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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	R.21-03-011

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING DISTRIBUTING WORKSHOP AGENDA AND PROVIDING QUESTIONS FOR ADDITIONAL POST WORKSHOP COMMENTS

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  - The definition of risks should include not only the consequence but also the probability of the outcome;
  - SCE and SDG&E's proposed FSR changes are imbalanced and require additional changes to improve the accuracy of the calculation;
  - The need to remove surety bonds as a security instrument has not been sufficiently demonstrated;
- Any financial monitoring must make use of existing public information and should be aimed solely at providing the Commission advance notice of likely customer returns;
  - The Commission should develop an administratively simple approach to financial monitoring as opposed to a complex approach resulting in premature action by the Commission;
  - The Commission should not require all CCAs to obtain a credit rating;
  - The Commission must apply financial monitoring and risk management requirements comparably between CCAs and ESPs;
- The Legislature did not authorize the Commission to unilaterally terminate CCA service;
- Requiring LSEs to include contract provisions for assignment to the POLR would risk unenforceability in bankruptcy, increased customer costs, and unintended market consequences; and
- A Commission-regulated public benefit central entity is a better long-term solution for POLR service, reliability and other critical functions.

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The California Community Choice Association[1] (CalCCA) submits these Reply Comments in response to the *Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments* (Ruling),[2] issued on February 24, 2022.

I. INTRODUCTION

Like most rulemakings, this proceeding requires the California Public Utilities Commission (Commission) to strike the right balance among competing interests. Senate Bill (SB) 520 articulates two objectives for Phase 1 of this proceeding: (1) ensuring California can continue to meet its greenhouse gas emissions (GHG) reduction and air quality goals,[3] and (2)

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[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.

[2] *Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments,* Rulemaking (R.) 21-03-011 (Feb. 24, 2022).

[3] Cal. Pub. Util. Code § 387(h).

avoiding disruption of electric service if a load-serving entity (LSE) fails.[4] Commission staff and parties to this proceeding have raised other critical goals, including preventing cost shifts to bundled customers[5] and mitigating the effects of any customer return on new project development.[6] Addressing these concerns, however, serves little purpose if community choice aggregator (CCA) failure becomes a self-fulfilling prophecy because the adopted "insurance" against failure drives CCAs out of the market. Consequently, impacts on CCA viability and customer affordability must be an overriding concern in balancing the interests in play.

Assessing trade-offs among these interests requires the Commission to assess risk. The risk associated with any particular event – here, a return of customers – is a function of the likelihood of failure and the consequences of failure. Designing risk mitigation considering only the *consequences* of failure without considering *likelihood* will lead to unnecessarily costly solutions. For example, requiring security based on a presumption that a "black swan" or "tsunami" event will occur and that such an event will result in the return of all non- investor-owned utility (IOU) load to the Provider of Last Resort (POLR) would be excessive. While an extreme event is possible, it is significantly less likely than other causes for returns. In fact, the two customer returns raised during this proceeding -- Western Community Energy (WCE) and Baldwin Park Resident Owned Utility District (BProud) – were caused by other circumstances, and their impacts were limited. These two entities represented 2.3 percent of the peak load in the Southern California Edison Company (SCE) Transmission Access Charge (TAC) area.

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4 Cal. Pub. Util. Code § 387(j).

5 Provider of Last Resort (POLR) Workshop #2, R.21-03-011 (Mar. 7, 2022), at Slide 8.

6 *Comments of the California Energy Storage Alliance on the Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments,* R.21-03-011 (Mar. 28, 2022) (CESA Comments); and *Comments of the Solar Energy Industries Association and the Large-Scale Solar Association on Questions Presented in Administrative Law Judge Ruling and March 7, 2022, Workshop*, R.21-03-011 (Mar. 28, 2022) (SEIA/LSA Comments).

Moreover, while California experienced an extreme event in 2000-2001, San Diego Gas & Electric (SDG&E) correctly observes that the conditions in California's markets that led to that event are no longer present.[7] And notably, during that event, which cost California ratepayers billions of dollars, there were no CCAs; IOU customers had to face the consequences. The extent of security required to prepare for potential customer returns must be reasonably set in the context of the relative risk.

