BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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

INITIAL BRIEF OF LOCAL POWER

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I. INTRODUCTION

Local Power hereby submits its Brief on the Testimony and Evidentiary Record of all parties participating in the California Public Utilities Commission proceeding on Community Choice Aggregation, R.03-10-003. Local Power's Brief employs Southern California Edison's ("Edison") Outline as modified by Cal Clera in its emailed response to the proposed outline to the R.03-10-003 email service list.

II Achieving the Legislature's Intent in Enacting AB 117

A. Legislature intended CCA to benefit all bundled service customers. The legislature intended CCA to provide a permanent recourse for all bundled service customers facing potentially unsatisfactory bundled service terms. The utilities agree that the ratepayers' recourse to CCA will introduce pressure to reduce customer costs (PG&E Witness Sandra Burns Reply Testimony on CRS Calculations, p.2-6, lines 36-7) – a clear benefit to bundled service customers. On the same day (September 24, 2004) that Governor Davis signed AB57 (Wright) authorizing electric utility procurement, AB117 was also signed, providing that (1) ratepayers shall be entitled to aggregate their electricity loads (PUC Section 366(a)), and that Customers shall be entitled to aggregate their electric loads as members of their local community with CCA (PUC Section 366.2. (a) (1)) – and customers may aggregate their loads through a public process with CCA, if each customer is given an opportunity to opt out of their community's aggregation program (PUC Section 366.2(a)(2)). Thus, the right of customers to form CCA through their local community thus confers a new, permanent entitlement on all bundled service customers that is statutorily defined alongside the right of customers to aggregate and negotiate with EPS on an opt-in basis (PUC Section 366(a)).

B. Legislature intended CCA to be a purchasing entity, not a Load Serving Entity. AB117 intended for Community Choice Aggregations (CCA) to be purchasing organizations facilitated through a “public process” (PUC Section 366.2(a)(2)) rather than Market Participants, and that notwithstanding Section 366, a CCA is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries “to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts.”(PUC Section 366.2©)1). CCA are composed of ratepayers similar to opt-in aggregations, not Load Serving Entities or Market Participants, thus AB117 requires utilities to “fully cooperate” with CCA – whereas the utilities agree no such requirement exists under any law for utilities to cooperate with Electric Service Providers (EPS) or Independent Power Producers (IMPS) that will compete to serve CCA customers (PUC Section 366.2©)9).

C. The Utilities’ definition of CCA as competitors contravenes legislative intent. Yet all three utilities’ witnesses have indicated that they consider CCA to be competitors (PG&E Witness Sandra Burns, June 7, 2004 Evidentiary Hearing, p.454 line 22 to p.455 line 27; S.G.&E Witness Jim Magill, June 8, 2004 Evidentiary Hearing, p.542, lines 6-9)) and S.G.&E’s witness indicated “seeing CCA as a utility”. The Commission should take note of a dangerous conflict of interest presented by this categorization of CCA as “Market Participants” and “Load Serving Entities” for utility officers who have a fiduciary responsibility to their shareholders to prevent competitors from reducing bundled utility sales . The utilities admit that CCA will result in a decline in bundled sales, with less procurement of power (PG&E Witness Sandra Burns, June 4, 2004 Evidentiary Hearing).

D. Incentive ratemaking with utility procurement and URG contravenes legislative intent. Indeed, the advent of incentive ratemaking in the electric procurement proceeding ®.01-10-024, D. 04-01-050, p. 4) introduces a new conflict of interest for the utilities. Under incentive ratemaking, utilities agree that "to the extent that there was an incentive mechanism that encouraged (utilities) to retain load, bundled load, that might create an incentive for us to want to retain the bundled load and not be indifferent to customer departure." (PG&E Witness Sandra Burns, June 7, 2004 Evidentiary Hearing p.458 line 5 to p.459 line 18) Given the fiduciary responsibility of the utilities executives to 'their shareholders, it is clearly incumbent on the Commission to take note of and remove an avoidable conflict of interest for the utilities, which should not be forced into breaking the law. As the Legislature expressly requires utilities to "fully cooperate" with CCA – and PG&E's witness admits no law requires utilities to cooperate with Independent Power Producers (IMPS), EPS or any other Load Serving Entities participating in the market (PG&E Witness Del Evans, June 4, 2004 Evidentiary Hearing, p.319, Line 24 to p.320, line 2), the Commission must take note of an obvious legal contradiction and grant CCA full but hermetic access to all utility data, and dispense with the categorization of CCA as the utilities' "competitors."

E. Legislature did not intend CCA to be a form of municipalization. There are statutory restrictions on CCA participation in the market that reflect CCA's definition as groups of ratepayers in a local public process. CCA are forbidden by AB117 from aggregating electrical load if that load is served by a local publicly owned electric utility (as defined in subdivision (d) of Section 9604), thus firewalling CCA against municipalization. AB117 authorizes a CCA's grouping of retail electricity customers for a specific purpose: "to solicit bids, broker, and contract for electricity and energy services for those customers (PUC Section 366.2©)1). - not to become an Electric Service Provider, Load Serving Entity or Market Participant. The CCA's agreements for services are limited "to facilitating the sale and purchase of electricity and other related services,"(PUC Section 366.2©)1) - not to undertake an intrepid wires takeover. Even the utilities agreed CCA are not municipal utilities

F. Legislature intended CCA to have full access to all utility data. Accordingly, AB117 requires utilities' statutorily required "cooperation" to include making available all billing and load data (PUC Section 366.2©)9.) to a CCA once it becomes a CCA through passage of a local ordinance (PUC Section 366.2©)10.). Unlike Electric Service Providers (EPS), which as the utilities' real competitors existing Direct Access rules forbid access to confidential customer information, CCA are not subject to confidential 15/15 Rule data restrictions from existing Direct Access rules except in being prohibited from releasing this data to an ESP prior to the completion of its ratepayer opt-out period.

