developable sites with large loads within the CCA territory. As mentioned above, CCAs need flexibility to use the defining mechanism of CCA as a policy, which is the opt-out mechanism.

The white paper also wisely focuses its policy framework on enhancing the market power of the vast majority of businesses and residents who are described as "small" customers:

"(S)ince the restructuring of markets in New York in the late 1990s, the Commission has sought to ensure that residential and small non-residential customers have the opportunity to participate in and benefit from retail energy markets, where energy services companies (ESCOs) sell energy to customers."[17]

We are pleased that the Commission believes itself to be authorized to implement CCA directly without the need for state legislation, and only notes that legislation was prepared as referenced above for statewide CCA, and we would encourage staff to review this legislation as a guide to policy and rules. "Based on comments received in this

[16] Commission Staff White Paper, page 5.
[17] Commission Staff White Paper, paragraph 1, page 2.

proceeding, as well as further research and engagement with stakeholders, the Commission may permit CCA programs under standards similar to those described in this Order and the White Paper; permit CCA programs with wholly different standards; or, take other appropriate action."[18] LPI is satisfied that no legislation may be necessary, but that legislation is available and filed dealing with many of the main issues and questions raised by the Commission Staff White Paper, such as data access, opt-out rules, rates and consumer protection, governance and processes of formation, Commission roles, etc.

Staff expressed concern that New York's existing market, which involves monthly rate changes, may complicate CCA implementation here. LPI's view is that New York's rate volatility is an economic opportunity for both CCA and DER, both of which can offer more stable rates. It is a form of hedging: a "hard" option in which there is only upside risk: the risk that utility rates will drop below a fixed rate and make it "look" expensive.

"In addition, while other states have seen positive results from CCA in the form of fixed commodity prices that are lower than for the utility's default product, as described in the White Paper, none of the states that permit them structure their utility supply charges to fluctuate on a monthly basis in response to market conditions. In New York, a fixed-price contract offered by a CCA can provide pricing certainty as compared to the variable supply charges from the utility."[19]

And also,

"Depending on the circumstances, a fixed price offered by a CCA might result in higher or lower overall costs to customers." [20]

LPI views the New York system's variability contrarily as an ideal market environment for CCA 2.0, which may also be called DER-CCA – the monthly volatility being an opportunity to stabilize wholesale energy rates in New York State, and a dynamic environment for DER performance and Demand Response integration. Energy security is a form of insurance: agreeing to a longer-term rate in return that is competitive compared to the average rates of insecure, volatile power at the point of enrollment. For most consumers, there is a higher value to avoiding a sudden loss than to winning an unexpected gain. Those customers who are so involved in markets as to seek sudden gains from energy savings are extraordinary and likely to have other reasons to want to

[18] Commission Staff White paper, age 3-4
[19] Commission Statf White Paper, page 5.
[20] Commission Staff White Paper, footnote 5, page 5.

develop the capacity than normal energy procurement. Consumers are ultimately looking for stable, reasonable rates.

Financing mechanisms:

The white paper mentions the Commission might authorize a CCA to "assign a portion of customer payments to the funding of the construction and operation of distributed energy resources."[21] LPI is not aware that such authorization would be required for CCAs, which through the authority to set rates may establish cash reserves for investments that will provide power and economic benefits to the aggregate community-wide load. CCA laws do not specify authorization to assign, as this power is implicit in the CCA's or inter-municipal entity's authority to enter into PPAs with renewable operators as they do with ESCOs, or to issue revenue bonds or use other financing for DER projects. These powers are implicit in existing law.

The Commission properly anticipates two categories of clean energy components – one focused on greener supply, and another focused on repaying financing for DER:

"Some CCA programs also involve clean energy components. This can be through a provision in the contract that a fixed percentage of the electricity supplied, up to 100%, will be from renewable or other specified sources; through the offering of an additional opt-in option to residents under which a percentage of electricity supply is from renewable sources; or through the collection by the municipality of a portion of customer payments for the creation of a fund that can be used to finance building or installation of renewable generation, energy efficiency projects, or other clean energy measures."

This passage acknowledges several important aspects of certain CCAs. 1) That they case set as their base product an energy mix that meets RPS goals (Sonoma and Marin). 2) That through polling you can identify customers who want to 'Opt-up' to other products that need not be virtual (as in % increase in virtual green power supply). 3) That CCAs can finance the development of resources and offer financed efficiency and renewables to businesses and residents. This process is outside the conventional policy envelopes developed in all states other than California, and is based on analyzing and identifying DER host and ownership candidates using utility usage data collected from utilities and other data held by governments concerning land use and other important factors for site evaluation.

[21] Commission Staff White Paper, p.6.