Parties' opening comments advanced recommendations that would lead to an unbalanced solution to address the risk of customer return, and CalCCA urges the Commission to consider the following replies in developing a solution:

- The Commission should ensure the balance and accuracy in the financial security requirement (FSR) calculation rather than replace the FSR with an out-sized liquidity pool;
  - The definition of risks should include not only the consequence but also the probability of the outcome;
  - SCE and SDG&E's proposed FSR changes are imbalanced and require additional changes to improve the accuracy of the calculation;
  - The need to remove surety bonds as a security instrument has not been sufficiently demonstrated;
- Any financial monitoring must make use of existing public information and should be aimed solely at providing the Commission advance notice of likely customer returns;
  - The Commission should develop an administratively simple approach to financial monitoring as opposed to a complex approach resulting in premature action by the Commission;
  - The Commission should not require all CCAs to obtain a credit rating;
  - The Commission must apply financial monitoring and risk management requirements comparably between CCAs and Electric Service Providers (ESP);

[7] *Response of San Diego Gas & Electric Company (U 902 E) to Administrative Law Judge's Ruling,* R.21-03-011 (Mar. 28, 2022) (SDG&E Comments), at 4-5.

- The Legislature did not authorize the Commission to unilaterally terminate CCA service;
- Requiring LSEs to include contract provisions for assignment to the POLR would risk unenforceability in bankruptcy, increased customer costs, and unintended market consequences; and
- A Commission-regulated public benefit central entity is a better long-term solution for POLR service, reliability and other critical functions.

II. THE COMMISSION SHOULD ENSURE THE BALANCE AND ACCURACY IN THE FSR CALCULATION RATHER THAN REPLACE THE FSR WITH AN OUT-SIZED LIQUIDITY POOL

Pacific Gas and Electric Company's (PG&E) comments focus primarily on its "procurement pool" proposal that would require each CCA to contribute an amount equal to its estimated costs during the two highest energy load months to provide the POLR with access to upfront liquidity in advance of customer transition to the POLR. Across the three IOUs, the pool size would range between $800 million to $1.4 billion.[8] Of that amount, PG&E's share would range from $415 million to $987 million.[9] Notably, neither SCE nor SDG&E raise similar concerns or proposals.[10] Based upon PG&E's comments, it appears the real issue driving PG&E's need for liquidity is the borrowing costs for the immediate California Independent

8 Dependent on whether the pool is inclusive of energy only or energy, Resource Adequacy (RA), Renewable Portfolio Standard (RPS), and Administrative fees.

9 Based upon calculations provided by PG&E directly to CalCCA ($415 million) for energy only, and an estimate calculated by CalCCA for energy, RA, RPS, and Administrative fees.

10 *Opening Comments of Southern California Edison Company (U 338-E) on the Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments,* R.21-03-011 (Mar. 28, 2022) (SCE Comments), at 16: In response to the question, "What options are available to provide sufficient cash flow for a mass transfer of customers to the POLR? What options other than significant cash flow are available to the POLR in the event of a mass transfer of customers?" SCE states, "Timely recovery of Re-Entry Fees is critical to ensuring sufficient cash flow in a mass involuntary return, including residual Re-Entry Fees that are authorized for recovery through a Tier 2 advice letter pursuant to Resolution E-5059." SCE does not mention a pool concept in response to this question but rather discusses the recovery of the re-entry fee in a timely manner.

System Operator Corporation (CAISO) energy costs of serving returning customers.[11] However, PG&E does not justify the assertion that it will not be able to borrow to pay for these costs in the event of customer return. In fact, PG&E notes that if the pool is not fully replenished by the revenues from returning customers, PG&E would amortize those funds with interest at the Federal Reserve's three-month Commercial Paper rate to be paid over time by returning customers.[12] While PG&E discusses the challenges of borrowing on short notice,[13] this information does not confirm that the POLR will be unable to find adequate credit facilities upon customer return to the POLR. More importantly, it does nothing to calibrate the risk of a large-scale return and the size of the pool. Any consideration of a pool must consider the relative risk and size of such a pool and the costs of acquiring the instruments necessary to fund the pool. The costs and feasibility of a pool must be compared with the costs and feasibility of relying on existing balancing account treatment for a two-month period.

CalCCA maintains, as discussed in Opening Comments,[14] that the right approach is ensuring the balance and accuracy in the FSR calculation and relying on existing balancing account treatment for any two-month periods while the IOU waits for revenues. Instead of continuing to develop an instrument whose need is undemonstrated and unproven, the Commission should focus on modifying the FSR to make it more accurate. Several parties have already commented on the need to more accurately identify the costs and revenues that impact

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[11] *Opening Comments of Pacific Gas and Electric Company (U 39 E) on Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments,* R.21-03-011 (Mar. 28, 2022) (PG&E Comments), at 6-8.

[12] *Id.* at 11-12.

[13] *Id.*, Appendix at 2.

[14] *California Community Choice Association's Comments on Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments*, R.21-03-011 (Mar. 28, 2022) (CalCCA Comments), at 5-11.

the FSR.[15] Further, as indicated in footnote ten, SCE has indicated that timely calculation and payment of the re-entry fee, which is based on the FSR calculation, is a significant step in ensuring that the POLR can serve returning customers. As such, the Commission should examine all of the FSR modifications raised in comments in this proceeding. This should include reductions in the quantity of RPS and RA for any returning Voluntary Allocation and Market Offer (VAMO) allocations and Cost Allocation Mechanism (CAM)[16] resources. This should also include updating the RA and RPS benchmarks to include the impacts of the returning customers' rate classes, reflect the impacts of any already authorized future rate changes, and account for the impact of seasonality of rates that returning customers will pay.