G. Legislature intended CCA to have customer-specific data upon formation to make the CCA opt out notification possible. A failure to make this data fully accessible to CCA would have several unlawful consequences. First, the utilities agree that if the 15/15 rule is applied, the CCA could not even perform the first two official opt-out notifications in violation of AB117's provision allowing CCA to make the notifications directly (PUC Section 366.2(c)13(B)) because the 15/15 rule precludes the utility from providing the level of detail that is required for a customer to make a specific decision around opting out (PG&E Witness Dell Evans, June 4, 2004 Evidentiary Hearing, p.328, lines19-27.

H. Legislature intended CCA to have equal access to all data if when utilities compete against CCA to administer Public Goods Charge funds. Second, If utilities were allowed to restrict data to CCA they consider competitors or municipal utilities when they are bidding against them for Public Goods Charge funds as provided in AB117 (PUC Section 381.1(a)), this would provide utilities with an unfair competitive advantage over CCA in designing their proposed programs, thus directly violating the requirement that the statutory requirement that utilities "fully cooperate...shall include data necessary to establish the data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Restricting CCA access to billing and load data useful for designing energy efficiency programs (such as customer-specific data) would also violate the CCA's right to co-design energy efficiency programs even in the even that they are administered by utilities (PUC Section 381.1©)).

I. Legislature intended that only customer-attributable transaction costs be charged to CCA customers. The Legislature intended that all transaction and utility procurement-related costs imposed by any particular Community Choice Aggregator or CCA ratepayer to be born by the CCA and the CCA ratepayer. However, the legislature intended that all costs relative to implementing Community Choice Aggregation that *are not attributable* to any particular CCA or CCA ratepayer shall be born by bundled service customers (PUC Section 366.2©)17) as the appropriate and necessary cost of having Community Choice as a permanent recourse to all California's bundled service customers to which AB117 "entitles" them (PUC Section 366.2. (a)(1)).

J. Legislature intended that the CRS be similarly limited to customer-attributable costs. Costs associated with scheduling utility procurement to maintain a 5-10% annual window of CCA load departure according to a CCA implementation plan process are the cost of having Community Choice as a choice in California. Accordingly, the added incremental cost of increasing short term procurement authorizations for a commensurate margin of power purchase agreements should not be included in the CCA CRS.

K. Legislature intended an Integrated Resource Calendar to avoid stranded costs and assets. The Legislature intended that any Cost Responsibility Surcharges imposed on CCA or CCA ratepayers be limited, and that utilities not be allowed to block CCA through overprocurement. The governor's recent letter to President Peevey also directs the Commission to avoid the creation of future stranded costs (Exhibit 47, p.1).

L. Legislature did not intend to shield shareholders against bearing a fair share of transaction and procurement-related costs. While bundled service customers are limited to paying for CCA transaction and procurement costs not attributable to any particular CCA customer, the legislature did not intend that utility shareholders should be protected against costs relative to CCA. The word "shareholder" does not appear in AB117. Thus, AB117 does not protect utility shareholders from cost shifting where necessary to accommodate CCA as a permanent recourse to California ratepayers.

M. Legislature intended a CCA-specific load profile-based CRS. The legislature intended CCA to administer energy efficiency and conservation programs, and requires CCA to implement the Renewables Portfolio Standard (RPS) law, SB1078 (2001, Sher). In fact, the current crop of cities implementing Community Choice has at minimum a 40% RPS goal – over three times the increase in renewables and conservation required by law of the utilities. Thus

N. Legislature intended CPUC to disclose a finite CRS to CCA customers – not a true-up. The Commission is required by AB117, after certification of receipt of a CCA's 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 CCA* to prevent a shifting of costs – a fee, based on Commission forecasting, which will not change for any CCA from year to year.

O. The Legislature intended that the "costs" as used in AB117 may be set on a forecasted basis.

III Achieving Consistency with the Governor's Energy Plans as reflected in PG&E's Exhibit 47

In Exhibit 27, PG&E submitted a letter from Governor Schwarzenegger to CPUC President Michael Peevey, and in particular asked me to read isolated sentences from this letter onto the record - in particular, the sentences, "Now is the time for utilities to lock in these low prices through long-term contracts," to which I disagreed on grounds that doing so would be illegal prior to completion of the Commission's already expedited R.01-10-024 and R.03-10-003.

Contradictory elements in the Governor's plans should not be taken out of context of the letter in which they appear, and should be reconciled to capture their true meaning.

The Governor's letter also calls for "an electric market structure that encourages healthy wholesale and retail competition," and calls for a CPUC procurement process which "avoid[s] the creation of future stranded costs. (Exhibit 47, p.1)

In another passage of the Governor's letter that PG&E's Counsel also asked me to read, "(t)o compensate for these plant retirements and to plan for the inevitable return of strong economic growth, California cannot afford to delay the construction of new power plants. (Local Power Witness Paul Fenn, June 24, 2004 Evidentiary Hearing, pp. 1043, line 23 to p. 1044 line 20.) I said I did not understand the meaning of this sentence because current delays are market based – no bank is willing to underwrite power plants without long-term contracts.

CCA provides a superior method of overcoming this delay factor than utility procurement can offer, because like utility procurement, CCA involves the same kinds of long-term contracts to which the Governor referred – through a competitive market that does not run the risk of creating future stranded costs, which utility procurement and particularly URG directly entail through the rate-basing of contracts pursuant to AB57 and SB1976.

In fact, the outcome outlined in the Governor's letter is best provided by Community Choice and could be directly contravened by utility procurement. Thus, achieving consistency with the Governor's energy plans – to have a competitive market but also provide for long-term contracting and new capacity financing - hangs on expediting R.03-10-003 more than R.01-10-024.

IV. INFORMATION ISSUES

A. Service of All Load Within CCA Jurisdiction

AB117 requires a CCA's implementation plan to include universal access within its jurisdiction (PUC Section 366.2(c)4(A)) and requires a CCA to offer service to all residential customers in its jurisdiction (PUC Section 366.2(b)).

B. Phase-In of Community Aggregation Programs

AB117 does not allow phase-in of CCA programs. AB117 requires a CCA's implementation plan to include universal access within its jurisdiction (PUC Section 366.2(c)4(A)), and requires a CCA to offer service to all residential customers in its jurisdiction(PUC Section 366.2(b)).

