BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Proceeding No. 221-0027E

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

REPLY COMMENTS OF THE LOCAL ENERGY AGGREGATION NETWORK (LEAN)

April 15, 2022
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In accordance with Decision No. C22-0032, the Local Energy Aggregation Network, d/b/a LEAN Energy US (LEAN) respectfully submits these Reply Comments for the Colorado Public Utilities Commission’s (Commission) consideration.

I. Introduction.

As stated in its Initial Comments, LEAN is a national 501(c)(3) non-profit organization dedicated to the expansion and success of Community Choice Energy (CCE) across the country.¹ 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.

LEAN appreciates the initial comments of the many parties that expressed support for developing and implementing CCE in Colorado,² as well as other parties who identified areas that require further study and examination.³ LEAN’s reply comments focus on responding to those parties that argued that CCE is not worth exploring further in Colorado, primarily Public Service and Black Hills, and address four major themes: the value of local control; the value of competition; reliability, decarbonization, and customer programs; and, stranded costs and exit fees. The concerns the utilities express in their comments on these topics are overblown or misplaced, and generally reflect the fears

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.
³ E.g., Colorado Communities for Climate Action (CC4CA), City of Boulder, and the Utility Consumer Advocate.
of monopolists facing the prospect of competition for the first time in their existence. CCE is neither a relic of prior decades nor a “wolf in sheep’s clothing,” but an innovative policy tool for empowering communities to control their energy destiny and accelerate decarbonization through competition, innovation, and consumer choice. CCE is a powerful, market-based tool that is very likely to be viable in Colorado and worthy of the Commission’s and the General Assembly’s careful consideration.

II. The Value of Local Control.

Fundamentally, CCEs empower communities to choose and procure the sources of their energy supply. As LEAN discussed throughout its Initial Comments, empowering CCEs to make energy procurement decisions on behalf of their constituents allows them to meet their own clean energy and rate savings goals on an accelerated timeline. Local control is a valuable goal in and of itself, but its value is further amplified when one considers what is made possible from a carbon and rate reduction perspective. Many citizens and communities have a desire for more direct control of their energy destiny and want energy options that are responsive to their unique community needs and goals.

Being composed of local governments, CCEs typically enjoy a high degree of trust and visibility in the community and have the nimbleness to tailor and deliver programs that are responsive to customer input and needs. Residents and small businesses often find their local CCE to be more accessible than their investor-owned utility and find the decision-making process of CCE governing boards to be more understandable than the utility regulatory process. In turn, CCE governance benefits from direct community input to better define and deliver on specific community energy needs.

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4 Public Service Initial Comments, pp. 2 and 3.
and priorities. And, far from being unaccountable as Public Service suggests,⁵ CCEs are directly accountable to their publicly elected governing boards and the constituents that the board members represent. Board meetings are conducted in a public forum and, as quasi-governmental agencies, CCEs are subject to the same governance and transparency requirements as local governments. It should be noted that CCEs are also accountable to the Commission for many of the same resource, capacity, and reliability requirements as the large IOUs, thus creating a double layer of accountability.

Local control is especially valuable in the design of customer-facing programs. Unlike utility programs that are largely “one-size, fits-all,” the community-based nature of CCEs provide a direct channel from a community and its unique needs to the implementation of programs to meet those needs. Many CCEs see their role as providers of energy-related programs as equally important to their role as providers of clean electricity supply. For example, when Peninsula Clean Energy published its Community Impact Report in 2020, it described its programs to promote electric buses, resiliency, youth education on clean energy, and healthy home retrofits, in addition to its clean energy procurements.⁶ Today, CCEs like Peninsula Clean Energy have added even more programs designed to encourage transportation electrification, reduce energy consumption, and expand energy efficiency and solar energy in disadvantaged communities, among other innovative programs.⁷

These kinds of tailored programs and customer benefits can only be achieved through local control. That is, none of the direct benefits just discussed could be achieved by improving the manner in which investor-owned utilities are regulated. It would be inappropriate and likely infeasible for a

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⁵ Public Service Initial Comments, p. 13.
⁷ For a detailed listing of various local energy programs enabled by CCE in California, please visit https://cal-cca.org/cca-impact/.
utility to offer different customer programs for different communities within its service territory in an attempt to meet each communities’ unique needs. This is often especially true for programs geared toward low- and moderate-income customers, as a CCE may face fewer limitations than a utility with respect to its ability to provide targeted rates and program benefits to more vulnerable customers.

