

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

03/07/22

04:59 PM

R2103010

Order Instituting Rulemaking to Revise
General Order 156 to Include Certain Electric
Service Providers and Community Choice
Aggregators and Encourage Voluntary
Participation by Other Non-Utility Entities
Pursuant to Senate Bill 255; Consider LGBT
Business Enterprise Voluntary Target
Procurement Percentage Goals; Incorporate
Disabled Business Enterprises; Modify the
Required Reports and Audits; and Update
Other Related Matters.

R.21-03-010

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
REPLY COMMENTS ON THE PROPOSED DECISION**

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March 7, 2022

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Revise General Order 156 to Include Certain Electric Service Providers and Community Choice Aggregators and Encourage Voluntary Participation by Other Non-Utility Entities Pursuant to Senate Bill 255; Consider LGBT Business Enterprise Voluntary Target Procurement Percentage Goals; Incorporate Disabled Business Enterprises; Modify the Required Reports and Audits; and Update Other Related Matters.

R.21-03-010

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
REPLY COMMENTS ON THE PROPOSED DECISION**

The California Community Choice Association (CalCCA)¹ submits these Reply Comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *Decision Revising General Order 156 Supplier Diversity Program To Implement Senate Bill 255, Adopt A Voluntary Procurement Goal For LGBT Business Enterprises, Incorporate Persons With Disabilities Business Enterprises, And Other Updates* (PD or Proposed Decision), issued on February 9, 2022.

¹ California Community Choice Association represents the interests of 23 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

I. INTRODUCTION

CalCCA does not change its position on any of the topics that it raised in Opening Comments but rather uses this opportunity to respond specifically to the Opening Comments of Shell Energy North America (US), L.P. d/b/a Shell Energy Solutions and the Alliance for Retail Energy Markets (Shell/AREM).² CalCCA responds to Shell/AREM's assertion that the application of unique reporting requirements applicable to community choice aggregators (CCAs) is unreasonable, discriminatory, and unfair. As set forth below, the different statutory reporting requirements applicable to CCAs compared with those of investor-owned utilities (IOUs) and Electric Service Providers (ESPs) is intentional and necessary given the unique restrictions on CCAs (not applicable to IOUs and ESPs) from Article 1, Section 31(a) of the California Constitution (known as Proposition 209).

II. SHELL/AREM'S STATEMENT THAT THE PD'S APPLICATION OF DIFFERENT REPORTING REQUIREMENTS TO CCAS VERSUS ESPS IS UNREASONABLE AND DISCRIMINATORY IGNORES THE UNIQUE STATUTORY REQUIREMENTS APPLICABLE TO CCAS

Shell/AREM assert that ESPs should have the same reporting requirements as CCAs and that the PD's failure to do so "is unreasonable, unduly discriminatory, and inconsistent with [Public Utilities] Code Section 453(a)."³ Shell/AREM further state that differing reporting requirements for CCAs and ESPs subject large ESPs to "unfair competition," inconsistent with Business and Professions Code Section 17200.⁴ Shell/AREM's arguments regarding the Commission's unique reporting requirements for CCAs being unreasonable, unduly discriminatory, or rising to the level of unfair competition ignores the unique statutory

² *Opening Comments of Shell Energy North America (US), L.P. d/b/a Shell Energy Solutions and the Alliance for Retail Energy Markets on Assigned Commission Rechtschaffen's February 9, 2022 Proposed Decision*, R.21-03-010 (Mar. 1, 2022) (Shell/AREM Opening Comments).

³ *Id.* at 3, 5-7.

⁴ *Id.* at 3, 7.

framework applicable to CCAs, and not ESPs or IOUs, in Public Utilities Code Section 366.2(m).

Senate Bill (SB) 255 added CCAs and ESPs as entities subject to the Commission’s Supplier Diversity program (which for the electric sector previously only applied to IOUs), but clearly distinguished the unique statutory requirements for CCAs (Section 366.2(m)) versus ESPs (Sections 8281-8286).⁵ As detailed in CalCCA’s Opening Comments, the Legislature’s application of different statutory requirements for CCAs in Section 366.2(m) was intentional. CCAs, but not ESPs or IOUs, are prohibited from granting preferential treatment to suppliers based on their “race, sex, color, ethnicity, or national origin” by Article 1, Section 31(a) of the California Constitution (known as Proposition 209) and accordingly different requirements must apply.⁶

Shell/AReM’s contention that adopting different reporting requirements for CCAs is unreasonable or unduly discriminatory under Public Utilities Code section 453(a) ignores the express language of that statute. Section 453(a) has no bearing on adoption by the Commission or Legislature of different requirements for differently situated load-serving entities (LSEs). Instead, it prohibits a “public utility” from “mak[ing] or grant[ing] any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage.” Moreover, even if the subject and purpose of this statute were relevant, the language still could not be applied to this situation. Section 453(a) prevents discrimination by

⁵ SB 255 (2019) (amending Public Utilities Code section 366.2 (regarding CCAs) and 8283 (adding ESPs to the list of entities subject to sections 8281-8286)).

⁶ CalCCA Opening Comments at 3-10.

“public utilities,” and CCAs are not “public utilities” as defined by Public Utilities Code Section 216(a)(1).⁷

Furthermore, Shell/AReM err in asserting that the PD’s proposed treatment of ESPs differently than CCAs subjects ESPs to “unfair competition” under Business and Professions Code Section 17200. The Business and Professions Code allows for injunctive relief against “any person who engages, has engaged, or proposes to engage in unfair competition....”⁸

Shell/AReM fail to substantiate how the Proposed Decision’s differential treatment of ESPs and CCAs with respect to reporting requirements (based on legislative mandate) would create unfair competition under the Business and Professions Code. For the reasons set forth above, CalCCA requests that the Commission distinguish the reporting requirements of CCAs from both ESPs and IOUs given the statutory requirements uniquely applicable to CCAs in Section 366.2(m) (as opposed to the requirements imposed on ESPs and IOUs in Section 8281-8286).

III. CONCLUSION

CalCCA appreciates the opportunity to submit these Reply Comments and requests adoption of the recommendations proposed herein.

Respectfully submitted,



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March 7, 2022

⁷ See Pub. Util. Code § 216(a)(1) (“public utility” includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.”)

⁸ Bus. and Prof. Code § 17203.