C. CCA-Specific Load Profiles

The Office of Ratepayer Advocates (ORA) has proposed a load factor-based adjustment to the CRS mechanism to be imposed on CCA. Indeed, AB117 requires CCA-specific load profiles in calculating a CRS for any particular CCA for a number of reasons outlined below.

Under AB117, a retail end-use customer purchasing electricity from a CCA shall reimburse the electrical corporation that previously served the customer for: (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 (PUC Section 366.2(f)1), as well as (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 Section 366.2(f)2).

AB117 employs a broader standard to recover DWR bond-related costs (PUC Section 366.2(e)1) which states that ratepayers pay "(a) charge *equivalent to the charges that would otherwise be imposed* on the customer relative to DWR bond related costs, and for DWR contracts requires a CCA customer to pay "the customer's *proportionate share* of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs" (PUC Section 366.2(e)2). Yet in the next paragraph the legislature employed more restrictive language regarding what CRS charges may be applied for utility costs – that such costs must be "attributable to the customer."

Thus under AB117, CRS charges to a CCA's customers must reflect that CCA's peak load requirement costs, not merely reflect the peak load requirement costs of the average utility's customer, nor merely meet the utility's revenue requirements – as this would presume shareholders are protected against cost-shifting, which they are not. The utilities argument that they have always forced ratepayers from less peaky areas to subsidize ratepayers in peakier areas

(PG&E Witness Andrew Bell, June 8, 2004, p.507 line 11 to p.508 line 8) does not make it legal to do so with the CCA CRS, which specifically forbids it.

SDG&E's witness admitted that using a utility's system average load profile-based CRS would not adjust a CRS for the CCA that have implemented aggressive energy efficiency and other peak load reductions despite the fact that such peak load reductions would have dramatically reduced costs associated with meeting their peak load requirements (SDG&E witness Robert Hanson, Evidentiary Hearing, June 8, 2004, p.609, Lines 16-17). If San Francisco implements its adopted ordinance requiring EPS to install 360 MW of load-reducing efficiency, conservation and renewable technologies in a community with 650-850 MW load, virtually perfecting its load profile as a region, it might at expiration of its CCA contract return its customers to bundled service for a time, then subsequently implement a new CCA load departure. Under this scenario, San Francisco's customers could not lawfully face the same CRS as a CCA of similar load departure history but which had done nothing to improve its community's load profile. (San Francisco's adopted Community Choice ordinance 86-04, approved May 27, 2004).

A system average load profile-based CRS directly violates the plainly worded requirement in PUC Section 366.2(f)2 that CRS charges on a CCA customers reflect costs that are "attributable to the customer":

- First, it would impose charges on CCA's customers based on peak load requirement costs that they have actively eliminated, such as in San Francisco.

- Second, a system average load profile would arbitrarily cost-shift between CCA and bundled service customers by directly imposing charges associated with peakier customers from one location in a utility's service territory on less peaky customers at another location in its service territory.

No less significant, failure to implement a CCA-specific load profile-based CRS would create a massive disincentive for CCA to implement peak load reduction efforts, jeopardizing fully half of the "means" identified by the adopted Energy Action Plan for meeting the Commission's adopted policy goal of meeting California's energy needs in an environmentally friendly manner:

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

D. Boundary AND OTHER Metering

AB117 requires provides that, at the request and expense of any community choice aggregator, utilities shall install, maintain and calibrate metering devices at mutually agreeable locations "within or adjacent to" the CCA's political boundaries – not merely "Boundary Metering." Furthermore, AB117 provides that the electrical corporation shall read the metering devices and *"provide the data collected to the community aggregator"* at the aggregator's expense. To (PUC Section 366.2©)18).

The ability to install metering devices of any kind – at mutually agreeable locations on the utility's grid – has implications that are illustrated by San Francisco's adopted Community Choice ordinance, under which an Implementation Plan will be submitted to the San Francisco Board of Supervisors in November of this year (City and County of San Francisco Ordinance 86-04, May 27, 2001, p.4), which may amend and adopt the plan by ordinance and send it to the Commission at that time.

The "new" metering language in AB117 is important because it underscores the ability of a CCA and utility to measure the benefits from new capacity and load reduction technologies installed by the CCA's ESP.

The basic requirements of AB117 combine to provide guidance on how the legislature intended availability of data relative to a CRS definition. The legislative intent of AB117 is found in a combination of provisions:

(1) the legislative intent of AB117's energy efficiency funds language,
(2) the requirement that utilities provide data on customers' energy needs and patterns of usage,
(3) the requirement that utilities install metering devices *within or adjacent to* the community aggregator's political boundaries,
(4) the detail that implementation plans are the basis of the CRS mechanism determination after a 90 day "certification" process (PUC Section 366.2©)7), and
(5) that implementations must include details about who is the underwriter, particularly "the rights and responsibilities of parties"(PUC Section 366.2(c)3(E)).

Thus, the Commission, while lacking ratesetting jurisdiction over Community Choice Aggregations, has broad discretion, based on a CCA's implementation plan, to impose CRS penalties (this regulatory authority also lacking due to CPUC Decision 04-01-050, which forbade Commission review of electric utility procurement contracts pursuant to AB57.)

E. Relevancy of Information to Community Choice Aggregation

Making Customer-specific billing and load data is critical to the ability of a CCA (1) to provide statutorily required customer notifications to all ratepayers in its jurisdiction, and (2) to design and measure the benefits of cost-effective energy efficiency and conservation programs.

Accordingly, AB117 requires utilities' statutorily required "cooperation" to include making available all billing and load data (PUC Section 366.2©)9.) to a CCA once it becomes a CCA through passage of a local ordinance (PUC Section 366.2©)10.).

Customer-specific data is needed prior to the beginning of the opt-out period so that a CCA may perform the required opt-out notifications, in violation of AB117's provision for CCA to make the notifications directly to ratepayers (PUC Section 366.2(c)13(B)). The utilities agree that, if applied, the 15/15 rule would preclude the CCA from providing the first two notifications required by this section of code because the 15/15 Rule precludes utilities from providing the level of detail that is required for a customer to make a specific decision around opting out (PG&E Witness Dell Evans, June 4, 2004 Evidentiary Hearing, p.328, lines19-27).

