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)

LOCAL POWER
REQUEST FOR COMPENSATION

February 22, 2005

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Pursuant to §1801 et seq. of the Public Utilities (PU) Code and Rule 76.71 et seq. of the Commission's Rules of Practice and Procedure, Local Power requests compensations for its substantial contribution to the Community Choice Aggregation proceeding as reflected in the Commission's final decision in this matter, D.04-12-046. Local Power requests $95,118.75 for its hours and $0 for its expenses a total of $95,118.75.

Local Power represents PG&E customers who are affected by this proceeding

PU Code §1802(b) states in part: "'Customer'" means any participant representing consumers, customers, or subscribers of any electrical… corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer…" Local Power has been authorized by Ms. Dominique Parducci, to represent her in this proceeding. Ms. Parducci is a customer of Pacific Gas & Electric Co. (PG&E), a respondent in the Commission's Community Choice proceeding.

Ms. Parducci lives in public housing in Grass Valley. Since the Energy Crisis and PG&E's bankruptcy bailout, she has wanted independence from the utility and a more accelerated conversion, not a transition, to renewable energy, energy efficiency and conservation technologies. First, as a low income residential customer, she already

suffers from high electricity rates and is particularly threatened the prospect of future PG&E rate increases. Second, her neighborhood and children's health and future welfare are threatened by extremely poor air quality. With electricity accounting for one of the largest causes of the nation's childhood asthma epidemic as well as climate change both, and Grass Valley an extremely high ozone area, Ms. Parducci is impacted by having the Community Choice alternative to monopoly utility-based electricity procurement and resource management. She asserts that by passing AB117 into law, the legislature and governor guaranteed her this right under 366(a) of the Public Utilities Code, notwithstanding the policies of the Commission. Her opportunity to implement AB117 through her local government therefore has the potential to avoid severe impacts on both her family's health and welfare. Ms. Parducci's letter attesting to these facts in greater detail is attached to this request.

Even if the utilities ever sign contracts and comply with California's Renewable Portfolio Standard law, Ms. Parducci believes that a 20% RPS by 2017 is a mere 8% increase from existing statewide levels of renewable power - which when measured against growth achieves little. In contrast, she points out that San Francisco, first among the Community Choice Aggregators with its May 11, 2004 Energy Independence ordinance (86-04), will build 360 Megawatts of green power and efficiency measures, in a community that uses 650-850 MW at any given time, far beyond the RPS requirement - and they will build it, not just purchase already existing renewable capacity. Ms. Parducci is very concerned that Pg&e-based procurement might also facilitate construction of new power plants upwind of Grass Valley. She is also concerned that the high cost of building more centralized generation - as oppose to local power, as in the minimum 211 MW San Francisco will build or retrofit within the city - might result in increased costs of PG&E energy for herself and her community. In addition, Ms. Parducci is concerned that PG&E's over-reliance on natural gas-fired generation, and its interest in building new gas-fired power plants, will both cause environmental and public health problems in her community, and lead to increased electricity price volatility. She worries that PG&E's mismanagement of energy efficiency programs, and conflict of interest in reducing electricity sales, could discourage investment in environmentally friendly alternatives,

such as the 12 Megawatts of solar photovoltaic capacity developed by nearby Sacramento Municipal Utility District. Her interest in CCA is also outlined in her attached letter.

Local Power shared the concerns of Ms. Parducci, and Local Power also works closely with many California municipalities and counties pursuing, investigating or implementing Community Choice Aggregators throughout California, including Oakland, Marin County Berkeley, Sonoma County, Pleasanton and others in PG&E's service territory.

Evidence of Financial Hardship

PU Code Section 1802 (g) requires the customer to present evidence of financial hardship. Ms. Parducci is a single mother of two young children, runs her own small curtain- cleaning business with no employees, and has a very low income. She receives welfare benefits in the form of TANF (case number 0091954), Section 8 Housing Assistance for herself and her children (HAP contract #V50), and MediCal for her children. Ms.Parducci has referenced this information in a letter to ALJ Malcolm in this document, in which she states her willingness to submit her public assistance records available under a protective order if it so requires. The cost of representation in this proceeding would clearly present a severe financial hardship for her.

This request for compensation also addresses requirements adopted in the intervenor compensation rulemaking and investigation (see D.98-04-059), including requirements that the benefits to ratepayers outweigh the costs of participation, and that the customer represented interests that would "otherwise be underrepresented."

It is clear from the description of Local Power's participation that the interests of Ms. Parducci, as described above, were underrepresented by other parties in the proceeding.

The description of Local Power's services also shows that the benefits to ratepayers outweigh the costs of Local Power's participation.

Procedural History

The Commission's Community Choice proceeding ®.03-10-003) was filed October 2, 2003. Local Power filed its Petition to Intervene on October 21, 2003, and was granted party status by Administrative Law Judge Kim Malcolm. Local Power filed a Notice of Intent to Claim Compensation on December 1, 2003, and was determined to be eligible to receive compensation by Judge Malcolm on December 4, 2003.

Consistent with the requirement of PU Code §1804©), this request for compensation is being filed within 60 days of December 21, 2004, the mailing date of D.04-12-046.

Local Power participated fully in the Evidentiary Hearings that were held between June 2 and 24, 2004. In addition to participating in the Evidentiary Hearings, Local Power filed the following documents and participated in the following workshops and evidentiary hearings, in chronological order:

1. On October 20, 2003 Local Power filed Its Petition to Intervene with Comments on the Commission's Order.

2. November 17, 2003 Local Power filed a Motion to Accept Late Filed Comments; with Comments Attached.

3. On December 1, 2003 Local Power filed its Notice of Intent to Claim Compensation.

4. On January 9, 2004 Local Power participated in the first CCA CPUC Workshop.

5. On January 30, 2004 Local Power participated in the second Workshop on the utility reports on data issues.

6. On February 13, 2004: Local Power filed its "Comments on Joint Utility Report on Community Choice Aggregation Information Issues"), and on February 20, 2004 filed a "Motion of Local Power to Accept Late Filed Comments on Joint Utility Report on Community Choice Aggregation Information Issues," which was granted by Judge Malcolm.

7. On February 20, 2004 Local Power filed its Motion to Reconsider ALJ's Ruling Modifying Schedule and Outlining Workshop Issues.

8. On March 2, 2004 Local Power participated in a Pre Hearing Conference on Local Power Motion Second Workshop on CRS - DWR.

9. On April 15, 2004 Local Power filed its "Comments on Electric Utility Procurement Plan Outlines and the Imposition of Customer Responsibility Surcharges on Customers Participating in Community Choice Aggregation," accepted by Judge Malcolm as Paul Fenn's Testimony. In particular, Local Power included "Attachment 1: Widespread Adoption Utility Forecasting Community Choice Scenario (PDF)" a Spreadsheet analysis of seven counties in which local governments are now investigating, pursuing or implementing Community Choice Aggregation.

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

11. Between June 2 and 10 and on June 24, 2004, Local Power participated in Evidentiary Hearings, Cross Examined most witnesses, and at the last day of hearings Local Power's Witness was Cross-Examined by Utilities and other parties to R.03-10-003. Local Power submitted the Qualifications of Local Power witness Paul Fenn as well as San Francisco Board of Supervisors' unanimously adopted Energy Independence Ordinance 86-04 (May 11, 2004, Ammiano) as evidence to Judge Malcolm.

