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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Portions of AB117 Concerning Community Choice Aggregation.

Rulemaking 03-01-003
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LOCAL POWER COMMENTS ON THE CUSTOMER RESPONSIBILITY SURCHARGE AND UTILITY COSTS ISSUES

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I. INTRODUCTION

Local Power hereby submit comments in the above mentioned proceeding on the relationship between the Community Choice Aggregation ("CCA") Customer Responsibility Surcharge ("CRS") and the electric utilities' long-term procurement plan outlines submitted on April 1 in R.01-01-024.

With the Gas Procurement proceeding (R.04-01-025) considering new gas and or Liquefied Natural Gas (LNG) investments to fuel alleged potential new gas-fired power plants that might result from R.01-10-024, the CCA CRS policy and electric procurement plans will ultimately create the new system under which California's hybrid utility/CCA electric system is administered by the Commission, from the LNG terminal to the customer's meter. The Commission's electric utility procurement policy will thus have not only a downstream impact on CCAs but will also have an upstream impact on whether California's coastline becomes host to an onshore or offshore LNG terminal - and whether California becomes dependent on imported foreign gas to keep the lights on.

Local Power's first assertion is that the Commission should design the CCA CRS assignment and electric utility procurement authorizations as a single administrative system. As active parties to the gas proceeding, Local Power applaud's R.03-10-003 ALJ Kim Malcolm's declared intention of communicating with the Judges and Assigned Commissioners in the electric procurement proceeding, and we urge similar communication with the ALJs in the Energy Efficiency (R.01-08-024) and gas procurement proceedings.

Reflecting this assertion, as reply comments on the electric utility procurement plan outlines are due on the same day as comments on the CCS CRA and Utility Costs Issues, and our comments speak particularly to the connection between New World electric utility procurement and CCA CRS, we are submitting this document in both proceedings. Thus Local Power, the intervenor representing ratepayers in R.03-10-003, will submit this document as comments on CCA CRS and Utility Cost Issues to the Community Choice Aggregation service list, and as reply comment on the utilities' procurement plan outlines to the R.01-10-024 service list.

Electric Utility Procurement is authorized by the legislature pursuant to AB57 (Wright, 2002), and Community Choice Aggregation is authorized pursuant to AB117 (Migden, 2002). Together, these two laws created a hybrid electricity system in California that maintains a system of cost-based electric utility procurement and Default Service while also giving ratepayers the option of choosing an Electric Service Provider and departing from electric utility procurement through a state-local government certification, solicitation and administrative process - CCA. These two laws were in fact signed by Governor Davis on the same afternoon. Apart from the few remaining Direct Access customers in California, and apart from the political future possibility of further electric deregulation by the legislature in the form of the so-called Core/Noncore proposal, for the foreseeable future the Commission's jurisdiction will primarily involve either electric utility procurement or Community Choice Aggregation load departures from electric procurement.

II. INTEGRATED RESOURCE CALENDAR (IRC)

Local Power believes the Commission should not waste time and money now attempting to establish an *a priori* CCA CRS for New World Procurement. Rather, the Commission should implement a case-by-case administrative process according to an "Integrated Resource Calendar"

("IRC") under which a CCA load departure scheduling process may be used to determine what blend of short, medium, and long-term electric utility procurement contracts should be authorized.

An IRC Complies with AB117

AB117 contains specific statutory guidelines for the Commission to act as gatekeeper for CCA load departures relative to electric procurement plans. In particular the Commission is required to set the date for a CCA implementation according to the impacts of the departure on the utility's "annual" electric utility procurement plan:

> "No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost-recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission." (AB117, 366.2 (c)(8)).

Thus, the Commission's administrative system for CCA CRS should be based on an annual IRC.

We are proposing that the California Public Utilities Commission ("Commission") has the opportunity to establish a system of administering electric utility procurement, CCA load departures and related Integrated Resource Planning elements under an annual IRC according to which the Commission may 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 the following deadlines:

1. a date each year on which any CCA seeking to depart at the next annual load departure

date must notify the Commission that it is a CCA;
2. a second date after that date when it must receive the Implementation Plan;
3. a third date on which the Commission will assign a CRS based on the Plan following the statutory 90-day certification and data request period;
4. A fourth date on which award of a Public Goods Charge funds to the CCA is made;
5. a fifth date by which an ESP is chosen, a fourth date involving notification of customers;
6. a sixth date involving transfer of customers;
7. a seventh date for end of the opt out period;
8. an eighth date involving termination of CCA contract;
9. annual notification requirements, and a final date for notification of intent to repeat CCA process.

