local power
R.03-10-003
Response to PG&E Data Request
May 28, 2004

Recipient:	PG&E		
PG&E Data Request No.:	PGE-LocalPower_001		
PG&E File Name:	CommunityAggregationOIR_DR_PGE_LocalPower001!		
Request Date:	April 26, 2004	Local Power Witness:	Paul Fenn
Due Date:	May 28, 2004	Local Power Witness Tel No.:	510 451 1727
Topic:	CCA Customer Responsibility Surcharge and Cost Issues		

PG&E Q 1:

This data request relates to the appropriate forum for resolving the various issues and concerns raised in your prepared comments. As you have indicated, you have filed these comments in both this rulemaking and in Rulemaking 01-01-024 (Procurement OIR). While PG&E agrees that many of these matters may be appropriate for the Commission to address, it is not clear (with the exception of your discussion of the CRS Calculation on pp. 23-24) that any of them involve matters to be decided in this proceeding. In particular, many of these matters appear to be more appropriately resolved in the Procurement OIR and in Rulemaking 01-10-024 (the "Gas Procurement OIR").

In the interest of avoiding duplication of work and before seeking any necessary clarification from Judge Malcolm regarding the appropriate matters to resolve in this phase of the rulemaking, we are submitting this data request. Please feel free to call if you have any questions or concerns, as our intention in seeking this clarification is to facilitate the process by narrowing issues for resolution in this phase, not to request any unreasonable effort on your part.

For each major heading included in your testimony (listed below), please indicate:

1) If the item includes matters that should be addressed in Phase I of Rulemaking 03-10-003; and

2) If the answer is "yes" as to any major heading with respect to each such heading, please identify the factual findings or legal conclusions you will be asking the Commission to make in this phase.

I. INTRODUCTION (2-3)

II. INTEGRATED RESOURCE CALENDAR (3-6)

III. RATEPAYER INDIFFERENCE SHOULD BE MUTUAL (6-7)

IV. CURRENT PROCUREMENT PROCEEDINGS' CRS IMPACT (7-8)

V. CCA's APPROACHING THE CPUC 'GATE' 2005-6 (8-11)

VI. CURRENT UTILITY PROCUREMENT CCA CRS IMPLICATIONS (11-12)

VII. UTILITY CONFIDENTIALITY CCA CRS IMPACTS

A. Utility procurement plan confidentiality (12-16)

B. AB 117 data request confidentiality (16)

C. IRC "case study"—current data requests (16-19)

VIII. ELECTRIC PROCUREMENT PLAN OUTLINES (19-20)

IX. ADDED NEW UTILITY-OWNED GAS-FIRED POWER PLANTS (20-23)

You may disregard this data request if you do not plan to submit these comments as testimony in Rulemaking 03-10-003.

LOCAL POWER ANSWER 1:

PG&E's data request relates to the appropriate forum for resolving the various issues and concerns raised in Local Power's prepared comments. As Local Power indicated, Local Power filed these comments in both this rulemaking and in Rulemaking 01-01-024 (Procurement OIR). While PG&E agrees that many of these matters may be appropriate for the Commission to address, PG&E suggests is not clear (with the exception of Local Power's discussion of the CRS Calculation on pp. 23-24 which PG&E specifically admits) "that any of them involve matters to be decided in" R.03-10-003. In particular, PG&E contends that many of these matters appear to be more appropriately resolved in the Procurement OIR and in Rulemaking 01-10-024 (the "Gas Procurement OIR").

PG&E is mistaken to suggest that ignoring the critical matters raised by Local Power would avoid duplication of work. Judge Malcolm indicated she would maintain communication with the Assigned Commissioners and Administrative Law Judges in R.01-10-024 R.04-01-024 for the obvious reason that failure to do so would result in a blind regulatory process. As addressing these matters would require greater effort on my part rather than less effort, PG&E's request could not possibly be construed to ask for any unreasonable effort on my part – but, rather, appear to seek to relieve me of an opportunity to raise Local Power's specific proposals to solve a very real and serious problem – the protection of CCA customers from utility over procurement, and the protection of bundled service customers from stranded costs associated with CCA departing load.

1) YES If the item includes matters that should be addressed in Phase I of Rulemaking 03-10-003; and

2) If the answer is "yes" as to any major heading with respect to each such heading, please identify the factual findings or legal conclusions you are asking the Commission to make in this phase.

I. INTRODUCTION (2-3)

YES. The factual findings or legal conclusions I am asking the Commission to make in this phase include; (1) ALJ Malcolm indicated she would maintain contact with the ALJ and ASC in the electric and gas procurement proceedings for the important reason that electric and (electricity-based) gas utility procurement must be coordinated in order to minimize impacts on both bundled service customers and CCA customers. They are in fact two halves of the same gatekeeping process; (2) because PG&E, Edison and Sempra are now aggressively seeking to over-procure both long-term power supply agreements and utility-owned generation, thereby threatening to impose new Customer Responsibility Surcharges on any ratepayers seeking to escape utility procurement to implement Community Choice Aggregation, these investor-owned utilities are in effect failing to cooperate with Community Choice Aggregators as specifically required by AB117. Because any utility over-procurement would impose new Customer Responsibility Surcharge fees that would directly block customers from economically bypassing default service, the utilities efforts to over'-procure without consideration of impacts on Community Choice before R.03-10-003 is contrary to the requirement in AB117 violates the statutory requirement that electrical corporations "cooperate fully" with Community Choice Aggregators. Specifically, PG&E, Edison and Sempra are seeking affiliate transactions between gas and electric affiliates (e.g., Sempra is seeking to lock a percentage of its LNG terminal to SDG&E owned gas-fired generation), any failure of the Commission to protect CCAs against such over-procurements would violate AB117's requirement that the Commission facilitate transactions between CCAs and ESPs.

