BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 22I-0027E

IN THE MATTER OF THE COMMISSION'S IMPLEMENTATION OF § 40-4-120, C.R.S., THE STUDY OF COMMUNITY CHOICE IN WHOLESALE ELECTRIC SUPPLY.

INITIAL COMMENTS OF THE LOCAL ENERGY AGGREGATION NETWORK (LEAN)

March 1, 2022

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Pursuant to Decision No. C22-0032, the Local Energy Aggregation Network, d/b/a LEAN Energy US (LEAN) respectfully submits these Initial Comments for the Colorado Public Utilities Commission's (Commission) consideration.

LEAN is a national 501(c)(3) non-profit organization dedicated to the expansion and success of Community Choice Energy (CCE)[1] across the United States. We have promulgated CCE industry best practices for over a decade to hasten the country's transition to clean and reliable power, support competition and customer choice in the energy sector, and maintain affordable electricity rates. LEAN has been directly involved in the authorization of CCE in New York, market growth in the Midwest, and the formation of over half of the largest CCE programs in the State of California. Our filing also incorporates contributions from Scott Dunbar and Lilly McKenna of Keyes & Fox LLP, a national boutique law firm that specializes in public utility law and has represented numerous Community Choice Aggregators (CCAs) before the California Public Utilities Commission (CPUC); Shawn Marshall, LEAN Advisory Board member and Director of CCA Market Development at Calpine

[1] LEAN uses the term CCE throughout these comments consistent with CRS § 40-4-120. This concept is also known as community choice aggregation (CCA) and municipal aggregation in other states.

Energy Solutions; and, Samuel V. Golding of Community Choice Partners, Inc., which specializes in the design and operation of CCEs and contributed substantively to accelerating the evolution of CCE governance frameworks and operating models in California and New Hampshire.

These comments provide LEAN's position on CCE and our initial responses to questions posed by the Commission in accordance with § 40-4-120, C.R.S. Study of Community Choice in Wholesale Electric Supply, as established in House Bill 21-1269.

INTRODUCTION AND PARTY POSITION

Colorado has embraced ambitious decarbonization goals and set in motion an array of policies, incentive structures, and rulemakings to that end. Achieving the state's energy policy goals over the coming years, however, will require careful planning and execution in practice.

From a fundamental perspective, the objective is to reconfigure electrical grids and deploy distributed and renewable generation to reduce and eliminate fossil fuels (across electricity, transportation, industry, buildings, etc.) while optimizing production and usage to maximize cross-sectoral efficiencies, maintain grid reliability, and minimize energy transition costs for customers. From a practical local perspective, the decarbonization process will necessarily vary by town, city, and regional economy. It will require expert, nimble decision-making on the part of government — leveraging local relationships and informed by local opportunities — to deploy the right set of policies, programs, incentives, market reforms, business models, and technologies.

As Governor Polis' "Roadmap to 100% Renewable Energy by 2040 and Bold Climate Action" plan recognizes, communities have a critical and pressing role to play in the State's energy transition. Municipalities have inherent and relevant authorities across all sectors of the economy, understand

their communities, are aware of local challenges and opportunities, are generally bipartisan and inclusive, stable, business-oriented, and pragmatic in terms of how decisions are made, and coordinate closely on regional planning. They are also the most democratically accountable, accessible, and responsive level of government, and (not coincidentally) the most consistently trusted when it comes to facilitating and implementing policy decisions.

What municipalities typically do not possess is the specialized expertise required to understand how the electric power sector functions from a frontline, operational perspective. The wholesale, opt-out model of CCE has been designed to bridge that gap. It is an institutional capacity-building mechanism that affords communities the opportunity to manage their own competitive power supply while partnering with existing investor-owned utilities that continue to own and manage the "pole and wire" electrical infrastructure.

LEAN has engaged in this proceeding to demonstrate to the Commission how CCE, properly designed and implemented in the Colorado market, will play a critical enabling role in achieving the state's climate objectives. It represents a clear pathway towards a more consumer-centric, decarbonized, and reliable energy future for communities across the state.

Furthermore, CCE is immediately actionable and scalable. Under the wholesale CCE model, communities achieve an economy of scale by first joining together to incorporate a Regional Planning Commission[2] (known as a Joint Powers Authority in some states), governed by representatives appointed by each participating community, and subsequently by soliciting an established, robust ecosystem of competitive vendors, energy experts, and financial institutions to launch and operate

[2] *See* CRS § 30-28-105, et seq.

CCE programs. The most well-run solicitations result in performance-based contracts that outsource implementation costs to the private sector and impose minimal to no upfront costs and financial risk on local governments in advance of the commencement of service. The cash flow and net revenues generated by serving residential and commercial customers subsequently: (1) secures the CCE's creditworthiness and ability to function as an off-taker of long-term contracts (to build new renewable capacity) and (2) funds an expansion of institutional capacity within the enterprise sufficient to afford a team of experienced staff to exercise oversight and management of CCE operations and planning. This ensures the provision of unbiased advice and knowledge transfer to the governing boards of local/regional CCE programs and their various community committees. Thereafter, the CCE is equipped to make nimble, democratically informed decisions while evolving as a competitive power enterprise that is uniquely able to leverage municipal authorities and relationships towards achieving energy transition objectives *within a market-based framework*.

Over 200 communities in California have launched wholesale model CCEs to date, mostly in the last 5-10 years. The model is currently being deployed in New England as well, where the Community Power Coalition of New Hampshire Joint Powers Agency (incorporated in October 2021 by municipalities representing ~20% of the state's population) is preparing to launch wholesale CCE service beginning in April 2023. Refer to LEAN-05 for CPCNH's Business Plan.

LEAN believes that Colorado's climate policies, culture, and pragmatic approach to utility regulation could readily support the most logically designed and well-functioning CCE market of any state to date. Wholesale model CCEs are load serving entities (LSEs) that operate on a 24/7 basis and manage diversified portfolios of physical and financial contracts to provide full requirements electricity supply service to participating retail customers. Assuming the utilities enable the exchange

of actionable customer data with CCEs via Electronic Data Interchange (EDI), and if the Commission defines resource adequacy procurement requirements for CCEs while removing a number of lessor market barriers to CCE service, then LEAN foresees no significant barrier to the successful implementation of CCE service throughout the territories currently served by Xcel Energy and Black Hills Energy. Wholesale model CCEs are capable of functioning as load serving entities in Colorado's current market structure (given statutory authorization): taking service under Xcel's Open Access Transmission Tariff (OATT) and arranging for the delivery of energy and capacity primarily through bilateral transactions, with voluntary intra-hour dispatch of generation and storage resources located within the PSCo Balancing Authority Area under the terms of the joint dispatch agreement filed with FERC.

LEAN appreciates the opportunity to participate in this proceeding and looks forward to exploring how best to implement CCE in furtherance of Colorado's decarbonization and energy policy goals with other parties and the Commission. Our comments first present a general overview of CCE structural considerations, then respond to the General Assembly's questions (which have been grouped under thematic headings), and conclude with responses to the Commission's questions.

CCE STRUCTURAL CONSIDERATIONS

CCE was first enabled by Massachusetts, in 1997, and subsequently spread to nine other states over the course of the next 25 years. Consequently, a variety of CCE models have evolved to operate under different statutory and regulatory frameworks. LEAN is pleased to have the opportunity to contribute to the Commission's evaluation of the wholesale, opt-out model of CCE and how it could best be implemented in Colorado.

As a competitive alternative to utility-managed supply service, all CCE models have common features. Eligible customers (i.e., residential and commercial customers of an investor-owned utility) within participating communities are automatically enrolled unless they choose to "opt-out." The CCE thereafter functions as the default electric service provider on behalf of participating customers. As such, the CCE is responsible for the provision of: (1) full-requirements electricity supply, (2) the secure interchange and management of customer data with the utility for load forecasting, wholesale settlements, retail customer billing and other purposes, (3) call center and related services for customer inquiries, and (4) the design and delivery of local energy programs not otherwise provided by the IOU.

To satisfy these basic functional requirements in practice, communities have typically either:

1. Contracted with a power marketer at a retail rate that is typically fixed (or seasonally variable) over a one-to-three-year term of service; or
2. Launched a local power agency to self-manage the provision of all-requirements electricity supply, inclusive of credit support requirements, and retail energy services to participating customers.

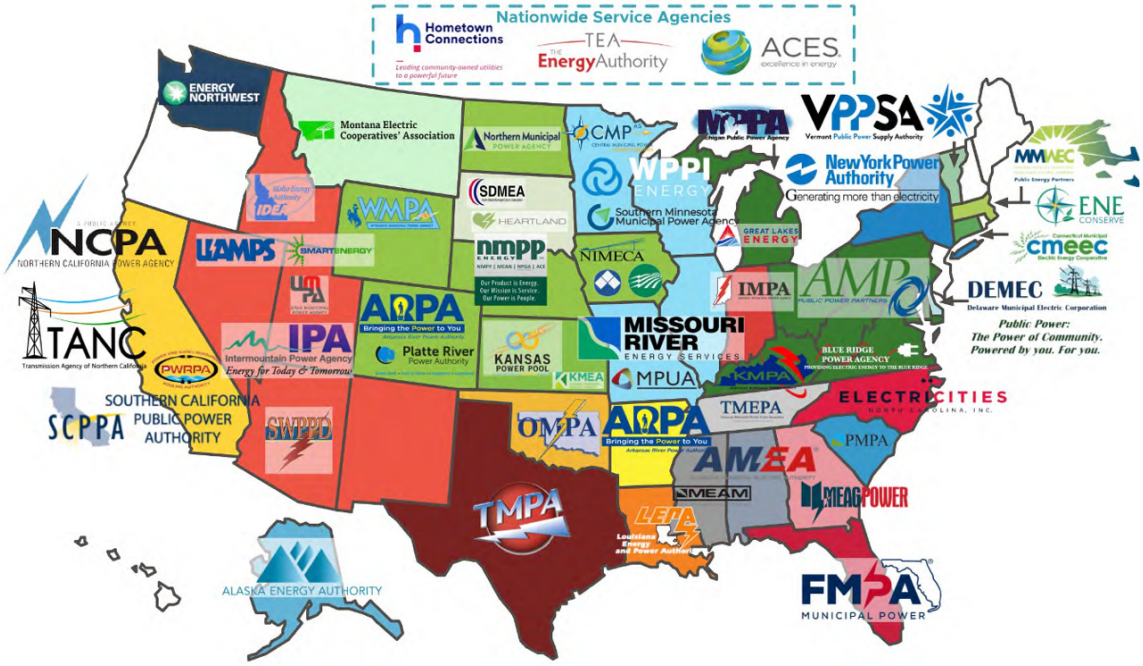
The latter model has become known as the "wholesale model of CCE," denoting the fact that the CCE itself constructs and actively manages a diversified portfolio of physical and financial products to provide all-requirements electricity supply, which can be procured on the wholesale market. Doing so entails contracting directly for different products from a wide variety of counterparties (power plants, retail electric suppliers, independent power providers, financial entities, etc.) while procuring and integrating local renewables, distributed energy, demand flexibility, electric vehicle charging infrastructure, and battery storage assets into the CCE's energy portfolio.

Consequently, the retail services of the "wholesale" model of CCE have evolved beyond the basic functional, power procurement focused requirements of a CCE to support innovation in customer products, local energy programs, and enabling services for advanced distributed energy resources. In this way, CCEs act as a channel for local energy innovation and adoption, while accelerating the State's achievement of its clean energy goals.

Participating communities access the economy of scale necessary to provide CCEservices while maintaining competitive rates primarily through two mechanisms:

1. First, by entering into an inter-municipal cooperation agreement to establish a new power agency (typically referred to as a "Joint Powers Authority" or "JPA" but in Colorado is known as a Regional Planning Commission) that is professionally managed and jointly governed by representatives appointed by each of the participating communities.
2. Second, by issuing one or more competitive solicitations (through the JPA) to contract for the professional services and credit support required to launch and operate CCE programs. It is worth noting here that the regional commission or JPA structure functions as a separate entity, thereby insulating participating municipalities from any legal or financial liability of the regional planning commission/JPA.