Rules for establishing a CCA:

The White Paper correctly describes the conventional method of CCA formation by ordinance of a city council for municipal CCAs or through a vote on the governing board formed by inter-municipal agreements based on existing law:

"Municipal officials would then enact an ordinance as required by GML §360(3)–(4) and plan for a referendum as required by GML §360(5), or follow the procedure required by an alternate grant of municipal authority."[22]

It is true that California, which far and away leads CCA, certainly with regard to achieving goals such as are anticipated in the REV, does not require majority voter approval by a local voter referendum, but other states like Ohio do require voter approval by a simple majority. LPI believes that the ability of CCAs to offer universal service to all customers, including large industrial customers, by the opt-out enrollment mechanism that defines CCA, is of primary importance to the success of CCA to achieve REV goals, and a majority referendum requirement would be acceptable provided that CCAs may offer opt-out service to all customers including large commercial and industrial customers who choose not to renew ESCO contracts under Direct Access service.

And it is important to point out, as referred to in the introduction, that IOUs like Pacific Gas & Electric attempted to stymie the development of CCAs by imposing, through a state wide ballot initiative, a requirement for a referendum.[23] Because CCAs involve multiple public meetings and formal approvals, a referendum may not be necessary, but may be appropriate, particularly if policymakers feel that including commercial and industrial customers in CCA service offerings justifies greater formal community approval.

Data & Planning

The white paper's provisions regarding data are, as indicated above, insufficiently specific to facilitate DER planning during the investigation and pursuit of CCA, specifically prior to actual implementation of CCA which typically uses a public solicitation process using Requests for Proposals, Requests for Qualifications and other common formats of competitive bidding for municipal contracts:

[22] Commission Staff White Paper, p. 10.
[23] Majority approval is required in Illinois, Ohio and New Jersey, but not in Massachusetts or California where local municipal ordinances suffice.

"…the municipality would request that the distribution utility that serves its residents and businesses provide it with data necessary to issue a solicitation for the provision of CCA services. The data would be aggregated for all residents and businesses receiving supply service from the distribution utility, including the number of such customers and their aggregate gas and electric usage. This data could also include a separate total for residential and applicable business customers taking service from an ESCO. At this stage, no personally identifiable information (PII) would be transferred. The utility would furnish that data to the municipality or consultant within a time frame fixed by the Commission."[24]

The white paper would require CCAs to enter into contracts prior to receiving energy usage data:

"After entering into a contract, the municipality would request, from the distribution utility, data necessary to contact residents receiving supply service from the distribution utility,"[25]

This is inappropriate for the reasons sited above, but simply put because data is needed to negotiate with ESCOs and DER developers and operators.

The white paper would not transfer data to the CCA until after customers are enrolled, when the end of the opt-out period occurs and load is established:

"Once the opt-out period has passed, the municipality would transfer to the ESCO the data necessary to enroll all residents who have not opted out."

Again, the inability to hold and analyze data prior to negotiation means that negotiations would be conducted without basic information for ESCOs, much less the detailed data needed to solicit bids from REV developers. In the passages above we encounter an important issue. What data does a CCA need to achieve the REV goals, when does it need it, and why?

DER, unlike traditional central station power, requires sophisticated knowledge of where and when specific electrical demands are occurring. To limit the data available, or make it available only in stages, from low granularity at first, to high granularity at some future point – and crucially after power contracts have been entered into by the CCA – prejudices the CCA development process away from DER and toward traditional supply.

[24] Commission Staff White Paper, p.12.
[25] Ibid, p.12.

The idea of limiting data until after customer enrollment adds another uncertainty layer to negotiation – uncertainty about the rate of opt-out enrollment, but any information at all about the nature of the load being enrolled. This uncertainty not only artificially disables the CCA from rationally planning its program and customer phase-in, but also creates a premium for failure to plan, which harms the environment for DER development and raises rates for all aggregations unnecessarily.

Below are the California Public Utility Commission's Findings of Fact, Conclusions of Law and Orders reflecting its key reliance on Local Power's argument that AB117 itself requires a full disclosure, interpreted broadly, with a CCA nondisclosure agreement to protect confidentiality of customers[26]:

- Finding of Fact # 38: "CCAs would 'investigate or pursue' CCA programs prior to offering service and a CCA would need relevant customer and load data in order to conduct a meaningful investigation of CCA programs" (p.62).
- Finding of Fact # 39: "A CCA cannot notify customers of its intent to offer electrical service if it does not have access to relevant customer information" (p.62).
- Finding of Fact # 40: "In the CCA's effort to satisfy customer notice requirements, tax rolls are not a reasonable substitute for customer information held by utilities partly because property owners would not necessarily be a utility customer of record" (p.63).
- Finding of Fact # 41: "Nondisclosure agreements would provide reasonable protections against the disclosure by a CCA of a utility's customer information.
- Finding of Fact # 42: "CCAs may need specific customer information in order to market energy services and tailor those services to individual customers or groups of customers" (p.63).
- Finding of Fact #43: "CCAs need load data in order to develop cost-effective and reliable energy procurement strategies" (p.63).
- Finding of Fact # 44: "Customers would benefit from notification that contact information and usage data may be shared with the CCA and may not be disclosed to others" (p.63).
- Conclusion of Law #30: "Section 366.2(c)(9) requires the utilities to provide all relevant information required by CCAs to "investigate, pursue or implement"

