1125 Tamalpais Ave.
San Rafael, CA 94901
415-464-6189
cal-cca.org

January 18, 2018

Via U.S. Mail and Electronic Mail

Mr. Ed Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenues
San Francisco, CA 94102

Re: Reply Comments on Draft Resolution E-4907

Dear Mr. Randolph:

In accordance with the email from Suzanne Casazza, California Public Utilities Commission ("Commission") Energy Division, dated December 27, 2017, the California Community Choice Association ("CalCCA") submits these reply comments on Draft Resolution E-4907 ("Draft Resolution").

SUMMARY

The comments of the Los Angeles Community Choice Energy, Desert Community Energy and the Western Riverside Council of Governments (collectively "SoCal CCAs"), Pioneer Community Energy, and the cities of King City, San José and Solana Beach paint a clear picture of the Draft Resolution's impacts. These communities have collectively redirected their personnel, conducted hundreds of meetings, worked many hours, and invested millions of dollars to seek the benefits that Community Choice Aggregation ("CCA") programs offer their residents and businesses. The communities relied on a longstanding implementation framework they reasonably expected to remain viable. They worked in good faith with the investor-owned utilities ("IOUs") to understand their obligations and, in some cases, confirmed the timing of those obligations while the Draft Resolution was being developed. With no warning from the IOUs with which they were working—the same IOUs that now profess adequate notice was provided—they are being required to delay their implementation dates, undertake further efforts, and incur substantial expense to respond to conclusions they have been unable to discuss, investigate and, if necessary, disprove.

With this picture in mind, CalCCA appreciates the opportunity afforded by the Commission to provide reply comments. While a two-stage comment period on the Draft Resolution is insufficient to satisfy due process and other procedural concerns, reply comments nevertheless give parties an opportunity to comment on common themes with reference to the Draft Resolution. Three common themes emerge from opening comments, all of which point to the need for further work, collaboration and consideration of alternative outcomes.

First, more work is needed to address the various issues facing the Commission and the IOUs as the electric industry seeks to integrate and accommodate the expansion of CCA programs. Many stakeholders state that the Draft Resolution does not sufficiently identify what the year-ahead Resource Adequacy ("RA") problem is, explore mitigating factors, and analyze the appropriateness of the remedy set forth in the Draft Resolution. While the Draft Resolution has served to sharpen interest among stakeholders, more work is needed.

Second, there was widespread concern about procedural flaws with the Draft Resolution, and the significant hardship that would occur as a result of the process contemplated in the Draft Resolution. Only the Joint IOUs and the Coalition of California Utility Employees ("CUE") assert that the Draft Resolution's approach is compatible with due process. While generally sympathetic to the underlying concerns in the Draft Resolution, The Utility Reform Network ("TURN") expresses a view held by nearly all commenters:

> [I]t is problematic for the Commission to include [rules] in a Draft Resolution not tied to activity in an ongoing active proceeding. The lack of advance notice and absence of an open record complicates the justification for significant changes in policy and practice. As a general matter, the Commission should undertake consideration of these types of changes as part of a rulemaking or investigation.[1]

The problems associated with the Draft Resolution's process are exacerbated by the fact that the hardship will be swift and significant, a point made by many emerging CCA programs in their comments. This underscores the need for due process in resolving the issues posed by the Draft Resolution.

Third, there was nearly universal support for an alternative outcome. In general terms, this outcome would allow, for 2018 only, the transfer of surplus RA capacity currently held by the IOUs from the IOUs to newly-forming CCA programs – a process similar to one the Commission previously adopted on an interim basis in D.10-03-022 in response to the reopening of direct access ("DA"). Even the IOUs express a willingness to arrive at an alternative outcome for 2018, although preferring a negotiated transfer of capacity rather than a more ready-made alternative outcome.

In general, the themes advanced in opening comments support the two-part approach described by CalCCA in its comments. Under the first part, near-term RA-related matters (*i.e.*, for 2018) would be expeditiously adopted in an appropriate proceeding under temporary action comparable to that which was approved by the Commission in D.10-03-022. The second part of the approach (*i.e.*, action beyond 2018) would be addressed in a reasoned and timely process in a formal proceeding, presumably the RA proceeding. CalCCA looks forward to openly and fairly addressing these issues in a manner that stays true to the indifference principle and due process requirements.

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[1] TURN Comments at 2.