AB117 provides that CCA have the opportunity to administer (PUC Section 381.1(a)) and the right to design (PUC Section 381.1©)) energy efficiency programs even if other parties are the administrator. Accordingly, AB117 requires that utilities make customer billing and load data available to a CCA "*including, but not limited to, data detailing electricity needs and patterns of* *usage*, as determined by the Commission" (PUC Section 366.2©)9) in addition to requiring utilities to install and report data from new meters to the CCA at is own expense.

The fact that the utilities maintain confidentiality of even their interval meter data while downplaying the statutory requirement that they install and report data from new meters in AB117 goes contravenes obvious legislative intent in AB117.

If CCA are denied access to their own customer-specific and interval meter data that utilities admit using in designing their energy efficiency programs (SDG&E Witness Wendy Keilani, June 2, 2004, p.109, line.2) in applications for such energy efficiency funds, CCA would suffer a competitive disadvantage bidding against utilities for Public Goods Charge funds as provided in AB117 (PUC Section 381.1(a)). Allowing utilities to exploit an unfair advantage in depriving customers the opportunity to administer their own programs would directly violate the statutory requirement that utilities "fully cooperate" with CCA, in addition to offering the data necessary to establish the data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission, as cooperation is statutorily defined. Restricting CCA access to billing and load data that is useful for designing energy efficiency programs (such as customer-specific load data) would also violate the CCA's right to co-design energy efficiency programs even in the even that they are administered by utilities (PUC Section 381.1©)).

Moreover, without the data, CCA will be unable to prepare Implementation Plans as outlined in AB117.

F. Confidential Customer Information

Direct Access confidentiality rules (Rule 15/15 and the 500 Kilowatt Rule) do not apply to CCA, but should continue to apply EPS and other Market Participants for the simple reason that whereas CCA are formed by ratepayers through a public and non-profit process, EPS are indeed market participants and Load Serving Entities formed by private, for-profit energy suppliers. It should be noted that as private, for-profit suppliers, utilities should not be entrusted with confidential customer information either. Thus AB117 establishes a degree of regulation over EPS (PUC Section 394.25. (a) through (d)). For similar reasons, AB117 establishes regulation of utility services, providing that "the commission shall determine the terms and conditions under which the electrical corporation provides services to community choice Aggregations and retail customers." (PUC Section 366.2©)9. In stark contrast, AB117 gives CCA relatively autonomous ratesetting authority for its ratepayers (PUC Section 366.2(c)3(B)). Thus, while EPS and indeed utilities should not be entrusted with unrestricted use of confidential customer data, CCA should and must be entrusted with this responsibility over their own data for the reasons listed above.

Thus, customer-specific data and the utilities load research data, both of which the utilities maintain as confidential (Edison Witness Akbar Jazayeri, June 3, 2004 Evidentiary Hearing, p.188, lines 8-23), may be made accessible to CCA, though not EPS. Edison's witness agrees that data from new meters installed within or adjacent to the CCA jurisdiction pursuant to PUC Section 366.2©)18 is not confidential. (Jazayeri, June 3, 2004 Evidentiary Hearing, p.190, lines 8-15). The same witness indicated Edison's unwillingness to release confidential information to a CCA "prior to a CCA being formed." (Jazayeri, June 3, 2004, p.193, lines 11-14).

Mr. Jazayeri neglects to note that a CCA is formed when the local governing board of a municipality, county or joint powers agency elects to combine the loads of its residents, businesses, and municipal facilities in a community wide electricity buyers' program. Under AB117, such a governing board that elects to implement a CCA program within its jurisdiction "shall do so by ordinance" (PUC Section 366.2(c)10(A)).

Once a CCA is formed, it needs customer specific and interval meter data in order to facilitate the transaction and prepare an Implementation Plan for submission to the Commission – a plan whose specific details will determine the Commission's calculation of a CRS.

Thus AB117 requires to "cooperate fully" with any CCA that "*investigate, pursue, or implement CCA*," and cooperation is defined as including 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. (PUC Section 366.2©)9). It is important to observe that including data detailing electricity needs and patterns of usage is not required only with CCA that "implement" CCA but even CCA that merely investigate or pursue CCA.

It is dangerous to argue that utilities should protect the confidentiality of ratepayers against CCA as if they were competitors. . Yet all three utilities' witnesses have indicated that they consider CCA to be competitors (PG&E Witness Sandra Burns, June 7, 2004 Evidentiary Hearing, p.454 line 22 to p.455 line 27; SDG&E Witness Jim Magill, June 8, 2004 Evidentiary Hearing, p.542, lines 6-9)) and SDG&E's witness sees the CCA "in a similar fashion to a utility" (Magill, June 7, 2004 p.545, line 4), even though AB117 specifically firewalls CCA against municipal utilities by forbidding CCA from aggregating electrical load if that load is served by a local publicly owned electric utility (PUC Section 366.2©)1).

The CCA is not a competitor – even the same witness who said he sees CCA in a similar fashion to a utility admitted, upon my further questioning, "a CCA is not a municipal (utility)." (Magill, June 8, 2004, p.545, line 12). If a CCA is not a municipal utility and is statutorily required to be a local government, then it is by statutory definition not a "utility" at all.

The Commission should take note of a dangerous conflict of interest presented by this categorization of CCA as "Market Participants" and "Load Serving Entities" for utility officers who have a fiduciary responsibility to their shareholders to use any means necessary to block competitors. The utilities admit that CCA will result in a decline in bundled sales, with less procurement of power (PG&E Witness Sandra Burns, June 4, 2004 Evidentiary Hearing).

CCA are ratepayers exercising their right to depart from utility procurement. Even SDG&E's witness agreed that CCA customers are "members" of the CCA and not merely customers of it (SDG&E Witness James Magill, June 8, 2004 Evidentiary Hearing, p.544, lines 14-20), reflecting the statutory language entitling *ratepayers to aggregate through a public process called CCA.* Second, CCA are public and non-profit. Utilities, being both for profit and privately controlled, offer ratepayers no such assurance of public meeting laws and electoral accountability. CCA are therefore better stewards of confidentially protected customer data than utilities under their basic legal and constitutional characteristics.