[26] Found in: "Decision 04-12-046 December 16, 2004 / 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) / ORDER RESOLVING PHASE 1 ISSUES ON PRICING AND COSTS ATTRIBUTABLE TO COMMUNITY CHOICE AGGREGATORS AND RELATED MATTERS"

meaningful programs. This requirement does not permit the utilities to deny CCAs access to relevant customer or load information" (p.67).

- Conclusion of Law #31: "Section 366.2(c)(13)(A) requires CCAs to provide customer notice of their intent to provide service, a requirement a CCA cannot satisfy without relevant customer information. Read in conjunction with Section 366.2(c)(9), this requirement presumes that the CCA will have access to certain customer information held by the utility"(pp.67-8).
- Conclusion of Law #32: "Section 366.2(c)(9) requires the provision of detailed billing and load data to CCAs that are investigating, pursuing or implementing CCA programs" (p.68).
- Conclusion of Law #33: "The utilities should require CCAs to sign nondisclosure agreements when they share confidential information about customers or electricity load and should require a county or city's chief administrative officer to attest that it is "investigating" or "pursuing" status as a CCA as a precondition to receiving confidential customer information" (p.68).

The white paper envisions a process for soliciting CCA service:

"The solicitation would include the aggregate data provided by the utility and information on program features the municipality seeks. For example, a municipality could ask for contracts including certain terms or with fixed prices; state a preference for contracts that include commitments to purchase certain levels of renewable or local generation; or, instruct ESCOs to include in their bid prices a small per kWh or Btu charge that would be transferred to a consultant, a municipal fund, or both. ESCOs would also ensure that their bids comply with any requirements imposed on CCA programs by the Commission. "

This approach to CCA creates a good basic concept of how a CCA pays consultants on a performance basis and establishes cash reserves and credit to provide the basis of financing DER and implementing DER build-out on a scheduled per month basis in coordination with customer phase-in and wholesale power procurement. However, it is conceptual in nature only and should not bind the manner in which CCAs pay counterparties.

The white paper also envisages an ESCO-centric business model for CCA in which the ESCO is the only major counter-party:

"Once the period of time set to receive bids elapses, the municipality would select an ESCO. Based on engagement with residents and businesses and in consideration of municipal policy goals, the municipality would choose the bid that best fits local needs. The municipality would then enter into a contract based on the winning bid. If, on review, the municipality determines that no bidder has offered sufficient value, the municipality may hold another RFP or terminate the CCA process. "[27]

This may be a popular method for CCAs, as this approach is being used by CCAs in New Jersey and Illinois, but other states, particularly with CCAs focused on DER, CCAs tend to contract out to multiple counterparties and in some cases several grid power suppliers, as in California. Furthermore, as mentioned above, because of industry trends, DER developers may be more promising counterparties, with ESCOs as subcontractors or wholesale purchases ultimately to be conducted in-house if the CCA has the resources to develop this capability.

The quote above is based upon approaches assuming RFPs only for conventional power supply, not RFPs for DER development which, to make them scalable and financially viable, need to be integrated into supply planning, but whether the core planning is done by an ESCO or a DER developer is not certain, and in some cases municipal agencies will want to hire local labor and therefore directly administer local contractors through full-time staff. The same assumptions apply to local DER labor training programs, which will consist of municipal nonprofit contractors and/or municipal job training programs, depending on local resources and practices.

Again, there is a tendency in the above description to require the CCA to first recreate the conditions of its present supply, with a third-party providing generation where the IOU did formerly, physically unchanged. It may be a virtual green product, RPS compliant, 100% green, etc., without building anything new: but DER must be built.

Double Benefit, Double Loss?

If a CCA, enabled by the detailed data described in this submission, can place solar array on a daytime business, sized to the demand of that business or perhaps to allow sharing with neighboring businesses, and designed to provide onsite power, the CCA and its customer have achieved a double benefit – in terms of wholesale power not procured based on this new capacity to provide power and reduced strain on the distribution system, a double benefit.

[27] Commission Staff White Paper, p.11.

However, if a CCA is locked into a supply contract first, with the DER to be layered on at a later date, then the CCA is of course constricted by its supply contract, and DER has been delayed as now energy efficiency represents a loss of revenue owed to a supplier, and renewables represent new capacity that is not needed under the terms of the traditional supply contract. Further without the data and supply integration necessary for CCA 2.0, the local solar becomes a blind offering to whoever wants to have it. It then goes on the roof of a large residence which is mostly empty during the day, and therefore does not reduce demand for wholesale power, and, since the power it produces must be exported, leads to congestion and the need for upgrades on the distribution grid, a double loss.