REPLY COMMENTS

I. Consensus Exists For Implementation Of An Alternative In 2018

Nearly every party expressed the belief that a work-around or alternative outcome should be implemented in 2018 in an expedited process that meets due process requirements. Even the IOUs expressed support, although the IOUs stated they want the *option*, but not the *obligation*, to negotiate an alternative outcome.[2]

The Commission should reject the IOUs' work-around approach, and consider in an appropriate proceeding the alternative outcome described by numerous commenters. 350 Bay Area summarizes this outcome by first observing that the Commission previously addressed a similar RA issue in D.10-03-22, where Electric Service Providers ("ESPs") "paid the IOU's directly for the capacity for the first year – at which point the normal planning and procurement cycle took over."[3] The Alliance for Retail Energy Markets ("AReM") similarly notes that "CCA formation is not the first instance of load departing IOU service"[4] and suggests that the D.10-03-022 process could be applied, making the Draft Resolution's restrictions on new and expanding CCAs unnecessary.[5] A number of other parties express similar support for the outcome produced in D.10-03-022.[6] CalCCA also mentioned this as a possible alternative outcome, noting that this and related issues could be expeditiously considered in the RA proceeding.[7]

II. Comments Describe Significant, Negative Impacts Associated With The Draft Resolution

Opening comments from local governments and other stakeholders describe the significant impact that the Draft Resolution poses on California residents, ratepayers, and emerging CCA programs. AReM expresses "concerns about the Draft Resolution's excessive and unwarranted impact on the development of CCA programs." and notes that an effect of the Draft Resolution's schedule is that "any nascent CCA that has not yet filed an Implementation Plan is effectively forestalled until at least 2020 to begin its operations."[8] The Sierra Club sees "significant policy implications for new and expanding CCAs as well as the municipal and county government that support them."[9]

These negative impacts are described by numerous local governments – spanning a wide range of California's demographics and geography. The SoCal CCAs raise concerns about the disruptive

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2 *See* Joint IOU Comments at 5.
3 350 Bay Area Comments at 2.
4 AReM Comments at 6.
5 AReM Comments at 7.
6 *See* 350 Bay Area comments at 2; Sierra Club Comments at 3; San Francisco Comments at 8; AReM Comments at 6-7 and SoCal CCAs Comments at 13-14.
7 *See* CalCCA Comments at 12.
8 AReM Comments at 2.
9 Sierra Club Comments at 2.

impact of the Draft Resolution on CCA programs that "are near the finish line for development and are ready for launch" and have invested large amounts of time and funds in the careful planning and development of these programs.[10] Pioneer Community Energy notes the undue burden on communities investing resources in CCA implementation.[11] San José expresses concern with the fact that it has expended significant time and funds in preparing to launch its CCA program during the summer of 2018.[12] King City states that a key preventative component of its plan for safe neighborhoods is the much-needed expansion of neighborhood street lighting through the King City CCA.[13] San Francisco notes that the Draft Resolution could substantially affect the ability of existing CCAs to phase-in additional customers.[14] Solana Beach notes harm in implementing its CCA plans and its ability to partner with local jurisdictions.[15]

The negative harm described by these communities throughout California exemplifies the harmful consequences that would result under the Draft Resolution, and highlights the need for a measured approach that provides sufficient consideration of these important issues.

III. Comments Raise Broad Concerns Over Due Process And Other Procedural Matters

Comments on the Draft Resolution raised broad procedural concerns, including: the need for incorporation in a formal proceeding (such as the RA proceeding), the extent of opportunity to be heard, and the requirement under law that local governments be provided the earliest possible effective date for implementation.

A. Formal Proceeding.

Many comments raised concerns with utilizing a Draft Resolution as the means to address long-term issues. As noted by the Sierra Club, "The resolution process denies the Commission and stakeholders the opportunity to develop a public record, to solicit and vet alternative proposals, and to facilitate robust stakeholder debate."[16] CalCCA and San Francisco, among others, state that the Commission's process violates the requirements of the Public Utilities Code and the Commission's Rules of Practice and Procedure and impermissibly modifies previous Commission decisions.[17] AReM states that the RA proceeding is the best forum in which the "issue and magnitude of any potential cost shift could be examined through a robust stakeholder process – rather than through the Draft Resolution, which provides for very little meaningful stakeholder input."[18] Sierra Club and Shell Energy both propose

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10 SoCal CCAs Comments at 6-7.
11 *See* Pioneer Community Energy Comments at 2.
12 *See* City of San José Comments at 1.
13 *See* King City Comments at 2.
14 *See* San Francisco Comments at 10.
15 *See* City of Solana Beach Comments at 2-3.
16 Sierra Club Comments at 2. *See also* TURN Comments at 2-3 (describing the problematic nature of not addressing a key issue in an ongoing active proceeding.)
17 *See, e.g.,* CalCCA Comments at 7-8; San Francisco Comments at 5-6.
18 AReM Comments at 3.

the RA proceeding as a means to address issues in the Draft Resolution,[19] and Shell Energy references past comments from Pacific Gas and Electric Company ("PG&E") seeking review of these issues within the RA proceeding.[20]

Interestingly, when the Joint IOUs propose modifications to the Draft Resolution, and note concerns with the Draft Resolution's rigid January 1 launch, the Joint IOUs also ask the Commission to "clarify how the annual Local RA requirement should be addressed as there could be ambiguity as to whether Local RA should be covered by the CCA or the utility."[21] This request for clarification on cost allocation issues, such as "how costs or contracts will be allocated to CCA customers" is the very question that should be addressed in the context of a formal proceeding, and should not be left to bilateral negotiations, as proposed by the IOUs.

