

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

Order Instituting Rulemaking to Examine the Commission's Future Energy Efficiency Policies, Administration and Programs	Rulemaking 01-08-028 Filed August 23, 2001
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**WOMEN'S ENERGY MATTERS
COMMENT ON ADMINISTRATIVE STRUCTURE PROPOSALS**

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Women's Energy Matters (WEM) appreciates this opportunity to comment on Administrative Structure Proposals submitted to the California Public Utilities Commission April 8, 2004. Our comments cover general principles in Part I, analysis of specific proposals in Part II, and comments on statewide scope and ease of contracting in Part III. Comments by Paul Fenn of Local Power and Maurice Campbell of Community First Coalition are attached as appendix A and B.

The five proposals are identified herein by their authors as follows:

CCEE: the *California Standard Offer Program* (CSO), submitted by the California Coalition for Energy Efficiency, which includes WEM

TURN: *Efficiency California*, submitted by The Utility Reform Network (TURN) et al.

NRDC: *Reaching New Heights*, submitted by Natural Resources Defense Council (NRDC) et al.

CAL-UCONS: *FOCUS*, submitted by CAL-UCONS

IOUs: *Ensuring a Reliable and Sustainable Energy Efficiency Future*, submitted by Southern California Edison (SCE) et al.

New Members of California Coalition for Energy Efficiency

WEM proudly announces the following new members have joined the California Coalition for Energy Efficiency in support of the California Standard Offer Program:

Custom Distributors, Inc. of Monrovia CA
Energx Controls, Inc. of Cypress CA
Free Lighting Corporation of Houston TX
Quality Conservation Services, Inc. of South San Francisco CA
SESCO, Inc. of Claremont CA

TEDCO Energy Services, Inc. of Amarillo TX
Winegard Energy, Inc. of Duarte CA
Critical Mass Energy & Environment Project of National Public Citizen
San Francisco Green Party
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Part I. General Principles: Only CCEE’s proposal enables real Integrated Resources Planning to achieve Energy Action Plan goals.

Utility conflicts of interest with saving energy are massive and must not be ignored

All proposals, except CCEE’s, allow utilities and/or utility-dominated entities to control many if not most key functions in their structures, including administration, program selection, program implementation, and Evaluation, Measurement & Verification (EM&V). This creates an insurmountable barrier to Integrated Resources Planning and the Energy Action Plan’s priority “loading order” of Energy Efficiency and Renewables before fossil-fueled power plants.

Investor-owned-utilities (IOUs) have a huge conflict with conservation — selling more energy raises their profits and their stock prices (see further discussion below). Their participation in Energy Efficiency structure must be carefully limited, as CCEE does, to prevent them from subverting program goals.

As WEM has explored in detail in previous filings in this proceeding, IOUs have delivered only a fraction of the energy savings that could be achieved with Public Goods Charge funds and have damaged the credibility of EE resources in several ways. Briefly: Utilities have a long history of high administrative costs and other wasteful spending; failure to fulfill program targets, particularly for residential customers; refusal to offer many high-performing energy measures; reporting phantom savings as if they were real; and providing confusing reports that prevent full analysis of what they have actually spent and achieved. They have gobbled up half a billion dollars worth of Shareholders Incentives based on these flawed reports.

Utilities have formed sweetheart relationships with several EM&V contractors who measure their programs as well as non-utility programs. They award no-bid lucrative studies to these contractors, including studies of “deemed savings” (how much energy is assumed to be saved by a particular measure), some of which do not pass the laugh test.

Utilities have thrown numerous roadblocks in the path of non-utility implementers as well as their own subcontractors. They have used their administrative role and their control of CALMAC (the Calif. Measurement Advisory Council) to withhold information and prevent discussion of the superior cost-effectiveness of non-utility programs.

NRDC acknowledges none of this history. It claims, “The CPUC is decoupling the utilities revenues from sales, as required under state law, to ensure that the utilities do not profit by selling more and more electricity and are not penalized for saving it.”

(NRDC, p. 15) The passage ends with footnote 15, referring us to §739.10. Here is that entire section:

739.10. The commission shall ensure that errors in estimates of demand elasticity or sales do not result in material over or undercollections of the electrical corporations.

It’s hard to see this little passage as providing much protection against utility conflict of interest. Utility economist, Dr. Eugene Coyle (formerly of TURN) states that efforts to decouple revenues from sales have never been all that successful, although debates on the question remain heated. However, the key point Dr. Coyle made in the early 1990s has never been refuted: utilities have an irreconcilable conflict of interest because utility *stock prices* are inextricably linked to expanding electricity sales. As long as electricity (and or gas) sales remain the primary product(s) of utilities, this will be true. That fact would only change if and when energy efficiency services provide the majority of utility sales (surpassing electricity, gas, transmission & distribution, and generation, if any).

Dr. Coyle’s testified extensively on this point before the CPUC as part of his exhaustive study of the “shareholders incentive” mechanism in the early 1990s on behalf of TURN. WEM’s 3/29/02 comment in the Annual Earnings Assessment Proceeding (AEAP), concerning why the Shareholders Incentive decision should be re-examined, quoted TURN’s summary of Dr. Coyle’s testimony. We repeat that here:

The management of an investor-owned utility is obliged to act in the best interests of the utility’s shareholders. Under the current regulatory framework, this means utilities have a drive for growth. Utility management has the responsibility to promote their shareholders’ interests by maximizing the value of shares on the stock market... by pursuing policies which increase dividend growth.

In the long run, for earnings to grow there must be sales growth... A utility seeking to best serve the interests of its shareholders will obviously, and must, choose to pursue increased sales.

Sales growth means investment growth... A utility simply cannot deliver increasing amounts of its product without increasing its capital investment in corresponding plant expansion or additions... Thus the interrelated drives for growth in sales, investment and earnings per share form a powerful incentive for a utility to pursue supply-side investment opportunities...