Forming a JPA necessarily entails a significant amount of inter-municipal coordination and relationship building. That said, communities can readily access the knowledge and support required to draft a Joint Power Agreement to incorporate an all-requirements CCE agency, as the public power industry has formed more than seventy such agencies in the last fifty years (depicted below) and CCEs in the state of California have formed 20+ regional agencies using the JPA form of governance.


Nationwide Service Agencies
Hometown Connections
TEA
The Energy Authority
ACES
excellence in energy
ENERGY NORTHWEST
Montana Electric Cooperatives' Association
Northern Municipal Power Agency
CMP
MPPA
VPPSA
Vermont Public Power Supply Authority
WPPI ENERGY
New York Power Authority
Generating more than electricity
MMWEC
ENE
CONSERVE
cmeec
NCPA
NORTHERN CALIFORNIA POWER AGENCY
WMPA
SDMEA
HEARTLAND
Southern Minnesota Municipal Power Agency
GREAT LAKES ENERGY
LLAMPS
SMARTENERGY
nmpp
NIMECA
IMPA
AMP
DEMEC
Delaware Municipal Electric Corporation
Public Power: The Power of Community. Powered by you. For you.
TANC
Transmission Agency of Northern California
IPA
Intermountain Power Agency
Energy for Today & Tomorrow
ARPA
Bringing the Power to You
Platte River Power Authority
KANSAS POWER POOL
MISSOURI RIVER ENERGY SERVICES
KMEA
MPUA
KMPA
BLUE RIDGE POWER AGENCY
PWRPA
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
SCPPA
SWPPA
OMPA
TMEPA
ELECTRICITIES
NORTH CAROLINA, INC.
PMPA
AMEA
MEAG POWER
TMPA
LEPA
Louisiana Energy and Power Authority
ALASKA ENERGY AUTHORITY
FMPA
MUNICIPAL POWER


The California Community Choice Association's mission is to support the development and long-term sustainability of locally-run CCA electricity providers throughout California.
Areas of Service:
Apple Valley Choice Energy
City of Apple Valley
Central Coast Community Energy
Unincorporated Monterey, San Benito, Santa Barbara & Santa Cruz Counties & 27 cities
Clean Energy Alliance
3 cities
Clean Power Alliance
Unincorporated Ventura County & 7 cities, Unincorporated Los Angeles County & 23 cities
CleanPowerSF
San Francisco County
Desert Community Energy
Palm Springs
East Bay Community Energy
Unincorporated Alameda County & 14 cities
King City Community Power
King City
Lancaster Choice Energy
City of Lancaster
MCE
Marin & Napa Counties, Unincorporated Solano County & 2 cities, Unincorporated Contra Costa County & 14 cities
Peninsula Clean Energy
Unincorporated San Mateo County & 20 cities
Pico Rivera Innovative Municipal Energy
City of Pico Rivera
Pioneer Community Energy
El Dorado County, Unincorporated Placer County & 6 cities
Pomona Choice Energy
City of Pomona
Rancho Mirage Energy Authority
City of Rancho Mirage
Redwood Coast Energy Authority
Humboldt County
San Diego Community Power
5 cities
San Jacinto Power
City of San Jacinto
San Jose Clean Energy
City of San Jose
Santa Barbara Clean Energy
City of Santa Barbara
Silicon Valley Clean Energy
Unincorporated Santa Clara County & 13 cities
Sonoma Clean Power
Sonoma & Mendocino Counties
Valley Clean Energy
Yolo County & Cities of Winters, Woodland & Davis
REDWOOD COAST EnergyAuthority
VALLEY CLEAN ENERGY
Chico
BUTTE COUNTY
Oroville
PIONEER
EL DORADO COUNTY
Sonoma Clean Power
MCE
Fairfield
Stockton
TUOLUMNE COUNTY
CleanPowerSF
Tracy
EAST BAY COMMUNITY ENERGY
PENINSULA CLEAN ENERGY
SAN JOSE CLEAN ENERGY
Los Banos
SILICON VALLEY CLEAN ENERGY
KING CITY COMMUNITY POWER
Central Coast Community Energy
Paso Robles
Grover Beach
Arroyo Grande
Pismo Beach
SAN LUIS OBISPO COUNTY
Morro Bay
San Luis Obispo
LANCASTER Choice ENERGY
POMONA CHOICE ENERGY
Apple Valley Choice Energy
prime
Santa Barbara CLEAN ENERGY
CPA CLEAN POWER ALLIANCE
San Jacinto POWER
ORANGE COUNTY
Orange County Power Authority
RANCHO MIRAGE ENERGY AUTHORITY
SAN DIEGO COUNTY
Escondido
San Marcos
DESERT COMMUNITY ENERGY
CLEAN ENERGY ALLIANCE
National City
SAN DIEGO COMMUNITY POWER
CALCCA
ADVANCING LOCAL ENERGY CHOICE cal-cca.org
Serving Customers
Implementation Plan Filed
Considering CCA
* Not all towns/cities within a county are served by the local CCA program. Please visit individual agency websites for more detailed service area information. To learn more about CalCCA please visit our website at cal-cca.org.

The process of implementing the CCE competitive operating model is now so well understood and commercially proven that many vendors are willing to work on a deferred, at-risk compensation basis to complete all necessary implementation activities and provide or arrange for credit support sufficient to launch CCE service. It was only recently that this relatively specialized, commercially valuable knowledge became widely accessible and actionable to new communities seeking to implement new CCEs. During this period, between 2016 and 2021, the California CCE industry expanded from five to twenty-one operating CCEs and has grown tenfold in terms of load served. Each of the early CCEs had typically invested between $2 million to $3 million over a three-to-four-year design and implementation process. Consequently, every successive CCE that launched during this period drew more vendors, financiers, and talent into the industry and the out- of-pocket costs for program design and launch have dropped significantly. It is worth noting here that all pre-development costs associated with CCE start up, which may be provided or loaned by a participating municipality, are entirely reimbursable through ratepayer revenues once the CCE program is launched and operational. In addition, CCEs are, by design, self-funding and not reliant on taxpayer subsidies or municipal support.

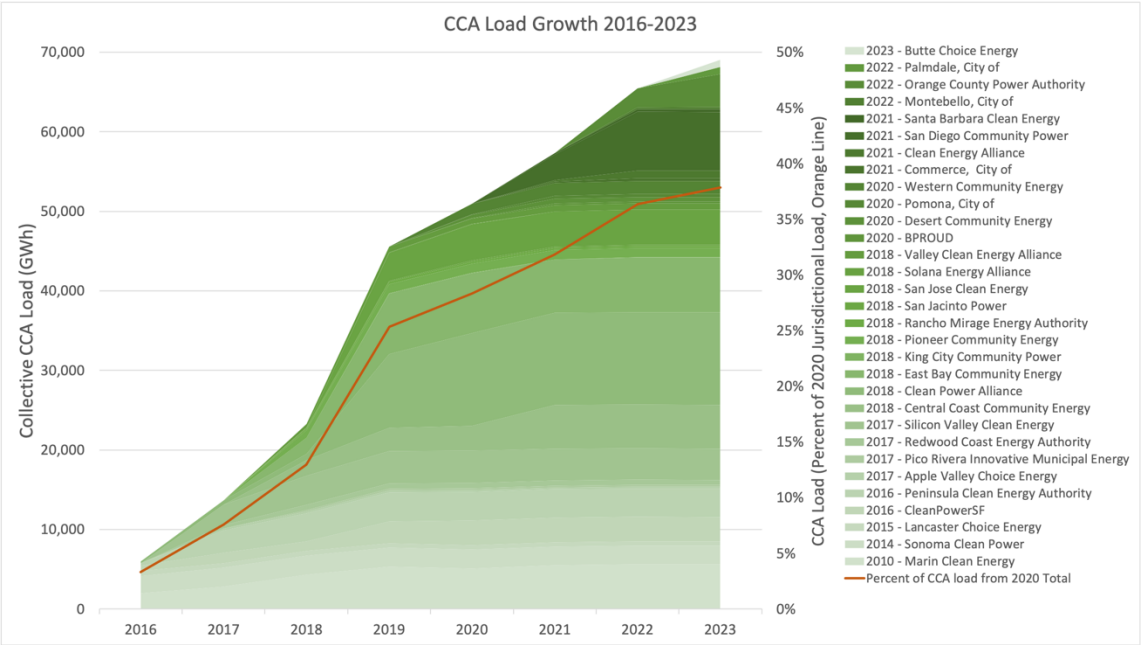


Image credit: Cal-CCA

At present, California CCEs collectively serve approximately 4.5 million customers. (As a point of comparison, Xcel serves 1.5 million retail electric customers in Colorado.) Over 200 local governments are participating, each of which has appointed representatives to serve on a CCE governing board, and the CCE agencies collectively employ over 300 professional and administrative staff, with hundreds if not thousands more people employed by various vendors serving the CCE industry.

The first CCE JPA to employ a performance-based contracting approach was the Redwood Coast Energy Authority (RCEA) in Humboldt County[3] — one of the smaller, more rural, and remote CCEs in California with eight local government members and 60,000 retail electric customers. Prior to launch, the RCEA Board established a 15-member Community Advisory Committee of appointed community members to provide input on decision-making, guide public outreach efforts, and serve

[3] Redwood Coast Energy Authority, online at: [https://redwoodenergy.org].

as liaisons to the broader community. After issuing a Request for Proposals soliciting all the services and credit support required to launch an all-requirements power agency, RCEA received four team proposals and executed contracts with the team led by The Energy Authority[4] (a nonprofit power portfolio manager and energy supplier owned by municipal utilities that provides services on a competitive basis across the country).

RESPONSES TO QUESTIONS IN STATUTE

Please note that the use of the term joint power authority (JPA) in this section refers to the legal structure of joint CCEs in the state of California, which offers the most advanced example of wholesale CCEs in the country. The term JPA as used in this document is roughly analogous to Colorado's regional planning commission structure.

1. CCE OPERATING MODEL, START-UP & PROCUREMENT CONSIDERATIONS

<u>Question VII:</u> Potential challenges for CCE start-up or continuing operations, including the availability of financing and credit rating considerations, and strategies to overcome those challenges.

LEAN cautions that the presence of incumbent monopoly utilities that provide non-competitive services while competing with CCEs for customers invariably invites misbehavior and can jeopardize the viability and maturation of nascent markets:

- Utilities will be both wholesale sellers to CCEs while simultaneously competing against CCEs as retail sellers. Consequently, the Commission will need to monitor the market for instances of

[4] The Energy Authority, online at: [https://www3.teainc.org/].

manipulation, untruthful customer and public communications, predatory pricing, withholding and price squeezing, and be prepared to correct any imperfections that derive from the utilities' unearned advantage and market power.

- Similarly, retail metering infrastructure, data management systems, control over billing, and other retail customer-facing functions are all critical network facilities that can — and often have — become bottlenecks when utilities use their monopoly position to disadvantage, delay, and discriminate against CCEs. The Commission must ensure that operational access to data, information, and functionality is provided on a non-discriminatory, timely and open access basis.

The below responses assume that the Commission has ensured a "level playing field" between incumbent utilities and CCEs.

For CCEs that issue a Request for Proposals (RFP) to provide operational services and credit support on an at-risk, deferred compensation basis (as described in the section "CCE Structural Considerations" " above) — prospective vendors and financiers will evaluate the CCE as a counterparty based on factors such as:

- The experience and reputation of the JPA's leadership at the staff, Board, and committee levels.
- The political cohesion of participating communities and strength of cost-recovery provisions in the Joint Powers Agreement.
- The overall quality of governance and preparatory activities, including documents that demonstrate a credible understanding and outlook regarding the CCE's organizational requirements (e.g., financial projections, a budget and staffing plan, etc.).
- The capacity of the CCE to monitor and manage political risk at the General Assembly and the

Public Utilities Commission.