Finally, it will be important as part of any formal proceeding to examine all RA-related issues that may be implicated by the departure of load to CCA programs. As described above, the IOUs state in their opening comments that they want the option, but not the obligation, to negotiate an alternative outcome.[22] The IOUs' comments highlight an issue. Specifically, in the context of RA products, the IOUs have market power and in certain respects operate as oligopolies, controlling the supply of RA products. Parties have, from time to time, expressed concerns about the possible withholding of RA products by the IOUs.[23] Given the IOUs' position in the RA market, it would be wrong to grant the IOUs' request for an option, but not an obligation, to implement an alternative outcome. Granting the IOUs' request would exacerbate market power-related concerns.

B. Opportunity to Be Heard

Several comments describe the Draft Resolution's insufficiency in providing stakeholders the opportunity to be heard. AReM states that the comment process in the Draft Resolution is "severely circumscribed" and highlights that parties are directed to focus on "factual, legal or technical errors" rather that understand the full scope of underlying RA issues that the Draft Resolution seeks to address, or present any meaningful data on those issues.[24] AReM also points to *Cal. Trucking Ass'n v. Pub. Utilities Comm'n*, 19 Cal. 3d 240, 244 (1977) for the proposition that an opportunity to be heard "implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[25]

Here, the Draft Resolution was based on confidential information not available to parties. As the Local Government Sustainable Energy Coalition ("LGSEC") notes, "no local governments or CCAs

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19 Sierra Club Comments at 2.
20 Shell Energy Comments at 2-3.
21 Joint IOU Comments at 4.
22 *See* Joint IOU Comments at 5.
23 *See* Shell Energy Comments at 3. *See also* CCA Parties' Comments (R.17-09-020) at 3-4 (October 30, 2017). *See*
24 AReM Comments at 4. *See also* Organizing for Action ("OFA") - Contra Costa Chapter at 1 (raising concerns with adequate notice).
25 *Cal. Trucking Ass'n v. Pub. Utilities Comm'n*, 19 Cal. 3d 240, 244 (1977)

were contacted in preparation of the Draft Resolution."[26] There is no discovery or hearings to address PG&E's information provided to the Energy Division, and, as noted by Shell Energy, "reliance on undisclosed, untested confidential information as the basis for its recommendation is legally questionable."[27] Sierra Club states that, since the directive in D.05-12-041 "is over a decade old, there is no justification for a hasty solution rather than providing stakeholders the opportunity to propose and vet alternative solutions."[28] CalCCA supports these views. The Commission should give parties a fair opportunity in an appropriate proceeding to be heard on issues in the Draft Resolution.

C. Earliest Possible Effective Date

AReM notes that the outcome proposed in the Draft Resolution stands in contrasts with direction for the "earliest possible effective date" for implementation of CCA programs.[29] AReM notes that it is doubtful that the delay caused to launching CCAs without adequate support would comply with that obligation.[30] The SoCal CCAs also make this point – a point especially relevant to their respective situations.[31]

IV. Comments That Summarily Dismiss Due Process Concerns Are Unavailing

Only two parties (the IOUs and CUE) believed the Draft Resolution process met due process requirements. [32] Tellingly, neither party offered legal support or substantive analysis for their summary statements. CUE unreservedly states that "[t] here is no question that Due Process will be provided and that parties will receive ample opportunity to be heard" because "[t]he Commission granted two requests for extension at the behest of CCA parties and will receive both opening and reply comments…in addition to the letters and other forms of correspondence submitted by CCA parties."[33] The summary statements from the IOUs and CUE are unavailing. Due process concerns associated with the Draft Resolution are substantial.[34] The Commission has established the requirements for due process, and the Draft Resolution did not meet these requirements.