The utilities' drive for growth exists irrespective of how rates of return are set by the Commission under the current regulatory framework. However, where the authorized rate of return on the new investment exceeds the cost of the capital invested, the drive for growth is exacerbated by the additional opportunities for growth in earnings per share which may be achieved under such circumstances.” (Testimony of Dr. Eugene Coyle, TURN Opening Brief, 7/19/93, p.3-4, quoted in WEM's Comment in A01-05-003 (AEAP) emphasis added.)

Coyle's point was simply ignored by the CPUC in the early 1990s, and in the Commission's 10/20/03 Decision 03-10-057 in the AEAP it was ignored again.¹

Shareholders Incentives — Back from the Dead

We do not go deeply into the question of Shareholders Incentives here, since they are the subject of future comments. However, three proposals — Joint Utilities, NRDC, and even TURN, all talk about incentives for utilities as if they were a done deal. Therefore, we offer a few more remarks:

After two years of study, Dr. Coyle concluded that Shareholders Incentives were nothing more than a bribe to utilities and a terrible waste of ratepayer money.

Decision 03-10-057 summarizes the amounts of Shareholders Incentives utilities have claimed based on the October 1994 decision:

Collectively, the utilities request approximately \$315 million in profits for programs associated with the shared savings incentive mechanism adopted in D.94-10-059. This translates to an average of \$105 million in claims for profits per program year when the incentive mechanism was in effect. This level of profits is within the range of profit levels presented in D.94-10-059 for performance at or above target. (D. 03-10-057, p. 18, emphasis added)

Note: these are only the incentives for program years 95-97; they were also dished out in the “experimental” years of the early 1990s and again after deregulation went into

¹ The decision was drafted by ALJ Gottstein, who eventually replaced ALJ Walwyn in the AEAP proceeding. That proceeding was suspended for over a year after WEM filed the above comments.

effect in 1998. WEM's understanding is that IOUs have claimed a breathtaking total of more than a half billion dollars of Shareholders Incentives since NRDC and its "Collaborative" of the late 1980s promoted the notion of giving away public purpose money to IOU shareholders. Commissioner Lynch finally pulled the plug in 2002 — but incentives are once again on the table in this proceeding.

Postscript: The Energy Foundation funded Coyle's study of the Shareholder Incentive mechanism. His failure to parrot the NRDC-IOU company line favoring shareholders incentives irritated the Energy Foundation so much that its director told TURN it would never get another dime from EF. He later relented.²

Energy Foundation-funded RAP report omits any mention of Texas

Energy Foundation³ is still a major, if seldom seen, player in Energy Efficiency proceedings at the CPUC. In preparation for the Administrative Structure Workshop, parties were ordered to read the report by the Regulatory Assistance Project (RAP) that purportedly examined all new statewide administrative structures in the US. The study was commissioned by the CPUC but funded by Energy Foundation.

Guess what, no Texas in the RAP report. We asked the presenter why they had excluded it. He mumbled something like, "We thought that system was so different, nobody would be interested."

Who made the decision to exclude Texas, which has one of the most successful and efficient systems for implementing energy conservation in the U.S.? Was it the Commission? RAP? Or Energy Foundation? Or was it NRDC or the utilities?

Conflicts of interest are not resolved in any proposals except CCEE's

Proposals by the utilities, NRDC and TURN all claim that there are no conflicts of interest or they are resolved in their proposed structures. This is not true. (We analyze each proposal in detail in Part II, below.)

CCEE's proposed structure fully recognizes the various conflicts of interest that exist and provides clear and powerful mechanisms to prevent them from affecting EE programs.

² Coyle resigned in 1996 due to TURN's refusal to oppose the deregulation law, which NRDC supported. No Energy Foundation grantee opposed AB1890. In fact, no organization in California opposed it.

³ The ties between Energy Foundation and NRDC are extensive. See *Who Owns the Sun*, by Dan Berman and John O'Connor, 1998 Chelsea Green, and October 8, 1998 issue of the *San Francisco Bay Guardian*.

First of all, the California Standard Offer Program only pays for verified energy savings, verified by EM&V experts with no financial ties to the administrators or implementers and with no stake in the findings. This addresses the most glaring conflict of interest — the utilities’ responsibility to their shareholders to increase energy sales.

Second, we eliminate hanky panky in the selection process by making it first-come, first serve, the same conditions for all applicants who meet basic criteria of proper licensing, insurance, and a clean record, free of bankruptcies or convictions for environmental or economic crimes.

Third, we require every participant to choose only one role — either Administration, Implementation, or EM&V. It should be obvious that a party should not administer programs that it implements, as the utilities’ propose to do, and that the measurement of savings function must be entirely separate from both administration and implementation.

Fourth, we require EM&V functions to be under the control of the CPUC/System Director. Since payments depend on the amount of energy saved, Implementers have a reason to influence EM&V, if they could. Administrators, too, may want their numbers to look good in order to have their contracts renewed. The System Director, however, is motivated to make sure energy savings figures are accurate, to back up its demand that Cal-ISO and load-serving entities take EE resources into account for “integrated resources planning.”

REAL Integrated Resources Planning is only possible with CCEE structure

WEM finds it astonishing that the CPUC, CEC, CPA and Legislature persist in discussing Integrated Resources Planning (IRP) as if everybody is going to be nice and get on board because it’s the right thing to do.

Utilities wax eloquent as proponents of IRP to justify grabbing control of EE in this proceeding and to justify building new power plants and LNG terminals in other proceedings. WEM wonders, doesn’t anybody remember the last IRP attempt, in the early 1990’s? The Commission dragged IOUs kicking and screaming into IRP. Then, for a time, the utilities seemed to embrace the concept. As Bill Marcus of JBS testified on behalf of TURN in the Edison’s General Rate Case 12/6/02, Edison filed amazing projections of Energy Efficiency spending in the early 1990s that were different from

their budgets submitted in the EE proceeding. It appears that Edison (and possibly other utilities) offered inflated EE projections in order to justify their refusal to purchase renewable energy. Within months of getting FERC's approval to refuse renewables, all the utilities slashed EE budgets, ended their IRP charade, and rushed forward to deregulation.