12. On June 15, 2004: Local Power Submitted Local Power Witness Paul Fenn's Reply Testimony on "The Prepared Testimony of Thomas K. Clarke on Behalf of the Inland Valley Development Agency" (Parts subsequently stricken by Judge).

13. On June 24, 2005 Local Power submitted the Qualifications of Paul Fenn.

14. On July 9, 2004 Local Power filed is Initial Brief.

15. On July 23, 2004 Local Power filed its Reply Brief.

16. On August 10, 2004: Local Power Submitted a "Draft Settlement Agreement for Consideration by Community Choice Aggregators" to clarify the issues between CCAs.

17. On November 18, 2004: Local Power filed its Comments Judge Malcolm's Proposed Decision Resolving Phase I Issues on Pricing and Costs Attributable to Community Choice Aggregators and Related Matters.

18. On November 23, 2004: Local Power filed Reply Comments on Proposed Decisions Resolving Phase I Issues on Pricing and Costs Attributable to Community Choice Aggregators and Related Matters.

19. On November 24, 2004 Local Power filed a Motion to Accept Filing Exceeding Page Limitation Regarding Reply Comments of Local Power on Proposed Decision Resolving Phase I Issues On Pricing and Costs Attributable to Community Choice Aggregators and Related Matters (1 page, motion denied, one day).

20. On February 22, 2005 Local Power filed its Request for Compensation.

Local Power's contribution not duplicative of any other party

PU Code §1801(f) requires the customer to shows that its participation is not duplicative. It will be clear from the detailed description of our services below that Local Power's participation was unique and not duplicative of any other party in R.03-10-003.

Local Power made a substantial contribution to the proceeding

PU Code §1802 (h) states:

> "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

It is clear that Local Power made a substantial contribution in Phase I of the Community Choice proceeding because the Commission adopted many of Local Power's policy or procedural recommendations, and Local Power made additional contributions to the positions of other CCAs that were party to the proceeding whose resulting proposals to were ultimately adopted in D.04-12-046 . Local Power was allowed to cross-examine witnesses at length, in some cases being allowed additional time, and raised issues (such as SDG&E's proposed extra customer notification letter) that elicited testimony referenced in the decision. Finally, Local Power was permitted to enter a number of significant documents as evidence, in particular San Francisco's Energy Independence Ordinance (86-04), submitted on the last day of evidentiary hearings, when Local Power was finally cross-examined by the other parties to R.03-10-003. The final Decision reflects the fact that the Commission considered Local Power's Phase I contribution significant, and adopted Local Power's positions on key Phase I issues. While the Commission did not adopt all of Local Power's positions in D.04-12-046 (such as the adoption of a Customer Responsibility Surcharge True-Up), the statute does not require

the Commission to adopt all of an intervenor's positions in order to rule that there was a substantial contribution.

Detailed description of Local Power's services and its contribution to the proceeding
Section 1804©) requires that a compensation request include "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." The following is a description of Local Power's substantial contribution, including Local Power's recommendations that were adopted, and an outline of the information that was entered into the record, with detailed citations, as a result of Local Power's work:

A. UNIQUE CONTRIBUTION: COORDINATION WITH ELECTRIC PROCUREMENT

From the outset of this proceeding, Local Power has highlighted the urgent need to coordinate between Community Choice Aggregators and Electric Utility Procurement. In its October 20, 2003 Petition to Intervene, Local Power called for coordination between these proceedings:

> "With the Community Choice Rulemaking now in progress, it is critical that the Commission not approve procurement contracts that will impose any exit fees on ratepayers departing under Community Choice Aggregations. Some kind of triage is needed to not block the early adopters like San Francisco while preparing for the second wave a year or two later. Many California cities, counties and joint power agencies have passed resolutions declaring their intention of implementing CCA, and asking the Commission not to approve contracts that would impose exit fees on them for departing as early as January 2005" (Local Power Petition to Intervene, pp.6-7).[1]

In particular, Local Power argued that a failure to coordinate would erect new Exit Fees on CCAs before they are out of the gate, violating AB117:

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[1]It should be noted that Local Power was not compensated in any way for the submission of this document in R.01-10-024, has never qualified for compensation in that proceeding, and shall not seek compensation for providing this document, nor was Local Power compensated by any other party for preparing and/or submitting the document.

> "The Commission should not approve new utility long-term procurement agreements with unregulated third parties in a manner that will impose any new exit fees on them. Chapter 838 is already law and the Commission is required to accommodate this law in all of its policies. It will not do to decide utility procurement separately from Community Choice Aggregation, because utility procurement directly harms Community Choice Aggregators' customers chances of departing. Rulemaking 01-10-024 is also subject to the requirements of AB117; just as energy efficiency funds should be rethought in terms of a regional system, so should utility procurement be redesigned to maximize availability of competitive supply rather than locking the wholesale market down in captive ratepayers when we have an opportunity to get some competition out of them.
> I have said again and again in the Commission's various proceedings including the interagency action plan, that approving any contracts on behalf of San Francisco directly dilutes the pool of available competitive supply for Community Choice Aggregators (CCAs). This would violate the language of Section 366. (a) of the Public Utilities Code that "the commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Part and parcel of "facilitating direct transactions for Community Choice Aggregations" is not approving contracts that will cause new exit fees for these cities, at a minimum. A revolving load departure schedule could be created under which San Francisco and others could depart starting January 2005, with the next phase departing a year later, and so on. (Ibid.)"

In Paul Fenn's April 19 Testimony, which was mistakenly filed by Local Power as "comments," then re-proposed as testimony of Paul Fenn and accepted as such by Judge Malcolm, I (Paul Fenn), Fenn explicitly sent the same document into the records of both R.03-10-003 and the Commission's Electric Utility Procurement Proceeding, R.01-10-024:

> "Reflecting this assertion, as reply comments on the electric utility procurement plan outlines are due on the same day as comments on the CCS CRA and Utility Costs Issues, and our comments speak particularly to the connection between New World electric utility procurement and CCA CRS, we are submitting this document in both proceedings. Thus Local Power, the intervenor representing ratepayers in R.03-10-003, will submit this document as comments on CCA CRS and Utility Cost Issues to the Community Choice Aggregation service list, and as reply comment on the utilities' procurement plan outlines to the R.01-10-024 service list" (Local Power Comments on the Customer Responsibility Surcharge and Utility Cost issues, admitted by ALJ Malcolm as Paul Fenn Testimony in R.03-10-003, p.3).

Again, the same document was submitted to the Commission to R.01-10-024 on the same date, as Local Power comments, which Judge Malcolm accepted in R.03-10-003 as Paul Fenn's testimony. This document was primarily concerned with submitting information on ongoing electric procurement activities to R.03-10-003 and pointing out a complete lack of coordination between the proceedings:

> "Under the current regime of gas and electric procurement, the Commission is not only not coordinated, its proceedings appears scheduled to prevent clarity. Whereas the loading order established in the Energy Action Plan said that all new electricity load growth shall be met with energy efficiency first, renewables second and "other" third, the Commission's current schedule will resolve gas procurement decisions first in June even though virtually all forecasted gas demand growth is attributed to yet unbuilt gas-fired power plants; electric utility procurement of gas-fired electrical capacity will then be decided second in the Fall even though the amount of procurement directly depends on the rate of CCA load departures; and Community Choice is scheduled to be decided *last.* As a result, the current regime's June gas decision will remain uninformed by electric procurement data, which will remain unresolved until the Fall, which decision will be similarly uninformed about CCA load departure impacts" (Fenn Testimony, p.11).