II. INTEGRATED RESOURCE CALENDAR (3-6)

YES. The factual findings or legal conclusions I am asking the Commission to make in this phase includes (1) that the Commission is required by AB117 to facilitate transactions of Community Choice Aggregators with Electric Service Providers pursuant to the statutory entitlement of California investor-owned utility customers to depart from utility procurement, and pursuant to the statutory rights of Community Choice Aggregators to negotiate with Electric Service Providers; (3) that the Commission has the authority to assign a Customer Responsibility Surcharge on the implementation plan of a Community Choice Aggregator on a case by case basis based on the actual costs that would be imposed by the specific nature of the plan; (3) that an annual administrative process of electric utility procurement and CCA load departures according to an "Integrated Resource Calendar" is needed to meet the Commission's obligations

to protect ratepayers and facilitate CCA - not an *a priori* CCA CRS for New World Procurement.

III. RATEPAYER INDIFFERENCE SHOULD BE MUTUAL (6-7)

YES The factual findings or legal conclusions I will be asking the Commission to make in this phase includes; (1) because AB117 requires Community Choice Aggregators to include all ratepayers in their jurisdiction who do not choose to opt-out, and under AB117 must also continue to be served as captive customers by the IOU for distribution, metering and billing services, Choice Customers are legally indistinguishable from utility bundled service customers, and are entitled to the same ratepayer protections (under the principle of ratepayer indifference) against stranded costs and exit fees associated with utility over-procurement or new utility owned generation underscoring their need for the Commission's regulatory protection; (2) the principal of "mutual indifference" between CCA customers and utility customers is needed to satisfy the requirement that the Commission facilitate transactions between CCAs and ESPs – under which CCA customers should neither "harm" bundled service customers, nor be harmed by utility procurement; (3) as it is in the interests of all California ratepayers' interests (CCAs are defined as groups of ratepayers seeking to leverage their buying power) to have an option to utility bundled service, and as under AB117, 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 forms of service; (4) thus, the designation of CCAs as Load Serving Entities ("LSE's") under the Commission's nomenclature, is inconsistent with state law. The CCA is a customer, not a "market participant".

IV. CURRENT PROCUREMENT PROCEEDINGS' CRS IMPACT (7-8)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase includes; (1) 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.

V. CCA's APPROACHING THE CPUC 'GATE' 2005-6 (8-11)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; (1) 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

accordingly. 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.

VI. CURRENT UTILITY PROCUREMENT CCA CRS IMPLICATIONS (11-12)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; (1) the current regime of gas and electric procurement, the Commission is not coordinated, and its proceedings appear scheduled in a manner which 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. This is inconsistent with state policy and AB117.

VII. UTILITY CONFIDENTIALITY CCA CRS IMPACTS

A. Utility procurement plan confidentiality (12-16)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; (1) 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 utility's electric procurement. Yet AB117 defines CCAs *as customers.* (AB117, PUC 336 (a)). Section 366.2 (a) (1); (2) AB117's requirement that utilities "fully cooperate"with AB117 indicates that 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 (3) 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 (PUC 366.2(f)), such that 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) – and the abovementioned statutory requirement that utilities "fully cooperate" with CCAs.

B. YES. AB 117 data request confidentiality (16)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; 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; (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;

C. IRC "case study"—current data requests (16-19)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; (3) 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, 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."

This refusal constitutes a violation of AB117's requirement that utilities "fully cooperate" with CCA's; any Commission process that authorizes procurement without this data is a violation of the Commission's obligation to facilitate transactions between CCAs and ESPs, and violates the

entitlement of ratepayers to find alternatives to utility procurement under ÄB117, and violates the right of CCAs to negotiate with ESPs..

IV. ELECTRIC PROCUREMENT PLAN OUTLINES (19-20)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; (1) 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; (2) 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; (3) 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; (4) 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.

.

V. ADDED NEW UTILITY-OWNED GAS-FIRED POWER PLANTS (20-23)

YES. The factual findings or legal conclusions I will be asking the Commission to make in this phase include; (1) 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; (2) this will not succeed in delivering energy security because, in fact, over-reliance on natural gas was among the principal causes of our energy crisis of 2000-Supporting Local Power's assertion is the very document on which the IOU's will prepare their base line forecasts; (3) 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. 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;p (4) the IEPR identifies four overarching strategies that serve as the basis of California's energy systems - 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, and 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); (5) In particular, the IEPR recommends reducing California's dependency on natural gas for electricity generation; (6) the IEPR points out that renewables and conservation saved the state during the 2000-1 Energy Crisis: (8) the IEPR recommends that California meet forecasted electricity demand with demand reduction and RPS acceleration: (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. These facts underscore the fact that over-procurement or new utility-owned gas fired generation will create stranded costs, constitute a failure of the utilities to comply with AB117's requirement that utilities fully cooperate with CCAs, would unnecessarily impose a Customer Responsibility Surcharge on ratepayers now seeking to escape them, and if approved by the Commission would constitute a failure to facilitate transactions between CCAs and ESPs as required by AB117.