Paul Fenn, author of the Community Choice law, argues that Community Choice Aggregators are the only entities whose interests are thoroughly aligned with IRP and the "loading order" prioritizing EE and renewables. That's because CCAs are customers and communities of customers. Customers, especially low-income minority communities living with the health impacts of fossil fuel power plants, are the ones who care the most about lowering utility bills through EE and choosing energy efficiency and renewable energy instead of more dirty power plants dependent on non-renewable fuel imported from all over the world at great cost in treasure and broken lives.

Customers, especially in communities like Bayview-Hunters Point, have few illusions about how hard it is to switch to the clean energy system envisioned by the Energy Action Plan. They have to live with PG&E's plant spewing out particulates year after year, while every deadline to shut the plant down passes and gets pushed out further into the future — now it's 2008, or maybe 2011. They call and complain countless times, but the Air Board is moving ahead with a new permit and states in documents presented at its hearing on April 6, 2004, that "there are no alleged complaints." They sit in meetings and hearings for 2 years arguing with Cal-ISO and PG&E, who agree with each other that they can't solve reliability problems with Energy Efficiency or Distributed Generation (those numbers are just too small to count), and EE projections can't be trusted. The only "real" things are power plants and transmission lines under construction — even though ISO studies show the new Jefferson Martin transmission line causes congestion and reduces power to the City, which must be fixed either by building more transmission lines or building new power plants in the City — or maybe both. The community shows up at more meetings for six months on the "peaker plants" and vociferously objects, but in March, 2004, the City's public power department, SF PUC, still files an Application for Certification for three more power plants in Potrero Hill. SF PUC claims that these will result in a "cleaner" environment even though there is no plan

to shut down the Mirant plant, just ten blocks from the Hunters Point plant. The community attends dozens of meetings on the PG&E/San Francisco “Pilot” Peak Energy Program; and files comments and motions and more comments with WEM, trying to get PG&E, the City and the Commission to focus on the fact that more than half of the promised 16MW for \$16.3 million are phantom savings or short-term measures that will be gone in a year. The community offers detailed proposals for the money to be redirected to real and long-lasting energy savings that would also benefit the community, but the months go by and there’s still no final ruling. However, the Commission has plenty of time to entertain proposals for expanded gas infrastructure including LNG facilities and new utility-owned power plants. The community asks whatever happened to the solar/EE bond measures passed by voters in 2001, but the SFPUC ignores them and the NRDC-led San Francisco Dept. of the Environment (SFE) is too busy cranking up its “mitigation” and “community benefits” machine, which by the way will fund SFE salaries for a while now that the Energy Efficiency Pilot money is all parceled out.

It’s all very well for Berkeley academics, CPUC, CEC and CPA regulators, and legislators in their air-conditioned capitol to while away the time with fantasies of Integrated Resources Planning, but when the rubber hits the road, it’s the people of Bayview Hunters Point and a few scruffy activist organizations (including the Community First Coalition, WEM, and Local Power) up against the money and power of the energy giants.

Nevertheless, the communities of BVHP and Potrero have beaten back nearly 800 MW of gas-fired power plant proposals over the past ten years and are determined to see that San Francisco gets all new supplies it needs from energy efficiency and renewables instead. With tools including the Community Choice law, the solar/EE bonds — and hopefully, the California Standard Offer EE Program — the people of southeast San Francisco are moving forward with a real Energy Action Plan.

The California Coalition for Energy Efficiency is firmly rooted in the reality of the California power system and addresses all barriers, whether economic, political or technological. Our initial signers include members of the Bayview Hunters Point and Potrero communities and we are gathering statewide and national support. We have many

allies, even in this proceeding, although most have been too frightened, up to now, to come forward.⁴

Part II. Analysis of Specific Proposals

A. PROPOSAL OF NRDC, ET AL.

NRDC proposes to place essentially all funding and all decisions in the hands of the utilities (IOUs). It entrenches the IOUs in their position of contracting with themselves, instead of others, thus placing all non-self-dealing contractors (competitive firms and local governments) at a huge disadvantage.

NRDC reserves to the IOUs the role of administrators, allowing no competition and providing no means for replacing the IOUs, regardless of their poor performance and conflicts of interest.

Under the NRDC plan, the IOUs choose all of the programs to be implemented, with no limit on the amounts of money the IOUs can reserve to themselves for implementation. The fig leaf of some funds reserved for competitive bidding is in fact not meaningful; see below. This is fundamentally anti-competitive and, economics teaches, will lead inefficiency, waste, and a fossilized market, as competent potential competitors leave the field, as they realize that the fix is in.

NRDC proposes to establish new entities with no controls to prevent their domination by the IOUs. Because the NRDC plan places nearly all decisions involving use of EE funds in the hands of the IOUs, their domination of the new entities will surely occur. NRDC proposes that the IOUs select all EE programs to be funded and (p. 14) that the IOUs select all EM&V contractors as well, both those who conduct the "overarching studies" **and those who evaluate individual programs**. The NRDC plan (p. 14) has the CPUC establish EM&V protocols, based on the studies done by consultants selected by the IOUs. Then the IOUs themselves will develop "high level individual program EM&V plans" and then select all of the EM&V consultants to determine the energy savings achieved by each program. The IOUs are provided with the

⁴ As WEM pointed out at the workshop, the "confidentiality" provision for anonymous support for these proposals overlooked one crucial problem: the CPUC staff, which would see the identities, cannot be trusted not to leak the information to the utilities.

means to choke off all competition by selecting (and paying with ratepayer dollars) the evaluators of their own programs and of all competing programs.¹

It is truly difficult to imagine a more anti-competitive structure or one with more built-in and severe conflicts of interest. The IOUs get to use ratepayer funds to design the portfolios, design the programs, and select every person or entity that evaluates or measures the programs. Such a proposal does not merit serious consideration in an economy that should use competition for efficiency and vitality.