A. The Definition of Risks Should Include Not Only the Consequence but Also the Probability of the Outcome

Proposals to manage risk must weigh both the probability of an event as well as its consequences. Within this proceeding, the weighting of probability has been set at 100 percent. That is, assume the event will occur – the failure of a large LSE or the possibility of multiple concurrent LSE failures due to a major market shortage[17] -- then assess the consequences and how they are securitized. People and businesses do not hedge risk in this manner. Rather they account for the probability of the risk occurring and adjust their risk management accounting for the risk of the consequences coming to pass.

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15 *See* CalCCA Comments at 6-10; SCE Comments at 11-12; and SDG&E Comments at 8-9.

16 In response to the question, "Could the existing Capacity Allocation Mechanism (CAM) and Voluntary Allocation and Market Offer (VAMO) resources be used to meet POLR needs, and if so how?" SCE states, "Yes. These mechanisms are load-based and enable allocations to migrate along with migrating load. Thus, when an LSE fails and mass involuntarily returns its customers to the POLR, that LSE's CAM and VAMO allocations, as well as Demand Response (DR) related RA allocations, should / will migrate to the POLR, increasing the POLR's ability to close any gap on procurement needs to serve the mass involuntarily returned customers."

17 CPUC Energy Division Staff Presentation, October 29, 2021, at 93.

PG&E has proposed a posting requirement equal to the anticipated cost of energy at the CAISO for two months. While PG&E does indicate that costs of posting may be higher under its proposal, the probability that PG&E will need to procure in such a circumstance is absent from the calculation. CalCCA has estimated the cost of two months CAISO energy costs at approximately $800 million for all CCAs.[18] This represents the cost that would be anticipated to be incurred if all CCAs returned their load to POLR service. It fails to account for the very likely event that not all or even a significant portion of CCAs will fail. Indeed, according to the Texas Public Utilities Commission, even under the winter of 2021 events, only three Retail Electric Providers (REP) exited the business with a fourth entering bankruptcy.[19] At present, Texas lists over 150 REPs.[20] The event in Texas saw market prices exceeding the price caps applicable in the CAISO market by a significant margin. The U.S. Energy Information Administration (EIA) reports prices at or near $9,000 MWh for 77 hours over four days.[21] The CAISO market bids are capped at $2,000 MWh. Even in these extreme price events in Texas, a small number of REPs exited the market.

Failing to account for the probability of an event will significantly over-securitize the risk at the expense of customers. Presently a CCA may post a letter of credit, cash, or a surety bond with the IOU for the FSR. Each has cost consequences for customers. In addition, both a secured letter of credit (LOC) and cash limit the LSE's liquidity; a secured LOC limits the LSE's borrowing ability, and cash limits other uses of the cash. Taken to an extreme, these limitations

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18 CalCCA previously reported its estimate of the CCA pool concept at $1.4 Billion. This estimate was based upon Energy, RPS, RA, and Administrative costs as calculated by the FSR today. Excluding RPS, RA, and Administrative costs, the estimate is approximately $800 million for all CCAs.

19 https://www.puc.texas.gov/agency/resources/reports/UTAustin_(2021)_EventsFebruary2021TexasBlackout_(002)FINAL_07_12_21.pdf, at 90.

20 https://www.puc.texas.gov/industry/electric/directories/rep/alpha_rep.aspx.

21 https://www.eia.gov/todayinenergy/detail.php?id=47876.

could affect an LSE's ability to advance clean energy resource development. The only instrument that does not have this effect is a surety bond, which SCE now proposes to eliminate as an option, as discussed below.

Consider the effect of the use of letters of credit to fund a liquidity pool of the magnitude PG&E proposes. A secured LOC may have costs as low as 65 basis points annually, the securitization means encumbering cash with the financial institution providing the letter. Therefore, if used by all CCAs, $800 million in cash would be encumbered that would be better spent developing new non-emitting resources to meet grid and policy goal needs. In addition to the opportunity cost of the posted cash, it would also cost CCA customers in excess of $5 million annually. Unsecured instruments such as a surety bond or unsecured LOC may cost the borrowing entity on the order of 200 basis points. This would reduce the liquidity crunch from setting aside millions of dollars as security, but it would come at a cost of $16 million per year for the same $800 million in security. Since these costs accumulate each year, over the next 20 years alone the additional costs would be between $100 million and $320 million. This is an unreasonable price for customers to pay for an event that is unlikely to occur.