Furthermore, we recommend that the Commission exercise its authority to punish non-compliant CCAs for the increased costs imposed as a result of non-compliance using AB117's clear authority to assign a higher CRS to cover the costs associated with IRC non-compliant CCA attempts. By using this punitive authority in conjunction with the Commission's clear authority to schedule electric utility procurement from AB57, the Commission will best be able to leave room for CCA departures without new CRS penalties or stranded costs and assets that would otherwise result from utility over-procurement..

A case-by-case CCA CRS assignment according to an IRC regime will not impose an administrative burden on the Commission. As Local Power has pointed out in previous comments, CCA's will *reduce* the Commission's administrative burden compared to either electric utility procurement or DA, with blocks of hundreds of thousands or even millions of customers transferring under a public process and according to common terms in a single contract. CCA is similar to utility procurement in that purchasing for large regional blocks of customers is much simpler than DA, except as in DA the ESP does not require its contracts to be rate-based, involving a substantially greater private sector assumption of the risk burden, thus involving a *lesser* administrative burden on the Commission in not one but two respects: CCA is simpler than DA and less risky than electric procurement. CCA procurement can be complex but is administratively simple compared to electric utility procurement's Byzantine combination of rate-basing and secrecy.

The best example is Ohio, where CCA constitutes the lion's share of the competitive electricity market. Under Ohio's 1999 Community Choice law, just three CCAs now aggregate over a million customers and together constitute 98% of all Direct Access in the state. In Ohio, CCAs not only provide insurance against the costs of involuntary return, but ESPs also guarantee a discount locked to the local utility's energy charge. In other words, Ohio ESPs are managing a major part of the risk that utilities require ratepayers to hold - a major regulatory burden for state regulators.

The Commission should create a gating system using the IRC to administer utility short, medium and long term electric utility procurement authorizations pursuant to AB57 based in part on IRC schedule-compliant CCAs, while also enjoying full range to penalize any non-compliant or disorderly CCA load departures based on the costs associated with non-compliance pursuant to AB117.

An IRC-type annual schedule will provide administrative simplicy, reserve the Commission's full authority over CRS assignments and procurement authorizations, and perhaps most importantly provide the Commission the means of influencing CCAs.

III. RATEPAYER INDIFFERENCE SHOULD BE MUTUAL

CCA customers are indistinguishable from bundled service customers. In R.03-10-003 the utilities have consistently maintained that the Direct Access "principal of indifference" from DA should be applied to CCA's CRS. While this might be appropriate for Direct Access under AB1890, under which only the largest corporate customers could even participate in the market, it is woefully inappropriate for CCA customers. From a rate class perspective, it must be agreed, CCAs share the universal service requirements as IOUs, are required to aggregate the same ratepayers and ratepayer classes: these customers are entitled to the same Commission protections as bundled service customers. In addition, unlike DA customers, CCA customers must also continue to be served as captive customers by the IOU for meter and billing services, underscoring their need for the Commission's regulatory protection. CCA is not the same as DA in this respect, and Local Power has proposed the principal of "mutual indifference" between CCA customers and utility customers in earlier comments based on these facts. CCA customers should neither "harm" bundled service customers, nor be harmed by utility procurement. As it is in the ratepayer interest to have an option to bundled service, and as CCA customers continue to be served by the IOU, the Commission should consider CCA and bundled service customers as essentially the same customers in different states of service.

This is why it is so critical that the Commission not establish Community Choice Aggregators in a competitive relationship with their utilities. Customers cannot compete against their energy supplier. Rather, these customers are served by the investor-owned utility, may elect to choose a competitor to serve them, but will continue to be provided distribution, metering and billing service by the utility even in the event that it does depart from utility procurement contract with an Electric Service Provider.

Thus, the designation of CCAs as Load Serving Entities ("LSE's") under the Commission's nomenclature, is inappropriate. The CCA is a customer, not a "market participant."

IV. CURRENT PROCUREMENT PROCEEDINGS' CRS IMPACTS

While some parties to R.03-10-003 remain focused on the calculation of past obligations for Department of Water Resources ("DWR") contracts and historical procurement, Local Power/Local Power believes that these elements have been worked out adequately in the context of Direct Access, and are in many ways a distraction from the real issues facing a successful Community Choice Aggregation strategy. By far the most important CRS issue is "future" electric utility procurement - and new utility-owned generation, either of which will present new potential stranded costs that will be born by either CCA or bundled service customers.

A case-by-case method of assigning a CRS to a CCA Implementation Plan according to an IRC schedule may be the most effective method of protecting customers equally whether they happen to be served by a CCA or through Default Service.