While in order to facilitate transactions, the CCA needs customer-specific and all interval load data even at the implementation plan drafting stage, EPS should be restricted to anonymous data that protects ratepayer confidentiality until the 120 day opt out period is complete, as requested by the utilities. The EPS may receive the data at this point because of the fundamental difference between Direct Access (DA) and CCA – the opt out provision under which CCA ratepayers aggregate to leverage purchasing power and lower transaction costs. Under DA, the authorization to switch a customer to a supplier was conducted in much the same manner that under the DA confidentiality rule data was released - through a written authorization.

SDG&E's witness agreed that whereas under Direct Access customers were switched through a written authorization and thus utilities authorized release of the data to an ESP through a written authorization, under PUC Section 366.2(a)2 a CCA customer's legally binding participation in an ESP contract does not require a positive written declaration, but all customers shall be informed of the opportunity to opt out prior to transfer to an ESP's contract.

Thus the CCA's release of confidential data to an ESP or other third party would logically occur upon the terminus of the opt-out period – when the customer may no longer opt out of the contract without incurring a penalty. In response to being asked in Local Power's cross-examination whether SDG&E objects to releasing the protected information after the opt out period if the customer hasn't opted out, SDG&E's witness said he "would say we would not object if the notification included the safeguards as we proposed, which is that the notice provides clear and unequivocal -- clearly explains to customers that the Commission is requiring the utility to turn over their private information to a CCA provider even if they do not give their affirmative permission and it describes the specific information that is disclosed. Then I would say that we would not object." (SDG&E Witness Wendy Keilani, June 2, 2004 Evidentiary Hearing, p.117, line 14 to p.118, line 4). While Ms. Keilani's interpretation of CCA as competitors is mistaken for the reasons already given, the treatment she proposes for CCA would be appropriate for governing release of the confidential data to EPS or third party data services.

G. Proposal for Third Party Data Services

There is no need for Third Party Data Services to be ruled on in this proceeding, except to the extent that such parties, as disclosed in an implementation plan, would as market participants face restricted access to confidential information as per EPS.

V. COST RESPONSIBILITY ISSUES

A. Transaction Costs

1. Treatment of Implementation Costs

Implementation costs not attributable to a CCA or a CCA customer must be paid by all ratepayers. (PUC Section 366.2©)17) An electrical corporation shall recover from the CCA any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

2. Incremental Costing Methodology

Local Power supports the principal that fixed costs be recovered from all ratepayers, not just the CCA, and that only certain incremental costs be recovered from CCA -- incremental transactions costs attributable to CCA or CCA customers that may therefore recovered from the customers of the CCA.

However, incremental costs that are not specifically attributable to a CCA or its customers must also be recovered from all ratepayers.

4. CCA Fees and Existing DA Fees

CCA fees should reflect the lower transaction costs in relation to DA fees and any costs not attributable to a CCA customer may not be paid by that customer (PUC Section 366.2©)17).

5. Incremental Billing Costs

6. Incremental Opt-Out Processing Costs

7. Actual versus Estimated Costs

8. Revisions to Estimated Service Fees

B. Cost Responsibility Surcharge

1. DWR's Calculation and Modeling Assumptions

2. Relation of DA CRS and CCA CRS

3. Treatment of New Utility Contracts and Vintaging of CCA CRS

TURN witness Michael Florio agreed with the concept of an Integrated Resources Calendar under which CCA implementation plan and exit fee assignment processes could be coordinated with electric utility procurement in order to avoid the creation of any new utility procurement-based CRS.

No party disagreed with Local Power that the current crop of CCA cities is 11% of the investor owned utility market, nor my recommendation the Commission should leave a 5-10% load departure window for IRC compliant CCA to depart, with customer transfers starting in 2006 (Paul Fenn Opening Testimony on the CRS and Utility Cost Issues, April 15, 2004, p.9).

ORA suggested that after 2013 no such charges should continue, ORA witness Steve Ross set aside the question about whether utility contracts in 2005 and a CCA subsequently formed and makes its binding commitment to leave in 2007. Instead he correctly asserted the operative question – not *whether* those contracts entered into in 2005 be included in the CRS calculation for that CCA, but instead how to mitigate the problem in answer to the Governor's direction to the Commission not to create future stranded costs: in Ross' words, "because the CCA and utility procurement has been so well integrated that utilities truly know years in advance not to procure for a CCA that is departing."

The mechanism for authorizing electric procurement should be resolved in the next few months in both R.01-10-024 and R.03-10-003. Being parallel processes deciding how electric utilities should enter into contracts and how CCA can enter into contracts, the Commission will create the mechanism for the new hybrid world of CCA and utility procurement in these two proceedings (and R.01-080-28 re incentive ratemaking and the availability of energy efficiency funds to CCA). Mr. Ross urged the Commission "to not simply -- I think that an annual proceeding where a CCA tells a utility a year in advance -- that might not even be enough. That in an annual proceeding, any CCA, potential CCA, could inform the utilities of several years' worth of procurement plans or migration plans. And by 2013 I would like to see that set up sufficiently so that there would be no New World portion of CRS.`(Office of Ratepayer Advocate Witness Steve Ross, June 10, 2004, p.843 line 27 to p.845 line 11).

Local Power agrees with Mr. Ross that multi-year planning is necessary, but we assert that while CCA formation is an approximately 2-year process, an annual window allowing a percentage of bundled service load to depart without a CRS penalty. Given that the current crop of CCA cities (Local Power Witness Paul Fenn Opening Testimony, April 15, Attachment A) has formed over the past year, the Commission should include adequate short-term procurement in each utility's procurement plan to leave a window open for the current crop of cities to complete their opt out periods and depart from bundled service in starting in 2006 without any utility procurement or Utility-Retained Generation-related CRS, provided that the CCA submit implementation plans to the Commission in an orderly manner. Local Power recommends that CCA submitting plans by February 14, 2005 be allowed to depart without a CRS starting May 11, 2006. Moreover, we believe that URG presents major inconsistencies, and under AB117 URG is not be included among the CCA CRS obligations listed in 366.2(f).