PG&E's liquidity proposal must be viewed through the lens of not only consequences, but probability of failure. As CalCCA has noted, seven CCAs now have investment-grade credit ratings, with two ratings that were issued *after* the WCE bankruptcy. This means that a ratings agency has issued an opinion about the ability and willingness of an entity to meet its financial obligations in full and on time.[22] In addition, all CCAs have active risk management policies, which are publicly available, and conduct risk oversight on a regular basis. Risk management mitigates the risk of default – both the probability and potential consequences of failure.

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22 https://www.spglobal.com/ratings/_division-assets/pdfs/guide_to_credit_rating_essentials_digital.pdf, at 4.

B. SCE and SDG&E's Proposed FSR Changes are Imbalanced and Require Additional Changes to Improve the Accuracy of the Calculation

SCE and SDG&E each propose two changes to the FSR calculation to improve its accuracy. First, they propose the calculation of RA and RPS costs should use the most up-to-date benchmarks.[23] CalCCA agrees with this change.[24] Additionally, SCE proposes the FSR and re-entry fee calculation must net "the PCIA revenues the IOUs expects to recover from the mass involuntary returning CCA customers over the forward six-month period from the gross revenues the IOU expects to recover from those customers over the same period."[25] SDG&E also suggests the FSR calculation needs to be revised to consider Power Charge Indifference Adjustment (PCIA) rates already received by the IOU that would not be incremental revenue.[26]

If the Commission moves forward with changes to the FSR calculation to improve its accuracy, the Commission should take a holistic review of the calculation to ensure each component of the calculation is properly updated. Therefore, in addition to reconsidering the benchmarks for RA and RPS costs and the treatment of PCIA revenues, the Commission should also consider the changes proposed by CalCCA, including (1) accounting for resources readily available to the POLR (*i.e.*, CAM and Voluntarily Allocated PCIA); (2) updating the RA and RPS benchmarks to include the impacts of the returning customers' rate classes; (3) reflecting the impacts of any already authorized future rate changes; and (4) accounting for the impact of seasonality of rates that returning customers will pay.[27] This will ensure that cost and revenue forecasts are equally informed for all elements.

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23 SCE Comments at 11; and SDG&E Comments at 11.
24 CalCCA Comments at 7.
25 SCE Comments at 12.
26 SDG&E Comments at 8.
27 CalCCA Comments at 8-9.

C. The Need to Remove Surety Bonds as a Security Instrument has not Been Sufficiently Demonstrated

The Commission should not remove surety bonds as a security instrument to comply with the FSR. The FSR statute expressly allows for posting a bond.[28] The Commission appropriately allowed for surety bonds when implementing the statute with respect to CCAs.[29] SCE proposes to remove surety bonds as an instrument that can be used to meet a CCA's FSR. SCE bases this proposal on the supposition that "they [surety bonds] are expected to be litigious, just as insurance claims typically are, and can potentially take months or years for the IOU to recover on its Re-Entry Fee claim and impact the IOUs' liquidity during this period of dispute." [30] However, the Commission expressly rejected this argument:

> The Joint Utilities describe the problem with surety bonds as follows:
>
>> Collecting on a surety bond is similar to collecting on an insurance claim, where a litigious and delayed process for resolving a claim is not unusual.... The purpose of the statute appears to be more about basic financial security – ensuring that money is available – rather than liquidity. The fact that surety bonds may not be commonly used for other purposes in the energy procurement business does not control in this context, where there is express statutory language. Accordingly, we approve the use of surety bonds as FSR for CCAs.[31]

The governing statute permitting a bond - section 394.25(e) – has not changed and continues to permit the use of a bond. SCE's supposition was not sufficient when raised before the Commission previously, and it is not sufficient now to remove surety bonds as an option. As noted in section II.A, a surety bond may be the most cost-effective manner of meeting an FSR

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28 Cal. Pub. Util. Code § 394.25(e).
29 D.18-05-002 Ordering Paragraph 7.
30 SCE Comments at 16.
31 D.18-05-022 at 8-9.

requirement to avoid encumbering needed cash. For these reasons, the Commission should reject SCE's proposal.

III. ANY FINANCIAL MONITORING MUST MAKE USE OF EXISTING PUBLIC INFORMATION AND SHOULD BE AIMED SOLELY AT PROVIDING THE COMMISSION ADVANCE NOTICE OF LIKELY CUSTOMER RETURNS

Parties have made a number of financial monitoring proposals, including monitoring based upon publicly available data,[32] complex monitoring using a substantial list of metrics,[33] required use of a third-party credit rating agency,[34] and preemptive action to deregister an LSE involuntarily in response to unspecified financial circumstances.[35] CalCCA's proposal would (1) enhance the implementation planning process for newly launching CCAs; and (2) require financial monitoring of existing LSEs, including CCAs and ESPs, using publicly available data based on a tiered approach that considers each LSE's circumstance. Any financial monitoring proposal adopted should strike a reasonable balance between the ability for the Commission to evaluate useful information, and the ability for the LSE to provide the information without the need to disclose confidential information or report unnecessary information. CalCCA's proposal does this by providing the Commission the information it needs to be informed of LSE's financial activities, leveraging publicly available information, and ensuring LSEs can readily provide the necessary information.