The implementation of an IRC by the Commission should involve a gating process in which utility procurement authorizations are reduced to accommodate IRC compliant CCA load departures in process at any given time. With both electric utilities and CCA's seeking to undertake Integrated Resource Planning, a uniform schedule will allow the Commission to stagger contract authorizations in order to avoid stranded costs or assets, while also dispensing with Public Goods Charge funds in a manner that supports IRP for either transaction type.

Recognizing this new reality, the Commission approved a decision on January 22, 2004, requiring the state's three investor owned utilities to resubmit electric procurement forecasts that include scenarios representing a "widespread adoption" of Community Choice.

Thus, R.01-10-024 presents an opportunity for the Commission to adapt its forecasts to current CCA activity levels for the first time. California's electric and gas utilities are, in fact, currently involved in fast-tracked proceedings to decide how much electricity and gas to buy (and rate base) going forward, and are also pushing to build new natural gas-fired power plants.

V. CCA'S APPROACHING THE CPUC "GATE" 2005-6

In the utilities' procurement plan outlines, the utilities make inadequate reference to CCA, placing it alongside municipalization (Edison, "Outline of Its 2004 Long Term Resource Plan," April 1, 2004, p.3), DA, and a potential core/non-core environment (SDG&E, "Long Term Resource Plan Outline, April 1, 2004, p.4). Given that municipalization is both infrequent and not subject to CPUC jurisdiction, and core/non-core is merely political speculation, Local Power believes that the procurement plans should recognize the more significant role of CCA in circumscribing electric utility procurement.

Over a dozen California jurisdictions representing 3 million residents are already spending scarce funds during a budget crisis year to implement Community Choice, committing to a 40% RPS goal before the CRS has even been set. The Commission should take this group as sample 2004-6 load departure candidates and model its IRC gating parameters according.

Thus, approximately 11% of statewide IOU (kwh) customer load is already seeking to depart from utility procurement, with 4% of statewide IOU now earmarked for RPS compliant renewables - most of which will have to be new renewables. Thus, the 2005-6 batch of CCA cities already formed, if successful, will reduce their upstream conventional portfolio demand by not 8% (the 20% RPS requirement) but 28% by 2020, exceeding by far the CEC's forecasted electricity demand increase for that year.

If successful, the CCA cities formed by the Local Government Commission and San Francisco will have a significant impact on both electric procurement and gas forecasts, with a the 40% RPS dramatically reducing the demand for both electric utility procurement and added new utility-owned, rate-based generation. Attachment A, prepared by Local Power, shows the 2000 levels of electrical consumption for counties that the Commission should anticipate might leave the IOU market in the near future under Community Choice legislation. Two counties may leave in entirety, San Francisco and Marin Co. Thus, the figures for their electrical consumption by county represent the departing load. These together represent about 1,000,000 people, or 1/3 of the total 3,000,000 community choice population. For the other two thirds, the demand profile of the their counties was taken as representative of the demand of the smaller community choice city populations in that county. This we consider a reasonable estimate, but no value can be precise for future demand, of course. Most likely the margin of error for 2000 is not greater than 10- 15% for the whole community choice population.

2000 was chosen both for availability of data as well as its close match to current aggregate state levels of electricity use. After the peak demand year in 2000, electricity sales plummeted in 2001, and only in 2004 was it projected by the CEC to return to the former levels. Peak demand, for example, was 54,000 MW in 2000, and is expected to be 54,600 MW in 2004, a difference of near 1%. (source: The Energy Commission staff report, California Energy Demand 2003-2013 Forecast,) Similar conformity is expected for total demand figures. Future growth in peak and total demand is expected to be about 1.5% annually through the next 10 years.

The spreadsheet shows that departure of 10% of the load, with 20% conservation and 20% renewable portfolio, results in a total effect of 40% portfolio. Current reliable levels of renewable energy in California are at 10%, but under favorable conditions, e.g. one with good wind and small hydro production, may go as high as 12%. Thus, a 40% combined renewable/conservation/energy efficiency portfolio would have an incremental effect of 28-30% increase over current levels.

The total renewable/conservation portfolio of the CCAs approaching the Gate is 4.4% of the state's IOU region electricity usage, as shown on the spreadsheet for the "40% renewable portfolio", and is an increment of 3.1 to 3.3% over the entire IOU load, over and above the current renewable production - added new generation or conservation measures. This represents over two years of forecasted statewide electricity demand growth that is planned to be removed by this first batch of communities.