By addressing the issues of the CCA CRS and electric utility procurement as a single issue, Local Power helped form a needed dialogue between the Administrative Law Judges and Commissioners in these inextricably linked processes, recognition of which was made verbally by Judge Malcolm on March 2, 2004 when she rejected Local Power's Motion Reconsider the schedule in her December 4, 2004 Scoping Ruling. While rejecting Local Power's Motion, Judge Malcolm promised to communicate and coordinate with the ALJ in R.01-10-024, such that Local Power's assertion that the proceedings should be a "parallel process" or the viability of CCA could be in jeopardy, was accepted (March 2, 2004 CCA Workshop). The Commission adopted Judge Malcolm's verbal commitment to coordinating these proceedings to ensure a place for CCA in D.04-12-046, when the Commission agreed with the need to coordinate and balance electric utility procurement and CCA load departures:

> "Utility resource plans will need to balance supply security with enough flexibility to accommodate many market contingencies in addition to those associated with the CCA program, as we have recognized. Because it would ideally recognize and anticipate changing markets and supply sources, resource planning will necessarily be an ongoing, interactive exercise (p. 29)."

Indeed, the Decision's description of Los Angeles County's and Chula Vista's position,

> "LA/CV argues that SDG&E has already failed to reflect CCA load in its recently-signed power contracts (approved in D. 04-06-011) even though it was aware that the City of Chula Vista had created a CCA in mid-2001. It argues that SDG&E appears to be racing to sign contracts in a manner that will force CCAs to subsidize such purchasing decisions" (p.29),

reflects repeated comments and testimony by Local Power and Paul Fenn to this especial concern, and is well expressed in the particular line of inquiry made by Local Power in its cross-examination of a utility witness at the Evidentiary Hearings on June 8, 2004:

> "MR. FENN: Q In response to Mr. Huard's question,
> you indicated that CCAs are competitors for purposes of
> procurement. Would you not potentially have recourse to
> overprocurement as a means of blocking the loss of
> departing customers?
> A Well, I'm not in procurement, but my general
> understanding is that all of SDG&E's procurement plans,
> which are done I guess on an annual basis, some annual
> procurement filing, are reviewed and approved by
> the Commission.
> So is what you are asking, is SDG&E going to
> do something that is unreasonable and the Commission is
> going to approve something that's unreasonable, I guess
> I just don't agree with your premise that somehow the
> utility is going to able to do something unreasonable
> when it's fully under regulation by the CPUC for those
> issues.
> Q Given that the Commission now just in this
> time period has not completed regulations for community

> choice, wouldn't any long-term procurement contracts or URG acquisitions prejudice the ability of jurisdictions to implement community choice after the regulations are complete?
> ALJ MALCOLM: Is that an argument or a question?
> MR. FENN: I'm asking -- yeah.
> Q Would it not -- I mean, is your ability now to overprocure before the regulations are complete --
> A Well, at least --
> MR. SZYMANSKI: I object. Mr. Fenn's question..." (June 8, 2004 Transcript, pp.550-51).

In D.04-12-046, the Commission agreed fundamentally that it is responsible for coordination of Community Choice Aggregation and Electric Utility Procurement:

> "The objective of AB 117 in requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is to minimize the CRS (and all utility liabilities that are not required) and promote good resource planning by the utilities" (p. 29).

And furthermore,

> "Utility resource plans will need to balance supply security with enough flexibility to accommodate many market contingencies in addition to those associated with the CCA program, as we have recognized. Because it would ideally recognize and anticipate changing markets and supply sources, resource planning will necessarily be an ongoing, interactive exercise" (p.29).

Finally, it agreed that facilitating CCA in the utility procurement process involves forecasting that is not new to either utilities or the Commission:

> "We share the parties' concerns that the utilities must recognize CCA load in their resource planning and should not sign contracts that might create new liabilities for CCA customers and utility customers where available information suggests the power might not be needed. We understand the utilities face a difficult balancing act by assuring adequate and reliable power supplies in amounts that reflect forecasts that are changing constantly. However, the utilities are accustomed to using available information to forecast customer demand and should incorporate CCA load

> losses into their planning efforts, just as they would include any other forecast variable related to expected changes in supply or demand" (p.29).

By red-flagging the issue from the earliest days of R.03-10-003, helping establish coordination with the Commission's Electric Utility Procurement proceeding, and pursuing the issue to its logical extreme, Local Power contributed to the following Findings of Fact, Conclusions of Law, and Orders in D.04-12-046:

Finding of Fact 20": AB 117 provides that the CRS should include all costs that the utilities reasonably incurred on behalf of ratepayers, which may include costs incurred after the passage of AB 117 but should not include any costs that were "avoidable" or those that are not attributable to the CCA's customers (p.60).

Finding of Fact #23: "An 'open season,' as SDG&E describes it, would help the utilities and CCAs plan for CCA operations in a way that may permit more efficient and effective resource planning" (p.60).

Finding of Fact # 49: "Requiring a CCA to participate in an open season immediately would unreasonably delay initiation of service by CCAs because the Commission will not adopt guidelines for open seasons until Phase II of this proceeding" (p.63).

Conclusion of Law #12: "The utilities should establish a CRS, consistent with this order and DWR's model, to allow the utilities to recover costs of power purchase commitments that become stranded as a result of the CCA initiating service. Such costs include DWR bond and power purchase contracts, utility power purchase commitments and balances in power purchase accounts but should not include costs that may have been avoidable or are not otherwise attributable to the CCA's customers. The CRS as described herein should be net of any existing "nonbypassable" surcharges for past liabilities that are included on all customer bills" (p.65).

Conclusion of Law #15: "Utilities should not be required to assume the risks of CCA forecasting errors or non-performance, and should propose tariff fees that reflect the cost of forecasting errors or non-performance attributable to the CCA" (p.65).

Conclusion of Law #16: "Whether the utilities should be required to act as provider of last resort where CCA power supplies are inadequate is a matter for resolution in R.04-04-003" (p.65).

Conclusion of Law #21: “AB 117 does not permit cost-shifting of CCA CRS liabilities between utility bundled customers and CCA customers” (p.66).

Conclusion of law #24: “The utilities should not be required to assume the risk for CRS forecasts where CRS liabilities were reasonably incurred” (p.66).

Order #7: “PG&E, SCE, and SDG&E shall for Phase II of this proceeding develop a forecast for the CRS in their respective territories, consistent with this order, and serve a notice of availability of the forecast and work papers on all parties to this proceeding. Each cost component of the CRS shall be calculated and identified separately. Elements of the work papers that are confidential shall be provided subject to a standard nondisclosure agreement” (p.71).

Order #9: “In all respects, utility tariffs and practices shall permit CCAs to initiate service immediately following the filing of tariffs described in Ordering Paragraph 2" (p.72).