Favorable assessments will lower the CCE's risk profile as a counterparty and strengthen participation and competition during the solicitation process. For additional insights, refer to the draft Business Plan of the Community Power Coalition of New Hampshire.[5]

In regard to continuing operations (i.e., after successful CCE launch), the credit ratings of CCE's provide insight into financial risk factors and related management best practices. LEAN has attached the credit ratings of Silicon Valley Clean Energy,[6] East Bay Community Energy[7] and MCE Clean Energy[8] for reference (refer to LEAN-02, LEAN-03, and LEAN-04).

Additionally, Moody's credit rating methodology for US Municipal Joint Action Agencies[9] (refer to attachment LEAN-01) discusses a variety of relevant risk factors and management best practices and includes scorecard metrics for full requirement CCEs. Key considerations regarding

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[5] Community Power Coalition of New Hampshire, "Draft Business Plan", August 2021. Available online: [https://www.dropbox.com/s/476jmxzdu696m94/3_CPCNH Draft Business Plan_14Aug2021.pdf?dl=0]
Note Samuel Golding of Community Choice Partners, Inc. authored this document and contributed to these comments.
[6] S&P Global Ratings, "Silicon Valley Clean Energy, California; Retail Electric", 5 January 2021. [https://www.svcleanenergy.org/wp-content/uploads/2020/02/SP_Rating_SVCE.pdf]
[7] S&P Global Ratings, "East Bay Community Energy, California; Retail Electric", 9 December 2021. Available online: [https://res.cloudinary.com/diactiwk7/image/upload/v1639513241/RatingsDirect_SummaryEastBayCommunityEnergyCaliforniaRetailElectric_50135100_Dec-09-2021_iebnql.pdf]
[8] S&P Global Ratings, "Marin Clean Energy, California; Retail Electric", 4 March 2021. Available online: [https://www.mcecleanenergy.org/wp-content/uploads/2021/03/MCE-Ratings-Direct_Marin-Clean-Energy-California-Retail-Electric_03.04.21.pdf]
[9] Moody's, "US Municipal Joint Action Agencies Methodology", 2020. Available online: [http://www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_1207102]

Moody's weighting factors are summarized below:

Moody's CPA JPA Credit Rating Scorecard

- **Cost Recovery Framework (25%)**
  - Quasi-monopoly position with automatic enrollment of all customers in service area with limited customer opt-out history
  - Proven unregulated rate setting
  - Above average customer base and service area economy
  - Municipal participants have high credit quality
- **Competitiveness (15%)**
  - Competitive current and expected rates in the region or compared with neighboring utilities on a consistent basis (e.g., average rates range from 10% below regional average to 10% above regional average)
  - Modest likelihood of material prospective cost pressures that could lead to higher rates.
- **Willingness to Recover Costs with Sound Financial Metrics (25%)**
  - Adequate ratesetting record
  - Rates likely to result in maintenance of financial metrics
- **Leverage & Coverage (15%)**
  - 70% to 100% adj. debt ratio
  - 1.2x to 1.4x fixed obligation coverage ratio
- **Liquidity (10%)**
  - Cash and unrestricted credit on hand to cover 120-200 days of operating expenses
- **Energy Risk Management (10%)**
  - Well-managed portfolio of supply contracts with moderately strong suppliers + manageable exposure to environmental regulation OR
  - Strong energy resource risk management + 20%-30% from power market purchases

Excerpts of Moody's additional CCE weighting factors and creditworthiness considerations are provided below. Note that Moody's refers to JPAs as "JAAs" here ("Joint Action Agencies" being synonymous with "Joint Powers Authorities"):

- *"JAA governance is also an important element of the cost recovery framework because poor governance may result in participants challenging their contractual obligations, which can disrupt timely cash flow and cost recovery for the JAA."*
- *"The quality of management is an important factor supporting a JAA's credit strength. Assessing the execution of business plans over time can be helpful in assessing management's business strategies, policies and philosophies and in evaluating management performance relative to performance of competitors and our projections. Management's track record of adhering to stated plans, commitments and guidelines provides insight into management's*

likely future performance, including in stressed situations."

- *"Effects of these regulations may entail limitations on operations, higher costs, and higher potential for technology disruptions and demand substitution. Our view of future regulations plays an important role in our expectations of future financial metrics as well as our confidence level … over the medium and longer term."*
- *"The quality of financial statements may be influenced by internal controls, including the proper tone at the top, centralized operations, and consistency in accounting policies and procedures."*
- *"Seasonality is an important driver of customer demand and can cause swings in cash balances and working capital positions for issuers. Higher volatility creates less room for errors in meeting customer demand or operational execution."*
- *"All-requirement agencies typically meet their participants' resource requirements through a combination of owned assets and contractual agreements with energy suppliers."*
- *"We typically consider the diversity and credit quality of the energy resource suppliers, typically as reflected in their ratings. We also typically consider key terms of the supply contracts, such as maturity, payment provisions and the amount of the contracted resource."*
- *"The agency's broad energy resource risk management is a stronger indicator of credit quality than asset quality alone"*
- *"The score for this factor is typically based on the weakest element in the JAA's resource risk management."*
- *"Poorly operating JAA assets, poor resource risk management or the cost of compliance with*

environmental regulation can increase all-in costs for the energy resource while also potentially inducing participants to seek alternative energy resources outside of the JAA."

- *"A JAA's inability to deliver its resource at competitive rates may cause participants to challenge their contractual obligations."*
- *"Participant support for the JAA, which is largely based on customer satisfaction and the cost of service, can result in greater participant willingness to meet the revenue requirements that help the JAA maintain its financial condition.*"

<u>Question XX:</u> The risks a CCE authority might face that merit consideration, such as resource price risks, contract risks, or load defection, and the significance of those risks.

Refer to attachments LEAN-06 and LEAN-07 for the Redwood Coast Energy Authority CCE's Energy Risk Management Policy and Financial Reserves Policy for an indicative overview of relevant risk factors and mitigating strategies. Note that similar policies are typically publicly accessible and found on the websites of CCEs, many of which are compiled for easy access online.[10]

<u>Question XXIII:</u> How the procurement process works and how it varies from one CCE or CCE authority to another, especially in California.

As context, refer to our responses to Question VII and XX above, along with the referenced attachments LEAN-02 through LEAN-07. Note that:

- CCE credit ratings provide context to understand the range of portfolio management activities in question; for example, MCE Clean Energy's power portfolio consists of over 350 power purchase and resource adequacy contracts.

[10] Available here: https://cal-cca.org/about/members/

- While CCE hedging strategies and market intelligence are not publicly disclosed, the risk management policies of CCEs typically narrate the process, methodologies and transaction authorities by which energy portfolios are managed.

CCEs are competitive load serving entities with full portfolio management capabilities. The majority have hired expert procurement staff and/or energy portfolio managers to provide the requisite operating model functionality. Energy portfolio managers structure and actively manage diversified portfolios of physical and financial energy products on behalf of their CCE clients, which are typically either entities providing all-requirements electricity supply to retail customers (e.g., power marketers, CCEs, utilities in vertical markets) or financial institutions engaged in energy trading (the commodity trading arms of investment banks). Their function requires the provision of multiple 24/7 secure operational control centers capable of transacting with bilateral counterparties and (often) in one or more of the country's regional wholesale electricity markets, along with the substantial number of staff, software and data subscriptions required to forecast load and market prices, analyze risk, devise portfolio strategies, negotiate contracts, and transact on an active and continuous basis thereafter in response to evolving market, policy, and technology factors.

Energy portfolio managers are naturally expected to anticipate and appropriately hedge the energy portfolios of CCEs — including throughout periods of extreme weather and market disruption — managing exposures in line with margin preservation targets and credit support requirements, and in alignment with approved Risk Management policies as well as industry standard practices and procedures delineating and maintaining the responsibilities of front, middle and back-office functions (i.e., trading, risk management / oversight and settlement /accounting functions).

In terms of long-term procurement of new renewable and battery storage resources, CCEs in

California have contracted for the development of approximately 10,000 MW to date, through individual and joint CCE JPA solicitations. Note that CCE JPA Integrated Resource Plans are compiled online for easy reference.[11]

Note also that while California regulators require the use of certain standardized models to govern Integrated Resource Plans — similar to the EnCompass model relied upon by Xcel, *which solves at hourly intervals*[12] *and as such will lead to imprudent procurement choices when constructing decarbonization portfolios* — CCEs employ a variety of more sophisticated analytical platforms to guide medium-to-long term portfolio optimization activities and contract valuation analysis during procurement events. LEAN observes that CCEs have contracted with Colorado-based companies such as cQuant and Ascend Analytics to provide the temporally granular, spatial optimization analytics (e.g., 5-minute timesteps at nodal locations) required to prudently value contracts and assess CCE portfolio risk.[13]

<u>Question XIII:</u> What, if any, minimum requirements and standards should apply to independent power producers and power marketers who wish to supply energy to a CCE authority.

In LEAN's experience, contractual requirements — beyond those applicable to any other entity authorized to engage in business — and other relevant standards are freely negotiated between power suppliers and the CCE. LEAN does not see a reason to depart from this practice and does not

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[11] Available here: https://cal-cca.org/cca-integrated-resource-plans-irps/

[12] Public Service Company of Colorado (Xcel), "2021 Electric Resource Plan and Clean Energy Plan", 31 March 2021, at p. 27 of 73. Available online: [https://www.xcelenergy.com/staticfiles/xe-responsive/Company/Rates%20&%20Regulations/Resource%20Plans/Clean%20Energy%20Plan/Vol_1-Plan_Overview.pdf]

[13] Gary W. Dorris and David Millar, "Making the Right Resource Choice Requires Making the Right Model Choice" NRRI Insights. September 2021. Available online: [https://pubs.naruc.org/pub/9F384B91-1866-DAAC-99FB-94A9489C14B9]

recommend that the Commission or the General Assembly impose any such minimum standards. CCEs should be afforded the flexibility to negotiate its power procurement contracts in a manner that allows for the contracting parties to develop terms and conditions that are most impactful to the CCE's customers' needs.

<u>Question XIV:</u> What, if any, data-sharing requirements should be imposed on investor-owned electric utilities to help ensure that a CCE authority or a jurisdiction investigating whether to form or join a CCE authority can reasonably evaluate its financial and technical viability and implement its CCE program.

Customer data sharing, within established data security and customer confidentiality guidelines, is a critical element of CCE evaluation and ongoing operations. The Commission may require the utilities to post a schedule of authorized data files for CCEs along with a pricing schedule and the timing within which data requests must be met by the utility. It should be noted that data files are typically free (as in NY) or low cost (as in CA) to the CCE and requesting municipalities. Most utilities require service NDAs to be signed by any CCE staff member or vendor who will have access to the data as well as data attestation/approval forms signed by the participating municipalities. Examples of such forms from a California utility are attached for the Commission's consideration: refer to LEAN-08, LEAN-09 and LEAN-10.[14]

The following are the essential data files commonly shared for CCE evaluation and start-up. This list is non-exhaustive, and may change depending on operational status and services provided.

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[14] *See* Pacific Gas and Electric, "Electric Schedule E-CCAINFO: INFORMATION RELEASE TO COMMUNITY CHOICE AGGREGATORS", accessible online: [https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHEDS_E-CCAINFO.pdf].
See also Pacific Gas and Electric, "Electric Schedule E-CCA: Services to Community Choice Aggregators," accessible online: [https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_SCHEDS_E-CCA.pdf].

1. Last 12-24 months aggregate monthly usage (kWh) by rate schedule and zip code for each customer class;
2. Any "public goods charge" or similar payments (by customer) within a proposed CCE service territory (if applicable);
3. Estimated annual generation revenues within specified CCE service territory;
4. Data related to Time of Use rates (if applicable);
5. Customer specific information from the last 12 billing periods consisting of: meter number, service agreement number, name/service address, monthly kWh usage, monthly maximum demand, low income or other rate discount program participation, monthly rate schedule for all accounts within service CCE service territory, historical billing info, monthly interval meter data (if available);
6. Customer list with personally identifiable information redacted until needed for pre- and post- enrollment mailings.