Thus, based on current activity levels, CCA will have a significant impact on both utility procurement - 10% of statewide load may depart IOU procurement in 2005-6 alone. Even more significantly, CCA may have a massive impact on forecasted statewide electricity demand - over a 3% RPS compliant increase in relation to the total statewide IOU load compared to the CEC's 1.5% per year forecasted statewide load growth.

When added to the beneficial impacts of energy efficiency and retooling of old gas fired power plants over the next five years, the Commission has the foundation of data on which to initiate an IRC process that will enable it to ascertain whether now is the time to rate-base added new utility-owned gas-fired power plants.

The upstream gas and gas-fired power plant demand impact of CCA and RPS acceleration is potentially massive. For purposes of electric utility procurement forecasting, the "widespread adoption" scenario must be assumed to be at least a half if not potentially all of the IOUs' electric procurement load over the next ten years, *meaning 5-10% of customer load might forseeably depart from utility procurement every year.*

But the Commission should reconfigure its proceedings to bring about a coordinated new process under the IRC, creating a uniform annual calendar under which:

1. Electric Utility Procurement and Power Plant ratebasing is scheduled;
2. Community Choice load departures are scheduled;
3. Energy Efficiency funds administration is scheduled;
4. Other Public Goods Charge Funds are scheduled.

In other words, if the current batch of CCA efforts is representative, CCA will make the RPS acceleration more likely to succeed amidst doubts that the IOUs will willingly implement what is after all not law (the revised 2010 date).

VI. CURRENT UTILITY PROCUREMENT CCA CRS IMPLICATIONS

Under the current regime of gas and electric procurement, the Commission is not only not coordinated, its proceedings appears scheduled to prevent clarity. Whereas the loading order established in the Energy Action Plan said that all new electricity load growth shall be met with energy efficiency first, renewables second and "other" third, the Commission's current schedule will resolve gas procurement decisions first in June even though virtually all forecasted gas demand growth is attributed to yet unbuilt gas-fired power plants; electric utility procurement of gas-fired electrical capacity will then be decided second in the Fall even though the amount of procurement directly depends on the rate of CCA load departures; and Community Choice is scheduled to be decided *last.* As a result, the current regime's June gas decision will remain uninformed by electric procurement data, which will remain unresolved until the Fall, which decision will be similarly uninformed about CCA load departure impacts.

In the meantime, new utility-owned generation remains unresolved by the Commission, but has been requested formally by Sempra subsidiary San Diego Gas & Electric (SDG&E) in the electric procurement proceeding, and informally by Pacific Gas & Electric (PG&E) President Bob Glynn before Wall Street investors following the PGE Corp subsidiary's bankruptcy bailout was upheld.

The current schedule is roughly speaking the exact opposite of the“loading order” established in the adopted Energy Action Plan, threatening a high transaction cost environment plagued by over-procurement, with stranded costs and assets imposed on either CCAs or bundled service customers.

VII. UTILITY CONFIDENTIALITY CCA CRS IMPACTS

A. Utility Procurement Plan Confidentiality

While the utilities’ are seeking to keep their procurement processes confidential from market participants, the application of any electric utility procurement confidentiality rules to CCA’s is not only inappropriate but contrary to law. While a degree of confidentiality regarding utility procurement contracts may or may not be needed for utility data from reaching real “market participants” and “Load Serving Entities” such as power merchants, developers or even ESPs who might be tempted to abuse the information, it would be contrary to law to say that CCA’s should pay Customer Responsibility Surcharges for New World procurement without even being allowed to review all electric utility procurement contacts, plans, forecasts, designs, and any details whatsoever.

All three utilities filed comments on March 1 asking that their electric procurement plans, forecasts, and contracts be kept secret from “market participants.” While they do not mention CCAs specifically in these pages, the utilities repeatedly refer to CCAs as “Load Serving Entities,” implying but not stating that CCAs are somehow similar to Merchant Generators and

ESPs, and therefore should not have access to procurement data and documents relative to their their utility's electric procurement. For purposes of efficiency we will refer to the case made by PG&E:

> "The only segment of the interested public whose access is somewhat restricted is composed of the suppliers and marketers who sell their energy-related products to, ultimately, California's ratepayers....When in doubt about whether o liberalize access to confidential information which principally benefits suppliers and marketers, the Commission , whose mandate includes ensuring just and reasonable rates, should err on the side of *protecting the ratepayers' interests*." (Emphasis added, PG&E, March 1, p.2)

Yet AB117 defines CCAs *as customers.* As the Legislative Counsel's AB117 digest explains, "this bill would authorize *customers to aggregate* their electrical loads as members of their local community with community choice aggregators, as defined." (AB117, Leg. Counsel's Digest). Thus, CCAs are customers:

> "Customers *shall be entitled to aggregate* their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2" (AB117, PUC 336 (a)).