CCAs have to plan, with detailed utility data for their customers as well as the data municipalities already hold for their citizens, for the beginning to integrate DER, or risk recreating the delays and financial conflicts that exist in the present market. By phasing in customers strategically, CCAs can start up with minimal credit or cash reserves and largely self-fund their administrative costs without burdening their General Funds. Minimizing the costs of formation is important for planning and funding administrative capacity to develop DER as part of a program.

The white paper clearly anticipates DER development in the white paper, but the appropriate order for a CCA that is newly formed to undertake these activities is off slightly:

"…renewing the ESCO contract or initiating a RFP process for renewing the CCA program; and administering and eventually spending any municipal fund created through the program, including through engagement in municipal energy planning. This could include purchasing and installing renewable generation facilities or other distributed energy resources and administering those facilities." [28]

Ultimately, this language or approach does not anticipate the integration of DER with ESCO supply. "Energy planning" and "installing renewable generation" are considered only after supply contracts, not integrated with them. The language should also address the need for CCAs to negotiate the terms of substitution of new DER into the ESCO supply.

Again, we wholeheartedly support the policy definition on CCA as a DER development platform:

[28] Commission Staff White Paper, p.14.

"CCA programs can also support the deployment of renewable generation, energy efficiency programs, home energy management, and other distributed energy resources (DER). In concert with CCA programs, municipal governments can collaborate with ESCOs, DER providers, and utilities to engage in energy planning that can provide price savings and public policy benefits."[29]

CCAs can directly finance DER, and their primary focus is to provide to customers in a jurisdiction products, which cause local physical changes to the energy supply. The idea is to integrate DER planning into municipal (and county) planning, which can direct a long-term development and infrastructure financing processes, with vital resources like electricity and heat. Rather than treat these kinds of goals and capabilities as secondary or afterthoughts, the opportunity to integrate planning, operational and financial design into a single critical path that includes DER development and financial capacity is what makes CCA 2.0 a unique opportunity for REV – as opposed to CCA 1.0.

LPI can provide three illustrative examples of how data analysis and community engagement processes of more and less successful CCAs with DER.

CCA 2.0 Success Stories

The evolution of CCA 2.0 has taken years to realize and finds its best expression in three CCAs that are under service – Cape Light Compact in Massachusetts and Sonoma Clean Power and Marin Clean Power in California - and a fourth more ambitious program that has had its implementation plan certified and exists officially but has not initiated services – CleanPowerSF in San Francisco.

Cape Light Compact - Among these, Cape Light Compact represents a program that began as a CCA 1.0 program and over the course of fifteen years has gradually involved into a program that might be described as CCA 1.5. Specifically, Cape Light Compact has come to redefine its marketing message to customers in terms of promoting energy efficiency rather than power supply, and has come to regard its local solar photovoltaics and energy efficiency programs as more strategically important to customer retention and loyalty than power supply and short-term discounts.

So in message and in diversity and accomplishment of its programs, the Cape Light Compact comes quite close to CCA 2.0, except for the gradual manner of deployment and the unbundled nature of its program components. While CLC emphasizes its energy efficiency and local renewable projects, and has innovated to develop a local financing authority for local renewables, it has continued to separate its power procurement

[29] Commission Staff White Paper, p.15.

planning from its renewables planning. In part this has resulted from unfavorable CCA rules and market design in Massachusetts that restricted the ability of CLC to more fully integrate local DER and into its retail energy product.

The "piecemeal" approach to CCA, or CCA 1.5, is better than 1.0 in that it focuses program criteria on DER development, but inferior to 2.0 in that it fails to "bake" CCA program design into a coherent plan for DER development on a multi-year basis, and therefore will achieve much less DER development. In some ways the Cape Light Compact approach to DER is similar to the Westchester County's recent petition to the Commission to allow and facilitate a CCA pilot project in Westchester County. In this case, Sustainable Westchester is seeking only aggregate data from utilities, as it is not currently planning DER as part of the CCA supply definition, but intends to use this wholesale power-only process in a manner to augment other existing local energy efficiency programs and local renewables programs that are already administered locally by or under Westchester County. The petition's proposed "OURS" system of collecting funds from customer payments to support local DER is reflected in the Staff White Paper, but is a very limited form of DER financing in which incremental funds collected are applied to subsidize or incentivize DER development.

Thus, like CLC in Massachusetts, Westchester will solicit power from an ESCO in a solicitation that does not itself develop DER, which will be handled incrementally under separate tracks.