Finally, early on in R.03-10-003, Local Power urged the Commission not to delay implementation of CCA rules, warning that delay could endanger the ability and right of CCAs to implement CCA. This urgency was contained in Local Power’s Motion to Reconsider the schedule contained in Judge Malcolm’s December 4 Scoping Memo (discussed above), and was demonstrated by Local Power’s submission of San Francisco’s CCA implementation ordinance as evidence on June 24, 2004, but also appeared throughout Local Power’s focus on the Commission’s Electric Procurement Process. In D.04-12-06, the Commission fully recognized the importance of allowing CCAs to proceed with implementing CCA should they so wish:

> “However, we do not intend to delay the initiation of service by CCAs while we are considering this matter. In the interim, the utilities must accommodate CCAs that wish to begin delivering power” (p.35).

Thus, Local Power contributed to the following additional Findings of Fact, Conclusions of Law, and Orders:

Finding of Fact # 9. Delaying the effectiveness of CCA tariffs until after the close of Phase 2 in this proceeding would unreasonably delay the implementation of the CCA program. (P.59)

Finding of Fact # 31: Delaying the implementation of CCA costs until after the resolution of Phase 2 of this proceeding could delay implementation of the CCA program until almost three years after passage of AB 117.

Conclusion of Law #3: Each utility should be permitted to establish balancing accounts for implementation costs incurred prior to the implementation of its next general rate case. Those balancing accounts should be eliminated once the Commission has authorized a related revenue requirement in that general rate case"

Conclusion of Law #7: "The utilities should be ordered to propose final tariffs for recovery of transactions costs from ratepayers within 60 days of the effective date of this order for consideration in Phase 2 of this proceeding" (p.64).

Conclusion of Law #6: "The utilities should be ordered to apply direct access tariffs for CCA transactions until the Commission has approved final CCA tariffs in this proceeding" (p.64).

Conclusion of law #23: "The utilities should establish balancing accounts for CRS costs and revenues and reconcile actual costs and revenues in the proceedings addressing the CRS for direct access customers, unless the Commission directs review of these costs and revenues in a different proceeding" (p.66).

Conclusion of Law #25: "In the interim, the utilities should be ordered to apply the rates and cost recovery provisions of direct access tariffs to CCAs that begin operations prior to the Commission's approval of final CCA tariffs" (p.66).

Conclusion of Law #41: "CCAs may initiate service prior to the Commission's adoption of open season guidelines" (p.69).

Order #2: "PG&E, SDG&E, and SCE shall, within 60 days of the effective date of this decision, file tariffs that are substantively identical to those in effect for direct access customers and which shall apply in the interim to Community Choice Aggregators (CCAs) prior to the Commission's approval of final CCA tariffs" (p.69).

Order # 9: "In all respects, utility tariffs and practices shall permit CCAs to initiate service immediately following the filing of tariffs described in Ordering Paragraph 2" (p.72).

B. UNIQUE CONTRIBUTION TO D.04-12-046: CCAs ARE ENTITLED TO WHATEVER CUSTOMER INFORMATION IS USEFUL TO THEM, PROVIDED A STATEMENT OF INTENT AND NONDISCLOSURE AGREEMENT

Starting with its Petition to Intervene, Local Power has made a major issue of the fact that AB117 requires customer billing data to made available to CCAs that investigate, pursue and implement Community Choice Aggregation:

> "Most importantly at first, the Commission must decide what constitutes 'APPROPRIATE BILLING DATA' under the definition in the ordinance. The statute specifies that 'APPROPRIATE' includes data to establish patterns of usage : this is the basic standard of data that we need to design and install energy efficiency, solar photovoltaic, conservation, storage, and load management systems that have measurable load reductions at the interval meter and substation level. Community Choice is not just purchasing bulk power contracts off the grid: as Section 381.1 establishes that Community Choice Aggregators may apply to administer energy efficiency programs. The point is for a city council, county board of supervisors or joint powers authority to be able to compare an ESP's bid to PG&E's existing service - including multiple service components - and decide whether to pass the ordinance switching participants to the new Electric Service Provider" (Local Power Petition to Intervene, filed Oct 21, 2003, p.4).

In addition, as early as its Petition to Intervene in R.03-10-003, Local Power has emphasized that CCAs are local government institutions, which unlike Electric Service Providers are accountable to the public and *may be entrusted* with their welfare:

> "Because CCA's are governed by ordinance as per Section 366.2©)(10) and (11) of the Public Utilities Code, a local public process subject to sunset ordinances and meeting laws rather than internal agency solicitations maximizes both public official accountability and maximizes the public education and participation benefit of public hearings" (Local Power Petition to Intervene, p. 7).

At the January 30, 2004 Workshop on Data Issues at PG&E, Local Power was alone among the parties, including CCAs, in insisting that the range of policies on CCA information to be included in the Utility Report on Data Issues should include a policy under which all data, including customer-specific data, would be made available to CCAs.

Indeed, the second paragraph of Local Power's subsequent "Comments on Joint Utility Report on Community Choice Aggregation Information Issues" asserted unequivocally,

> *"The 15/15 Rule restricting Direct Access energy suppliers' ability to secure individual ratepayer energy usage data does not apply to Community Choice Aggregators.* Indeed, 15/15 was written for a Direct Access environment in which the ratepayers' energy usage information was appropriately shielded against abuse by the potentially predatory practices of energy suppliers. Confidentiality rules protect ratepayers against suppliers, *but do not protect ratepayers against themselves" (page 1.)*

In D.04-12-046, the Commission acknowledged Local Power's unique position that AB117 requires utilities to provide CCAs with customer-specific billing data:

> "Local Power believes the statute is clear with regard to its requirement that utilities provide all relevant information to CCAs that are "investigating, pursuing or implementing" CCA programs and suggests that confidentiality concerns may be addressed by imposing limits on the CCA's use of the information it gets" (p.49).

The Commission Agreed that certain types of data are needed for a CCAs to investigate, pursue or implement CCA :

> "CCAs must have certain types of information in order to plan their procurement strategies, assess the viability of offering energy services, and to contact customers. Section 366.2©)(9) anticipates the needs of CCAs for certain types of customer data and information" (p.50)

The Commission agreed that the data is needed in advance of actual CCA implementation:

> "AB 117 is clear in its intent to require the utilities to provide CCAs all customer and usage data that is relevant to CCA operations even before the CCA begins offering service. In addressing the informational needs of CCAs, Section 366. 2©) (9) provides that the utilities shall "cooperate" with CCAs that "investigate or pursue" CCA programs. Because a CCA is most likely to "investigate or pursue" CCA programs before it begins offering service, we read the plain language of the statute to mean relevant information must be provided on demand, without distinguishing between a customer who is still with the utility or a customer of the CCA or between the time a CCA is created and the time it provides service. By law, CCAs are entitled to receive certain types of information as long as they are investigating, pursuing or implementing a CCA program"(pp.49-50).

The Commission acknowledged Local Power's argument that the CCA customer notification requirements would depend on access to customer-specific information:

> "LA/CV and Local Power also observe that AB 117 requires the CCA to notify utility customers of the CCA's plan to offer service, a requirement the CCA cannot satisfy without customer billing information" (p.49).