V. The IOUs Fail To Provide Information Supporting Supposed Cost-Shifting

Despite the fact that the IOUs exclusively hold key cost-related information, nowhere in their comments do the IOUs attempt to justify claims in the Draft Resolution that short-term RA-related cost-shifts rise to the level of material. The IOUs claim that the problem is "significant and would

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26 LGSEC Comments at 2.
27 Shell Energy Comments at 2.
28 Sierra Club Comments at 2.
29 AReM Comments at 3.
30 AReM Comments at 6.
31 *See* SoCal CCA Comments at 7-8.
32 Joint IOU Comments at 6.
33 CUE Comments at 2.
34 *See* CalCCA Comments at 3-7 (outlining numerous due process-related flaws with the Draft Resolution).

constitute a large cost burden" but they fail to describe the amount, nature and mitigating elements associated with this supposed large cost burden.[35] The IOUs likewise claim that they "have had to make incremental purchases of RA to satisfy the year-ahead obligations for the load that is about to be served by a CCA" but again they fail to describe the amount, nature and mitigating elements associated with these purchases.[36] Instead of providing supporting information, , the IOUs prefer to make broad, unqualified, and prejudicial statements about untested "subsidies" and "cost-shifts."[37] As other parties also stated,[38] untested and unsupported claims of cost-shifts by the IOUs, as market participants, are insufficient to justify the material actions described under the Draft Resolution.

The IOUs' silence on these key matters only serves to leave these issues of fact unanswered.[39] This silence is particularly deafening with regard to Southern California Edison Company ("SCE") and San Diego Gas & Electric Company ("SDG&E"). One of the critical evidentiary shortcomings within the Draft Resolution is that it relies solely on data provided by one IOU to establish a far-reaching policy outcome that affects CCA programs in all three IOUs' service territories. SCE and SDG&E failed to supplement the record with any evidence to support the existence of the cost-shift issues underlying the Draft Resolution's concerns in their service territories. The result is a Draft Resolution based on insufficient and untested evidence with regard to PG&E, and zero evidence with regard to SCE and SDG&E.

VI. CalCCA Supports The CAISO's Call For Coordination

The CAISO emphasizes the need for coordination among the Commission, California Energy Commission ("CEC"), the CAISO and stakeholders.[40] CalCCA supports this request. Consideration in a formal proceeding is the best approach to achieving a fair outcome that is coordinated with stakeholders such as the CEC and the CAISO. As the CAISO notes, if a load-serving entity has an RA obligation, there are additional requirements, such as load migration information, to ensure that the RA obligations are reflected in the CAISO's systems and coordinated with other agencies.

VII. The IOUs Underscore Additional Problems With Blanket Implementation

In its opening comments, CalCCA describes various problems with a blanket launch date of January 1 for all CCA programs.[41] Not only does such an approach violate Section 366.2(c)(8), which requires an individual assessment of implementation plans, but a blanket approach also could create market distortions that adversely impact California customers and is difficult to administer, particularly during the holiday season. The IOUs describe additional problems. As stated by the IOUs, "[i]f multiple CCAs, with a significant number of customers, were to begin service during

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35 Joint IOU Comments at 2.
36 Joint IOU Comments at 2.
37 See Joint IOU Comments at 2.
38 *See* SoCal CCA Comments at 10-11; AReM Comments at 5-6; Shell Energy Comments at 2; and San Francisco Comments at 2.
39 *See* CalCCA Comments at 5 (listing specific issues of facts that are unresolved).
40 *See* CAISO Comments at 1.
41 *See* CalCCA Comments at 11.

January of Year 2, the utilities would experience delays in processing times because SCE and SDG&E's operations and systems are not designed to accommodate large-scale transitions within a short period of time."[42] CalCCA agrees; blanket implementation, especially in January, is inadvisable and fraught with problems.

CONCLUSION

Given the reasons provided above, the Commission should either deny or withdraw the Draft Resolution. CalCCA agrees with commenters that short-term RA issues associated with the formation of CCA programs should be addressed expeditiously, but in a manner that considers and harmonizes counterbalancing issues and that adheres to the Commission's due process requirements. The approach utilized by the Commission in D.10-03-022, or some variant thereof, appears to be a workable approach. Longer-term RA issues should be addressed in a more reasoned and deliberative manner in an appropriate proceeding, such as the Commission's RA proceeding.

Sincerely,

Beth Vaughan
Executive Director, CalCCA

Copy (via e-mail): CPUC President Michael Picker
CPUC Commissioner Martha Guzman Aceves
CPUC Commissioner Carla J. Peterman
CPUC Commissioner Liane M. Randolph
CPUC Commissioner Clifford Rechtschaffen
CPUC Executive Director, Tim Sullivan
Jonathan Tom, CPUC Energy Division
Suzanne Casazza, CPUC Energy Division
Energy Division Tariff Unit
Service Lists: R.17-09-020
R.03-10-003
R.17-06-026
R.16-02-007

[42] Joint IOU Comments at 4.