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[32] CalCCA Comments at 16-18.

[33] *Comments of the Public Advocates Office on the Administrative Law Judge's Ruling Distributing Workshop Agenda and Providing Questions for Additional Post Workshop Comments,* R.21-03-011 (Mar. 28, 2022), at 11-19; and PG&E Comments at 21-23.

[34] SDG&E Comments at 21-23.

[35] SCE Comments at 2.

D. The Commission Should Develop an Administratively Simple Approach to Financial Monitoring as Opposed to a Complex Approach Resulting in Premature Action by the Commission

The Public Advocates Office (CalAdvocates) and PG&E propose a significant number of metrics CCAs should report to the Commission. At this point, however, the Commission should avoid undertaking an overly complex oversight framework for CCA financial practices. Instead, the Commission should develop administratively simple approaches to identify financially stressed LSEs and engage those LSEs in consultation to better understand their plans going forward.

Further, as discussed in section VI, it is not within the scope of the Commission's jurisdiction to terminate LSE service involuntarily, as suggested by SCE. It should be noted that pre-emptive action was not taken in either of the bankruptcies of PG&E, and yet customers continued to be served. It is possible that a similar event could occur with a CCA or Electric Service Provider (ESP), where the LSE continues service following bankruptcy. If the Commission took pre-emptive action, the ability to continue to serve those customers by the CCA or ESP would be removed unnecessarily. Such an outcome would result in significant market disruption and undermine confidence in the stability of the business environment in California.

CalCCA's proposal for financial oversight serves as a reasonable basis for the Commission to begin to understand the mechanisms and practices used by different LSEs while remaining clearly within the Commission's jurisdiction.[36]

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[36] CalCCA Comments at 16-18.

E. The Commission Should not Require all CCAs to Obtain a Credit Rating

The Commission should dismiss any suggestions that all CCAs must pursue a compulsory credit rating. SDG&E suggests "[t]he most critical new measure to be implemented at this point is the requirement that all CCAs (*i.e.*, those currently in existence and those that form in the future) register with third party credit rating agencies (*e.g.*, Moody's Investors Service, S&P Global Ratings (Standard & Poor's))."[37] The Commission should not adopt this proposal given the undue burden it would place on smaller or newly forming LSEs. Obtaining a credit rating by an independent agency is costly and requires an extreme amount of time and effort that may be too burdensome for smaller or newly formed LSEs. In addition, forcing newly launched CCAs to get credit ratings before they are ready and have established an operating history is very likely to increase the costs for new CCAs both in (1) staff time and direct costs to work with rating agencies; and (2) higher procurement costs across the board. The Commission must balance the burden on LSEs associated with financial monitoring with the benefit of having the information. Requiring credit ratings of all CCAs would be unduly burdensome, particularly when the Commission can obtain valuable information through the reporting as suggested by CalCCA.

Rather than requiring CCAs to be credit rated, the Commission should adopt CalCCA's proposed tiers, which would require different levels of financial monitoring based on individual LSE's circumstances, including if the LSE is credit-rated. Under CalCCA's tier proposal, if the LSE has an investment-grade credit rating, no additional financial monitoring would be required. This would provide incentives for LSEs to obtain credit ratings, while providing smaller LSEs the option to forego obtaining a credit rating in favor of financial monitoring. This proposal recognizes that credit-rated LSEs are already under evaluation by a third-party that specializes in

[37] SDG&E Comments at 22.

evaluating entities' financial health and recognizes that entities with investment-grade credit ratings are extremely unlikely to fail, as demonstrated in Table 1 below.