4. Open Season Proposal

Local Power proposed the concept of an Integrated Resource Calendar under which certification of the CCA's Implementation plan and assignment of a CRS would be used to schedule CCA load departures with a minimum 5-10% annual CRS-free window, and the Commission orders a margin of short contracting by utilities as a cost not attributable to any particular CCA or CCA customer – but the cost of having CCA as a recourse to all bundled service customers.

5. Provider of Last Resort

Under AB117, the utility is provider of last resort in that CCA ratepayers are entitled to return, whether voluntarily or involuntarily, to bundled service, and to be received by the utility. Once enrolled in a CCA, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any CRS charges previously determined and paid from the cost of reentry. (PUC Section 366.2©)11)

While under the advent of new world procurement the electric utility preparing for a resumption of the role of Provider of Last Resort, California's electric utilities broke the regulatory compact when the State of California assumed the financial burden of serving customers – and the CPUC ultimately even charged ratepayers for AB1890 rate caps. Thus, the legal significance of the Provider of Last Resort role has lost substance since 2000. In its January 22 decision, the Commission (1) directed that each Load Serving Entity (LSE) within the utility's service territory (i.e., utility, Energy Service Provider (ESP) or Community Choice Aggregator) has an obligation to acquire sufficient reserves for its customer's load located; (2) adopts a reserve margin for LSEs of 15-17%; (3) directs the LSEs to meet this 15-17% reserve requirement by no later than January 1, 2008, through a gradual phase-in including the establishment of interim benchmarks to become effective in 2005; (4) establishes a requirement that utilities forward contract 90% of their summer (May through September) peaking needs (loads plus planning reserves) a year in advance; and (5) continues the 5% target limitation on utilities' reliance on the spot market (i.e., Day-Ahead, Hour-Ahead, and Real-Time energy) to meet their energy needs. (CPUC Decision 04-01-050, January 22, 2004). Thus, the Commission has also shifted some of the traditional burden of the provider of last resort onto a CCA or indirectly onto its ESP.

6. Proposal for Fixed CRS Obligation

By fixed CRS Obligation Local Power understands to mean a charge similar to that imposed on DA customers **-** a flat per kilowatt hour fee.

AB117 requires that the Commission inform a CCA's prospective customers what they must pay based on their CCA's specific implementation plan details. The Commission is required by AB117, after certification of receipt of a CCA's 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 CCA* to prevent a shifting of costs – a fee, based on Commission forecasting, which will not change for any CCA from year to year.

A flat fee-based per kilowatt hour CRS obligation is not allowable to the extent that it would ignore the particular details of a CCA implementation plan and thus fail to reflect benefits to bundled service customers.

Clearly, establishing the CRS at the outset involves forecasting. Nothing in AB117 prohibits forecasting and indeed the Legislature intended to permit the use of forecasting in determining costs (Local Power Witness Fenn, June 24, 2004, p.1036, lines 12-15) While forecasting requires effort by the Commission and involves some degree of imprecision, the importance of certainty and predictability for decision-making by CCA and their customers amply justifies the use of forecasting to establish an up-front CRS that will not involve a true-up.

It is noteworthy that the IOU's have strenuously argued (D.04-01-050, January 22, 2004, p.117) for up-front decision-making with regard to their procurement planning, and even while preserving their right to recover costs from their ratepayers no longer face after-the-fact regulatory review of their electric procurement contracts by the Commission under D.04-01-050 pursuant to AB57 and SB1976. With CCA requiring EPS to shoulder a greater degree of risk than the Commission requires of utilities, a CRS true-up is therefore unacceptable.

7. CRS Applicability to CCA or CCA Customers

Under AB117, a retail end-use customer purchasing electricity from a CCA shall reimburse the electrical corporation that previously served the customer for: (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 (PUC Section 366.2(f)1), as well as (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 Section 366.2(f)2).

AB117 employs a broader standard to recover DWR bond-related costs (PUC Section 366.2(e)1) which states that ratepayers pay "(a) charge *equivalent to the charges that would otherwise be imposed* on the customer relative to DWR bond related costs, and for DWR contracts requires a CCA customer to pay "the customer's *proportionate share* of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs" (PUC Section 366.2(e)2). Yet in the next paragraph the legislature employed more restrictive language regarding what CRS charges may be applied for utility costs – that such costs must be "attributable to the customer."

As AB117 does not provide for the CCA CRS to include new Utility Retained Generation, CCA may not be charged a CRS for URG.

8. Proposed Cap on CCA CRS

9. True-up of CRS Obligations

AB117 requires that the Commission inform a CCA's prospective customers what they must pay based on their CCA's specific implementation plan details. The Commission is required by AB117, after certification of receipt of a CCA's 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 CCA* to prevent a shifting of costs – a fee, based on Commission forecasting, which will not change for any CCA from year to year.

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10. Load Factor Adjustments

Load factor adjustments that are attributable to a CCA or its customers should be paid by the CCA or its customers, provided that the utility has made all data available to a CCA seeking to plan its loads once it is formed by ordinance.

Load factor adjustments not attributable to a CCA or its customers should be paid by all ratepayers or by utility shareholders, whether considered fixed or incremental costs consistent with PUC Section 366.2(f) or as a procurement cost pursuant to PUC Section 366.2©)17.

CCA denied access to any customer-specific or interval meter data by its utility prior to completion of its Implementation Plan, and would place a disproportionate burden on utility shareholders to pay for the cost of the adjustments made blindly as a result of the utility's failure to cooperate fully with the CCA, including provision of 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 (PUC Section 366.2©)9).

11. Utility and CCA Procurement Risks

CCA risks relative to Utility Procurement is carefully circumscribed by AB117.

Under AB117, a retail end-use customer purchasing electricity from a CCA shall reimburse the electrical corporation that previously served the customer for: (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 (PUC Section 366.2(f)1), as well as (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 Section 366.2(f)2).

AB117 employs a broader standard to recover DWR bond-related costs (PUC Section 366.2(e)1) which states that ratepayers pay "(a) charge *equivalent to the charges that would otherwise be imposed* on the customer relative to DWR bond related costs, and for DWR contracts requires a CCA customer to pay "the customer's *proportionate share* of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs" (PUC Section 366.2(e)2). Yet in the next paragraph of AB117 the legislature employed more restrictive language regarding what CRS charges may be applied for utility costs – that such costs must be "attributable to the customer."