The Commission agreed:

> "Section 366.2©)(13) (A) supports this finding in its requirement that CCAs provide opt-out notifications to prospective customers prior to cut-over. Although Section 366(2) (13)(B) gives the CCAs the option to request utility assistance with the notifications, each CCA must assume ultimate responsibility for the notices. The CCA cannot satisfy this responsibility without access to customer names and addresses. Thus, if the Legislature had intended for customer information to remain with the utility, it would have not required the CCA to issue the opt-out notices"(p.50).

The Commission agreed with Local Power that Ab117 requires CCAs to have access to data that would be considered confidential under Direct Access rules:

> "The information the CCAs may need from the utilities may be confidential, for example, (1) basic load and usage data required to estimate energy procurement needs and (2) customer information needed to contact customers and provide services, including name, address, and meter information"(p.47).

The Commission rejected utility arguments that Direct Access confidentiality rules should apply, "*primarily because the statute itself directs the provision* of customer information to a CCA":

> "Moreover, unlike a district attorney investigating criminal activity. The statute permits the CCA to receive such information. Unlike the unwilling subject of a criminal investigation, the customers for whom the CCA seeks information have implicitly agreed to permit the CCA to aggregate their energy requirements and offer service. We believe AB 117 assumes, as we do, that CCAs can be entrusted with confidential customer information. Unlike energy service providers offering direct access, CCAs are government agencies. As long as some basic protections are in place, the risks of providing confidential information to these entities is outweighed by the dictates of the statute and the potential benefits CCA customers would realize only if CCAs have the information they need to make fully informed decisions regarding energy procurement, service requirements and resource planning decisions" (p.51)

Note the observation that "CCAs can be entrusted" - the argument contained in Local Power's October 20, 2003 petition to intervene. Moreover, as argued by Local Power, the Commission cites AB117 rather than any policy argument of the other parties to confirm that even customer-specific billing data (as opposed to masked load data) must be made available to CCAs:

> "In addition to its requirement that utilities provide information to CCAs before and after they initiate operations, AB 117 specifies the types of information the utilities must provide to CCAs. Section 366. 2©)(9) refers to "appropriate billing and electrical load data, including, but not limited to, data detailing electricity needs and patterns of usage." The statute specifically refers to "billing" data as distinct from "electrical load data." We are not aware how aggregated or masked billing data could satisfy the statutory requirement. Again, the plain language of the law means that the CCA is entitled to any and all billing data that is reasonably useful to the CCA. It also refers to information "detailing" electricity needs and patterns of usage. Use of such specific terms reflect the Legislature's intent for CCAs to have information that is neither masked nor aggregated, to the extent such information is required by CCAs that would reasonably "investigate, pursue or implement" a CCA program"(p.52)

The Commission followed Local Power's cross-examination of SDG&E's witness on whether city and county tax rolls include renters, who would be utility customers who must be notified by the CCA:

> "We are not convinced by utility testimony that city and county tax rolls will provide the kind of information CCAs need to accomplish those ends" (p.52)

The Commission then adopted Local Power's suggestion that confidentiality concerns may be addressed by imposing limits on the CCA's use of the information it gets, by requiring CCA nondisclosure agreements:

> "We direct the utilities to provide all relevant usage information, load data and customer information to CCAs. The CCA shall sign nondisclosure agreements for any confidential information that is not masked or aggregated. We will also require that all notices relevant to CCA programs inform customers that the utility may share customer information with the CCA and that the CCA may not use the utility's information for any purpose other than to facilitate provision of energy services" (p.52)

Finally, the Commission stated its "intent to enforce the law with respect to its requirement that the utilities 'cooperate' with CCAs in the provision of all relevant information, a *term which we interpret broadly":*

> *"The utilities may not determine what information is "relevant" to CCA operations as long as the utility is reimbursed for the reasonable costs of providing the information.* While we welcome the utilities' tariff proposals for the secure and cost-effective sharing of information, we will not tolerate utility actions or delays that may affect the provision of information to CCAs or CCA services to customers" (p.53).

The Commission's Findings of Fact, Conclusions of Law and Orders reflected its key reliance on Local Power's argument that AB117 itself requires a full disclosure, interpreted broadly, with a CCA nondisclosure agreement to protect confidentiality of customers:

Finding of Fact # 38: "CCAs would 'investigate or pursue' CCA programs prior to offering service and a CCA would need relevant customer and load data in order to conduct a meaningful investigation of CCA programs" (p.62).

Finding of Fact # 39: "A CCA cannot notify customers of its intent to offer electrical service if it does not have access to relevant customer information" (p.62).

Finding of Fact # 40: "In the CCA's effort to satisfy customer notice requirements, tax rolls are not a reasonable substitute for customer information held by utilities partly because property owners would not necessarily be a utility customer of record" (p.63).

Finding of Fact # 41: "Nondisclosure agreements would provide reasonable protections against the disclosure by a CCA of a utility's customer information.

Finding of Fact # 42: "CCAs may need specific customer information in order to market energy services and tailor those services to individual customers or groups of customers" (p.63).

Finding of Fact #43: "CCAs need load data in order to develop cost-effective and reliable energy procurement strategies" (p.63).

Finding of Fact # 44: “Customers would benefit from notification that contact information and usage data may be shared with the CCA and may not be disclosed to others” (p.63).

Conclusion of Law #30: “Section 366.2©)(9) requires the utilities to provide all relevant information required by CCAs to “investigate, pursue or implement” meaningful programs. This requirement does not permit the utilities to deny CCAs access to relevant customer or load information” (p.67).

Conclusion of Law #31: “Section 366.2(c)(13)(A) requires CCAs to provide customer notice of their intent to provide service, a requirement a CCA cannot satisfy without relevant customer information. Read in conjunction with Section 366.2©)(9), this requirement presumes that the CCA will have access to certain customer information held by the utility”(pp.67-8).

Conclusion of Law #32: “Section 366.2©)(9) requires the provision of detailed billing and load data to CCAs that are investigating, pursuing or implementing CCA programs” (p.68).

Conclusion of Law #33: “The utilities should require CCAs to sign nondisclosure agreements when they share confidential information about customers or electricity load and should require a county or city’s chief administrative officer to attest that it is “investigating” or “pursuing” status as a CCA as a precondition to receiving confidential customer information” (p.68).

Conclusion of Law #34: “Notices to prospective CCA customers should inform customers that the utility may share customer information with the CCA and that the information may not be used for any purpose other than to facilitate the provision of energy services to the customer by the CCA” (p.68).

Conclusion of Law #35: “Utility tariffs should provide that the CCA must indemnify utilities from liability for the disclosure of confidential customer information in cases where the utility has take all reasonable precautions to prevent that disclosure” (p.68).

Commission Order #5: “PG&E, SDG&E, and SCE’s proposed tariffs shall include... (12) the offer to provide access to all relevant customer information, billing information, usage and load information, consistent with this order and which shall be provided to the CCA at cost except that those information services already approved in D.03-07-034 shall be provided at no cost to the CCA; (13) a requirement that all confidential utility information shall be provided subject to nondisclosure agreement and a requirement that the chief administrative officer of a city or county attest that the city or county is investigating or pursuing status as a

CCA as a precondition of receiving confidential customer information; (14) a requirement that customer notifications about prospective CCA operations inform the customer that customer information may be provided to the CCA subject to nondisclosure for any purpose other than those related to facilitating the CCA's services; (15) a provision for CCAs to indemnify the utilities from liabilities associated with the CCA's disclosure of confidential customer information where the utility has taken all reasonable steps to prevent such disclosure" (pp.70-71).