Standard & Poor's *Default, Transition, and Recovery: 2020 Annual Global Corporate Default and Rating Transition Study* provides metrics around the default rates of credit-rated entities, indicating investment-grade credit-rated entities have a very low probability of default.[38]

Global Corporate Average Cumulative Default Rates By Rating Modifier (1981-2020) (%)

	--Time horizon (years)--														
Rating	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**
AAA	0.00	0.03	0.13	0.24	0.34	0.45	0.51	0.59	0.64	0.70	0.72	0.75	0.78	0.84	0.90
AA+	0.00	0.05	0.05	0.10	0.15	0.20	0.25	0.31	0.36	0.42	0.48	0.53	0.59	0.66	0.72
AA	0.02	0.03	0.08	0.21	0.35	0.47	0.59	0.70	0.78	0.87	0.95	1.00	1.10	1.16	1.22
AA-	0.03	0.08	0.16	0.23	0.31	0.41	0.47	0.52	0.57	0.62	0.68	0.73	0.75	0.80	0.84
A+	0.05	0.09	0.19	0.31	0.41	0.50	0.60	0.71	0.83	0.96	1.08	1.21	1.36	1.54	1.68
A	0.05	0.14	0.21	0.32	0.44	0.61	0.78	0.94	1.11	1.32	1.48	1.60	1.72	1.79	1.95
A-	0.06	0.16	0.25	0.36	0.51	0.66	0.87	1.03	1.15	1.27	1.37	1.50	1.62	1.74	1.84
BBB+	0.09	0.26	0.47	0.67	0.90	1.15	1.35	1.56	1.82	2.07	2.30	2.46	2.64	2.87	3.12
BBB	0.15	0.37	0.59	0.93	1.27	1.62	1.94	2.24	2.56	2.88	3.22	3.49	3.72	3.82	4.03
BBB-	0.24	0.69	1.27	1.93	2.63	3.24	3.78	4.28	4.69	5.04	5.43	5.75	6.05	6.51	6.86
BB+	0.32	0.97	1.76	2.55	3.35	4.14	4.82	5.32	5.92	6.52	6.93	7.42	7.92	8.27	8.82
BB	0.48	1.52	2.96	4.34	5.76	6.88	7.92	8.81	9.67	10.43	11.25	11.86	12.34	12.68	13.0
BB-	0.96	2.92	5.01	7.15	9.03	10.83	12.34	13.78	14.92	15.92	16.68	17.46	18.21	18.94	19.6
B+	1.98	5.42	8.82	11.73	14.02	15.80	17.43	18.86	20.17	21.37	22.41	23.14	23.92	24.65	25.3
B	3.13	7.35	11.11	14.19	16.69	18.97	20.62	21.87	23.07	24.26	25.02	25.78	26.37	26.89	27.4
B-	6.52	13.69	19.28	23.16	25.97	28.07	29.63	30.86	31.72	32.45	33.61	34.32	34.89	35.46	35.8
CCC/C	28.30	38.33	43.42	46.36	48.58	49.61	50.75	51.49	52.16	52.76	53.21	53.68	54.23	54.69	54.7
Investment grade	0.09	0.24	0.41	0.63	0.86	1.09	1.30	1.50	1.69	1.88	2.05	2.20	2.35	2.49	2.65
Speculative grade	3.71	7.19	10.18	12.63	14.64	16.30	17.68	18.83	19.86	20.81	21.61	22.29	22.93	23.49	24.0
All rated	1.53	3.00	4.27	5.35	6.25	7.01	7.64	8.18	8.67	9.12	9.50	9.83	10.13	10.41	10.6

Sources: S&P Global Ratings Research and S&P Global Market Intelligence's CreditPro®.

[38] *Default, Transition, and Recovery: 2020 Annual Global Corporate Default and Rating Transition Study* at Table 26: https://www.spglobal.com/ratings/en/research/articles/210407-default-transition-and-recovery-2020-annual-global-corporate-default-and-rating-transition-study-11900573.

Given the very low probability of default by investment grade credit rated entities it is reasonable for the Commission to require additional financial monitoring of LSEs without investment-grade credit ratings using publicly available information to allow the Commission to gather information about the health of LSEs and to inform the Commission of when LSE consultations are needed. This approach would not be overly burdensome and would provide the Commission useful information needed to gain insight into the financial conditions of all LSEs. For these reasons, the Commission should adopt CalCCA's proposal for tiered financial monitoring rather than require all CCAs obtain a credit rating as SDG&E proposes.

F. The Commission Must Apply Financial Monitoring and Risk Management Requirements Comparably Between CCAs and ESPs

DAC/UC/AReM's comments suggest financial monitoring and risk management proposals should apply to CCAs only.[39] In part, DAC/UC/AReM's argument is that ESPs are large multi-national companies and that there is a robust market for the provision of direct access. Neither of these arguments hold true under a "Black Swan" event the Commission is preparing for through this proceeding. The size and scope of a business does not guarantee that they will take losses to serve customers. If the profit from one market is reduced, entities will tend to invest that capital in a market with better returns. Under a market environment with high energy and capacity costs, there is no reason to believe that an ESP would continue to take losses by continuing to serve its customers. At the same time, if one ESP fails during a price spike, while other ESPs may continue to exist, it may not be feasible for them to take on new customers from the failed ESP at high prices when the customers have the option of returning to the IOU service. This was reported to have happened in Texas where an ESP encouraged customers to

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[39] *Comments of the Direct Access Customer Coalition, the Regents of the University of California and Alliance For Retail Energy Markets on Ruling Providing Questions for Additional Post Workshop Comments,* R.21-03-011 (Mar. 28, 2022) (DAC/UC/AReM Comments), at 3-5.

leave its service but other ESPs were not taking on new customers due to the volatility in pricing.[40] Given the Commission's problem statement in this proceeding is rooted in extreme events, and the fact that market price volatility will impact all LSEs and not just CCAs, proposals should apply to CCAs and ESPs alike.