12. Barriers to CCA Formation and Reflection of CCA Benefits

With California CCA representing over ten percent of the investor-owned utility market are now spending scarce funds to implement programs with a minimum goal of 40% RPS, it is clear that CCA will deliver massive benefits to all bundled service customers in California, and their CRS should reflect that benefit.

Artificially imposing a “gross cost” definition on AB117 would violate AB117 and create a massive barrier to implementation by refusing to include elements in a CCA’ implementation plan that benefit bundled service customers in the calculation of the CRS.

Thus, in calculating a CCA’s CRS, the Commission should “net” such benefits against the costs imposed by the implementation plan.

CAL CLERA’s witness asserts that if a CCA achieves certain kinds of benefits for the bundled service customers who remain, then the Commission should be able to net those benefits against that gross cost assignment to the CCA so as to encourage formation of CCA and the encouragement of CCA that produce benefits for the entire state, including the customers who stay behind.(CAL-CLERA Witness Charles Cicchetti, p.965, lines 16-22).

Local Power agrees with Mr. Cicchetti that the definition of “costs” in AB117, as in all Commission nomenclature, is “net” costs, requiring a CRS equal to an amount paid out *less any related savings or money returned* - not gross costs in which the gross amount is paid without regard to savings or money returned.

In other words, the legislature intended that bundled service customers should be held harmless from the impacts of a CCA load departure on a net basis (CAL CLERA Witness Cicchetti, page 979, lines 25-27) – not be allowed to absorb all the benefits of CCA customers’ investments, such as improved reliability, with one hand, while charging CCA customers for every cost associated with their actions with the other.

13. Tiered CRS that Reflects Benefits

Potential benefits to all bundled service customers from CCA's implementing aggressive energy efficiency, conservation and generation programs include but are not limited to:

- Increased Reliability;
- Avoided new generation costs in the rate base;
- Avoided new transmission costs in the rate base;
- Avoided new distribution costs in the rate base.
- Reduced fuel charge costs and price volatility through reduced demand for gas-fired generation, on which California utility investor-owned utility ratepayers already depend for 36% of their power;
- Reduced wholesale power costs from reduced demand in the wholesale market which, all other things being equal, cause the price in the market in which IOUs purchase more than two thirds of their energy for resale to be reduced, whose effect in terms of dollars saved by IOUs bundled customers could be significant.

CalCLERA's witness, Dr. Cicchetti testified the Commission should consider distinguishing between CCA that build power plants, and CCA that simply go into the same pool of resources in the Western market to purchase power, and that a 50% credit would be justified based on the following analysis: assuming at IOU demand in California of 40,000 MW, and 250 million MWHs per year, as a result of reducing demand across the wholesale market, a price reduction of $0.20 per MWH, or .02¢ per kWh wholesale costs for IOU would be reduced by $55,000,000, or approximately 50% of the assumed base CRS. Stated another way, if the reduced demand on the system reduced wholesale market prices by 2/10's of a mill/kwh MWH, the savings across the entire system would justify the 50% credit to the CCA (CalClera Witness Cicchetti, .

AB117 directs the Commission to calculate a CRS based on a CCA's implementation plan, and specifies that the Commission may require a level of detail to be included in such plans so as to reasonably forecast and net out the costs and benefits that would be associated with the plan.

The categories of detail in a CCA implementation from which benefits may be estimated are outlined in AB117, which provides that a CCA establishing electrical load aggregation shall develop an implementation plan detailing *the process and consequences* of aggregation, and must contain an organizational structure of the program, its operations, and its funding; ratesetting and other costs to participants; provisions for disclosure and due process in setting rates and allocating costs among participants; the methods for entering and terminating agreements with other entities; the rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures; termination of the program; a description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

Within 90 days after the CCA establishing load aggregation adopts and files its implementation plan with the Commission, 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 CCA 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 from DWR or utility procurement obligations (PUC Section 366.2©)7).

In order to assess the benefits of a CCA implementation plan, the Commission may thus request additional information about any element contained in a CCA's Implementation Plan.

In fact, San Francisco's adopted Community Choice ordinance (City an County of San Francisco Ordinance 86-04, Approved May 27, 2004) provides a good example.

While only an implementation ordinance and not an implementation plan, this ordinance requires that certain elements be included in a subsequent Implementation Plan to be completed in November, 2004 for adoption and submission to the Commission. Thus, the ordinance provides a basis on which the Commission may anticipate the generic level of detail it may require from a CCA's implementation plan in order to reasonably estimate and monetize its benefits to bundled service customers.

Thus, the ordinance provides a preliminary model with which to determine the level of detail needed in an implementation plan to reasonably identify, measure, monetize and credit such benefits against any gross costs attributable to customers participating in a CCA's load departure.

Specifically, the San Francisco ordinance orders that the Implementation Plan shall include a bidding requirement that Electric Service Providers (not the CCA) demonstrate insurance or post a bond to insure the costs of involuntary return of ratepayers to bundled service (Ordinance 86-04, Section 3(A)9(III), p.6). Second, the Plan must require qualifying ESP bids to include in the price of their bids the cost of a portfolio of resources that 107 Megawatts of load reduction through electricity load management and efficiency measures, 31 Megawatts of in-City solar energy, 72 Megawatts of new wind energy imports by 2012, as well as new natural gas-powered generation needed to close over 420 Megawatts of power generating facilities at Hunters Point and Portrero power stations (SF Ordinance 86-04, Section 3(A)9(II) on page 6 and Section 1(E) on page 5).

Thus, San Francisco's Implementation Plan will contain a great level of detail in terms of load reduction commitments, physical grid and procurement planning impacts – and thus reasonably predictable benefits to bundled service customers.

The CPUC has broad authority to request additional information necessary for it to calculate a CRS. Thus, if a CCA's implementation lacks certain details necessary for the Commission to monetize the benefits it would offer bundled service customers, the Commission may request such information prior to assignment of a CRS. This authority to include benefits provides the Commission with a critical opportunity to forecast the actual planning impacts of CCA as they go through the implementation plan certification process.