Marin Clean Energy - Marin Clean Energy formed about half a decade ago after the Marin Energy Authority (MEA) was formed specifically with the purpose of reducing greenhouse gases in Marin. Today Marin has a very high Renewable Portfolio at 51% as its generic or primary product, as well as a highly diversified portfolio of suppliers, and its rates have meet or beat PG&E's 20% renewable product average. But very few of MEA's resources would count as DER, as the management chose to rely heavily on unbundled Renewable Energy Credits for RPS definition and focused on the cheapest possible Power Purchase Agreements out of county many miles from the CCA in the Central Valley.

So in terms of REV goals of increasing penetration of DER, Marin Clean Energy is only today beginning to focus on "Local Power." Until recently, DER was missing from MEA's portfolio, and load reductions from energy efficiency almost nonexistent. In recent years, following the start of service of Sonoma Clean Power directly to the north, MEA has shifted its strategy, discontinuing the purchase of Renewable Energy Credits and shifting resources to local DER development.

However, while MEA has shifted its message and resources five years after forming, it is a classic example of a new CCA that failed to fulfill its stated mission by delaying its resource decisions until after the community engagement and political formation occurred. Former supervisor Charles McGlashan, founding chairman of MEA, talked the talk of DER in order to mobilize the activist base and rally public and media support for MEA, but behind the scenes opted to avoid "hard" political votes on whether to develop and or finance DER when the CCA went to market to negotiate with suppliers.

As a result, MEA sent a mixed message to the public and to RFP bidders, saying they welcomed proposals for DER development, but then ignoring proposals that were submitted and signing a five year conventional power agreement with Shell North America with a great reliance on unbundled RECs to qualify as "green."

This strategy was successful in simplifying the internal votes needed to launch the problem during a particularly difficult period of time when local investor-owned utility Pacific Gas & Electric was aggressively campaigning against CCA locally and statewide, but it also missed the opportunity for the major policy decisions to take place when they would naturally occur, namely during formation.

As a result, in the weeks following the launch of Marin Clean Energy service, public attention around CCA withered. MEA meetings that had been filled with hundreds of community members became empty, and the press stopped paying attention. Governance of the CCA reverted to staff management, which lacked the political authority necessary to make decisions about committing to DER long-term contracts or financing DER. As a result, some half-decade has passed before MEA's governing board began to refocus on DER development, and the program structure, like Cape Light Compact, is also not integrated into a single transition process to DER.

Sonoma Clean Power - Sonoma Clean Power could be said to be the first CCA in California to approximate what LPI would properly call CCA 2.0. Today, while its Renewable Portfolio is lower than Marin Clean Energy, at about 33% (PG&E's is 20%), its first actions were coordinated to focus the mission of the agency on DER development. Specifically, upon forming, SCP limited its wholesale power procurement to shorter periods while entering into long-term Power Purchase Agreements with renewable energy, photovoltaics and DER developers, including DER with local geothermal operator and a local water district. Within a year of launch and while customers are still being phased in, SCP is already launching an initial Demand Response program, and is focused on DER technology deployments such as electric vehicle car chargers and In-city community solar shares programs.

They key difference between Sonoma and Marin was the Sonoma's local agencies studied detailed end use meter data during a long program design period that provided sufficient context and definition so that elected officials could confirm their support for a localization-oriented program during the formation period. Unlike Marin, there was no unpeeling of rhetoric from reality, and staff now in charge of the agency are empowered to fulfill the governing board's decision. That is why LPI would direct the Commission to study Sonoma's formation as an example of how to implement CCA 2.0.

III. SOLICITATION OF COMMENTS

Question: *Should non-residential customers who are not served by ESCOs be included in CCA programs on an opt-out basis? If not, should they be included on an opt-in basis? Should any inclusion of small non-residential customers be based on the UBP definition of that phrase, or should municipalities be able to include a differently-defined group of non-residential customers in CCA?*

Answer: Yes, commercial customers should be included, but they should not be included on an opt-in basis, but an opt-out basis, just as residential customers are served. The legal principle in California, which has the most comprehensive and well designed legislation, is "Universal Access". All customers within the boundaries of the CCA municipality are offered service on an opt-out basis to prevent red lining and ensure the scope and success of the CCA by including large C&I customers who enhance the economics of the CCA. Those customers, either C&I, small commercial or residential may then opt-out of the service if they so choose. Marin and Sonoma Counties has been successful offering service to both large and small businesses.

2. Question: *Should customers already served by an ESCO be included in CCA programs? If so, how can they best be offered that opportunity? Some customers may be month-to-month under contracts with no termination fee or their contracts may be about to expire, and find the CCA contract offered attractive. Others may be willing to pay the early termination fee to obtain CCA benefits. What are the benefits and costs of allowing program participation of customers served by ESCOs?*

Answer: Yes, customers served by ESCOs should be offered the new, often advantageous (lower cost, more stable) choice of CCA service, and it should best be offered through the same opt-out mechanism used for other CCA customers when ESCO contracts expire. ESCO customers actively manage their energy choices, and opt-out of commercial customers is the standard for CCA, such as in California where opt-out commercial service has been an important opportunity for early stage CCAs using a phase-in strategy to minimize implementation costs. C&I customers can be added when

their current ESCO contracts expire or if possible or desirable cancel their ESCO service per the terms of their contracts and join. The same is broadly true of smaller customers served by ESCOs. In all cases, customers who do not want CCA service can opt-out and have many opportunities to do so.