The following are the essential data files commonly shared once the CCE is operational:

1. Daily exchange of EDI transaction sets in support of CCE operations (810 / 814 / 820 / 824 / 867 / 997 / 248);
2. Monthly kWh meter data for each customer service agreement and meter number delivered via EDI 867 transaction set;
3. Daily payment files (EDI 820) with accompanying detail that references each payment by customer service agreement;
4. Receipt of daily EDI 810 invoice data for bill ready IOU billing;

5. Delivery of daily EDI 810 invoice data for rate ready IOU billing (to allow for shadow billing and auditing of invoice accuracy);
6. Daily exchange of EDI 814 transactions in support of enrollments, terminations, and account maintenance such as name change, meter read date change, rate change, new move-in, new premise, six month returns;
7. Daily delivery of EDI 824 transactions noting acceptance or rejection of EDI 810 invoice data if bill ready IOU billing;
8. Daily delivery of EDI 997 acknowledgement transactions;
9. Returned Receivables Reporting (via EDI 248 or spreadsheet) to provide CCE information for collections or write-offs activity;
10. Ongoing delivery (weekly preferably) of territory-wide customer lists that include, at a minimum: customer name, customer account number, service agreement number, mailing address, service address, rate schedule, customer class type, meter read schedule, billing schedule, account start date, account end date, account status, service location identifier, service location town or municipality, tax status by town code (rate & exemptions), customer program identifies (low income programs, payment plans, level pay plans, up-to-date customer phone number and email address (where possible);
11. Territory-wide access to interval meter data as close to power flow date as possible to support forecasting, DER programs, other customer programs, analysis of load impacting events (weather, grid, outages, etc).
12. Publicly published rate tariffs and history of tariffs.

2. CCE LOCAL APPROVAL PROCESS, CUSTOMER ENROLLMENT & CUSTOMER PROTECTIONS

<u>Question X:</u> The appropriate process for approval of CCE on behalf of customers within a jurisdiction, whether by ordinance, by vote of the people, or otherwise.

CCE approvals at the municipal level (city, town, village, county) are done either through public referendum or adoption of an ordinance by a locally elected body such as a city council or county board of supervisors. The choice of approach is generally a function of whether a CCE exists in a structured or restructured energy state.

In fully restructured states such as Ohio and Illinois, CCE authorizing language is included on local ballots. The issue may garner local debate and advocacy, but the utilities generally do not become involved or spend significant sums opposing CCE because they are already functionally separate and have exited the electricity procurement business. Energy suppliers generally do not become involved either, as they will be able to serve load whether through a utility or a CCE. Consequently, CCE may be fairly debated at the local level without the undue influence of vested interests, utility funding, and misinformation campaigns.

In partially restructured states such as California, the opposite is true. CCE adoption is referred to a vote by the local governing body (e.g., a city or town council, or county board of supervisors) because they have representative authority and sufficient time to fully assess the functions, benefits and risks of a CCE. Adoption of a CCE ordinance mirrors many other local decisions an elected body makes on behalf of its constituents. And, importantly, because monopoly utilities can and do fund local anti-CCE campaigns, which by law cannot be matched by municipal funding in support of CCE, this sets up an unlevel playing field and "power of incumbency" that

would have outsized and unfair impacts at the ballot box.

Because the monopoly utilities in Colorado will likely see CCEs as potential competitors, it is reasonable to expect that they would seek to influence ballot initiatives if CCE could be adopted by a vote of the people, as discussed above. Accordingly, LEAN recommends that Colorado require CCEs to be formed through adoption of local ordinances by representative governing bodies.

<u>Question XVI:</u> The appropriate considerations for ensuring that the implementation of CCE does not include customers in the certificated territories of municipally owned electric utilities or cooperative electric associations.

CCE enabling legislation should make it clear that CCEs do not include customers already served by electric cooperatives or municipal utilities. From a practical perspective, CCEs will request customer specific data for customer classes within specific geographic boundaries, including by zip code. These requests are submitted to the IOU, not to a municipal utility or a coop. An IOU will not provide data for customers it does not serve. Moreover, as an additional check, the CCE data manager reviews the list to make sure all customer classes are identified accurately before customer mailers and notifications are sent out.

<u>Question V:</u> The appropriate conditions, limitations, and procedures under which customers may opt out of CCE and receive bundled service from the incumbent investor-owned electric utility.

CCE currently exists in ten states, all of which follow the opt-out model of automatic customer enrollment after multiple notifications with the option to opt-out at any time. Unlike the one-by-one "opt-in" approach to customer acquisition, the opt-out model enrolls customers en masse, allowing a CCE to reach adequate scale to successfully compete in the energy market while also achieving state

and local policy objectives. Similar to other local public services such as water and sewer, the CCE becomes the default electric service provider in communities that have affirmatively chosen to adopt it. While customers are automatically enrolled in a CCE, there are stringent customer notification requirements in advance of enrollment, and customers *always have the choice* to: a) opt out and remain with the IOU standard offer service, b) opt-up or opt-down to other energy mixes offered by the CCE, or c) do nothing to become part of a CCE's default service (which is generally cleaner and cheaper than the IOU's default electric generation).

Unlike a monopoly utility structure, a CCE's opt-out mechanism is the guarantee that a customer's choice is respected. Consequently, customers should have the ability to opt-out prior to, during, and after a CCE launches, with few if any limitations. CCEs should be required to mail one or more notifications to customers prior to (and potentially after) commencement of service. Notifications should inform customers regarding program rate impacts and other considerations. Customers should be given the option to opt-out via a toll-free phone number, email, website, or postal service. Customers choosing to opt back in (or return) to the CCE should have the same easy steps to follow. After a CCE launches, any new customers that move into or within the CCE's service territory should be provided with the same notification and choice of service. Customers are typically switched between CCE and utility service on the date of their next billing period.

<u>Question VI:</u> Whether any additional consumer protections would be required and the means of providing those protections.

A CCE is a non-profit entity with a public purpose, created by and for participating communities. A CCE is responsible to its governing board, local elected officials, and the community. If a CCE performs poorly, it is close to its stakeholders who will provide direct feedback.

Accountability towards customers is likely to be better when decisions are made more locally.

LEAN would expect the Commission's role in ensuring consumers are protected to be limited to resolving billing disputes, and other disputes of a similar nature that are specific to individual customers of the CCE. Ultimately, if a customer disagrees with the goals and priorities set by a CCE, the customer may opt-out. More fundamentally, customers can participate directly in matters of local governance — including CCE governance — for example by attending and participating in public meetings, participating on committees established by the CCE, and voting for (or against) specific local elected officials.

LEAN also observes that national policy research conducted by the University of Massachusetts Amherst, University of CA Los Angeles and the National Renewable Energy Laboratory has established that CCEs have a positive influence on consumer protections in restructured electricity markets.[15]

3. IMPACT OF CCE IN OTHER MARKETS

<u>Question XVIII:</u> The impact, both positive and negative, of CCE in communities that have formed or joined a CCE authority in states that have enabled the wholesale, opt-out model of CCE.

As described throughout these comments, the impacts of the wholesale CCE model have been overwhelmingly positive, not just in regard to price competition but also in terms of achieving state energy policy objectives in ways that reflect the local goals and values of participating communities.

However, the good governance and competitive performance of individual CCEs is not

[15] *See, e.g.,* [https://www.nrel.gov/docs/fy19osti/72195.pdf], [https://ag.umass.edu/clean-energy/municipal-aggregation] *and* [https://innovation.luskin.ucla.edu/energy/community-choice-in-energy/]

guaranteed. Much depends upon whether the CCE is designed and operated in accordance with industry best practices. The specific people involved in governing and managing the CCE, and the professionalism of the entities relied upon to advise and operate the CCE, are also determining factors. While most wholesale model CCEs have succeeded in developing a culture of entrepreneurialism, public service, and operational excellence (and are operating in a fiscally responsible manner) LEAN is aware of one instance in California where a CCE has failed to adhere to industry design best practices in these regards.

Western Community Energy (WCE) was a small CCE operating in the Southern California desert that declared bankruptcy in May of 2021, one year after launching service in May of 2020. Fitch Ratings observed that: "*Inadequate risk management, unexpected spikes in demand and compliance with state mandates, including California Senate Bill 350 requiring 65% of renewable energy to be procured under contracts 10-years or longer, can all hinder a CCE's ability to manage costs and provide competitively priced power supply. Many of these factors appear to have contributed to higher than anticipated power needs and energy costs at WCE*."[16] Similarly, WCE's staff report on the bankruptcy identified several "perfect storm" contributing factors that had not been appropriately foreseen or hedged against — and further disclosed that the CCE's inadequate risk management was largely the result of an overreliance on consultants who turned out to be unqualified: "*WCE further determined that it needed to hire its own professional staff so WCE could stop relying almost exclusively on recommendations from consultants. The reliance on consultants appeared to be a significant problem, particularly considering the decision not to purchase sufficient energy in*

[16] Fitch Ratings, "Community Choice Aggregator Risks Highlighted by Bankruptcy", 2 June 2021. Available online: [https://www.fitchratings.com/research/us-public-finance/community-choice-aggregator-risks-highlighted-by-bankruptcy-02-06-2021]

advance for the summer 2021, which became apparent only after WCE staff conducted additional review of available power contracts."[17]

LEAN observes that the need to hire qualified staff to exercise oversight and management of third-party vendors, and to meaningfully participate in portfolio risk management decisions, is a widely understood and widely applied best practice in the CCE industry.

<u>Question XXI:</u> The impact of CCE on jobs in the electricity sector, including the number and classification of jobs lost or gained at investor-owned utilities and CCE authorities in California.

LEAN is not aware of any studies on this issue. Cal-CCA, the CCE industry trade group in California, is collecting data to measure the labor and economic impacts of constructing and operating renewables and energy storage facilities enabled by long-term power purchase agreements (PPAs) with CCEs. LEAN is unsure when the analysis will be completed.

What is important to understand is that small- and large-scale energy projects are developed and built by third-party providers/developers, not the IOUs or CCEs themselves. The utilities and CCEs are off-takers of the power through PPAs (usually long-term) and most IOUs do not have large procurement staff departments to begin with. The IOUs continue to maintain, build and operate the grid infrastructure which is where the vast majority of utility jobs are and will continue to be. This does not change with the addition of CCE because a CE's role is limited to electric power supply. That said, job diversification has been enhanced by the existence of CCEs. The electric procurement work of a very few IOUs in a given state/service territory has now been spread across multiple

[17] Western Community Energy Joint Meeting of the Board of Directors and Technical Advisory Committee, "Staff Report: WCE Declaration of Fiscal Emergency", 24 May 2021 at p. 22. Available online:

operating CCEs and numerous energy service providers, each one having a small procurement team and many other staff positions to run local energy programs, handle customer engagement, et al.

Many in the CA energy sector believe that energy-related "green collar" jobs have increased as a result of CCE because of new staff positions and the proliferation of new energy providers having entered the market. In this way, CCEs serve as a conduit for new market entrants and the jobs that come with them.

<u>Question XIX</u>: The impact of CCE on low-income households and communities disproportionately impacted by electricity generation, including the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low-income households and communities disproportionately impacted by electricity generation.

The impact of CCE on their local communities varies across the country depending on legislative mandates regarding cost competitiveness as well as CCEs that offer a broad range of programs to benefit diverse social and income groups. Through incentives and local programs, CCEs can reduce consumption of electricity in households by making energy efficient products accessible, direct bill credits to the right customers, enhance local energy security and grid reliability, and increase availability of green energy at a lower cost by working with energy developers on projects that specifically benefit low-income and impacted neighborhoods.