C. CCAs ARE CUSTOMERS, NOT UTILITY COMPETITORS, WITH ALL THE RIGHTS OF CUSTOMERS PROTECTED BY THE COMMISSION

While not explicitly credited in D.04-12-046 with the definition of CCAs as customers rather than competitors of the utilities, Local Power alone made a major issue of this question in both its Comments and during cross examination of utility witnesses at the June Evidentiary Hearings. The ultimate embrace of Local Power's definition of CCAs as customers had a significant, even pervasive impact on several key components of the Commission's December 16, 2005 decision.

As early as our Petition to Intervene in R.03-10-003, Local Power underscored the importance of recognizing CCAs as customers acting through their local government, not suppliers competing to take customers from electrical corporations:

> "In terms of defining general terms, a CCA, which is a local democracy representing ratepayers, should NOT be treated as the same as ESP, which is a private, for-profit corporation. While the CCA aggregates, the ESP provides the comparable service to the utility, not the CCA. Because CCA's represent consumers rather than operating as suppliers....The CCA's decide what the community wants, the ESP bids to provide the service" (Local Power Petition to Intervene, p. 7)

In its"Comments on Joint Utility Report on Community Choice Aggregation Information Issues," Local Power reasserted the fact that, as AB117 defines CCAs as customers seeking alternative suppliers through their local government, the 15/15 Direct Access confidentiality rules to protect customers against abuse by suppliers do not apply, unless

it may be argued that the utilities would "protect their customers against themselves." (February 13, 2004, p. 1).

In Paul Fenn's Testimony, the importance of defining CCAs as customers was made even more pronounced:

> "This is why it is so critical that the Commission not establish Community Choice Aggregators in a competitive relationship with their utilities. Customers cannot compete against their energy supplier. Rather, these customers are served by the investor-owned utility, may elect to choose a competitor to serve them, but will continue to be provided distribution, metering and billing service by the utility even in the event that it does depart from utility procurement contract with an Electric Service Provider" (Paul Fenn Testimony, Submitted as "Local Power Comments on the CCA CRS," April 15, 2004, p.7)

During the two weeks of Evidentiary Hearings, Local Power was allowed to cross-examine the utilities' witnesses on whether they considered CCAs to be their competitors, and brought the significance of the issue out into the open:

> "Q Given that -- under the construction 366.2(a)(1), customers shall be entitled to aggregate their electric loads as members of a community choice aggregator, and SDG&E regards community choice aggregators as competitors, would it not follow that they regard their own customers as competitors?
> A No, I disagree with that. As I read the statute, I guess I go back to Section 331.1(a) and (b) where my understanding is they kind of define what a community choice aggregator means and they are talking about "following entities" and the entities are, for example, a city or a county or a combination thereof. So I would think, as I read this -- again, I'm not making a legal interpretation here, I'm just reading this in general -- it would seem to me that is the entity which is really the community choice aggregator and customers are a member of the associated with that entity. But it's not the actual customer doing the community choice aggregation.
> Q If they are members of it -- you said they're members. If they're members of it, doesn't that make them competitors as members?
> A No. It's the entity is what I'm looking at, and that entity has members. Just like the utility has customers, the CCA has customers.
> Q You don't have members. You are not a cooperative. In this case, the CCA has members.
> A Well, I don't want to get into a discussion of what the term "member" means. As I'm reading the statute, I'm seeing the CCA in a

> similar fashion as a utility in that it has customers it's going to provide power for and it has to go out there and procure the power to serve those customers.
> Q Do you regard a CCA as a utility?
> A No. I said in general. I didn't call it a
> utility. In general, I see it in a similar fashion" (Fenn Cross-Examination of SDG&E Witness MacGill, June 8, 2004 Evidentiary Hearing Transcript, pp.544-545).

In their subsequent comments, the utilities grew increasingly insistent on the statutory interpretation that CCAs are not to be defined as customers: "CCAs are not customers." (PG&E Comments on ALJ Malcolm's Proposed Decision, November 18, 2004).

Yet in D.04-12-046, while the Commission strangely omits the definition of CCAs as customers in its Findings of Fact and Conclusions of Law, it repeatedly defines CCAs as customers, not competitors, of the utilities, and based on that definition makes a number of key policy decisions. In the opening pages of the December 16 decision, the Commission observes broadly,

> "The order should also provide some guidance to the parties about how we envision the CCA energy procurement program in the broadest sense, and the costs that CCAs will have to incur as *customers of and partners with* the utilities." (p. 4)

The Commission asserts the same definition of CCAs as customers in its treatment of implementation costs:

> "Where the statute provides the Commission with discretion, we treat CCAs as customers who are buying services from the utilities. With that in mind, we apply ratemaking and cost allocation principles that are comparable to those applied to other utility customers" (p. 10).

The Commission acknowledges the assertion of Local Power that CCAs are not merely customers, but captive customers for distribution, billing, metering and customer service:

> "Local Power and other parties oppose upfront funding of implementation costs, arguing that CCAs are captive customers of the utilities for many services and should not be subjected to extraordinary financial burdens" (p. 21)

The Commission agrees that, as CCAs are utility customers, the utilities should assume some risk for serving them:

> "*To the extent the utilities provide services to CCAs, CCAs would be customers of the utilities* and, consistent with our treatment of the operational costs of serving other customers, *the utilities should assume some risk for serving them* and be able to reap the benefits of cost savings they implement between general rate cases. Moreover, CCAs should not have to assume liabilities for infrastructure development in advance. Such a requirement would be unprecedented in our treatment of utility customers and is unjustified here" (my emphasis, p.22).

Finally, the Commission agrees that CCAs, as utility customers, are entitled to the same CPUC protection and treatment as bundled service customers for these services:

> "CCAs, *like all customers*, are entitled to some expectation that their charges will be predictable and subject to review by the Commission. As we suggest in our discussion of implementation costs, we are concerned that open-ended balancing accounts and true-ups will undermine incentives for cost containment by the utilities and corresponding opportunities to make a reasonable rate of return on the provision of related services" (my emphasis, p.24).

Thus, the CPUC's definition of the CCA as a customer rather than a utility competitor, which Local Power advocated more than any other party in R.03-10-003, plays a major role in defining the rights and responsibilities of both CCA and utility in D.04-12-046.

D. IMPLEMENTATION AND TRANSACTION COSTS

In its discussion of the Recovery of Implementation and Transaction Costs in 03-12-046, the Commission ruled in favor of Local Power's position that as customers, CCAs should not be subject to up-front funding of implementation costs. I repeat the quote above for purposes of illustrating the distinct issue at hand:

> "Local Power and other parties oppose upfront funding of implementation costs, arguing that CCAs are captive customers of the utilities for many services and should not be subjected to extraordinary financial burdens" (p.21).