NRDC envisions having the Energy Division hire an expert who is not "implementing programs in California." But is the expert advising the administrators?² NRDC mentions no financial disclosure requirements for the Independent Observer and no controls over conflicts of interest or ties to the IOUs (not included in the NRDC use of the terms "implement" or "implementer").

NRDC proposes an Efficiency Leadership Council (ELC) to advise the CPUC, CEC, and municipal utilities. Any member of the ELC should be subject to strict financial disclosure and prohibitions on conflict of interest, so that the advice provided is not self-serving and anticompetitive. Each proposed member of the ELC should disclose employer, all clients of employer, and all investments. The NRDC plan makes no mention of financial disclosure for ELC members or avoiding conflicts of interest.

Since most of the types of "experts" listed in the NRDC plan would have conflicts of interest (due to jobs or contracts with the IOUs), an ELC is not likely to be useful. A better alternative would be for the CPUC on its own to hire or contract with independent experts who do not have any conflicts of interest (which is the CCEE plan).

The same comments about financial disclosure and conflicts of interest applies equally to NRDC's proposed Efficiency Solutions Team (EST), except that the NRDC

1. NRDC offers to have ORA hire "expert consultant(s)" to scrutinize final evaluations. Unless the ORA budget for such consultants is equal to that given the utilities to select the EM&V contractors in the first place, this will not provide an effective check against conflicts of interest and anti-competitive use of the measurement and evaluation function.

² NRDC (p. 7, note 8) separates "implementers" from "utilities," even though the NRDC plan would allow the utilities to reserve essentially all of the funds for their internally designed and implemented programs. It appears, then, that NRDC is proposing that the "Independent Observer" have no financial ties to "implementers" without concern for the Independent Observer's financial or other ties to the "utilities," which under the NRDC terminology are apparently not "implementers." We ask NRDC to clarify whether its proposed Independent Observer can have any past or present financial ties to any Administrators.

plan here appears to recognize the problem of conflicts of interest by creating a "sub-group comprised of the non-financially interested parties."³ But the NRDC plan does not identify those members or how many there would be. In any event, creating such a sub-group would require extensive financial disclosures and should apply to the entire EST and to the ELC and the MEC as well.

NRDC proposes a Measurement and Evaluation Council (MEC) but again fails to provide any financial disclosure requirements or means for revealing, avoiding, and correcting conflicts of interest. Today, nearly all EM&V "experts" are being paid by the IOUs, as the IOUs enjoy near-monopoly use of public funds for measuring and evaluating EE programs. Thus, absent conflict of interest controls, we would expect the MEC to be dominated by the IOUs and their contractors. MEC appears to be a new CALMAC, complete with its severe conflicts of interest.

The NRDC plan has no limits on administrative costs.

NRDC presents nothing that would compel the IOUs to choose the most effective implementers. NRDC (p. 11) states a desire for "rebuilding of cooperative and collaborative relationships within the industry." Why do such relationships not exist now? Because the IOUs act as monopolists with the PGC and other EE funds and treat implementers as supplicants. Those who inform the CPUC about problems are shunned. A competitive marketplace itself ensures cooperation by financially rewarding success and penalizing waste. Yet, the NRDC plan has no provision for using competition to select or to evaluate Administrators.

A variation of the CCEE proposal would have the CPUC select more than one Administrator in each region or each customer category, drawing from a common pot of EE funding. Implementers could then run programs under the auspices of one or both of the Administrators. An Administrator who treats implementers like dirt would quickly

³. NRDC defines "non-financially interested" as "those parties that are not seeking to implement programs in this process." Apparently, NRDC does not recognize any conflict of interest in having employees or contractors of Administrators sitting on its proposed new boards, even though those Administrators will also be large implementers. Note that NRDC's language separates "implementers" from "utilities" (see NRDC footnote 8), even though today the utilities are in fact the biggest implementers of all. It appears, then, that NRDC is proposing that the financial disclosures not apply to utility employees or contractors, since NRDC defines the term "implementer" as not including "utilities." See NRDC, note 8. We ask NRDC to clarify whether its proposed subgroup would include any persons with past or current financial ties to the Administrators.

lose its ability to contract with implementers, as they (and the funding) would gravitate to the better Administrator.

The "public process" outlined by NRDC is nothing more than the present system of IOU domination, with a meaningless gloss of the ELC looking at what the IOUs propose. It envisions giving untold amounts of ratepayer funds to the utilities to design portfolios, with zero ratepayer funds available to any other entity for the purpose of offering competing portfolios or even commenting upon the IOUs' product. The NRDC plan allows the IOUs to reserve an unlimited portion of the funds for their own programs, although setting aside a minimum of 20% "to be competitively bid out for design and/or delivery by non-utilities" (NRDC, p. 11) These "non-utilities," however, could consist totally of utility-controlled entities we are all familiar with from the current system: IOU-controlled "partnerships" with cities, statewide marketing efforts that conveniently provide off-the-books marketing for utility (but not non-utility) programs (conveniently enabling utility programs that are non-cost-effective to appear cost-effective), and utility sweetheart EM&V contractors running their "own" third-party programs.

NRDC proposes one public meeting before the IOUs submit their portfolios to the CPUC. This defies polite comment.