In California, CCEs offer programs that are designed to benefit low-income households and disadvantaged communities impacted by electric generation through a combination of effective policy making, targeted procurements, partnerships with local groups and community-based organizations that can communicate the benefits of a CCE in their target communities through education in multiple

languages, and localized programs. For example:

- Multiple CCEs administer Disadvantaged Green Tariff Programs, where a customer can be eligible for an on-bill credit of 20% by signing up for 100% renewable energy. Using accessible data, the CCE is able to identify communities most affected and ensure customers are enrolled into this program. The Clean Power Alliance CCE, for example, issued an RFP to develop a GIS browser tool supporting the program and hired additional staff to help manage the program.[18]
- East Bay Community Energy offers an Arrearage Management Plan[19] and has partnered with the local distribution utility to replace a jet fuel peaker plant operating in a low-income neighborhood with a 36.25 MW/145 MWH battery storage system.[20]
- East Bay Community Energy also offers a Resilient Home program to deploy 1,000 residential solar + battery backup systems (at least 20% of which will be in low-income and disadvantaged communities),[21]
- More broadly, CCEs offer a variety of incentives for electric vehicle adoption, rooftop solar access, and energy resiliency tools including battery programs, which tend to have deeper discounts and benefits for underserved communities. The trade association Cal-CCA provides

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[18] *See* Clean Power Alliance, "REQUEST FOR PROPOSALS (RFP) GEOGRAPHIC INFORMATION SYSTEMS (GIS) WEB TOOL AND ADDITIONAL GIS SERVICES", accessible online: [https://cleanpoweralliance.org/wp-content/uploads/2020/05/Addendum-to-the-GIS-Web-Tool-As-Needed-Services-RFP_5.20.20.pdf]
See also Clean Power Alliance, "Community Solar Program Manager", accessible online: [https://cleanpoweralliance.org/wp-content/uploads/2020/09/Community-Solar-Program-Manager.pdf]
[19] East Bay Community Energy, "Arrearage Management Plan", accessible online: [https://ebce.org/amp/]
[20] See East Bay Community Energy, "Oakland Clean Energy Initiative", available online: [https://ebce.org/ocei/]
See also East Bay Community Energy, "Press Release", 15 April 2020. Available online: [https://ebce.org/news-and-events/vistra-announces-expansion-of-previously-announced-oakland-battery-energy-storage-facility/].
[21] East Bay Community Energy, "'"From the CEO's Desk Newsletter", 17 November 2020. Available online: [https://ebce.org/news-and-events/ceos-desk/resilient-home/].

a number of resources in this regard. [22]

Finally, to institutionalize proactive community engagement and service, CCE Boards in California have approved a range of environmental justice and diversity resolutions into their organization's policies, and CCEs may form Community Advisory Committees (e.g., refer to East Bay Community Energy's Community Advisory Committee work plan).[23]

<u>Question VIII</u>: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues.

A key concern that arose in California is how to equitably allocate costs that were incurred by the incumbent utility on behalf of customers that subsequently depart for CCE service, and how to ensure above market costs were recovered without shifting costs between bundled and departing load customers. California adopted a methodology used to calculate these stranded resource costs and assign that rate component across both bundled customers (i.e., customers that receive both delivery and supply service from the incumbent utility) and unbundled customers (i.e., customers that receive supply service from an alternative supplier, such as through a CCE) to ensure that utility shareholder's remained indifferent to departing load.

California uses a Power Charge Indifference Adjustment (PCIA) rate to ensure that departing CCE customers contribute to the legacy cost[24] of resources that the utility procured to serve them and that CCE customers do not burden bundled customers with these costs. The California Public Utilities

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[22] *See* Cal-CCA, "California Aggregator: News and Updates from the California Community Choice Association", Winter 2022. Accessible online: [https://Cal-CCA.org/wp-content/uploads/2022/01/California-Aggregator-Winter-2022-Web.pdf].

[23] East Bay Community Energy, "Community Advisory Workplan". Available online: [https://res.cloudinary.com/diactiwk7/image/upload/fl_sanitize,q_auto/cac-workplan_final.pdf]

[24] Legacy power costs refer to long-term power supply agreements that the utility entered into many years ago, which are uneconomic but which the utility cannot offload.

Commission (CPUC) determines this indifference amount by calculating the incumbent utility's applicable total generation portfolio costs and subtracting the portfolio's market value as settled in the CAISO spot market. The intent is to offset above-market costs from legacy power supply commitments made by the utility with either the value that those resources provide to bundled customers or are sold into the market. The PCIA allocates the remainder across both bundled and unbundled customers. Because this rate mechanism allows for guaranteed cost-recovery of the incumbent utility's legacy above-market costs, however, the utility has little incentive to maximize the value of its energy portfolios (such as through wholesale market sales). Additionally, while the departing load customers (*i.e.*,CCE customers) are beholden to the above-market costs of these resources, they do not stand to benefit from any of the value those resources provide since the PCIA does not currently account for those benefits and the CCE is otherwise responsible for procuring its own energy supply. Lastly, while the investor-owned utilities are able to functionalize their energy portfolio costs in time-varying rates, CCE customers are charged the PCIA on a non-time-varying, volumetric, and non-bypassable basis, which significantly degrades the ability of CCEs to offer time-varying rate structures. The CPUC recently convened a working group and invited stakeholder comments on how to improve upon the PCIA.[25] Colorado should incorporate stakeholder feedback as it develops its own indifference framework to better align incentives for prudent resource management, decreased ratepayer costs, and Colorado's clean energy goals.

Additionally, it is critical to establish data-sharing protocols and other coordination measures to ensure that information flows to the key CCE decision-makers involved in managing costs, load,

[25] California Public Utilities Commission Decision 18-10-019, *Decision Modifying the Power Charge Indifference Adjustment Methodology*, Conclusion of Law 26 & Ordering Paragraph 14, Rulemaking 17-06-026, PCIA Rulemaking available at https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M232/K687/232687030.PDF.

and purchase decisions on behalf of customers, and also to minimize the risk of customer confusion. At the outset, the Commission should establish a clear division of responsibility and delineation of the role that the incumbent utility may continue to have with departed CCE customers. For example, the Commission or legislature should establish which entity shall remain responsible for customer billing, metering, and how communications will be handled across the entities.[26] The Commission may also consider establishing a minimum notice period that a CCE must provide to the incumbent IOU prior to launching and enrolling new customers.

With regard to data access where coordination is required (e.g., enrolling customers for DSM programs) or for shared responsibilities such as customer billing and communications, the Commission should establish data-sharing procedures that ensure coordination and a level-playing field across load-serving entities. This can be achieved by adopting careful confidentiality guidelines and requiring the utilities to share pertinent information at regular intervals. Such data-sharing is particularly important to the extent that CCE customers will continue to bear cost responsibility for resources procured by the incumbent utility through an indifference charge, because CCEs must also plan and procure adequate supply for these customers. As load-serving entities, CCEs should, at a minimum, have access to the following information: billing and electrical load data, including, but not limited to, detailed electricity needs, volumetric sales, and generation revenues; usage patterns; and procurement data for legacy resources for which departing customers may continue to be responsible.

Additionally, CCEs and IOUs will need to coordinate closely when implementing customer

[26] *See, e.g.*, Cal. Pub. Util. Code sec. 366.2(c)(17)-(18).

programs to avoid, for example, dual enrollment in demand response or other load management programs. Other jurisdictions have directed program providers to work together to develop and file a "Joint Cooperation Memorandum" to align marketing protocols, customer enrollment tracking, and other relevant measurements.

4. IMPLEMENTING CCE IN COLORADO: LEGAL, REGULATORY AND MARKET DESIGN CONSIDERATIONS

Question I. Whether the commission would require additional statutory authority to conduct a rule-making proceeding concerning the creation of CCE authorities in Colorado; except that the commission's determination that additional statutory authority is not required does not preclude the general assembly from increasing or amending the commission's statutory authority.

LEAN recommends that the Commission find that additional statutory authority is necessary in order to implement CCE in Colorado. LEAN observes that nine of the ten states which authorized CCE have required enabling legislation to do so (with the exception of New York).[27]

Fundamentally, CCE is about the right of utility customers in a local community (as represented by their local governments) to aggregate their loads through CCEs. CRS § 40-4-120(2) defines CCE as the mechanism by which local communities aggregate their loads and contract with alternative wholesale electricity suppliers, but nothing in existing Colorado law creates the right for local communities to do so. The Commission also does not appear to have the authority under existing statute to confer this right on local communities through a rulemaking or other Commission action. Additional legislation is necessary to create a legal right of local communities to aggregate their loads,

[27] LEAN has compiled CCE implementing legislation from these ten states. Available online [https://www.leanenergyus.org/CCA-by-state]

form CCEs, and enter into contracts with wholesale electricity suppliers.

Additional statutory authority is also necessary to provide the Commission with the necessary authority to oversee CCEs. For example, in the absence of clear statutory authority, Commission oversight of CCEs could conflict with the jurisdiction of home rule cities and towns under Article XX of the Colorado Constitution. By the same token, legislation is also necessary to circumscribe the scope of the Commission's authority over CCEs. Because CCEs arguably meet the broad definition of "public utility" in CRS § 40-1-103(2)(a) under existing law the Commission would be required to regulate CCEs in a variety of ways that would undermine CCEs' ability to succeed, such as by regulating their retail rates.

Finally, CCE implementing legislation is an effective way to provide clarity and resolve other potential complications, including some of the issues raised by the General Assembly's questions. For example, a CCE statute can specifically establish that CCEs may not aggregate load served by municipal or cooperative utilities (Question XVI) and can set forth the process by which a CCE can be established (Question X). While LEAN anticipates the Commission would need to conduct a rulemaking to establish many details, statutory clarity will go a long way toward smoothing the path to successful policy implementation and CCE formation.

<u>Question II</u>: The appropriate scope of regulatory oversight of CCE operations, on a scale ranging from comprehensive, as with investor-owned electric utilities, to minimal, as with municipally owned electric utilities.

As explained throughout these comments, Commission oversight over CCEs is appropriate in certain areas such as resource adequacy and clean energy planning targets. There is no need for enhanced oversight beyond these matters. Municipalities inherently have the best interest of local

citizens in mind when acting to acquire electricity and provide services and products, and CCEs should not be required to seek permission or answer to the Commission for decisions made at the direction of participating municipalities. Further, each community may prioritize different goals, programs, technologies, and outcomes for its participating residents and businesses, and any "second-guessing" by the Commission on such matters would not be appropriate.

<u>Question III</u>: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of:

(A) Resource adequacy planning;

Resource adequacy planning has traditionally occurred in the electric resource planning (ERP) process under Rules 3600, *et seq.*, which the Commission conducts pursuant to its broad authority to ensure that the service and facilities of all public utilities are adequate.[28] In 2021, Xcel Energy and Black Hills filed "clean energy plans" (CEP) pursuant to CRS § 40-2-125.5.

CCEs should be subject to the same obligations with respect to resource adequacy that apply to other load-serving entities. It is reasonable for the Commission to require each CCE to provide a reasonable forecast of its future load requirements and to demonstrate that the CCE has a plan in place to serve that load, which is essentially the Commission's task in an ERP proceeding. In a rulemaking proceeding, the Commission may determine that CCEs can make this showing without providing the same level of detail the Commission requires from the investor-owned utilities given that CCEs have independent government authority and oversight from their governing boards. For example, LEAN

[28] CRS §§ 40-4-101(1) and 108.

recommends that the Commission not exercise the same level of oversight with respect to CCEs' resource acquisition processes because procurement policies are better left to the local communities that form CCEs. If this recommendation is adopted, provisions of the Commission's ERP rules pertaining to competitive bidding would not apply to CCE resource plans (*e.g.*, Rule 3604 (i)and (j)). Similarly, any ERP rules pertaining to utility ownership would also not apply to CCEs, which contract with other wholesale energy providers. The Commission would likely want to evaluate which of its ERP rules pertain to the basic showing of resource adequacy, and therefore should apply to CCEs, and which rules are unnecessary to apply to CCEs given their unique role and function as load aggregators.

(B) Assurance of reliability and how this is paid for;

Reliability issues can arise in a myriad of ways at all levels of the power system: distribution, transmission, and generation. Because CCEs are only responsible for energy supply, they are not responsible for reliability issues that arise on the distribution or transmission systems.

As just discussed, CCEs should be required to ensure that there are sufficient resources to meet their load obligations, just like other load serving entities. CCEs are responsible for ensuring that service to their customers is reliable with respect to the ability of their supply resources to meet load at all times. CCEs generally perform this function through their contracts with wholesale energy providers.