Indeed, Local Power has consistently argued that as captive customers, CCAs are entitled to "loans" for their implementation costs:

> "CCA ratepayers remain utility captive utility customers for a range of services (default service, all customer service, billing, metering) so there is nothing inconsistent with giving them the rights of ratepayers to benefit from the revolving loan fund. This should not be limited to OOR or distribution accounts because the utility continues under statute as provider of last resort. AB117 establishes a permanent relationship between customer and the utility" (Local Power Reply Briefs, July 23, 2004, p.6).

The Commission agreed with Local Power that CCAs are customers, and as such should not be forced to pay for implementation costs in a manner that would financially burden them:

> "To the extent the utilities provide services to CCAs, CCAs would be customers of the utilities and, consistent with our treatment of the operational costs of serving other customers, the utilities should assume some risk for serving them and be able to reap the benefits of cost savings they implement between general rate cases" (p. 22)

The Commission also agreed with Local Power that up-front payment of implementation costs would prove burdensome and therefore is not allowable:

> "Moreover, CCAs should not have to assume liabilities for infrastructure development in advance. Such a requirement would be unprecedented in our treatment of utility customers and is unjustified here.... CCAs, like all customers, are entitled to some expectation that their charges will be predictable and subject to review by the Commission....We will not consider changes to CCA tariffs between general rate cases or, where general rate cases are deferred, more than every three years. In the latter case, we will consider utility applications for CCA changes. Between general rate cases, utilities may file advice letters if they wish to propose changes in CCA tariffs to components other than increases to existing rates, or for new services or to reflect changes in the industry or CCA program operation" (pp.21-4).

Local Power argued with several other parties that under AB117, any implementation costs not associated with an individual CCA must be born by all ratepayers:

> "As to what is recoverable, this language in AB117 is restrictive, as SDG&E admits, to costs that are "reasonably attributable" to a CCA. (SDG&E Reply Briefs, p.2). In certain cases, as when "(a)ny costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission.(PUC 366.2c17) Then AB117 defines that reasonable transaction costs shall in all cases be charged to ratepayers. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to *an aggregator or its customers* shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission (PUC 366.2c17). *Thus, non-transaction costs or any costs CCA-related costs not reasonably attributable to any CCA should be excluded the definition of cost shifting*, and the CCA's transaction-based costs should be derived exclusively from this group" (added emphasis, Local Power Reply Comments, pp.3-4).

The Commission agreed that the word "a" before CCA contains legislative intent:

> "AB 117 requires CCAs or their customers to assume any costs incurred on behalf of individual CCAs. Based on the plain language of the statute, we find that those costs which may be identified as being incurred on behalf of a CCA should be assumed by the CCA and its customers. *Those costs that cannot be associated with an individual CCA may be allocated to all ratepayers, at the discretion of the Commission.* If the Legislature intended that no CCA program implementation costs be allocated to all ratepayers, *we must assume that it would not have required that utility ratepayers assume program costs "not reasonably attributable to a CCA."* The choice of the phrase "a CCA" in this context also supports the CCAs' interpretation of the statute. If the Legislature had intended that the general body of ratepayers assume no implementation or transaction costs, this phrase would have said "not reasonably attributable to CCAs."(my emphasis, p.11)

Thus, The Commission agreed with Local Power that making all ratepayers pay for costs not attributable to "a" CCA does not constitute cost shifting:

> "The statute gives the Commission discretion to establish which costs should be borne by utility ratepayers and we find that *the assumption of implementation costs by such ratepayers is not "cost-shifting*." Our

> interpretation of Section 366.2©)(17) reflects our view that, while AB 117 would limit the cost liability of customers remaining with the utility, it recognizes that some program costs could not reasonably be assumed by a single CCA without creating insurmountable practical problems or barriers to entry that the statute probably did not intend" (my emphasis, p.11).

Local Power argued in several documents that charging costs not attributable to a CCA to all ratepayers was justifiable because having CCA as an option is in the interests of all customers:

> "As I have repeatedly cited, AB117 provides that costs associated with CCA in general that are not reasonably attributable to a particular CCA "shall be recovered from ratepayers, as determined by the commission." (PUC 366.2(c)(17)). Thus, bundled service customers may pay for costs associated with CCA in general - that is, costs which are inherent to having CCA as a permanent recourse to bundled service customers under California law" (Local Power Reply Briefs, p. 31).

The Commission arrived at a similar conclusion in D.04-12-046:

> "The CCA program is supported by the state's legislature as good public policy and one that will promote the state's interests. For that reason alone, we do not consider future CCAs and their customers as the sole beneficiaries of the program" (p.11).

Taken together, Local Power's positions are reflected in the following Findings of Facts, Conclusions of Law and Orders:

Finding of Fact # 1: "Allocating implementation costs to ratepayers that are related to the development of the CCA program's infrastructure would be fair, relatively simple to administer and avoid the barriers to entry that might occur if a handful of individual CCAs were required to assume those costs" (p.57).

Finding of Fact # 2: "Transaction costs and implementation costs that are attributable to individual CCAs should be charged to those CCAs in tariffs according to the costs of time and materials" (p.58).

Finding of Fact # 6: "Approving balancing accounts for implementation costs is reasonable prior to a general rate case to assure the utilities recover reasonable implementation costs" (p.58).

Finding of Fact #12: “If CCA fees for processing utility bills are not unbundled, CCAs may be liable for costs related to utility customer services, rather than those incurred for CCA customers”(p.59).

Conclusion of Law #1: “AB 117 provides the Commission discretion to determine which implementation costs should be allocated to individual CCAs and which of those costs should be allocated to ratepayers generally” (p.63).

Conclusion of Law #2: “AB 117 defines transaction costs as those relating to metering, billing, and other customer services that are attributable to a single CCA” (p.64).

Conclusion of Law #4: “The utilities should be ordered to charge CCAs for transaction costs in tariffs that include charges based on incremental costs. The utilities should not be permitted to establish balancing accounts for CCA transaction costs that are recoverable in tariffs” (p.64).

Conclusion of Law #7: “The utilities should be ordered to propose final tariffs for recovery of transactions costs from ratepayers within 60 days of the effective date of this order for consideration in Phase 2 of this proceeding” (p.64).

Conclusion of Law #9: “AB 117 requires CCAs to pay for “opt-out” notifications mailed by the utilities to customers. The utilities should charge for these services in the CCA tariffs” (p.64).

Conclusion of Law #10: “The costs of developing the initial ‘opt-out’ procedures and infrastructure should be assumed by all ratepayers as an implementation cost” (p.65).

Conclusion of Law #27: “The utilities should be permitted to establish balancing accounts to track the costs of developing the infrastructure needed to implement the CCA program, and should allocate those costs to all ratepayers, as set forth herein. These balancing accounts should be eliminated following each utility’s subsequent general rate case” (p.67).

Conclusion of Law #28: “The utilities should be required to provide forecasts of CCA implementation costs in their general rate cases for recovery from all ratepayers” (p.67).

Conclusion of Law #29: "The utilities should develop tariffs for transactions services to CCAs that include charges based on the incremental costs of each service but the utilities should not charge CCAs for services for which the utilities already recover costs in their revenue requirements, consistent with this order. The utilities should modify their CCA tariffs in general rate cases, consistent with the regulatory convention for adjustments to revenue requirements for other customers. In their general rate cases, the utilities may propose charges to CCA for transactions services that are currently included in utility revenue requirements and in such cases should propose offsetting reductions to other rates" (p.67).