As for competitive bidding, note that the NRDC plan does not require the IOUs to allow implementers to design and implement programs, as they do under the current third-party proposal (TPP) structure of the CPUC. **Instead, NRDC would allow the utilities to bid out tasks piecemeal (a little design here, maybe a little implementation here). There is no requirement for any TPPs, as now exist. The NRDC plan would be a huge step backwards for competent implementers that design their own projects.**

NRDC discusses allowing the Independent Observer and the "non-financially interested parties" some scrutiny of any competitive bidding process. But the NRDC plan does not require any TPP-type of bidding in the first place. The IOUs could simply bid out their purchase of office supplies and CFLs and call it a day (as that would likely consume 20% of the budget).

NRDC states that programs will run on 3-year cycles yet provides no means for terminating programs that are failing, so that the funds can be put to productive use.

NRDC allows the IOUs complete freedom in imposing onerous contract terms on independent implementers.

The NRDC plan is not consistent with AB 117, because it does not allow any person or entity to apply to become an Administrator, applying the AB 117 criteria to evaluation of the applications. Instead, it predetermines that the IOUs are the administrators.

B. PROPOSAL OF TURN, ET AL.

While the TURN plan is better than NRDC's, it is disappointing. Its problems include:

1. It relies on an IOU-dominated new CALMAC for creation and revision of EM&V protocols and for selecting contractors to measure the savings of all implemented programs;
2. It is incompatible with Community Choice. TURN emphasizes that the system has a single administrator — the PA. This prejudgment conflicts with AB 117, which allows “any party” to apply to the CPUC to administer cost-effective EE programs. In addition, TURN proposes for CCAs to compete with third parties and utilities as implementers, though CCAs, by statute, are administrators — they may or may not also be implementers.
3. It apparently allows IOU-dominated administration (in the form of a PA comprised of a firm with IOU parents or affiliates) and resulting self-selection of the IOUs' internally designed and implemented programs, regardless of the availability of superior programs designed and/or implemented by other firms or entities.

Unless TURN adds new restrictions to its proposal, the envisioned Energy Efficiency Programs Administrator (PA) is quite likely to be a consortium of the IOUs. The CCEE proposal, in contrast, has the CPUC itself hire the System Director as an office of the CPUC itself, not a consortium of outside private or public entities. Thus, we view TURN's proposal as very likely to saddle us with the IOUs again as permanent administrators but with even greater powers (since the TURN proposal has the PA take over many functions now performed by the CPUC and the ED, such as portfolio planning).

The TURN plan also includes no mechanisms to avoid conflicts of interest in the PA's selection of implementers. If the PA is a consortium of IOUs, for example, the TURN plan does not prevent the PA from contracting with themselves for implementation functions or for EM&V functions. The TURN plan (p. 6) states that the PA **itself** "cannot be a program implementer," but TURN does not ban implementation contracts for the members of a PA consortium or the owners of the PA or the affiliates, parents, or subsidiaries of the PA. The TURN plan (p. 10) envisions that IOUs will be implementers.

Even if the PA is not affiliated with the IOUs, the TURN plan has no provision for evaluating the independence of prospective PAs. Could a firm (or group of firms) which does \$100 million of business now with the California IOUs become the PA? Could such a firm or group of firms continue its paid work for the IOUs?

The TURN plan (p. 12) has the heavily conflicted CALMAC determine the energy savings from each program.⁴ TURN's version of CALMAC would remain dominated by the IOUs. TURN admits that the PA would be in a minority, with two appointees, but does not otherwise modify the current utility domination of voting rights on CALMAC, including the vote of the public interest group well known for representing IOU interests (NRDC). This places all independent implementers at a severe disadvantage (since TURN envisions that the IOUs themselves can be implementers). Allowing the PA to appoint 2 members of CALMAC is no solution, since the PA could well be affiliated with the IOUs. Further, the IOUs and their contractors would continue to have access to ratepayer funds (PGC and others) to pour into dominating CALMAC's studies and deliberations, while no others would have access to such funds for that purpose.

The TURN plan includes no CALMAC representation for private, competitive firms in the energy efficiency business and none for state or local government bodies that actually implement energy efficiency programs. It would place competitive firms and implementing government bodies essentially under the control of the same IOUs who will be "competing" for use of the EE funds as implementers, because a process completely dominated by the IOUs will determine if the

4. Turn (p. 8) also has the PA itself conducting limited EM&V on implementers' programs.

programs implemented by the competitive firms or government bodies are saving energy and how much. EM&V protocols are not physics; they include many opportunities for interpretation and shading. With the IOUs in charge of both creating the protocols in the first place (via CALMAC) and then implementing them (via CALMAC hiring of EM&V contractors to determine the savings from individual programs), competitive firms and local governments stand no chance of obtaining EE funding, if any of the IOUs wish to reserve it for themselves.

The TURN plan is not consistent with AB 117, because it does not ensure that the Administrator is not affiliated with or otherwise controlled by one or more of the IOUs. Thus, the TURN plan fails to adopt its stated policy of not "allocating all energy efficiency program funding and responsibilities to the Commission's jurisdictional utilities." (TURN, p. 31). Unless TURN adds restrictions to its plan, the PA could be affiliated with the IOUs or with energy efficiency firms that do significant business with the IOUs. That is a major reason that the CCEE proposal calls for a System Director (an office of the CPUC itself) that hires Administrators who do not have conflicts of interest.

There is no statement of who appoints the members of the EEAC. Perhaps the members are to "volunteer" on their own. If so, no members of the EEAC should be paid with any form of ratepayer funds, unless all of them are.

C. IOU Proposal: "Just give us the money and don't ask questions."

IOUs justify their grab for control of all functions and funds with the spurious claim that they have been offering the most successful programs. The SESCO ranking of cost-effectiveness (8/1/03) clearly shows that utilities' residential programs are all at the bottom (except for the spectacular success of their captive contractor, ARCA), and their commercial/industrial programs are no better than non-utility programs, despite the utilities' many advantages of off-the-books marketing and monopoly of statewide programs.

Edison also offers the ridiculous notion that regions and local governments "are counting on us to recognize their specific needs." In fact, Commission President Peevey remarked last week that CCAs are "springing up like wildflowers" all over the State. This is happening because utilities are only interested in their own needs, have devastated the economies of local communities and failed to offer relief in the form of EE.