In the CCE model, the utility retains ownership and control of its transmission and distribution systems and is responsible for ensuring the reliability of these systems. CCE customers remain customers of the utility and continue to contribute to the cost of maintaining the reliability of the distribution and transmission systems through the delivery charges on their bills.

(C) Compliance with renewable energy standards and emissions reduction targets;

CCEs should be subject to the same renewable energy standards and emission reduction targets that apply to the investor-owned utilities. As recognized by the General Assembly, CCE "could provide communities that have ambitious renewable energy goals, cost-containment goals, or both, with a means to reach those goals more quickly and cost-effectively."[29] While LEAN anticipates that many CCEs will strive to exceed Colorado's existing (and potential future) renewable energy standards and emission reduction targets, the requirements that apply to the investor-owned utilities should serve as a baseline requirement for CCEs. Applying the statutory requirements to CCEs will also ensure that any local communities that do not share Colorado's clean energy and climate goals do not form CCEs for the purpose of avoiding these requirements.

(D) Supplemental demand-side management programs offered by CCE authorities;

LEAN supports authorizing CCEs to implement supplemental demand-side management (DSM) programs in their service territories. LEAN provides recommendations with respect to the oversight and implementation of such programs in our response to Question XI.

(E) Time-of-use rates or other rate requirements if mandated for investor-owned electric utilities; and

In the wholesale, opt-out model of CCE, CCEs are not rate regulated. Setting rates or imposing requirements on CCE rates would undermine CCEs' ability to achieve their local communities' goals in forming the CCE. Some CCEs may provide rate options that are cheaper than the incumbent utility, some may offer rate options that are modestly more expensive but cleaner than the incumbent utility's

[29] CRS § 40-4-120(1)(1)(VIII).

supply mix, and some CCEs may offer several other green options for customers to choose from. Rate regulation would undermine CCEs' ability to provide these options. Rate regulation is also unnecessary from a consumer protection perspective because customers can always opt out of the CCE and take service from the incumbent utility, which is rate regulated.

For these reasons, LEAN recommends that no requirements related to rates be imposed on CCEs.

(F) Standards for requests for proposals.

LEAN believes that local communities are in the best position to determine the standards that should apply to any requests for proposals issued by CCEs. LEAN addresses this issue further in our response to Question XIII.

<u>Question XXII</u>: What options, including project labor agreements, would ensure that new energy projects built to supply CCE authorities are constructed using union labor.

Because CCEs are local, government-based entities, with a close connection to their communities, they often have a strong interest in pursuing opportunities that are supportive of the labor workforce. A common way that community energy suppliers achieve their goals is by including labor-specific terms and conditions in their power supply and even vendor contracts. For example, some CCEs often include provisions establishing requirements on prevailing wage (sometimes referred to "living wage" requirements), workforce development, project labor agreements, and other relevant standards.

<u>Question XII</u>: Regulatory and policy considerations related to forming CCE authorities in a state that does not currently belong to a regional transmission organization or participate in a wholesale electricity market, and possible solutions, including considerations in the areas of:

(A): Whether legislation should be adopted to guarantee open access and fair prices for transmission services;

The regulation of transmission services, including rates for such services and open access requirements, is within the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC),[30] which FERC exercised in Order 888.[31] Pursuant to FERC regulations,[32] Colorado's transmission utilities must file Open Access Transmission Tariffs (OATT) setting forth the rates and terms for transmission services in Colorado. Colorado should not seek to adopt legislation pertaining to open access or pricing for transmission services because such legislation would inevitably conflict with exclusive federal regulation of these areas.

While the Commission does not have jurisdiction over the utilities' transmission rates set forth in their OATTs, it does have jurisdiction over the rates that retail utility customers pay for transmission services. In the case of Public Service and Black Hills, these rates are the Transmission Cost Adjustment (TCA) riders. If Colorado implements CCE, the Commission will likewise have jurisdiction over the rates that CCE customers pay the utilities for transmission services. To ensure that CCE rate setting authority is not compromised, CCEs should be assessed transmission costs directly and permitted to recoup the expense in revenues collected from participating customers.

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[30] *New York v. FERC*, 535 U.S. 1 (2002).
[31] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 75 FERC 61,080 (1996).
[32] 18 CFR § 35.1, *et seq*.

(B) Recommendations for legislative or administrative measures, or both, concerning wholesale market access and development in Colorado;

Colorado took an important step forward in 2021 when it directed all transmission utilities (other than municipally owned utilities) to join an organized wholesale market (also known as an RTO or ISO) by 2030, unless the utility can demonstrate that doing so would not be in the public interest pursuant to specified criteria. Membership in an RTO/ISO is not strictly necessary for CCEs because CCEs typically enter into bilateral contracts with energy suppliers and can purchase transmission services under the terms and rates specified in the relevant utility's OATT. However, LEAN believes that joining an RTO/ISO will facilitate the development and formation of CCEs in Colorado for several reasons. First, membership in an RTO/ISO will eliminate rate pancaking, reducing the cost of wheeling power from a wholesale supplier to the CCE. Second, membership in an RTO/ISO drives down the cost of transmission services and wholesale power supply contracts through increased competition. Third, an RTO/ISO provides additional power supply options so that CCEs do not need to rely exclusively on the bilateral market to serve their loads. Fourth, an RTO/ISO guarantees nondiscriminatory transmission access by both generators and CCEs, something a utility's OATT may not always provide. For these reasons, LEAN encourages the Commission not to waive or delay the statutory requirement that transmission utilities join an RTO/ISO by 2030 unless absolutely necessary.

LEAN supports the recent decision by Xcel, Black Hills, Platte River Power Authority (PRPA) to join the Western Energy Imbalance Service (WEIS) Market, operated by the Southwest Power Pool (SPP). An imbalance market like the WEIS provides a valuable service to load-serving entities and saves customers money. If Colorado implements CCE, it should ensure that CCEs can

access the WEIS (or other imbalance market operating in Colorado) on the same terms as other load-serving entities.

(C) Whether other legislative and regulatory modifications are necessary to successfully implement CCE in Colorado.

LEAN recommends that the Commission evaluate whether § 30-28-105, et. Seq. ("Regional Planning Commissions") provides municipalities with sufficient authority to incorporate Joint Power Agencies (JPAs) for the purpose of operating wholesale CCE programs.

Additionally, the Commission should assess whether the implementation of a purchase of receivables (POR) program would be appropriate in Colorado.

More broadly, the Legislature and Commission need to stand ready to address issues that may arise as parties work to implement the CCE model. Parties opposed to consumer choice or that have a stake in the current vertically integrated generation, transmission and distribution electricity model will find ways to slow or block efforts at CCE implementation. In this regard, one thing the General Assembly may wish to consider is adoption of a utility code of conduct which, among other things, would ensure that utilities are prohibited from using ratepayer funding to market against CCE. It could also specify certain timelines within which the utility must respond. Including a utility code of conduct in authorizing legislation would help ensure that CCEs have a somewhat more level playing field, especially in the early days of ordinances and implementation.

<u>Question IX</u>: Whether an investor-owned electric utility that remains the sole provider of distribution, transmission, and other services traditionally provided by the utility, such as metering and billing, should also be the provider of last resort for supplying electricity to customers who opt out of CCE.

As provider of last resort (POLR), an electrical corporation or other designated entity has the ultimate responsibility of providing continuity and reliability of electric service for all customers within its service territory. Because IOUs maintain ownership and access to distribution and other elements of electric and gas services across a broad territory, potentially including one or more CCEs, they have traditionally been the designated entities to assume the functional and financial requirements of the POLR designation. POLR is a function of statute and regulation, and provides ready access to electrical infrastructure, and financial/operational capacity in the service of all customers, whether bundled or unbundled (i.e., receiving service from a CCE).

That said, the requirements for and application of a utility's POLR designation should be studied thoroughly to understand best practices, including ways to avoid cost shifting, higher costs and the appropriate management of POLR-related procurement. Without proper consideration and policy design, procurement of energy resources by the POLR has the potential to be expensive and duplicative for ratepayers and a poor use of resources. It may also adversely affect the energy market, as the POLR buys up resources that could otherwise be purchased by utilities or CCEs. Important study areas include the process of transitioning customers to POLR, the duration of POLR service before customers are enrolled in standard utility or other service, the regulatory obligations of POLR (e.g., meeting renewables or emissions goals), and the structure of cost recovery.

Electric utilities are not the only entities capable of serving in the POLR role. CCEs, co-ops and other providers may also have the resources and capability to serve as a POLR, and these

alternative options are also worth further consideration.

<u>Question XI</u>. Whether CCE authorities should be allowed to offer demand-side management programs that either expand upon or replace such programs offered by the incumbent investor-owned electric utility.

As a threshold matter, CCEs should be permitted to offer demand-side management (DSM) programs so that they can make informed procurement decisions on behalf of their customers and manage customer load in a manner that is consistent with the State's climate goals. DSM programs are a critical load-management tool and help load-serving entities avoid unnecessary procurement and cut down on ratepayer costs by incorporating demand-side measures such as peak load-shifting or energy efficiency improvements.

Additionally, allowing CCE authorities to offer DSM programs also presents several customer and grid benefits that reach even beyond the CCE. First, increasing the number of DSM market participants drives innovation, resulting in greater customer benefits and improved load reduction and/or load shifting impacts. In other jurisdictions, CCEs have proved themselves nimble organizations that can act on a faster timeline than incumbent investor-owned utilities to develop effective load-management and energy efficiency programs. Second, CCEs are well-positioned to develop effective programming because of their close connection to, and understanding of, their customers and community. This connection results in DSM programs that are closely tailored to their customers' needs and behaviors. In contrast, though IOUs have experience as program administrators, they are responsible for a broad service area encompassing many customer sectors and climate zones. In this way, IOUs are more limited in developing programming that meets the more specific energy and equity needs that CCEs can deliver.

When CCEs have the option to administer energy efficiency programs, they have often proven more cost effective than that of the incumbent utility.[33] For example, California recently authorized ratepayer funding for a community choice DSM program that showed such promise in effectively deploying ratepayer funds to achieve peak and net peak demand reductions that it simultaneously established a state-wide program modeled off of that developed by the community choice developer.[34] The program, known as Peak FLEXmarket,[35] presents an innovative value proposition because it incents both daily load-shifting behaviors and peak demand reductions. The program utilizes population-level normalized metered energy consumption (NMEC) rules and a pay for performance concept that delivers measurable peak or net peak demand savings. As the CPUC recognized, "[t]he major benefits of the program are that funds are only expended for portfolios of projects that deliver verifiable energy savings at peak times."[36]

Allowing CCEs to develop and implement demand-side management programs is also crucial to achieving statewide clean energy and decarbonization goals, as well as meeting the strategic goals foundational to the development of CCEs. In summary, authorizing CCEs to develop demand flexibility programs that supersede or complement utility offerings unlocks the following benefits and opportunities:

- Innovation: by considering demand flexibility generally rather than focusing on measure-specific

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[33] *See, e.g.*, Dr. JR DeShazo, Julien Gattaciecca, Kelly Trumbull, "The Growth in Community Choice Aggregation, Impacts on the Grid" (July 2018) UCLA Luskin Center for Innovation, available at [https://innovation.luskin.ucla.edu/wp-content/uploads/2019/03/The_Growth_in_Community_Choice_Aggregation.pdf]

[34] *See* California Public Utilities Commission Decision 21-12-011, "Energy Efficiency Actions to Enhance Summer 2022 and 2023 Electric Reliability" p. 24, December 8, 2021 ("D.21-12-011").

[35] The Peak FLEXmarket is administered by Marin Clean Energy, a California Community Choice Aggregator, and runs off of the Demand FLEXmarket platform developed by Recurve Analytics Company (Recurve). Recurve provides the measurement and verification (M&V) and implementation services for the program.

[36] D.21-12-011, p. 24.

utility programs, CCEs are better positioned to pay for results that matter most to their communities, and to support the deployment of technologies most relevant to savings in the local climate.

- Customer engagement: CCEs' close customer relationships will serve to not only design programs more suited to the local population, but will also increase awareness of these programs and drive community participation.
- Localized job growth: by having the freedom to design critical program elements, such as price signals and payment terms, local workforce development can benefit by ensuring local contractors are more heavily engaged in demand management opportunities.