III. The Value of Competition.

Key to CCEs’ ability to decarbonize their electricity supply on a faster timeline than the utility is the introduction of market competition, and the many benefits competition provides in the form of reduced costs and innovative solutions. As a vertically integrated state, competitive market forces make only limited appearances in Colorado’s utility landscape. Public Service and Black Hills procure most of their electricity supply through the ERP Phase II competitive bidding process overseen by the Commission. While this process may be the “gold standard” of utility RFP processes, it is a far cry from a dynamic, competitive market with numerous buyers and sellers such as exists in states that have adopted CCE.

Competitive Procurement Processes

Unlike a well-functioning market, ERP procurement events only occur approximately every four years and the size of the sales opportunity for developers is limited by each utility’s forecasted need as determined by the Commission. Both utilities have also been permitted to own utility-owned renewable resources outside the ERP process in procurements that did not involve competition.8 Other limitations, such as Public Service’s preference for build-own-transfer projects in the last ERP

8 For example, Public Service’s Rush Creek Wind Project (Proceeding No. 16A-0117E) and Black Hills’ Huerfano Wind Project (Proceeding No. 10A-930E). (There was an RFP held with respect to the ownership stake of the Huefano Wind Project that Black Hills did not own.)
and form contracts, distort competitive dynamics in the quadrennial RFPs. If a developer is unsuccessful in the ERP, it must either abandon its projects in its development pipeline or incur carrying costs (such as maintaining land rights, interconnection queue position, etc.) for four years until the next ERP. Infrequent and limited sales opportunities have prevented some developers from investing in Colorado and have led others to leave the state in favor of other markets that offer more opportunities on a more frequent basis. Finally, though developers compete on price as they try to win the RFP process, the utilities have no economic incentive as buyers to try to reduce contract prices because the cost of supply contracts are passed through in utility rates. It is a system of perverse incentives and missed economic opportunity for the state.

By contrast, project developers have flocked to states like California where there is a steady stream of opportunities to win supply contracts with numerous qualified buyers. The introduction of CCE in the State of California in 2009/2010 has led to a ten-fold expansion of competitive suppliers and other vendors bidding on electric supply and related operational services. CCEs have already signed long-term contracts for more than 10,000 MW of renewables and energy storage;9 these are new facilities that have already been built or will be built in the next few years. All load serving entities – CCEs, IOUs, and ESPs – have to comply with California’s RPS requirements including a mandate that requires 65% of RPS procurement to be derived from long-term contracts of 10 or more years.10 The three graphics below show technology types, location, and online dates for energy

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facilities tied to CCA PPAs.\textsuperscript{11}

\textsuperscript{11} Graphics source: www.cal-cca.org
Having numerous buyers and procurement events creates competitive dynamics that are absent from Colorado’s quadrennial RFP processes, resulting in a missed opportunity for energy innovation and cost reductions. Many developers are also more willing to make longer-term investments in California because they are not subject to the “feast or famine” dynamic that plays out when procurement only occurs every four years.
**Competitive Customer Program Implementation**

A similar dynamic plays out with respect to customer programs for demand side management (DSM), transportation electrification, and beneficial electrification. While utilities strive to meet their statutory or Commission-mandated goals for such programs, there are no competitive pressures on Colorado’s utilities to offer the most innovative or cost-effective programs available in the marketplace. In California, CCEs offer customer programs in these areas that complement or go beyond the utility’s programs without duplicating them; in this way, customers have the benefit of existing utility programs and those that are offered through the CCE. It is also important to remember that many customer programs are developed and/or implemented by third-party service providers. Having both utilities and CCEs offer customer programs pushes these service providers to develop new and innovative programs, and their competition for contracts drives down the cost of implementation, ultimately benefiting the end-use customer.