The IOUs propose an even more utility-controlled version of CALMAC (called (CEMAG). Their proposal features three toothless “advisory” bodies, dangling offers of compensation for dozens of consultants and utility-friendly “public interest” organizations like NRDC and Latino Issues Forum. No effort is made to ensure the independence of the members of these bodies. They are stacked with utility-friendly PhDs, delighted to squander ratepayer dollars on pointless pontificating.

The IOU game plan is to subsume Public Goods Charge programs under IOU procurement:

Most importantly, accountability for meeting Commission energy efficiency goals is placed squarely upon the IOUs through their ultimate responsibility for program choice and management of the energy efficiency portfolio, which is a subset of the IOUs’ procurement portfolios. (p. 3)

All program planning, solicitation and selection is under the utilities, with merely an opportunity for the CPUC to rubber-stamp their decisions. Energy Division staff is saddled with detail work that the IOUs want to dump on them. Commission review of programs takes place only every two years.

The IOU proposal, like TURN’s, is incompatible with AB117 because it sees CCAs only as implementers, not administrators.

Part III. Statewide scope and ease of contracting

TURN, NRDC and utility proposals make much of the “statewide” scope and streamlining of their administrators, whether the utilities or the PA, in TURN’s case. However, in truth, CCEE’s structure offers the broadest, smoothest-running statewide programs and ease of contracting, although there are multiple administrators.

The Commission has complained that “Statewide” programs currently offered by different utilities are not exactly uniform, and we believe that situation would continue in other proposed structures. Utilities have different relationships with different customers, and tend to treat some better than others.

By contrast, under CCEE’s proposal, a commercial/industrial entity, such as Safeway, Bank of America, or Intel, with multiple facilities around the State, has an opportunity to work with a single implementer or even design and implement its own program to specifically address the unique needs, characteristics and timelines of all of its

branch locations. At any time, the implementer would simply apply for funds in multiple territories using simple, standard forms, and maintain reports on achievements and expenditures in different territories. The only restriction would be the limit of 20% maximum in each territory per implementer. These are simple tasks in comparison with shoe-horning such a customers' needs into programs offered in different utility territories by different implementers or different IOUs. Such programs, furthermore, are only offered on one/two/or three-year cycles, and only offer a limited amount of a limited range of measures per cycle. CCEE's program encourages the most comprehensive retrofits possible.

There is no danger that big corporations would grab all the money, because of the 20% limit on a single implementer and because implementers working with smaller companies have an opportunity to apply for the smaller contract sizes.

An implementer working with non-chain operations would have the problem of marketing its services to more entities, but this is true regardless of administrative structure. CCEE retains the statewide marketing opportunities of the current structure, but enhances the effectiveness of statewide marketing because of the fairness and transparency of the system, and the elimination of conflicts of interest. Statewide education and marketing, under CCEE's proposal, is competitively bid by a special Administrator hired by the CPUC/System Director. This Administrator is tasked with exploring the types of education and marketing that would encourage the most widespread participation in all programs, not just utility programs as in the current system or the other proposals.

Conclusion

WEM has thoroughly analyzed all the proposals submitted to the Commission and concludes that the CCEE structure provides the most robust Energy Efficiency program ever offered in California. It is the only one that guarantees energy savings while responding nimbly to changing market conditions. It encourages the greatest benefits to customers and the environment, and develops a diverse, sustainable infrastructure that has the capability of rapid expansion to capture all energy efficiency potential. It can easily and fairly extend to municipal utilities, water districts, Regional Energy Offices and CCAs as well as traditional utility territories.

Dated: April 26, 2004

Respectfully Submitted,

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Attachment A

Women's Energy Matters
by Paul Fenn, Local Power
R.01-08-028
April 26, 2004

LOCAL POWER TESTIMONY ON PROPOSALS FOR INDEPENDENT ADMINISTRATION OF ENERGY EFFICIENCY PUBLIC GOODS CHARGE FUNDS

Local Power hereby submits testimony in R.01-08-028 on the relationship between the Community Choice Aggregation (“CCA”) law, AB117, and the administration of energy efficiency funds. As all three utilities neglected to answer ALJ Gottstein’s requirement that parties’ proposals include analysis of their compliance with AB117, and even some cities proposed systems that are inconsistent with AB117, we attach this testimony to the comments of Women’s Energy Matters with the hope of adding clarity to the discussion.

1. CCAs are Administrators, Not Implementors

TURN, ORA and others have suggested that CCAs should compete as implementors of energy efficiency programs against suppliers of energy efficiency services. This is inconsistent with AB117, which defines CCAs as collections of ratepayers seeking to leverage their purchasing power . AB117 defines CCAs *as customers*. As the Legislative Counsel’s AB117 digest explains, “this bill would authorize *customers to aggregate* their electrical loads as members of their local community with community choice aggregators, as defined.” (AB117, Leg. Counsel’s Digest).

Thus, CCAs are customers:

“Customers *shall be entitled to aggregate* their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2” (AB117, PUC 336 (a)).

Section 366.2 (a) (1) affirms this definition of CCAs as customers:

“Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.” (AB117, PUC 366.2(a)(1).

As customers, not “market participants,” CCAs are *unable* to compete with any market participant, and remain captive utility customers for billing, metering and distribution services.

Furthermore, under AB117 only licensed Electric Service Providers (“ESP”) may provide a CCA with service. This is undertaken through a competitive bidding process known as a Request for Proposals (“RFP”) issued by a CCA to ESPs.

In other words, AB117 does not envisage CCAs as implementors, but, rather, as administrators, of contracts to third parties, a list of which must be included in a CCA’s implementation plan to the Commission.