<u>Question XVII</u>: The impact of allowing CCE in Colorado on the ability of Colorado to reach its clean energy and greenhouse gas reduction goals and what legislative and regulatory requirements for CCE would be needed to facilitate reaching those goals.

LEAN expects that allowing CCE in Colorado will enhance Colorado's ability to reach its clean energy and greenhouse gas reduction goals. As recognized by the General Assembly, many communities in Colorado have committed to obtaining 100 percent clean energy on timelines faster than the utilities, and CCE will provide a means for them to achieve these goals without being beholden to the utilities' timeline.

As stated in the response to Question III(C), LEAN supports requiring CCEs to meet the same statutory renewable energy standard and carbon reduction requirements that apply to the investor-owned utilities. While LEAN expects most CCEs will seek to procure more clean energy on a faster timeline than the utilities are required to procure by statute, imposing the same statutory requirements is both appropriate and will ensure that local communities do not form CCEs for the purpose of

avoiding these requirements.

<u>Question XV</u>: How CCE might facilitate or impede: (A) Increased integration of distributed energy resources, such as rooftop solar, community solar, and battery energy storage into distribution systems; (B) Increased investment in beneficial electrification, including electrification of transport; and (C) Resource adequacy and reliability, and what regulatory approaches would be needed to maximize positive impacts and mitigate negative impacts.

CCEs in many states across the country have taken state and local leadership roles in the implementation and expansion of distributed energy resources (DERs) in their communities. Two states worth examining in this regard are California and New York.

In New York, where CCE has only been enabled for five years, CCEs have achieved a significant victory working with community solar developers to include local solar on an opt-out basis rather than the traditional one-by-one subscription approach. This is supporting the development of local solar projects tied to nearby CCE programs.

In California, most if not all CCEs offer more advantageous net energy metering (NEM) tariffs than their incumbent utilities, thus incenting commercial and residential rooftop solar. CCEs in California also implement their own local energy programs to complement or add to the IOUs' energy programs, offering additional discounts, financial incentives, and innovative policies. As local entities, CCEs tend to have stronger relationships with community-based organizations that often facilitate program implementation in underserved communities.

The trade association Cal-CCA maintains an extensive list of Distributed Energy Resource programs and the CCEs that offer them.[37] These programs are designed to accelerate decarbonization

[37]Available online: https://Cal-CCA.org/CCA-programs

and electrification, energy efficiency, solar rebates and incentives, demand response, microgrid and local solar plus storage development, and incentives for electric vehicles and infrastructure. See below for a chart of program offerings by CCE:

CALCCA ADVANCING LOCAL ENERGY CHOICE	Apple Valley Choice Energy	Central Coast Community Energy	Clean Power Alliance	CleanPowerSF	East Bay Community Energy	King City Community Power	Lancaster Choice Energy	MCE	Peninsula Clean Energy	Pioneer	PRIME	Rancho Mirage Energy Authority	Redwood Coast Energy Authority	San Jacinto Power	San Jose Clean Energy	Silicon Valley Clean Energy	Solana Energy Alliance	Sonoma Clean Power	Valley Clean Energy
Customer Load Shifting			✓	✓				✓								*In dev.*		✓	
Microgrid Development		✓					✓			*In dev.*			✓						
Citizen Sourcing			✓				✓						✓						
Energy Education in Local Schools				*In dev.*					✓						✓			✓	
Dividend Program		✓																	✓
Solar Referral Service			✓													✓			
Solar+Storage Offerings			*In dev.*		✓			✓	✓		*In dev.*		✓			✓		✓	
Advancing Reach Codes		✓			✓				✓							✓		✓	
Advanced Energy Rebuild								✓										✓	
TOU Rates				✓	✓ (Same as PG&E)		✓	✓		✓ (Same as PG&E)			✓		✓ (Same as PG&E)	✓ (Same as PG&E)	✓	✓ (Same as PG&E)	✓ (Same as PG&E)
Customer C&I Clean Power Offerings																✓			
Workforce Education & Training								✓								✓		✓	
Emissions Inventory Support for Member Agencies		✓														✓			
Property Assessed Clean Energy (PACE)										✓									

CALCCA ADVANCING LOCAL ENERGY CHOICE	Apple Valley Choice Energy	Central Coast Community Energy	Clean Power Alliance	CleanPowerSF	East Bay Community Energy	King City Community Power	Lancaster Choice Energy	MCE	Peninsula Clean Energy	Pioneer	PRIME	Rancho Mirage Energy Authority	Redwood Coast Energy Authority	San Jacinto Power	San Jose Clean Energy	Silicon Valley Clean Energy	Solana Energy Alliance	Sonoma Clean Power	Valley Clean Energy
Budget Billing				*In dev.*			✔												
Battery Storage Rate				*In dev.*	✔ *(pilot)*			✔								✔ (Same as PG&E)		*In dev.*	
Battery Storage Incentives								✔								*In dev.*		✔	
Demand Response		✔	✔	✔				*In dev.*	*In dev.*							*In dev.*		✔	✔
EV Rate		✔	✔	✔	✔ (Same as PG&E)		✔	✔	✔	✔ (Same as PG&E)	✔		✔		✔ (Same as PG&E)	✔ (Same as PG&E)	✔	✔	✔ (Same as PG&E)
EV Bus Program		✔		✔			✔		✔									✔	
EV Incentives (vehicles and/or charging)		✔					✔	✔	✔				✔		*In dev.*	✔		✔	*In dev.*
EV Load Shifting								✔								✔ *(pilot)*		✔	
Energy Efficiency				*In dev.*			✔	✔		*In dev.*			✔			*In dev.*		✔	✔
Energy Efficiency Data Sharing					✔														
Feed-In Tariff		*In dev.*		*In dev.*				✔					✔					✔	
Building Electrification		✔			*In dev.*			✔	*In dev.*				✔			✔		✔	*In dev.*
Low-Income & Multifamily EE		✔						✔	*In dev.*		✔		✔						
Solar Incentives												✔	✔						
On-Bill Repayment				*In dev.*				✔										*In dev.*	
Education, Outreach, and/or Innovation Grants			✔		✔				✔	*In dev.*						✔		✔	
Low-Income Solar Incentives		✔	*In dev.*	✔	✔	✔		✔	*In dev.*		✔								

California CCEs have contracted for the development of approximately 10,000 MW of renewable energy and storage. Several are creating comprehensive decarbonization plans. Many are leveraging municipal authorities and collaborating with other CCEs, and local and regional agencies, legislators, utilities, labor, developers, and manufacturers to remove barriers to rooftop solar installations, electric vehicles, and other innovations. One CCE negotiated the siting of a new electric bus factory, creating local jobs and the nation's first all-electric bus fleet. Another submitted a lease application for California's first offshore wind project. Others are building renewable microgrids for critical facilities and business parks, partnering with utilities and energy companies to replace natural gas power stations. Below is a survey of how these agencies are breaking barriers in accelerating distributed energy across operations and planning:

- https://cal-cca.org/cca-programs/
- https://cal-cca.org/wp-content/uploads/2020/05/CCA-Resilience-Iniatitives-August-2020.pdf

- https://www.greentechmedia.com/squared/dispatches-from-the-grid-edge/the-elusive-microgrid-tariff-begins-to-emerge-in-california
- https://cal-cca.org/calcca-launching-new-community-energy-innovation-webinar-series/
- https://cal-cca.org/ebce-launches-first-of-its-kind-home-battery-backup-program/
- https://cal-cca.org/inside-clean-energy-whats-a-virtual-power-plant-bay-area-consumers-will-soon-find-out/
- https://cal-cca.org/clean-power-alliance-approves-new-five-year-clean-energy-programs-plan/
- https://cal-cca.org/calchoice-associate-member-pico-rivera-innovative-municipal-energy-prime-launches-distributed-energy-resources-program/
- https://cal-cca.org/peninsula-silicon-valley-collaboration-recognized-for-advancing-electrification-in-building-codes-ev-infrastructure/

One of the biggest challenges when introducing competition is to ensure that the sum of all load serving entities' (LSEs) procurement and power development efforts serves the State's overall resource needs without over-procurement. In this sense, California has been engaged in important policy discussions and rulemakings related to resource adequacy (RA), centralized procurement of local RA, and other mechanisms to prevent shortage of power supply. CA's SB 350 is also in place to ensure that two-thirds of the CCEs' renewable energy is coming from long-term contracts. Resource adequacy is an issue appropriate for Commission oversight, while leaving procurement autonomy to the LSEs, including CCEs, to adequately reflect local preferences in their procurement choices.

Many of the above-mentioned programs are designed to procure resource adequacy, to

enhance the reliability of the electric grid, and to increase community energy resilience. Refer also to our answer to question XIX for additional examples.

5. PRINCIPLES AND CONSIDERATIONS FOR REASONABLE TRANSITION FEES ("EXIT FEES")

<u>Question IV:</u> The appropriate principles and considerations for calculating the amount and duration of reasonable transition fees, also known as exit fees, that communities forming a CCE authority would pay to the incumbent investor-owned electric utility to offset their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved, in amounts sufficient to provide cost recovery for stranded investor-owned electric utility assets and contracts and direct transition costs while protecting non-CCE customers but without unduly burdening CCE customers. The principles and considerations shall include: (A) The age or the date of initial service of generation assets and existing contracts; (B) The potential for exit fees to vary over time or by location; (C) The establishment of a specific expiration period for exit fees; (D) Measures to mitigate exit fees through potential contract transfer or resale to CCE authorities or other buyers, and appropriate forecasting of departing load to avoid over-procurement; and (E) Pitfalls encountered in other states related to exit fees and how those pitfalls could be avoided or mitigated by up-front consideration.

LEAN cautions that while the experience of other states may offer useful insights regarding stranded cost recovery, such legacy practices should not be assumed to be appropriate or applicable to Colorado's present-day context.

Exit fees exist to ensure that when electric customers of an IOU depart from IOU service and receive their electricity from a non-IOU provider such as a CCE, those "departing load" customers remain responsible for costs previously incurred on their behalf by the IOU. The costs associated with an exit fee may be included on a customer's bill but are effectively covered by the CCE through discounted rates so as to absorb any additional charges to the customer. It should be noted that CCEs

operating in restructured states do not have the burden of a departing load/exit fee, as this issue has been resolved as part of the broader electricity market restructuring that pre-dated CCE in that state.

The application and methodology of exit fees is not a new concept in the energy industry. The Commission should consider initiating a working group of industry experts to see which of the various models makes the most sense for the Colorado market. All of the elements noted in the question should be explored in depth along with others such as: whether it is appropriate to include utility-owned generation in the exit fee calculation, and if so, what is the appropriate depreciation schedule; various payment methods to reduce CCE/customer cost exposure and to increase exit fee certainty (e.g., on-bill payments, exit fee securitization, pre-payments, etc); and, full transparency regarding the above and below market costs that are included in the exit fee calculation and methodology used to set it (i.e., no black box calculations).

The Commission should examine the treatment and application of the exit fee in various states, including those that have fully restructured, and take special note of what is and is not working in the State of California. As mentioned above, CPUC opened Rulemaking (R.) 17-06-026 in June 2017 to review, revise, and consider alternatives to the exit fee, also known as the Power Charge Indifference Adjustment (PCIA). That rulemaking proceeded in three phases and the final phase concluded in February 2020.[38] See here for the final report of working group 3.

Key issues across the entire proceeding have included:

- Application of PCIA/exit fee to customers in special rate programs;
- PCIA methodology including establishing a cap on PCIA rates;

[38] The final report of Working Group 3 is available here: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M335/K710/335710541.PDF

- Market benchmarking;
- Prepayment/securitization;
- Portfolio optimization;
- Voluntary Allocation and Market Offer (VAMO) framework;
- CPUC oversight re: utility over procurement.

More information can be found in the docket referenced above and a recent CPUC decision, D21-05-030.[39]

LEAN looks forward to engaging further on this topic with parties over the course of this proceeding.