Undertaking such a process will improve the Commission's forecasting accuracy and facilitate better gatekeeping between utility procurement and CCA load departures to minimize stranded costs and assets. Because a CRS netting benefits against gross costs is gauged to the specific and binding resource commitments made by a CCA in its plan should its load ultimately depart, the Commission’s overall electric procurement planning certainty will be provided by the CCA’s *a priori* bidding requirements. The only remaining uncertainty relative to Commission planning will be whether the CCA’s Implementation Plan – once assigned a CRS by the Commission – actually results in an ESP contract – but the ultimate outcome will have been reduced to two possibilities rather than being.

Thus, a CRS reflecting net costs (gross costs minus net benefits) is not only required by AB117, but will also greatly assist the Commission in improving the accuracy of its forecasting and avoiding the creation of future stranded costs in its AB57/SB1976 New World Procurement authorizations to the electric utilities, as directed by the Governor (Exhibit 47, p.1).

14. Assumption of Liability for "In-Kind" MWhs

Consistent with the net cost definition of costs described above, nothing restricts the ability of CCA to voluntarily negotiate buy out utility or DWR contract obligations.

15. Payment of Bond Charge by New Customers

DWR bond charges are defined by AB117 as a charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs had a CCA never formed (PUC Section 366.2(e)1). New Customers should be required to pay any bond charges that a new CCA customer would have paid moving to California as a bundled service customer, whether from within the state or without.

16. Unbundling of CRS on All Customers' Bills

While utility witnesses have claimed that they see no reason to unbundle the CRS on all customers' bills, it is clear that this would facilitate a clear comparison of the terms of bundled utility service with a CCA's chosen ESP's service. If the utilities wish for consumers to be well informed of their choices, unbundling of the CRS is a basic, low cost measure.

17. Under or Overcollection of Utility Costs

Under or overcollection of utility costs should be regarded as a cost inherent to having CCA that is not attributable to a particular CCA or CCA customer, and must therefore be paid by (or credited to) all ratepayers.

18. Treatment of Forecasting Errors

Forecasting errors that are attributable to a CCA or its customers should be paid by the CCA or its customers, provided that the utility has made all data available to a CCA seeking to plan its loads once it is formed by ordinance.

Forecasting errors not attributable to a CCA or its customers should be paid by all ratepayers or by utility shareholders, whether considered fixed or incremental costs consistent with PUC Section 366.2(f) or as a procurement cost pursuant to PUC Section 366.2©)17.

CCA denied access to any customer-specific or interval meter data by its utility prior to completion of their Implementation Plan, should be exempt from any related charges. A failure of the utility to cooperate in providing this data places a disproportionate burden on utility shareholders to pay for the cost of any forecasting errors made blindly as a result of the utility's failure to cooperate fully with the CCA, including provision of 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 (PUC Section 366.2©)9).

19. Proposed CRS Exemptions for Baseline Residential Customers

20. Proposed Exemption for Customer Generation

This subject is addressed under III, 13 above. Customer generation provides a benefit to bundled service customers that should be reflected in the CRS based on commitments contained in a CCA's implementation plan.

21. Proposed Exemption for New Generation

This subject is addressed under III, 13 above.

22. Proposed Exemption for Norton Air Force Base

VI. ESTIMATES OF INFORMATION FEES

The "Confirmation Letter" (SDG&E Fee#15) Fee of $0.47 per account discussed by SDG&E's witness is a good example of a fee which blatantly violates PUC Section 366.2©)17 in that it is not attributable to a CCA or its customer, but is undertaken by a utility without any legislative basis simply as a policy of the utility.

SDG&E's witness admitted that the Confirmation Letter is separate from the four notifications required by AB117 (SDG&E Witness Dawn Osborne, June 9, 2004 Evidentiary Hearing, p.655, line 26), claimed that it was undertaken under Direct Access, but admitted DA customers do not pay for it(656, lines 11-14). Yet she indicated that this was the basis for the charge, indicating that "(I) there's an activity that we feel is essential that is directly attributable to the CCA program, yes, then I feel that cost should be recovered not from all ratepayers, but from the CCA." (SDG&E Witness Dawn Osborne, Page 661, lines 18-21.).

However, AB117 limits utilities charges to costs that are attributable to the CCA customer, and cannot therefore include costs that are neither mandated by AB117 nor requested by the CCA or CCA customer. Any other policy would invite utility abuse. It is clearly illegal to allow utilities to imposes charges for any activity they "feel is essential that is directly attributable to the CCA program," when the very fact the utilities are "feeling" it makes it attributable only to them alone.

While the CCA customer remains a captive customer of the utility for distribution, billing and metering, this does not make any communication to that customer a CCA-specific cost. If utilities choose to send out such letters, the cost must therefore be borne by all ratepayers or shareholders.

VII. ESTIMATES OF SERVICE FEES

Local Power will address these issues in our Reply Brief.

A. Implementation Fees

B. Fees Related to CCA Establishment

C. Enrollment Fees

D. Billing, Payment and Collection Fees

E. Monthly Account Maintenance Fee

F. Interval Metering Fees

G. Termination of CCA Program Fee

H. Special Request Fee Add

VIII Proposed Fair Share of Costs and Fees to be Borne by

The legislature did not intend to shield shareholders against bearing a fair share of transaction and procurement-related costs related to implementing AB117. While bundled service customers are limited to paying for CCA transaction and procurement costs not attributable to any particular CCA customer, the legislature did not intend that utility shareholders should be protected against costs relative to CCA. The word "shareholder" does not appear in AB117. Thus, AB117 does not protect utility shareholders from cost shifting where necessary to accommodate CCA as a permanent recourse to California ratepayers.

IX Credits for Benefits to the State of California and/or other ratepayers related to CCA Establishment

This subject is addressed in III 13.

X. Conclusion

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

Respectfully,

____

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CERTIFICATE OF SERVICE

I certify that the following is true and correct:

On July 9, 2004, I caused to be served an electronic copy of the attached:

Initial Briefs of Local Power

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

Executed this 9th day of July, 2004, at Oakland, California.

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R.03-10-003
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