Section 366.2 (a) (1) affirms this definition of CCAs as customers:

> "Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.
> (2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program." (AB117, PUC 366.2(a)(1).

As customers, not "market participants," CCAs should have every right to access to the electric procurement plans of their electric utility. As mentioned above, not only are customers unable to compete with any market participant, but even CCA customers remain captive utility customers for billing, metering and distribution services.

The utilities employ an elliptical reasoning in justifying the confidentiality of their electric procurement documents:

> "For utilities, the largest buyers of capacity and energy in their respective service areas, market perceptions about the buyers' resource needs can influence market prices" (PG&E, p.7)

Yet utilities must not be allowed to use confidentiality to protect their status as the largest buyers of capacity in their service areas, and the Commission should see to it that ratepayers are not prevented from access to all electric procurement documents.

While seeking for their contracts and power plants to be rate based, the utilities are asking for these documents to be kept confidential: Requests in the March 1 include:

1. A three year confidentiality period for utility forecasts of annual average natural gas price, annual average on-peak and off peak electricity prices, annual average new generation resource costs (PG&E, "Comments of PG&E on Confidentiality Issues, March 1, p.5);

2. Three year confidentiality period for each utility's valuation of avoided energy costs relative to energy efficiency programs (PG&E, March 1, p.7);

3. Permanent confidentiality for utility electric procurement plans, fuel buying (e.g. natural gas to be used for generating power) and hedging plans (PG&E, March 1, pp.7, 9);

4. Confidentiality of energy (Mwh not MW) mix (forward looking forecasts) by percentage of utilities own generating facilities, and New World Utility Procurement Activities reported in Mwh (PG&E, March 1, p.8);

5. Confidentiality of peak day resource needs, and further disaggregation of energy mix by either time period or resource type including information on procurement of natural gas to be used to generate power (PG&E, p.9);

6. Confidentiality of power purchase agreements (PPAs) in effect (PG&E, March 1,

p.10);

7. Some confidentiality of PPAs with affiliates (PG&E, March 1, p.11);

8. Confidentiality of energy sales forecasts (including losses) to the wholesale market with only annualized aggregated information that includes both the dispatchable DWR contracts and "new world" wholesale transactions (PG&E, March 1, p.11);

9. Confidentiality of peak day load and capacity needs (PG&E, p.12);

10. Two years of retrospective confidentiality of past fuel buying and hedging information (PG&E, March 1, p.12);

11. Two years of confidentiality for expired PPAs.(PG&E, March 1, p.12);

12. Confidentiality of Utility Quarterly Procurement Transaction Compliance Filings (PG&E, March 1, p.17).

While the California Energy Commission is calling on a full disclosure of these documents even to market participants, TURN and the ORA hold a compromise position. Whatever the Commission's ultimate policy is on confidentiality, it should recognize that CCAs are customers, not "market participants," and are therefore entitled to all electric procurement data and documents that might result in stranded costs and the subsequent imposition of a CRS pursuant to AB117:

> "A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:
> (1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.
> (2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with 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)).

Making such information available to CCA's is part and parcel of the Commission's obligation to "facilitate transactions" of ratepayers through CCAs as expressed in Section 366 (a).

B. AB117 Data Request Confidentiality

The utilities have similarly held that they should be allowed to deny CCA ratepayers access to their billing and load data, referring to Direct Access Rule 15/15 which was created to protect ratepayers against abuse of the information by power marketers . In their joint "Strawman" Proposal in R.03-10-003 (March 1, 2004), Edison, PG&E and SDG&E refuse to discuss utility cost issues relative to customer billing and load data requests:

> "Confidential Customer Information - Per D.97-10-031 this is defined as the customer's name, service address, billing address, telephone number, account number, and historical metered usage data. Utilities will not release customer specific information based on current rules, unless and until the Commission has expressly authorized...regarding the disclosure of confidential customer information and has clearly identified the circumstances or processes under which information may be disclosed." (Edison, PG&E, SDG&E Strawman, 03-10-003, March 1, 2004, p.2).

Thus, the utilities refuse to even discuss the costs that would be associated with a full disclosure of customer billing and load data to CCAs as required by AB117:

> "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."

C. IRC "Case Study" - Current Data Requests

The utilities' desire for secrecy is reflected in the current path of gas and electric procurement. Local Power has submitted data requests on March 9 (Ratepayers for Affordable Clean Energy, Motion to Modify Schedule, R.04-01-025, March 9, 2004) to California's gas and electric utilities in order to ascertain how their electric demand forecasts, thus also the demand for new added utility-owned gas-fired generation, might be impacted by the "widespread adoption" scenario of CCA.