**Rate Competitiveness**

CCE customers’ ability to opt-out at any time and return to incumbent utility service puts competitive pressure on both CCEs and the utilities to offer affordable rates. Competition has enabled most CCEs in California to offer standard rates that are equal to or below the incumbent utility rates. While Public Service purports to question CCEs’ ability to meet their cost-containment goals in Table 1 and Figure 1 of its Initial Comments,\(^\text{12}\) a closer inspection of this table and this figure demonstrates that a majority of the CCEs listed offer one standard rate option that meets or exceeds the state’s RPS at a discount or at parity with utility rates, and one or more premium options with higher percentages

\(^{12}\) Public Service Initial Comments, pp. 8-10.
of carbon free and renewable energy. The premium reflected in the standard rates of the other CCEs may reflect deliberate choices by the CCE to invest more in customer programs and/or cleaner energy mixes and likely reflect the above average Power Charge Indifference Adjustment (PCIA) that applied in PG&E’s service territory in 2021. Notably, for 2022 the PCIA has been reduced significantly compared to 2021 levels in each of the California IOUs’ service territories, even going negative in Southern California Edison’s service territory for some CCEs, meaning that customers receive a credit on their bills for prior overpayments.¹³

Furthermore, the rate comparison provided by Public Service is a single snapshot in time and is not reflective of the long-term savings enjoyed by CCE customers since 2010. The following excerpt and bar chart from UCLA Luskin Center’s October 2020 report¹⁴ provides a more accurate portrayal of CCA rates in California:

“The majority of CCA 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 CCA member communities, 131, or 73%, choose to offer a lower rate. This discount ranges from 0.004% to 9.1%. About 13% of CCA 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. Only 8% of CCA member

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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. Figure 9 shows the distribution of CCA member communities’ default rate compared to the affiliate IOU’s default rate.”

Finally, it is also important to remember that customers can opt-out of CCE service at any time, which means customers can always access IOU rates set by the Commission and, as mentioned above, puts competitive pressure on CCEs to set rates at levels that are competitive to IOU rates and discourage opt-outs.

IV. Reliability, Decarbonization, and Customer Programs.

Both Public Service and UCA express concerns about a lack of Commission oversight over CCEs and fret about the implications of CCE implementation for reliability, decarbonization, and
customer programs. To clarify, under the wholesale, opt-out model of CCE, the Commission would not set the retail rates charged by CCEs, but it would hold CCEs to the same standards as it holds the utilities with respect to resource adequacy, reliability, the renewable energy standard, and decarbonization.

To the extent a CCE is permitted by the Commission to implement customer programs using funds collected through customer program riders such as the DSMCA or the TEPA, the Commission will also have oversight over the implementation of such programs. However, because CCE customers will continue paying customer program riders such as the DSMCA and the TEPA, the utilities should be expected to continue offering these programs in territories served by CCEs and the Commission will maintain its regulatory oversight over such programs. It is important to remember that the utilities will continue providing distribution service to all customers in their service territories, including CCE customers, so it is reasonable to expect that they will also continue providing customer programs. Accordingly, there is no reason to worry that “customers may lose access to valuable programs which can impede achievement of state goals,” as Public Service argues. CRS Section 40-4-120(1)(a)(IV) is clear that under the wholesale, opt-out model of CCE that is the subject of this investigation, the utility will continue providing demand-side management programs. This does not mean that CCEs cannot also offer demand side programs, but they may not be duplicative to those offered by the IOU. Oftentimes, CCEs will offer additional customer programs that complement utility programs or serve needs that are not being fully met by utility programs, as discussed above,

15 Public Service Initial Comments, pp. 13, 17-21, 26, and 38; UCA Initial Comments, p. 2 and 4.
16 LEAN Initial Comments, pp. 35-38. As LEAN discussed in our Initial Comments, CCEs do not control the transmission and distribution systems and so cannot be held responsible for reliability issues that arise on those systems, but should be responsible for ensuring an adequate electricity supply to meet load at all times. LEAN Initial Comments, p. 36.
17 Public Service Initial Comments, p. 27.
which provide additional benefits to CCE customers. The Commission should not have oversight over any programs funded solely by CCE revenues, as such programs represent investment decisions by individual CCEs funded by unregulated rates.