IV. THE LEGISLATURE DID NOT AUTHORIZE THE COMMISSION TO UNILATERALLY TERMINATE CCA SERVICE

As CalCCA explains in section III, the Commission should limit any financial monitoring of LSEs to a purpose squarely within its statutory authority. SCE's comments clearly articulate this purpose: "to see early warning signs and influence the processes and outcomes in the event of an LSE failure is imminent and unavoidable." SCE unfortunately encourages the Commission to take a step outside of its jurisdiction, suggesting that "the Commission should be prepared to take pre-emptive actions, such as involuntary LSE service terminations when there is good cause, to protect customers."[41] The Commission should reject SCE's proposal and ensure any financial monitoring remains within the clear scope of its jurisdiction.

Assembly Bill (AB) 117 (2002)[42] established the primary scope of the Commission's jurisdictional authority.[43] Nothing in the bill allows the Commission to financially monitor or, more importantly, terminate a CCA's registration based on this monitoring. The primary focus of the Commission's role as established in AB 117 was "to determine a cost-recovery mechanism to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical

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40 https://www.dallasnews.com/business/energy/2021/02/16/electricity-retailer-griddys-unusual-plea-to-texas-customers-leave-now-before-you-get-a-big-bill/.

41 SCE Comments at 2.

42 Assembly Bill 117 (Migden 2002) (Electrical Restructuring: aggregation).

43 Since AB 117's enactment, the Commission's role has been expanded to limited authority related to Resource Adequacy (Cal. Pub. Util. Code § 380) and renewable resource integration (Cal. Pub. Util. Code § 399.12(j)(2)).

corporation's bundled customers."[44] Moreover, nothing in the list of required information for the implementation plan touches on the CCA's financial condition.[45] Finally, while the Commission may request additional information in some cases, requesting information is a far cry from revoking registration.[46]While the Legislature did not grant the Commission authority to assess or act on CCA financial condition, it expressly provided the Commission with that authority for ESPs. The Commission must require as a condition of registration "proof of financial viability" assessed using "uniform standards."[47] The Legislature also expressly and clearly provided the Commission authority to suspend or revoke an ESP's registration, "in whole or in part," under several circumstances. Most notably, the Commission may revoke or suspend an ESP's registration when "there is evidence that the electric service provider is not financially or operationally capable of providing the offered electric service."[48] None of these very explicit statutory directives applies to CCAs.

SB 520, enacted in 2019, did not extend the Commission's authority over CCAs. The primary focus of the bill is to describe the characteristics required for an entity to serve as POLR. In fact, the only provisions addressing entities *other than* a POLR address "continued achievement of California's greenhouse gas emission reduction and air quality goals."[49] Nothing in the Legislature's POLR directives give the Commission authority to terminate the registration of a CCA.

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44 AB 117 Legislative Digest (1). The bill also addressed CCA participation in energy efficiency programs. *See* Cal. Pub. Util. Code § 381.1.
45 *See* Cal. Pub. Util. Code § 366.2(c)(3).
46 *Id.* at (c)(17).
47 *See* Cal. Pub. Util. Code § 394.25(b)(9).
48 *Id.* at (b)(3).
49 Cal. Pub. Util. Code § 387(h).

AB 117 expressly establishes a role for the Commission in the implementation process. Other than the roles carved out for oversight of RA compliance and renewable integration purposes, the Legislature left financial and rate oversight to the local governing body. The Commission thus should reject SCE's proposal to step across the jurisdictional boundary to unilaterally terminate a CCA's registration.

V. REQUIRING LSES TO INCLUDE CONTRACT PROVISIONS FOR ASSIGNMENT TO THE POLR WOULD RISK UNENFORCEABILITY IN BANKRUPTCY, INCREASED CUSTOMER COSTS, AND UNINTENDED MARKET CONSEQUENCES

Early in this proceeding, Commission staff raised the possibility of assigning contracts of a failing LSE to the POLR upon customer return.[50] Certain parties continue to support this concept, including the California Energy Storage Alliance (CESA), the Solar Energy Industries Association (SEIA) and the Large-scale Solar Association (LSA) (SEIA/LSA), and Small Business Utility Advocates (SBUA).