Though both are gas and electric companies seeking to both sell gas to their customers and burn it in power plants, PG&E and Sempra both refused to answer Local Power's R.04-01-025 data request regarding forecasted impacts on gas demand from widespread Community Choice Aggregation, 2010 RPS, repowering and energy efficiency programs, claiming it was not relevant to the gas proceeding:

In response to Local Power's Question 24,

> "Provide copies of the analysis, assessments, evaluations or studies prepared by or for PG&E since January 1, 2003 which projected, examined or quantified the amounts by which electric utility procurement, and associated demand for the rate-basing of additinal gas-fired electrical generation capacity, potentially could be reduced in 2006, 2016 or any year in between, as result of regional electrical load departures associated with "widespread adoption" of Community Choice Aggregation pursuant to Chapter 838 of 2002, as required by California Public Utilities Commission's January 22, 2004 electric utility procurement decision, D.04-01-046 of R.01-10-024 on p.24, p.103, and Finding of Fact #49 on p.192 and Conclusion of Law #32 on p.197."

PG&E answered:

> "PG&E believes the intended reference in this question is to Decision (D.) 04-01-050, which refers to "Community Choice Aggregation". The requirement there is in connection with PG&E's next Long-Term Procurement Plan, which the Commission describes as being filed in June 2004. At this time, PG&E does not have an analysis addressing the issues raised in the question, but expects that it will comply with the planning directives of D.04-01-050 at the time its 2004 Long-Term Procurement Plan is filed."

The Commission's gas procurement proceeding is now being undertaken without evidentiary hearings to establish the need for new natural gas supplies and delivery infrastructure before any determination has been made on whether new gas fired power plants will be rate based. Instead, the gas proceeding depends wholly upon *conjecture* about the likelihood of new gas fired power plants, even though the Commission has observed that gas fired power plant permit holders currently cannot find underwriters and the only way to build these plants is to allow utilities to rate base the new investments - the very investments that can potentially become stranded costs for customers seeking to find a new, competitive supplier.

In other words, the Commission's gas proceeding R.04-01-025 is now deciding under a rush order whether to rate base LNG terminal-related investments based on alleged new gas-fired generation by June 2004, before it's the Commission's electric procurement proceeding will have ascertained whether the expected new gas fired generation will ever actually be built. An IRC based system would reverse this order to ensure a bottom-up real-time approach to load forecasting, not decide whether to allow a rate basing of LNG related infrastructure as well as gas procurement contracts without knowing whether there will even be a demand for new gas-fired generation.

The secret to successful gatekeeping between CCA and utility procurement will be to reverse the current process. This is particularly urgent because PG&E, and SDG&E/SoCalGas, have each proposed that the Commission allow it to acquire permits from stranded gas-fired power plant permit holders, and build new utility-owned gas-fired generation while rate basing the new investment, reversing a state policy of separating ownership of power stations and utilities.
"We want to invest in new cost-of-service generation," Chief Executive Robert D. Glynn Jr. said March 24 at an investor conference in New York sponsored by Morgan Stanley and broadcast on the Internet. "It's a business we know how to do." PG&E would like to build regulated power stations funded by its free cash flow, Glynn said. "We don't know if policy makers will provide us the opportunity," clearly referring to R.01-10-024: "We'll know this year."

Given that the gas procurement proceeding is predicated by a forecasted increase in gas demand that is virtually wholly attributable to speculation that utilities might build (and rate base) new added gas fired generation capacity, the Commission's scheduling of gas procurement first, electric procurement second, and Community Choice Aggregation last creates the risk that:

> 1. unneeded gas procurement authorizations will be made in July creating one set of stranded costs and assets;
> 2. Unneeded electric procurement authorizations will be made in September creating another set of stranded costs and assets;
> 3. Though 10% of the IOU's existing load is now seeking to depart, these stranded costs may incur a crippling CRS that could potentially render such load departure non-economic.

Sempra was even less willing to provide answers to Local Power's March 9 data requests on how CCA will impact their gas demand forecasts. SoCalGas/SDG&E refused to answer any questions regarding electricity generation, despite the fact that virtually all the new load for gas supply that will be delivered by Phase I of R.04-01-025 is virtually earmarked for new gas-fired electricity generation. Particularly objectionable among the questions SoCalGas and SDG&E refused to answer were those asking them to demonstrate how their gas load forecasts would be impacted by changes in the electricity sector, claiming that such questions regarding electricity generation are "beyond the scope of this proceeding and...not reasonably calculated to lead to the discovery of admissable evidence." Furthermore, claimed SoCalGas/SDG&E in reponse to Local Power's questions about the prospects for new gas-fired power plants, such questions "seeks data and information that was not relied upon by SoCalGas and SDG&E in preparing its Phase I submittal."