Order #1: "Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) shall create balancing accounts for implementation costs incurred prior to cost recovery changes authorized in their respective general rate cases. The utilities shall not enter costs into those accounts after those changes to the revenue requirement in the general rate cases becomes effective" (p.69).

Order #2: "PG&E, SDG&E, and SCE shall, within 60 days of the effective date of this decision, file tariffs that are substantively identical to those in effect for direct access customers and which shall apply in the interim to Community Choice Aggregators (CCAs) prior to the Commission's approval of final CCA tariffs" (p.69).

Order #3: "PG&E, SDG&E, and SCE shall, no later than 60 days after the effective date of this order, serve tariffs on all parties to this proceeding regarding costs and terms of services for CCAs. Cost recovery proposed in those tariffs shall be based on incremental costs but the tariffs shall not include charges for services for which the utilities already receive remuneration in existing revenue requirements, consistent with this order. These draft tariffs will be considered in Phase 2 of this proceeding" (p.69).

Order #4: "PG&E, SDG&E, and SCE shall, in their respective general rate cases, propose (1) a revenue requirement for CCA implementation costs and (2) changes to CCA tariffs for transactions including metering, billing, customer services and other services, which shall be authorized in the general rate case and remain in effect until a subsequent general rate case order, consistent with this order" (pp.69-70).

E. EVIDENTIARY HEARINGS CONTRIBUTIONS TO TRANSACTION AND IMPLEMENTATION COST ISSUE

Through its cross-examination of utility witnesses, Local Power also contributed to particular elements of D.04-12-046 related to transaction costs:

1.SDG&E's Additional Opt-Out Notice Not to Be Paid by CCA

> "SDG&E suggests utility customers receive a notice of the CCA program in advance of the CCA's notice. These preliminary notices would give customers information about the program and the release of customer information. We agree this notice might provide important information to the customer about potential changes in service. *However, we do not believe the CCA should pay for a notice that is not required by the statute and is sent at the utility's discretion.* Therefore, if the utility chooses to send such a notice, the associated cost should be assumed by the general body of utility ratepayers as start-up costs and consistent with the Commission's treatment of all customer notices regarding changes in markets and rules, and utility programs and services. If a utility chooses to send such a notice, it shall receive review from the Commission's Public Advisor office of its draft notice to assure the notice may not be misconstrued as a marketing tool for utility services. The notices shall provide basic information to customers explaining what the CCA will do, and how it may affect relevant customers and their service options " (my emphasis, p.20).

2. Utilities May Not Charge CCAs Higher Call Center Charges

> **Finding of Fact 13:** "The utilities did not demonstrate that CCA customers will make significantly more calls to the utility than they made as utility bundled customers. The extent to which the utilities must respond to additional calls would be established by directing CCA customers to a separate "800" number for questions about CCA services"(p.59).

Thus, Local Power also contributed to the following Findings of Fact, Conclusions of Law, and Orders:

> **Conclusion of Law #8**: "CCA tariffs should unbundle elements of the billing and call center services tariffs so that CCAs are not charged for billing processes and customers services that are unrelated to CCA services and CCA customer billings" (p.64).

F. METERING EQUIPMENT

The commission acknowledges Local Power's argument that AB117 requires utilities, at the request and expense of a CCA, to install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries:

> "Local Power suggested that the Commission order the utilities to install an additional CCA meter at every point at which a meter installed by the utility currently exists" (p.53).

The Commission observes the utilities willingness to support CCA metering:

> "SCE maintains concerns that this proposal is expensive and impractical, although it suggests considering the matter one case at a time. PG&E and SDG&E would also support boundary metering if it were offered on a time and materials basis" (p.53).

The Commission orders utilities to create a tariff for CCA metering:

> "Section 366.2©)(18) provides that 'at the request and expense of any community choice aggregator, electrical corporations shall install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries.' Again, we read the plain language of this section and, as the utilities suggest, require that they include an option in their tariffs for boundary metering that would be provided at the cost of time and materials" (p.53)

Thus, Local Power contributed to the following Findings of Fact, Conclusions of Law, and Orders:

Finding of Fact #48: Boundary metering would help CCAs develop area load profiles.

Conclusion of Law #40: "Section 366.2©)(18) requires the utilities to offer boundary metering. Utility tariffs should include an option for boundary metering to be provided at cost" (p.68).

Order # 5: "PG&E, SDG&E, and SCE's proposed tariffs shall include: (17) an option to have the utility install meters at CCA boundaries, at cost" (p.70).

G. Draft CCA Settlement Agreement

In addition to its submission of documents to the record in R.03-10-003, Local Power submitted a “Draft Settlement Agreement” to CCA parties in the proceeding, presenting them with a view of the full range of the different positions taken by each party on each major issue raised up to the Evidentiary Hearings of June, 2004. The CCAs agreed to receive this document from Local Power, which was presented to them on August 10, 2004. While the CCAs never agreed to a formal Settlement Agreement for submission to the Commission, they benefitted from a comprehensive comparison of dozens of positions taken for purposes of their November 18 Comments and November 23 Reply Comments to ALJ Malcolm’s November 18 Proposed Decision, passing on those benefits to the ultimate Decision on December 16. The document is attached to this Request.

Qualifications of Local Power personnel

Local Power’s Executive Director, Paul Fenn, conducted Local Power’s representation of Ms. Sarducci in this proceeding. His qualifications were filed as evidence in the proceeding, and an updated version is included as an attachment to this request for compensation.

Hourly rates, detailed charges and expenses

Mr. Fenn’s rate is $150/hr., a reasonable rate for a public interest advocate with his qualifications. It is comparable to the rates paid by the Commission and PG&E for similar services. Half rate ($75.00) is charged for travel related to the proceeding and preparation of this request. A breakdown of hours worked and services rendered is included in the attached Excel file. Local Power includes charges for research into Community Choice that was conducted prior to its filing as a party in the proceeding, which largely formed the basis of its participation. A listing of expenses is also attached.

Conclusion

For all the reasons described above, Local Power requests full compensation for its participation in the Community Choice Aggregation proceeding in the amount of $95,118.75.

DATE: February 22, 2005

Respectfully submitted,

____

Paul Fenn, Executive Director
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Enclosures:
ATTACHMENT A
EVIDENCE OF FINANCIAL HARDSHIP

ATTACHMENT B
QUALIFICATIONS OF PAUL FENN

ATTACHMENT C
LOCAL POWER HOURS AND SERVICES

ATTACHMENT D
LOCAL POWER'S EXPENSES

ATTACHMENT E:
DRAFT CCA SETTLEMENT AGREEEMENT

ATTACHMENT F:
RESPONSE TO PG&E DATA REQUEST

CERTIFICATION OF SERVICE
R.03-10-003

I, Paul Fenn, certify that on this day February 22, 2005, I caused copies of the attached LOCAL POWER REQUEST FOR COMPENSATION to be served on all parties by emailing a copy to all parties identified on the service list provided by the California Public Utilities Commission for this proceeding, and also by delivering an original and six copies to the Docket office and a copy to Administrative Law Judge Kim Malcolm and Presiding Commissioner Michael Peevey.

Dated: February 22, 2005 at Oakland, California.

____
DECLARANT

R.03-10-003

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(attached to original only)

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