RESPONSES TO QUESTIONS FROM THE COMMISSION

LEAN's responses to the Commission's questions articulated in Paragraph 10 of Decision No. C22-0032, requesting input on a range of subjects related to statutory nature and policy objectives of CCE, follow below:

<u>Question A:</u> Are cities, counties, combined cities and counties, or groups of cities and counties implementing CCE public utilities as defined in § 40-1-103, C.R.S.?

CCEs likely would meet the broad definition of "public utility" that appears at CRS § 40-1-103(2)(a) and LEAN finds no applicable exemption from regulation as a public utility that would apply to CCEs in the absence of additional legislation. As explained throughout these comments, Commission oversight over CCEs is appropriate in certain areas such as resource adequacy and

[39] Available here: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M385/K738/385738144.PDF

renewable energy and carbon reduction standards. However, regulating the rates of CCEs, which are subject to their own local government oversight, is unnecessary and would undermine CCEs' ability to achieve their unique, local goals.

LEAN recommends that any legislation to implement CCE in Colorado clarify that CCEs are not public utilities and clearly delineate the scope and limits of the Commission's oversight over CCEs.

<u>Question B</u>: Despite Article XX of the Colorado Constitution, does the General Assembly need to define cities, counties, combined cities and counties, and groups of cities and counties implementing CCE as municipal utilities, such that they are excluded from Commission authority or jurisdiction or subject to limited Commission authority or jurisdiction?

No. CCEs should not be defined as municipal utilities because they do not provide the same services or functions as municipal utilities. Most notably, a municipal utility typically owns and operates the local distribution system, reads customers' meters, and issues utility bills. CCEs do not typically perform any of these functions. While CCEs and municipal utilities both procure energy supply resources for their customers, that is perhaps their only similarity with respect to the functions they perform in the power system. Defining CCEs as municipal utilities solely to exclude them Commission authority would likely introduce needless complications arising from the distinct roles that municipal utilities and CCEs play.

Rather than classify CCEs as municipal utilities, LEAN recommends that the General Assembly define CCEs as a new type of "shared service" entity in Colorado's Public Utilities Law and, as stated above, clearly delineate the scope and limits of the Commission's jurisdiction over CCEs. LEAN's comments provide recommendations for the Commission's consideration in these

regards.

<u>Question C</u>: If it is determined by the General Assembly that cities, counties, combined cities and counties, or groups of cities and counties implementing CCE are public utilities subject to full or limited Commission authority or jurisdiction, should those cities, counties, combined cities and counties, or groups of cities and counties be assessed Revenue pursuant to § 40-2-112, C.R.S.?

As discussed, it will be necessary for the General Assembly to clarify that CCEs are not public utilities subject to the same regulation by the Commission as public utilities. However, as the Commission will retain some oversight with respect to CCEs, the General Assembly may determine that it is appropriate to assess some fees on CCEs to help cover the cost of this regulation. Similar to the treatment afforded to nonprofit generation and transmission electric corporations or associations under § 40-2-112(2), any fees should be set in recognition of the fact that CCEs are not rate regulated, that CCEs are composed of local governments, and that the Commission's authority over CCEs is much more limited than its authority over the utilities.

<u>Question D</u>: Considering that Colorado's investor-owned utilities are currently vertically integrated, are cities, counties, combined cities and counties, or groups of cities and counties implementing CCE subject to a determination of recovery of stranded costs by the Federal Energy Regulatory Commission pursuant to Order 888?

LEAN reserves the right to respond to this question in reply comments.

<u>Question E:</u> What has been the experience in communities where CCE has been implemented with regard to the overall cost of electricity provided to CCE participating customers as compared to similarly situated customers opting to receive bundled service from the incumbent investor-owned electric utility?

Most CCEs seek to offer electricity rates that are comparable to or less than the incumbent utility's rates for the simple reason that customers can choose to opt out and return to bundled service and that they are more likely to do so if the utility's rates are lower. Many CCEs offer multiple rate options that differ with respect to the portfolio of clean resources, price, or both. For example, many CCEs offer one rate plan that is cleaner and cheaper than the utility's rates and another plan that is 100 percent clean energy for a small premium. According to an October 2020 UCLA Luskin Center report:

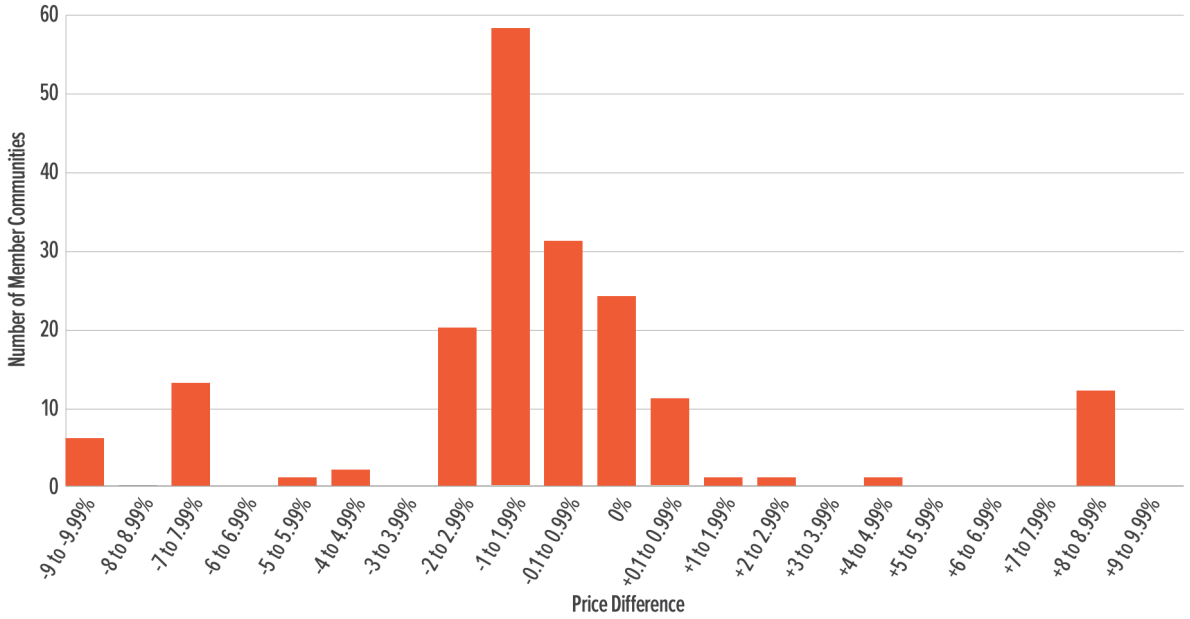
> *The majority of CCE member communities choose to offer a default rate that is lower cost than their affiliate IOU's default rate, as of publication of this report. Of 182 CCE member communities, 131, or 73%, choose to offer a lower rate. This discount ranges from 0.004% to 9.1%. About 13% of CCE member communities have a default rate that is the same as the affiliate IOU (24 out of 182). Eleven communities have a default rate that is only slightly higher (0.1%) than their affiliate IOU. These communities with slightly higher rates are all members of the Clean Power Alliance, and have a default electricity product with 50% renewable energy, 15 percentage points more than the default product offered by their affiliate IOU, Southern California Edison, in 2019.45 Only 8% of CCE member communities (15 out of 182) have a default rate 1.5% to 8.6% more expensive than the affiliate IOU. This is because the majority of these communities have chosen the 100% renewable energy product as their default.46 Figure 9 shows the distribution of CCE member communities' default rate*

compared to the affiliate IOU's default rate.[40]

<u>Question F</u>: Should the renewable energy standards detailed in § 40-2-124, C.R.S., for municipally owned utilities apply to cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, or should the renewable energy standards detailed in § 40-2-124, C.R.S., for investor-owned utilities apply?

LEAN supports applying the renewable energy standards that apply to investor-owned utilities at CRS § 40-2-124 to CCEs, rather than the less-stringent requirements that apply to municipal utilities.

Figure 9. CCA Default Rate Price Difference Compared to IOU



Source: Figure created by UCLA Luskin Center for Innovation. Data from each Joint Rate Comparison for each CCA and their affiliate IOU. All rates are accurate as of time of analysis in April 2020.

[40] UCLA Luskin Center for Innovation, "The Role of Community Choice Aggregators in Advancing Clean Energy Transitions: Lessons from California", October 2020, at pp. 27-28. Accessible online: [https://innovation.luskin.ucla.edu/wp-content/uploads/2020/11/The_Role_of_CCEs_in_Advancing_Clean_Energy_Transitions.pdf]

<u>Question G</u>: Should investor-owned utilities be obligated to offer demand-side management programs pursuant to § 40-3.2-104, C.R.S., to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Yes. Utilities and CCEs should be required to offer DSM programs to all customers in their service territories on a non-discriminatory basis, including CCE customers to which they provide delivery service but not supply service. Funding would typically be collected from all customers on a non-bypassable basis through existing riders - in this case, the DSMCA. CCEs should also be permitted to offer DSM programs and have access to DSMCA funds.

<u>Question H</u>: Should investor-owned utilities be obligated to offer net metering incentives to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Yes. Utilities should be required to offer the same net metering incentives to CCE customers as they offer to bundled customers. However, net metering tariffs will likely need to be reworked in recognition of the fact that CCE customers do not pay supply charges to the incumbent utility. It will also be necessary to ensure that utilities share adequate metering data with CCEs to allow CCEs to implement their own net metering policies with respect to CCE customers' supply charges. Finally, it will also be important to ensure that customers retain or are appropriately compensated for any net metering credits they have accrued with the utility when a CCE takes over load obligations.

<u>Question I</u>: Should investor-owned utilities be obligated to make investments or offer incentives to facilitate the deployment of customer-owned or utility-owned charging infrastructure pursuant to § 40-5-107, C.R.S., for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Yes. Similar to LEAN's response to subpart G., above, utilities should be required to offer transportation electrification programs to all customers in their service territories on a non-discriminatory basis, including CCE customers. Funding would typically be collected from all customers on a non-bypassable basis through existing riders - in this case, the TEPA. CCEs should also be permitted to offer transportation electrification programs and have access to TEPA funds.

<u>Question J</u>: Should investor-owned utilities be obligated to make investments or offer incentives to facilitate beneficial electrification pursuant to § 40-3.2-109, C.R.S., for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Yes. Similar to LEAN's response to subparts g. and i., above, utilities should be required to offer the same beneficial electrification programs to all customers in their service territories on a non-discriminatory basis, including CCE customers. Funding would typically be collected from all customers on a non-bypassable basis through whichever rider the Commission eventually approves for beneficial electrification program costs. CCEs should also be permitted to offer beneficial electrification programs and have access to the funds collected by the utilities for this purpose.

<u>Question K</u>: Should investor-owned utilities be obligated to offer low-income energy assistance programs for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Yes. Similar to LEAN's response to subparts g., i., and j. above, utilities should be required to offer the same low-income energy assistance programs to all customers in their service territories on a non-discriminatory basis, including CCE customers. Funding would typically be collected from all customers on a non-bypassable basis through existing riders. CCEs should also be permitted to offer low-income energy assistance programs and have access to the funds collected by the utilities for this purpose.

<u>Question L</u>: Should generation emissions from electricity served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE be excluded from clean energy plans submitted by investor-owned utilities pursuant to § 40-2-125.5, C.R.S.?

Yes. The utilities' clean energy plans describe how the utilities will procure adequate supply resources to serve their load obligations while achieving the carbon reduction targets in CRS § 40-2-125.5(3). The utilities' load obligations do not include CCE load. CCEs are responsible for procuring their own supply resources to serve their own customer loads. If the utilities included CCE supply resources in their clean energy plans, they would essentially be "taking credit" for supply resources that the CCEs have procured, not the utilities. Moreover, if the General Assembly accepts LEAN's recommendation to subject CCEs to the same renewable energy standard and carbon reduction requirements as the utilities, allowing the utilities to include CCE resources in their clean energy plans would be double counting. Emissions from CCE resources should be excluded from the utility's clean energy plans.

CONCLUSION

LEAN appreciates the opportunity to provide these initial comments and looks forward to continued engagement in this proceeding.

Respectfully submitted,

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