No commenters have provided any evidence or reason to believe that CCEs in Colorado would not be able to maintain reliability, meet decarbonization targets, or comply with other statutory requirements that apply to the utilities. The Commission is well-equipped to exercise the necessary oversight of CCEs to ensure applicable requirements are met, but there is no reason that the Commission needs oversight authority over other aspects of CCEs’ operations to enforce such requirements, as Public Service argues.\footnote{Public Service Initial Comments, p. 17.} The Commission certainly does not need authority over CCEs’ retail rates to ensure CCEs are meeting applicable reliability and decarbonization requirements as Public Service believes,\footnote{Public Service Initial Comments, pp. 21-22.} and doing so would be contrary to the manner in which CCE has been implemented in every state that has adopted the CCE model. Because CCEs are responsible for electricity supply, it would be impossible for CCE rates to conflict with the utility’s efforts to “shift consumption away from the time at which carbon emissions from the system are at their highest levels” as Public Service further argues.\footnote{Public Service Initial Comments, p. 21.} This argument forgets that CCE customers do not receive electricity supply from the utility’s carbon-emitting resources (unless the CCE happens to sign a supply contract with the utility for the output of a carbon-emitting resource, which may or may not be permitted in Colorado’s CCE construct).
Further, as LEAN discussed in its Initial Comments, RTO membership will provide a valuable tool to help CCEs achieve their goals, but it is not strictly necessary for CCE formation or function.\textsuperscript{21} Colorado does not need to (and should not) wait until 2030 when the utilities are expected to join an RTO to implement CCE.\textsuperscript{22} In the absence of an RTO, CCEs can enter into bilateral contracts with suppliers and pay for wheeling services pursuant to the utilities’ Open Access Transmission Tariffs (OATTs). CCEs should be able to participate in SPP’s Western Energy Imbalance Service along with Public Service, Black Hills, and PRPA to purchase balancing services just like other load-serving entities.

Finally, contrary to Public Service’s suggestion that California CCEs are using RECs to make claims that their supplies are carbon free or renewable,\textsuperscript{23} many CCEs have policies that prohibit or severely limit them from using unbundled RECs to meet renewable goals or obligations. These limitations are most often codified in the Joint Powers Agreement that serves as the CCE’s foundational governance document. One example is from East Bay Community Energy’s JPA Agreement which states: “The [CCE] Authority shall provide its customers renewable energy primarily from Category 1 eligible renewable resources, as defined under the California RPS and consistent with the goals of the CCE Program. The [CCE] Authority shall not procure energy from Category 3 eligible renewable resources (unbundled Renewable Energy Credits or RECs) exceeding 50% of the State law requirements, to achieve its renewable portfolio goals. However, for Category 3 RECs associated with generation facilities located within its service jurisdiction, the limitation set

\textsuperscript{21} LEAN Initial Comments, pp. 40-41.
\textsuperscript{22} Public Service Initial Comments, pp. 36-37.
\textsuperscript{23} Public Service Initial Comments, p. 11.
forth in the preceding sentence shall not apply."24 This is quite similar to the REC policies most CCEs have adopted in California.

Furthermore, as CCEs sign long-term contracts for renewables and energy storage, and the projects come online, they rely less and less on system power/market purchases. California’s RPS standards, including the 65% long-term contracting requirement, serves as a floor - not a ceiling - for California CCEs; many are exceeding, or plan to exceed, California RPS requirements. Based on data reflected in 2020 Power Content Labels, California CCE power portfolios have a lower emissions intensity than all other load serving entities in aggregate, and a lower percentage of unbundled RECs – 0.3 percent vs. 3 percent for the IOUs – in their supply portfolios.

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Finally, as noted and shown in section III above, many CCEs have signed and are signing long-term PPAs for additional renewable energy resources that would not be built but for the CCE’s actions. Thus, far from threatening Colorado’s emissions reduction pathway,25 CCEs can be expected to contribute to and accelerate the decarbonization process already underway in Colorado.

V. Stranded Costs and Exit Fees.

Rather confusingly, Public Service argues that “when CCE proponents discuss its potential to increase renewable energy adoption and reduce costs that implicitly means turning their backs on the commitments to early, higher cost renewable energy resources that utilities made that have fostered the current low-cost environment.”26 To the contrary, CRS Section 40-4-120(3)(c)(IV) specifically directs the Commission to investigate the principles and considerations for exit fees that “offset [CCE customers’] fair share of the costs of utility assets and contracts that were procured on their behalf

25 Public Service Initial Comments, p. 19.
26 Public Service Initial Comments, p. 22.
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.”27 Paying an exit fee that is consistent with these principles is in no way “akin to defaulting on your mortgage when the market changes,” but rather resembles refinancing your mortgage with a new lender that offers better terms.28 While the original lender may be disappointed that it will no longer receive future interest payments on the mortgage, as long as the new lender pays off the principal and the interest that has accrued to date, the original lender is held harmless. Just as there is nothing irresponsible about a homeowner refinancing their mortgage, there is nothing irresponsible about a community or group of communities paying an exit fee and taking control of their energy supply.