Furthermore, CCAs are subdivisions of the State of California. AB117 restricts CCAs to municipalities, counties, and Joint Powers Agencies. As agencies of the state, CCAs are subject to sunshine ordinances and public meeting laws, are non-profit, and democratically elected. In consideration of these facts, the Commission should treat CCAs as administrators under the meaning of AB117, not as implementors or market participants.

This is why it is so critical that the Commission not establish Community Choice Aggregators in a competitive relationship with their utilities. Customers cannot compete against their energy supplier. Rather, these customers are served by the investor-owned utility, may elect to choose a competitor to serve them, but will continue to be provided distribution, metering and billing service by the utility even in the event that it does

depart from utility procurement contract with an Electric Service Provider.

Thus, the designation of CCAs as Load Serving Entities (“LSE’s”) under the Commission’s nomenclature, is inappropriate. The CCA is a customer, not a “market participant.”

2. Integrated Resource Planning

Any new system of energy efficiency administration should be integrated with electric utility procurement and Community Choice Aggregation, the regulations for which are now being completed in R.01-10-024 and R.03-10-003 respectively. In all three of these very related proceedings, virtually all parties subscribe to Integrated Resource Planning (“IRP”) as a framework within which to procure electricity and implement energy efficiency programs. Most recently, on April 1, 2004 Pacific Gas & Electric (“PG&E”), Southern California Edison (“Edison”) and San Diego Gas & Electric (“SDG&E”) submitted “Long Term Resource Plan Outlines” in R.01-10-024, requesting that “all three utilities can use a ‘common approach’ to integrating energy efficiency procurement activities into their overall procurement forecasts and resource acquisition strategies (SDG&E, April 1, p.4).

CCA’s which under AB117 are authorized to administer energy efficiency programs (PUC Section 381.1), require the same opportunity to integrate their demand and supply side investments within a single process. In order for IRP to be implemented, therefore, both CCAs and electric utility procurement must be able to plan demand- and supply-side investments within a common planning window, and to secure the availability of Public Goods Charge funds in a long-term contracting environment.

It is a not insignificant fact that both CCAs and electric utility procurement involve long-term contracts. In order to facilitate Integrated Resources Planning for both AB57 (2002, Wright) procurement authorizations and AB117 (2002, Migden) CCA load departures,

any energy efficiency funds administration system adopted by the Commission should be prepared to accommodate IRP for either form of long-term contracting.

Electric Utility Procurement is authorized by the legislature pursuant to AB57 (Wright, 2002), and Community Choice Aggregation is authorized pursuant to AB117 (Migden, 2002). Together, these two laws created a hybrid electricity system in California that maintains a system of cost-based electric utility procurement and Default Service while also giving ratepayers the option of choosing an Electric Service Provider and departing from electric utility procurement through a state-local government certification, solicitation and administrative process - CCA.

These two laws were in fact signed by Governor Davis on the same afternoon. Apart from the few remaining Direct Access customers in California, and apart from the political future possibility of further electric deregulation by the legislature in the form of the so-called Core/Noncore proposal, for the foreseeable future the Commission's jurisdiction will primarily involve either electric utility procurement or Community Choice Aggregation load departures from electric procurement. AB117 establishes that any administrator of the funds must accommodate the special needs of a CCA (Section 381.1(c) of the Public Utilities Code).

3. Solution: Standard Offer

In our opinion, the Standard Offer system proposed by WEM would best accommodate an Integrated Resource Planning calendar, or "Integrated Resource Calendar" ("IRC") under which utility procurement and CCA load departures may follow a scheduling to determine what blend of short, medium, and long-term electric utility procurement contracts should be authorized, allowing CCA and utility procurement to co-exist under an umbrella of integrated resource planning.

AB117 contains specific statutory guidelines for the Commission to act as gatekeeper for

CCA load departures relative to electric procurement plans. In particular the Commission is required to set the date for a CCA implementation according to the impacts of the departure on the utility's "annual" electric utility procurement plan:

"No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost-recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission." (AB117, 366.2 (c)(8)).

Thus, the Commission's administrative system for CCA CRS should be based on an annual IRC.

We are proposing that the California Public Utilities Commission ("Commission") has the opportunity to establish a system of administering electric utility procurement, CCA load departures and related Integrated Resource Planning elements under an annual IRC according to which the Commission may plan, triage and coordinate between CCA load departures and electric utility procurement according to a uniform schedule.

The implementation of an IRC by the Commission should involve a gating process in which utility procurement authorizations are reduced to accommodate IRC-compliant CCA load departures in process at any given time. With both electric utilities and CCA's seeking to undertake Integrated Resource Planning, a uniform schedule will allow the Commission to stagger contract authorizations in order to avoid stranded costs or assets, while also dispensing with Public Goods Charge funds in a manner that supports IRP for either transaction type.

Recognizing this new reality, the Commission approved a decision on January 22, 2004, requiring the state's three investor owned utilities to resubmit electric procurement forecasts that include scenarios representing a "widespread adoption" of Community Choice. Thus, R.01-10-024 presents an opportunity for the Commission to adapt its

forecasts to current CCA activity levels for the first time.

4. Current CCA Activity

The current level of CCA activity gives a better sense of how an IRC would work. Over a dozen California jurisdictions representing 3 million residents are now spending scarce funds during a budget crisis year to implement Community Choice, the current batch committing, at minimum, to a 40% RPS goal. The Commission should take this group as sample 2004-6 load departure candidates and model its IRC gating parameters accordingly.

Thus, approximately 11% of statewide IOU (kwh) customer load is already seeking to depart from utility procurement, with 4% of statewide IOU now earmarked for RPS compliant renewables and energy efficiency - most of which will have to be new. Thus, the 2005-6 batch of CCA cities already formed, if successful, will reduce their upstream conventional portfolio demand by not 8% (the 20% RPS requirement) but 28% by 2020, exceeding by far the CEC's forecasted electricity demand increase for that year.