VIII. ELECTRIC PROCUREMENT PLAN OUTLINES

On April 1, 2004 Pacific Gas & Electric ("PG&E"), Southern California Edison ("Edison") and and San Diego Gas & Electric ("SDG&E") submitted "Long Term Resource Plan Outlines" in R.01-10-024.

SDG&E requests that “all three utilities can use a ‘common approach’ to integrating energy efficiency procurement activities into their overall procurement forecasts and resource acquisition strategies (SDG&E, April 1, p.4). This is part and parcel of Integrated Resource Planning, consistent with Local Power’s IRC proposal, and should clearly be equally applied to CCAs.

All three utilities want an incentive mechanism under which they will be paid for the power they do not sell as a result of installing energy efficiency systems, however. SDG&E requests consideration of an “SDG&E Only” plan, contradicting the idea of a “common approach” to IRP.

Moreover, utility energy efficiency incentives should not be allowed by the Commission. This proposal highlights the inherent dysfunctionality of any administrative regime resting on a utility voluntarily reducing its own sale of power to its customers. It should be observed, in passing, that Community Choice Aggregators do not have the need for an artificial procurement subsidy to cheapen their energy efficiency program administration proposals, nor has any CCA requested incentives.

Thus, it is essential at a minimum that the R.01-08-028 energy efficiency funds solicitations for the administration or implementation of Public Goods Charge funds for energy efficiency, a multi-hundred million dollar per year ratepayer fund, must be firewalled to prevent ratepayer incentives from subsidizing utility-administered energy efficiency program proposals, or else the ratepayer is in effect being forced to pay twice - first in the monthly PGC payment and second in procurement incentives.

VIII. ADDED NEW UTILITY-OWNED GAS-FIRED POWER PLANTS

PG&E, SDG&E and Edison all include new utility-owned generation. Local Power is extremely concerned about the prospects of the rate basing of added new utility-owned gas-fired generation, and asserts that the Commission cannot and should not protect California ratepayers from a future energy crisis by authorizing utilities to build and rate base more gas-fired power plants, or by authorizing utilities to rate base any investments related accommodating an LNG terminal on California's coastline.

In particular, this will not succeed in delivering energy security because, in fact, overreliance on natural gas was among the principal causes of our energy crisis of 2000-1. Supporting Local Power's assertion is the very document on which the IOU's will prepare their base line forecasts. All three utilities are using the California Energy Commission's ("CEC") Integrated Energy Policy Report (IEPR) information to form a base case for their analyses (SDG&E April 1, p.3).

It should be noted that the IEPR asserts that, under average conditions, the state's electricity generation system has adequate supplies to meet demand for at least the next six years. Hot weather, coupled with other factors, however, could reduce reserves to very low levels as early as 2006:

> "To meet electricity demand, the state is taking steps to help ensure that preferred resources are available by implementing new efficiency standards and programs, evaluating the benefits of dynamic pricing, and aggressively developing renewable energy resources, as required under California's Renewables Portfolio Standard." (2003 Integrated Energy Policy Report, California Energy Commission, December, 2003. Docket No. 02-IEP-1, Pub No: 100-03-019, p. vi.)

The IEPR asserts that the state should: ramp up public funding for cost-effective energy efficiency programs above current levels to achieve at least an additional 1,700 megawatts of peak electricity demand reduction and 6,000 gigawatt-hours of electricity savings by 2008. The IEPR recommends that California enact legislation reflecting the Energy Action Plan's commitment to requiring that all retail suppliers of electricity meet the Renewables Portfolio Standard's goal of 20 percent of retail electricity sales and accelerate the target date for reaching the goal from 2017 to 2010 (IEPR p. vii-viii).

The IEPR recommends Increased funding for natural gas efficiency programs to achieve an additional 100 million therms of reduction in natural gas demand by 2013 (IEPR, p. viii), approximately the amount of gas required to fuel one 300 MW gas power plant.

The IEPR identifies four overarching strategies that serve as the basis of California's energy systems.

> "It is imperative that the State of California take all necessary steps to implement the recommendations contained in this report. In doing so, the Governor, Legislature, and other state agencies should give great weight to strategies in addressing energy-related issues that:
>
> - Continue to harvest energy efficiency programs;
> - Diversify fuels and fuel sources of petroleum and natural gas with alternative fuels and renewable energy;
> - Offer consumers energy choices;
> - Strengthen the state's energy infrastructure.
>
> These strategies will provide the stable environment necessary to attract investments to meet the demand for more energy resources and services and protect our economy and environment" (CEC IEPR, p.2).