LEAN supports the development of an exit fee for Colorado CCEs that ensures incumbent utility customers are not harmed by the departure of the CCE’s load. LEAN agrees with MRW & Associates that Colorado should avoid some of the pitfalls of California’s process for calculating exit fees, known as the PCIA, including its complexity, volatility, and lack of a sunset date.29 LEAN believes that MRW & Associates’ straw proposal would achieve the goal of holding utility customers harmless without burdening the Commission, the utilities, and CCEs with constant regulatory disputes. Crucial to MRW & Associates’ proposal is the requirement that utilities adjust their procurement plans to account for departing CCE load.30 Such a requirement avoids one of the perverse results of the PCIA, which provides no incentive for the utility to maximize the value of its resource

27 Emphasis added.
28 Public Service Initial Comments, p. 23.
29 MRW & Associates Initial Comments, pp. 4-5.
30 MRW & Associates Initial Comments, p. 4.
portfolio because it receives guaranteed cost recovery of its above-market costs.\textsuperscript{31} As MRW & Associates points out, once the utility is no longer long on capacity, there is no reason for CCE customers to continue paying the exit fee because at that point the utility’s generation portfolio matches its load. The Commission and the General Assembly should also seek to avoid California’s current PCIA structure, which requires CCE customers to contribute to the above-market costs of a utility’s legacy resource portfolio without deriving any benefits from the legacy resource portfolio.\textsuperscript{32} The California Legislature is currently considering legislation, SB 612, to resolve this inequity based on a consensus proposal from stakeholders.\textsuperscript{33}

There is no need to require potential CCE customers to “commit to a service agreement with the CCE for a set period and provide advance notice in the event the customer seeks to terminate that agreement,” as Public Service recommends.\textsuperscript{34} From a practical perspective, it would be infeasible for a CCE to ask each of its thousands of customers to sign a service agreement. Moreover, requiring an affirmative agreement is directly contrary to the concept of wholesale, opt-out CCE that is the subject of this proceeding, “pursuant to which individual customers are automatically enrolled in and retain the right to opt out of their community’s CCE offerings.”\textsuperscript{35} It would also be unnecessary and unreasonable to assess customers opting out of CCE service an additional switching fee, as Public Service also suggests, because customers that opt out will begin paying the utility’s cost-of-service rates.\textsuperscript{36}

\textsuperscript{31} LEAN Initial Comments, p. 31.
\textsuperscript{32} CalCCA provides a helpful overview of the PCIA structure in California here: \url{https://cal-cca.org/pcia/}
\textsuperscript{33} More information is available here: \url{https://cal-cca.org/sb-612/}.
\textsuperscript{34} Public Service Initial Comments, p. 33.
\textsuperscript{35} CRS Section 40-4-120(1)(a)(VII).
\textsuperscript{36} Public Service Initial Comments, p. 33.
Finally, LEAN agrees with Public Service that the Commission should be responsible for the actual determination of exit fees, but recommends that the General Assembly enshrine principles for the calculation in any implementing legislation. In addition to the definition provided at CRS Section 40-4-120(3)(c)(IV), LEAN recommends that the General Assembly require that exit fees:

- Be calculated once at the outset of CCE formation,
- Incentivize the utility to manage its legacy resource portfolio prudently, and
- Sunset at a predetermined time.

Finally, it is important to remember that the goal of any exit fee is to hold utility customers harmless. Just as a lender’s expectation that it will receive future interest payments from a mortgage customer is not relevant to determining the payoff amount that will hold the lender harmless, the utility’s expectations for or interests in future load growth should not be a consideration in the determination of reasonable exit fees.

VI. Conclusion.

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

Respectfully submitted,

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37 Public Service Initial Comments, p. 30.