3. *Question:* *Should customers who participate in a low-income energy assistance program administered by a utility or receive Home Energy Assistance Program (HEAP) benefits be included in CCA* on an opt-out basis? If not, should they be included on an opt-in basis?
Answer: California Alternative Rates for Energy (CARE), customers receiving subsidized rates for energy based upon their income, are protected in the same when enrolled in a CCA. The CCA should be required to serve all HEAP customers who do not opt-out. As with "Universal Access" this require prevents CCAs from cherry-picking only those customers who are profitable to serve (though customers may be enrolled in defined Phases).

4. *Question:* *What provisions, if any, should be made to allow customers who move into the region served by a CCA after it has commenced, to participate in the CCA? Similarly, what provisions should be made to allow customers who are served by an ESCO at the time the CCA has commenced, to participate in the CCA at a later time, or to allow customers who initially opted out to later opt in?*
Answer: Customers who move into an area may be offered service. The question of stranded costs, cost incurred by the Utility on behalf of a customer who then leaves bundled (T&D + Generation) service has been resolved in California by the assessment of a charge per CCA customer that gradually reaches zero. This charge has not prevented CCAs for offering competitive service to customers.

5. *Question:* *Should the program include a requirement that the primary price contained in a CCA contract begin below a certain benchmark? What are the benefits and costs of such a requirement? If so, what benchmark is appropriate? For example, New Jersey sets a benchmark based on the distribution utility supply rate.*
Answer: No, the Commission should not regulate a CCA's "primary price" through benchmarking, which we take to mean the average rate for generic CCA service, because this would impose onerous and prohibitive financial burdens on CCAs and/or their suppliers that do not apply to investor-owned utility default service, whose rates vary frequently, nor ESCOs serving Direct Access customers. In addition to being contrary to standard CCA policy in other states, regulating or setting benchmark rates for CCAs increases risks and therefore discourages CCA formation and artificially imposes creating premiums on the cost of CCA service. Setting benchmark rates also discourages DER development by CCAs, as DER development requires longer-term contractual and

financial commitments to which price caps are financially threatening. Contextually, the Commission should not forget that CCA is a form of customer choice through demand aggregation at the community level, not an ESCO or new market participant. CCAs are accountable to their citizens and on average save their customers 10-15% in their rates. CCAs are accountable, elected nonprofit organizations consisting of locally elected officials subject to public meeting laws. Furthermore, CCA members are subdivisions of the state public meeting laws, and should not be regulated by the Commission, which is also a subdivision of the state.

6. ***Question:*** *Should the Commission require that CCA contracts contain a fixed price for at least a certain minimum period?*
Answer: The Commission should exercise restraint in limiting the ratesetting power of CCAs, which is a bulwark of its ability to both navigate through an (over-) volatile wholesale power price environment, and also critical for its ability to develop DER and sell DER systems and power through retail rates. At most, the Commission could consider imposing a "meet or beat" rate benchmark on the initial rates at the time of enrollment and opt-out. However, this benchmark should not extend beyond that period. Also, benchmarks should apply only to "generic" service, and not to the rates paid by "opt-up" customers who volunteer to pay higher rates for bill credits through financed efficiency, Community Solar Shares or other products. In all cases, benchmarks should not extend beyond one or two months of the aggregation during the opt-out period.

7. ***Question:*** *Is twenty days an adequate period within which a customer can opt out to avoid automatic enrollment in CCA?*
Answer: Based on experience, LPI believes that utility billing cycles are appropriate for opt-out notifications, meaning customers would ideally receive a first opt-out notification 30 days prior to enrollment (one month), and a second op-out notification 3 days following enrollment. Thus the entire opt-out window would consist of 60 days. LPI believes that it is appropriate for consumer protection and very importantly minimizes startup costs for CCAs to insert opt-out notifications into utility bill envelopes, as is the practice in most states, rather than having to pay for a separate mailing to each customer. Please observe that in order for CCAs to provide opt-out mailings of either form to customers, the CCAs must have the confidential names, addresses and phone numbers of each customer in participating municipal jurisdictions well in advance of the opt-out period. Should the Commission decide that the initial opt-out notification should be mailed by CCAs in a municipally-market envelope separate from the existing utility bill, then LPI belives that the second opt-out notification should indeed be inserted into the monthly utility bill, reflective of the fact that the customer is now receiving service and being billed for the new service (presumably) on the utility bill, as is the practice of most CCAs and enables an apple to apple comparison for customers that is necessary for

consumer protection and transparent competition, while lowering administrative costs for CCAs.