CCA will likely become a significant piece of the Commission's procurement process. If successful, the CCA cities formed by the Local Government Commission and San Francisco will have a significant impact on both electric procurement and gas forecasts, with a the 40% RPS dramatically reducing the demand for both electric utility procurement and added new utility-owned, rate-based generation. Attachment A, prepared by Local Power, shows the 2000 levels of electrical consumption for counties that the Commission should anticipate might leave the IOU market in the near future under Community Choice legislation. Two counties may leave in entirety, San Francisco and Marin Co. Thus, the figures for their electrical consumption by county represent the departing load. These together represent about 1,000,000 people, or 1/3 of the total 3,000,000 community choice population. For the other two thirds, the demand profile of the their counties was taken as representative of the demand of the smaller community choice city populations in that county. This we consider a reasonable estimate, but no

value can be precise for future demand, of course. Most likely the margin of error for 2000 is not greater than 10- 15% for the whole community choice population.

2000 was chosen both for availability of data as well as its close match to current aggregate state levels of electricity use. After the peak demand year in 2000, electricity sales plummeted in 2001, and only in 2004 was it projected by the CEC to return to the former levels. Peak demand, for example, was 54,000 MW in 2000, and is expected to be 54,600 MW in 2004, a difference of near 1%. (source: The Energy Commission staff report, California Energy Demand 2003-2013 Forecast,) Similar conformity is expected for total demand figures. Future growth in peak and total demand is expected to be about 1.5% annually through the next 10 years.

The spreadsheet shows that departure of 10% of the load, with 20% conservation and 20% renewable portfolio, results in a total effect of 40% portfolio. Current reliable levels of renewable energy in California are at 10%, but under favorable conditions, e.g. one with good wind and small hydro production, may go as high as 12%. Thus, a 40% combined renewable/conservation/energy efficiency portfolio would have an incremental effect of 28-30% increase over current levels.

The total renewable/conservation portfolio of the CCAs approaching the Gate is 4.4% of the state's IOU region electricity usage, as shown on the spreadsheet for the "40% renewable portfolio", and is an increment of 3.1 to 3.3% over the entire IOU load, over and above the current renewable production - added new generation or conservation measures. This represents over two years of forecasted statewide electricity demand growth that is planned to be removed by this first batch of communities.

Thus, based on current activity levels, CCA will have a significant impact on both utility procurement - 10% of statewide load may depart IOU procurement in 2005-6 alone. Even more significantly, CCA may have a massive impact on forecasted statewide electricity demand - over a 3% RPS compliant increase in relation to the total statewide IOU load compared to the CEC's 1.5% per year forecasted statewide load growth.

When added to the beneficial impacts of energy efficiency and retooling of old gas fired power plants over the next five years, the Commission has the foundation of data on which to initiate an IRC process that will enable it to ascertain whether now is the time to rate-base added new utility-owned gas-fired power plants.

The upstream gas and gas-fired power plant demand impact of CCA and RPS acceleration is potentially massive. For purposes of electric utility procurement forecasting, the “widespread adoption” scenario must be assumed to be at least a half if not potentially all of the IOUs’ electric procurement load over the next ten years, *meaning 5-10% of customer load might foreseeably depart from utility procurement every year.*

5. Conclusion

The Commission should configure its energy efficiency administration to bring about a coordinated new process under an Integrated Resource Calendar, creating a uniform annual process under which:

1. Electric Utility Procurement and Power Plant ratebasing is scheduled;
2. Community Choice load departures are scheduled;
3. Energy Efficiency funds administration is scheduled;
4. Other Public Goods Charge Funds are scheduled.

We look forward to working with the Commission on this matter.

Respectfully Submitted,

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April 26, 2004

APPENDIX B

**Comments of Community First Coalition (CFC)
On Administrative Structures for Energy Efficiency**

**Prepared by:
Maurice Campbell, Community First Coalition
April 26, 2004**

Community First Coalition supports the California Standard Offer Proposal, and the California Coalition for Energy Efficiency.

Community First Coalition has been on the front lines protecting the rights of the low income community and communities of color. We feel that Energy Efficiency is a major component in that fight because many of the people CFC represents have no discretionary income due to the high energy prices and also the impacts of two major power plants in the San Francisco urban community.

An efficient Energy Efficiency program will help to lower the bills of these residents and definitely help in expediting the closing of these and other power plants throughout California which have an impact on many low income and communities of color people throughout California.

CFC feels that a program of this type helps to address the spirit of Executive Order 12898 and Title VI of Civil Rights Legislation, where people only feel the multiple impact of a current program with less than efficient administration and delivery. CFC feels that the Texas model is proven and one of the highest rated in its return on investment (ROI) and service and delivery to their customer base

CONCLUSION

Low income customers and people of color feel the disparate impacts of poorly administered and non cost effective delivery of energy efficiency programs. They feel it through in many cases loss of dollars to an already tight budget, or in some other cases through the impact of their current environment when an aging power plant(s) is required to run in their community, causing negative effects to their health. That is why we are in favor of this program, which maximizes service and delivery of Energy Efficiency to the respective communities. Further any program should be able to tie to Community Choice Aggregation if it is offered in their community.

Respectfully submitted,

Maurice Campbell
Community First Coalition

CERTIFICATION OF SERVICE

R.0108028

I, Barbara George, certify that on this day April 26, 2004 I caused copies of the attached WOMEN'S ENERGY MATTERS COMMENT ON ADMINISTRATIVE STRUCTURE PROPOSALS to be served on all parties by emailing a copy to all parties identified on the electronic service list provided by the California Public Utilities Commission for this proceeding, and also by hand-delivering an original and six paper copies to the CPUC Docket office, with a copy to Administrative Law Judge Kim Malcolm and Presiding Commissioner Susan Kennedy.

Dated: April 26, 2004 at San Francisco, California.

DECLARANT

(Electronic service List attached to original only)

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