CESA and SEIA/LSA suggest *mandatory* novation of contracts to the POLR upon a return of customers. They suggest this tool could lower financing costs by providing more certainty to financers that the contract will remain intact in the event of an LSE deregistration.[51] SEIA/LSA's novation proposal would apply only to CCAs and explicitly exclude ESPs.[52] Such an exclusion would be arbitrary and further distort market conditions by putting CCAs on an unequal playing field with ESPs and IOUs. The Commission should not adopt requirements for one set of LSE contract while not requiring the same of other LSEs. No other party – notably including the IOU POLRs – support the SEIA/LSA solution. The IOUs do not support

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[50] *Administrative Law Judge's Ruling Directing Further Party Comment, Requesting Party Proposals, and Amending Procedural Schedule*, R.21-03-011 (Nov. 23, 2021), Attachment 2, at 3.

[51] SEIA/LSA Comments at 7.

[52] CESA Comments at 3.

mandatory assignment, noting that (1) the contracts were not reviewed for reasonableness by the Commission, "run[ning] afoul of the Commission's statutory duty to ensure that IOU rates are just and reasonable;[53] (2) because the POLR would play no role in negotiation, the contract terms and provisions may be unacceptable to the POLR;[54] and (3) mandatory contract assignment could increase stranded cost risk given the POLR may not need the contracts from the returning LSE.[55]

Given their concerns around mandatory contract assignment, the IOUs suggest any assignment of contracts to the POLR should be *voluntary*. Other parties, including CalAdvocates and Utility Consumers' Action Network (UCAN), support the inclusion of right of first refusal (ROFR) clauses into contracts. The Commission should not adopt requirements to include voluntary contract assignment provisions or ROFRs. Adopting such a requirement could have significant cost impacts on existing and future contracts in order to prepare for an event unlikely to occur in the first place. This is due, in part, to the need to underwrite the contract based on the credit risk of both counterparties. PG&E is the designated POLR for its service area and has maintained non-investment credit ratings since it entered bankruptcy. Further, as explained in CalCCA's opening comments and in the workshop, it is unlikely these provisions would be upheld in bankruptcy court.

The Utility Reform Network (TURN) suggests that in lieu of contract assignment, the Commission should consider a requirement that LSEs perform hedging of capacity and energy covering at least 6-12 months that can be transferred to the POLR in the event of a default.[56]

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[53] SCE Comments at 3.
[54] SDG&E Comments at 3.
[55] PG&E Comments at 16.
[56] *Comments of The Utility Reform Network on the March 7 Workshop and Responses to Questions in the February 24, 2022 Ruling of Administrative Law Judge Hecht*, R.21-03-011 (Mar. 28, 2022) (TURN Comments), at 7.

"Transfer" is just another word for "assign." Despite TURN's assertion that, "[t]ransferable short-term hedges could be less complex than requiring ROFRs for long term contracts,"[57] the process would be no less complex and no more likely to survive bankruptcy than any other assignment of a contract that inherently has value. For this reason, TURN's proposal should be rejected.

For all these reasons, the Commission should not adopt long-term procurement contract or short-term hedge assignment, whether voluntary or involuntary.

VI. A COMMISSION-REGULATED PUBLIC BENEFIT CENTRAL ENTITY IS A BETTER LONG-TERM SOLUTION FOR POLR SERVICE, RELIABILITY AND OTHER CRITICAL FUNCTIONS

In its comments, TURN "supports consideration of alternative POLR structures including the development of a statewide nonprofit entity that could assume this responsibility."[58] CalCCA agrees with TURN. The Commission should explore a central entity regulated by the Commission that could provide POLR service as well as other reliability functions such as local RA procurement (currently performed by PG&E and SCE), system and flexible RA procurement, and provision of default service. Such an entity, which likely would require legislation, may better ensure competitive neutrality and remove burdens from the IOUs for central procurement.

Indeed, PG&E's comments highlight concerns with placing PG&E in the POLR position. In Appendix A of its comments, PG&E lists three factors that may limit their ability to access capital:

1. Quarterly earnings blackout
2. Limit on the amount of borrowing available and/or authorized

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57 TURN Comments at 7.

58 *Id.*

3. Financial market conditions

The first two factors point to a conflict between providing POLR service as an IOU. The IOU as a vertically integrated, for-profit entity has many demands upon its finances. These include infrastructure build, operational needs, and research and development funding, among others. A for-profit entity would rather use its financial capacity to earn a return for investors, and POLR service does not produce a return. In contrast, a centralized public benefits corporation subject to Commission regulation could instead focus on central procurement using resources unencumbered by other demands. For these reasons, the Commission should expedite Phase 2 of this proceeding, where the Commission will consider entities other than the IOUs as POLR.

VII. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the recommendations herein and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,

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