8. Question: *Should the Commission permit the presence in CCA contracts of cancellation fees for customers who do not opt out during the opt-out period and later wish to leave the CCA program?...beyond the generally applicable rules, including the General Business Law? For example, customers might be permitted to leave CCA programs without charge for a certain period of time after the program starts or during a certain period each year. What are the benefits and costs of requirements of this nature?*
Answer: Yes, the Commission should allow CCAs to implement cancellation fees, though LPI sees no need to authorize fees beyond New York State's existing General Business Law. However, the Commission should be strongly cautioned against creating requirements that CCAs permit customers to create annual (or indeed any) opt-out periods, as this policy has only been used in markets that are strictly focused on short-term wholesale power discounts, and is particularly inimical to DER development in CCAs, which depends upon multi-year PPAs and financing agreements; such DER development agreements are directly subverted and prevented by any requirement for an opt-out period beyond the initial enrollment and start of service. For example, California, whose CCA law is most DER-focused among the CCA laws in effect in the United States today, places no restrictions whatever on cancellation fees and no opt-out periods aside from that required around the time of customer enrollment.
9. ***Question:*** *Should municipalities be required to allocate a portion of the CCA customer payment to a clean energy or public benefit fund? For what purposes should municipalities be permitted to use these funds? Examples from other states or proposed programs include municipal-owned renewable generation, as well as energy efficiency projects.*
Answer: The Commission could require CCAs to set aside revenues for investment in DER as a condition of operation, but should not seek to regulate CCA use of the funds in a manner that could harm the potential of the basic mechanism to develop DER. One logical restriction would be to limit use of funds to new in-state or in-CCA DER. Otherwise, LPI believes that a CCA's authority to allocate a portion of CCA customer payment to paying back clean energy project financing is inherently part of existing authorities; first, the authority to enter into power purchase agreements with ESCOs that would be created by Commission orders regarding opt-out enrollment and confidential customer utility data access; second, the authority to issue revenue bonds or other financing to pay for development of DER, which would be authorized by municipalities and inter-municipal agencies pursuant to state and local laws. Special laws may apply, but the Commission should seek to augment and not limit in any way the manner in which CCAs control CCA program revenues to support a shift in payments from wholesale power supply to local DER development PPAs and financing.

10. ***Question:*** *Is ten days an adequate period in which a distribution utility must transfer initial, aggregated customer data to municipalities after a request has been submitted by a municipality that has adopted a program? Is five days an adequate period in which a distribution utility should transfer customer data to municipalities to support the mailing of opt-out notices after a request has been submitted by a municipality that has entered into a CCA contract? What data should each transfer include?*

Answer: Before answering the time period, LPI wishes to re-state that the white paper appears to have mistakenly internalized a data collection protocol from a state whose CCA programs are solely focused on ESCO procurement – so called CCA 1.0. This is critical because more data under a different protocol is needed for CCAs that implement DER. Specifically, CCAs with DER focused on their programs need to investigate and evaluate DER options during their community engagement period in order to make relevant DER policy and program design decisions – prior to negotiation with ESCOs and DER developers (CCA RFP), prior to completion of their implementation plans. This data would include, at a minimum, a five-year data history of every end-user meter and every interval meter and system meter within the jurisdiction of the CCA. CCA precedents in many states support the position that the only confidential data that could be withheld from CCAs during the planning process are the personal names, mailing addresses and phone numbers of each customer. This data could be withheld provided that geocoded latitudes and longitudes of the address for each meter number be provided in lieu of addresses for DER analysis purposes until Commission certification of a CCA's implementation is completed, but should not be held beyond this time. All other data should be provided upon application by an executive officer of a CCA jurisdiction attesting that the jurisdictions for which data is requested are investigating CCA and require the data for this purpose – well in advance of negotiating with suppliers or completing an implementation plan for Commission certification. LPI provided a comprehensive list of data fields required for CCA DER planning in the above referenced 2014 New York State CCA legislation by Assemblymember Cahill; rather than repeating the list in this document, we refer the Commission to this legislation as a reference point.[30]

[30] See A08883/S07087 (filed February 27, 2014), Section 3, subsection 2 (a-z plus aa), sponsored by Assemblymember Kevin Cahill and co-sponsored by Senator Sweeney as S07087 in the Senate. Other bill co-sponsors are Barrett, Skartados, Crespo, Moya, and Lupardo. Please note that this legislation, like California's law, would make this detailed data This legislation would enshrine the "CCA 2.0" approach to CCA policy rules and procedures outlined in these comments, including detailed provisions on CCA access to utility data.