In particular, the IEPR recommends reducing California's depency on natural gas for electricity generation:

> "California is increasingly dependent on natural gas for its electricity, and natural gas costs are a large component of wholesale electricity costs. Volatility in the natural gas markets can drive up wholesale electricity prices, especially during peak demand periods when gas-fired resources are the marginal supplies that establish the wholesale market clearing price. The state can reduce the demand for natural gas to generate electricity by aggressively developing energy resources required under California's Renewables Portfolio Standard (RPS)" (IEPR, p.7).

Indeed, the IEPR points out that renewables and conservation saved the state during the 2000-1 Energy Crisis:

> During the energy crisis, transmission congestion frequently hampered the effective transfer of electricity to meet demand at critical times and contributed to the run-up in wholesale prices....Amid these serious problems, two factors emerged that played a key

> role in helping California through the summer of 2000. Despite not being paid for generation as a result of the adverse financial condition of the IOUs, cogeneration and renewable facility operators maintained relatively high levels of availability and were largely responsible for keeping the lights on during the darkest days of the crisis....Also, in response to rising retail prices and statewide public information campaigns, Californians voluntarily reduced electricity consumption to unprecedented levels, shaving approximately 6,000 megawatts (MW)3 off peak demand statewide. Surprisingly, recent analyses show that as much as half of these 2001 conservation efforts continued into 2002. (IEPR, p.7).

The IEPR recommends that California meet forecasted electricity demand with demand reduction and RPS acceleleration:

> "Reserve margins can be affected by the retirement of older generating units. The CA ISO projects that 7,232 MW of generation capacity in California could be retired during the next several years,7 while Dynergy, a merchant generator, has suggested that more than 10,000 MW may be retired as early as 2005 because of a lack of Reliability-Must-Run (RMR) contracts, contracts with the Department of Water Resources, or other power contracts.8 In contrast, the Energy Commission has projected that 4,630 MW of existing capacity will likely retire through 2006. Notwithstanding all of these projections, the Energy Commission believes that planning reserve can improve through 2010, if California meets the goals in demand responsive programs, peak reduction programs, and the accelerated RPS." (IEPR, p.8).

Moreover, the IEPR points out that the major demand issue facing California over the next six years - peak demand - is related exclusively to solar conditions:

> "In California, the highest peaks in electricity demand are caused almost exclusively by air conditioning during unusually hot weather occurring a few times each summer (50-100 hours per year)" (IEPR, p.11)

IX. CRS CALCULATION

Apart from the Commission's primary responsibility to minimize stranded costs associated with electric procurement and to make room for CCA, the Commission must also decide how a New World Procurement CRS will be calculated and collected from CCAs.

First, it is critical that when a CCA Implementation Plan is assigned a CRS, the CRS must not be changeable. Some parties to R.03-10-003 have suggested that a CRS true up might be employed that would make the CRS charge on a CCA customers' electric bill change from year to year. This would in effect make it impossible for CCAs to compare an ESP's offering with its existing IOU's offering, and violates AB117:

> "Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f)" (PUC 366.2 (c) (7)).

CCA's are formed to leverage the buying power of ratepayers, and cannot rationally choose between IOU service and ESP service if a potentially substantial surcharge on their bill will be subject to change. Thus AB117 requires that the Commission review a CCA implementation plan over 90 days and provide the CCA with its "findings," i.e. a discreet judgement on what amount of funds must be paid in order to prevent cost shifting. This is wholly inconsistent with any form of CRS True-Up.

X. CONCLUSION

We look forward to working with the Commission on this matter.

Respectfully Submitted,

Paul Fenn
Local Power

CERTIFICATE OF SERVICE

I, the undersigned, hereby declare:

1. I am a citizen of the United States of America over the age of eighteen years. My business address is 4281 Piedmont Avenue, Oakland CA 94611.

2. On April 15, 2004, I caused service of :

LOCAL POWER COMMENTS ON THE CUSTOMER RESPONSIBILITY SURCHARGE AND UTILITY COSTS ISSUES

to be made by EMAIL upon the parties or their attorneys of record for R.03-01-003.

I declare under penalty of perjury that the foregoing is true and correct.
Dated in Oakland, California, this 15tth day of April, 2004

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Ratepayers for Affordable Clean Energy
CPUC Rulemaking R.03-01-003
April 15, 2004

Attachment A: Community Choice 2005-6 "Widespread Adoption" Forecast Scenario

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