11. ***Question:*** *Should municipalities receiving personally identifiable information be required to abide by the same policies for protecting and use of that information that are currently applicable to utilities and ESCOs?*
Answer: Municipalities are not market participants or commercial entities like ESCOs and investor-owned utilities that routinely sell data and use data for purposes of achieving competitive advantages. CCAs are by definition not municipal utilities but customer aggregation programs: organizations of customers aggregating load to negotiate better terms for service using a local government process. Unlike market participants, municipalities are routinely entrusted with management of confidential data, and may be entrusted with end-use meter data. LPI recommends following California's procedure for data collection, which involves a requirement that CCAs officials collecting the data sign nondisclosure agreements and require any staff or consultants reviewing the data to first sign nondisclosure agreements, and delay release of any data to a chosen ESCO until after a customer has been enrolled into the program – or to DER developers until after a customer has signed up for a site visit.

12. ***Question:*** *Should municipalities considering CCA be required to conduct public forums or other public engagement at certain points during the process of establishing a CCA program?*
Answer: CCAs should be required to form or join a CCA by ordinance, which will *de facto* require public hearings. CCA should also be required to adopt an implementation plan by ordinance, which will *de facto* require public hearings. LPI has also suggested that a majority voter approval requirement may be appropriate if only to create a comfort zone to offering opt-out CCA service to all customers, not just residential and small commercial customers but also large commercial customers being served by ESCOs. In LPI's view, this alone makes the idea of a majority voter approval referendum requirement potentially advisable – otherwise not.

13. ***Question:*** *Should municipalities be required or requested to provide to Staff for approval or review copies of communications that would be distributed to customers regarding the CCA program and the contract selected, in addition to Staff's continued review of ESCO communications to customers?*
Answer: Commission staff should provide *review only* of communications to confirm accuracy, not approval – based on the same reasoning that the Commission should not regulate CCAs, as they are subdivisions of the State of New York, not market participants like ESCOs. This is a similar principle to Implementation Plan review by the Commission, which in other states is not an approval but a certification that the CCA program conforms to ratepayer protection standards.

14. ***Question:*** *Are any revisions to the Uniform Business Practices other than those described above necessary or helpful for CCA?*
Answer: Not that LPI is aware at this time.

15. ***Question:*** *Should any specific modifications be made to the structure of CCA, as described above, that are not covered by the above questions?*
Answer: The main change suggested in LPI's comments is a change in the idea of how "choice" is exercised under CCA – namely that the choice is a public community engagement process that occurs during a period of *investigation* of utility data combined with local municipal data, followed by a *pursuit* of CCA in the form of a negotiation with ESCOs and DER providers based upon the business model established in the investigation phase; and finally, an implementation of CCA consisting of the submission of an implementation plan to the Commission for certification, after which the CCA finalizes its contracts with suppliers and initiates the opt-out notification process under a schedule for load departure that is coordinated with the Commission. The second major change in structure needed is for the Commission to not merely recycle policies and procedures from neighboring states that are pursuing ESCO supply only CCA (CCA 1.0) and do not adequately support DER planning and development, and focus rules and policies in a manner that is adapted to DER development based on California's Phase I and II decisions referenced in this document.

16. ***Question:*** *Are there any reasons CCA programs should not be adopted, including issues with opt-out aggregation generally, not covered by the above questions?*
Answer: No.

17. ***Question:*** *Are there any reasons supporting implementation of CCA, including descriptions of positive experiences in other states, not covered by the above question?*
Answer: CCA is a platform not merely for DER "support" but for directly financing DER buildouts. CCA creates the unique opportunity of putting municipalities, which are in charge of local zoning, permitting and infrastructure planning, in charge of energy procurement planning and DER development. Municipal financing authorities and authority to enter into Power Purchase Agreements with DER developers, management of local labor and local contractors, all fall under local economic development practices that can now be brought to support and coordinate DER development. Categorically, New York State needs CCA and specifically opt-out including all customer classes, in order to extend the benefits of a competitive market to the vast majority of customers who fall under the category of "small customers, " and no less to make REV a success in terms of deeper DER penetration on a meaningful timeline. CCA 2.0 is the ultimate delivery system for REV goals.

18. ***Question:*** *Are there matters, including concerns regarding policy and legal issues, not fully addressed in the above questions? If so, please provide comments on those matters.*
Answer: None.

Conclusion

Local Power Inc. appreciates the opportunity to participate in New York State's Community Choice Aggregation proceeding, and more broadly in the Reforming the Energy Vision proceeding, and submits its comments with great optimism regarding the DER-centric approach being taken by both the Commission and the Cuomo Administration.

Commissioners and staff are welcome to please contact me at paulfenn@Localpower.com or (510)451-1727x2 with any questions or comments. We look forward to future correspondence.

Yours truly,

Paul Fenn

President, Local Power Inc.
Local Power, Inc.
P.O. Box 261
Comptche, California 95427

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