July 29, 2024

VIA ELECTRONIC MAIL: (edtariffunit@cpuc.ca.gov)

Public Utilities Commission of the State of California
Energy Division
Attention: Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102

Advice Letter 15-E **Apple Valley Choice Energy**	**Advice Letter 48-E** **Ava Community Energy**	**Advice Letter 41-E** **Central Coast Community Energy**
Advice Letter 9-E **Clean Energy Alliance**	**Advice Letter 27-E** **Clean Power Alliance**	**Advice Letter 29-E** **CleanPowerSF**
Advice Letter 10-E **Desert Community Energy**	**Advice Letter 6-E** **Energy For Palmdale's Independent Choice**	**Advice Letter 28-E** **Lancaster Energy**
Advice Letter 78-E **Marin Clean Energy**	**Advice Letter 9-E** **Orange County Power Authority**	**Advice Letter 34-E** **Peninsula Clean Energy**
Advice Letter 23-E **Pico Rivera Innovative Municipal Energy**	**Advice Letter 19-E** **Pioneer Community Energy**	**Advice Letter 10-E** **Pomona Choice Energy**
Advice Letter 13-E **Rancho Mirage Energy Authority**	**Advice Letter 21-E** **Redwood Coast Energy Authority**	**Advice Letter 20-E** **San Diego Community Power**
Advice Letter 21-E **San Jacinto Power**	**Advice Letter 35-E** **San José Clean Energy**	**Advice Letter 6-E** **Santa Barbara Clean Energy**
Advice Letter 32-E **Silicon Valley Clean Energy**	**Advice Letter 23-E** **Sonoma Clean Power**	**Advice Letter 18-E** **Valley Clean Energy**

RE: CALCCA'S REPLY TO JOINT UTILITIES' PROTEST TO APPLE VALLEY CHOICE ENERGY ADVICE LETTER 15-E, *ET AL*. (CONSOLIDATED) SUBMITTED BY CALCCA ON BEHALF OF THE JOINT CCAS TO AID IN THE IMPLEMENTATION OF COMMUNITY CHOICE AGGREGATOR FINANCIAL MONITORING AND REPORTING REQUIREMENTS ADOPTED IN DECISION 24-04-009

California Community Choice Association (CalCCA) submits this Reply to the protest of San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (SCE), and Pacific Gas and Electric Company (PG&E) (together, the Joint Utilities), dated July 22, 2024, to the Tier 2 Advice Letter (Advice Letter) submitted by CalCCA, on behalf of Apple

Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, Energy For Palmdale's Independent Choice, Lancaster 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[1] (collectively, the Joint CCAs). This Advice Letter seeks to aid Energy Division staff in the implementation of Ordering Paragraph 7 of Decision (D.) 24-04-009[2] as well as provide clarity to the Joint CCAs on required reporting triggers.

The Joint Utilities' protest asks the California Public Utilities Commission (Commission) to reject the Joint CCAs' Advice Letter entirely, stating, "(i) it is procedurally improper because the Joint CCAs have not been authorized to seek the relief requested through the advice letter process; (ii) the relief requested in the Consolidated AL cannot be granted since the Proposed Guidelines violate the POLR Decision; and (iii) the Consolidated AL is an improper collateral attack on the POLR Decision."[3]

In this Reply, and the revised Financial Monitoring Guidance Document, the Joint CCAs correct two unintended errors in the original Financial Monitoring Guidance Document regarding the calculation of cash reserves and confidentiality. It also explains why the Commission should not adopt the Joint Utilities' recommendation to reject the Joint CCAs' Advice Letter in full, given (1) the Decision's intent is not explicit in some areas, and (2) the clarity and consistency in how CCAs monitor Tier 2 triggers through the Financial Monitoring Guidance Document does not violate the POLR Decision or its intent.

I. THE JOINT CCAS ADOPT MODIFICATIONS TO THE FINANCIAL MONITORING GUIDANCE DOCUMENT TO CORRECT UNINTENTIONAL ERRORS

The intent of the Joint CCAs' Financial Monitoring Guidance Document is to provide clarity where the Decision left room for interpretation, ***not*** to make changes to the Decision. Adoption of the revised Financial Monitoring Guidance Document would not change the fact that the Joint CCAs are obligated to fully comply with the Decision as adopted.

The Joint Utilities' protest identified inadvertent errors in the Financial Monitoring Guidance Document that the Joint CCAs agree require modification to ensure consistency with the Decision language. These modifications are documented in the clean and redlined version

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[1] The Joint CCAs have provided CalCCA with authority to submit this Advice Letter on their behalf.

[2] D.24-04-009, *Decision Implementing Senate Bill 520 Regarding Standards for Provider of Last Resort*, R.21-03-011 (Apr. 18, 2024) (the Decision or, the POLR Decision): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M529/K986/529986322.PDF.

[3] Joint Utilities' protest at 3, footnotes omitted.

(Attachment A and Attachment B, respectively) of the revised Financial Monitoring Guidance Document attached to this Reply, and described here:

- Modifies the Cash Reserves explanation from "It **should** not consider a city's general fund cash reserves" to "It **shall** not consider a city's general fund cash reserves."
- Removes all references to confidentiality in all places except section 4. The use of "confidential" in other sections reflects outdated language and has been removed.
- Modified Section 4 to ensure it directly reflects the Decision language.

The Commission should adopt the revised Financial Monitoring Guidance Document attached to this Reply. The revisions are intended to make it consistent with the already clear Decision language. The rest of the document informs elements of the Decision that are ambiguous.

II. THE COMMISSION SHOULD REJECT THE JOINT UTILITIES' PROCEDURAL ARGUMENTS THAT THE JOINT CCAS ARE NOT AUTHORIZED MAKE ITS RECOMMENDATIONS IN THE ADVICE LETTER

The Joint Utilities make several procedural arguments in attempts to support their recommendation to reject the Joint CCAs' Advice Letter in full. First, the Joint Utilities state, "[t]he POLR Decision did not direct or authorize the CCAs to submit an advice letter to implement the financial reporting rules established in the decision, nor is such an action necessary."[4] CalCCA contacted Energy Division staff to discuss the lack of clarity that the final decision contained. CCAs would need clarity on these items to ensure that they are able to take correct action given that the Decision contains significant new requirements as well as the potential for financial penalties for failing to report as required. The Advice Letter was filed to provide such clarity after consultation with Energy Division staff. CalCCA worked with Energy Division staff on how they could implement these clarifications and through consultation, it was clear that an advice letter was the preferred venue for these clarifications.

Second, the Joint Utilities suggest that "…the advice letter process is not the proper vehicle for challenging the POLR Decision" and that the Joint CCAs' Advice Letter represents a "collateral attack" on the Provider of Last Resort (POLR) Decision.[5] The Joint CCAs' Advice Letter does not challenge the POLR Decision. The volume and intricate detail of new requirements will benefit from clarification so that CCAs can effectively comply with the order. If the Energy Division staff believes these clarifications would change the final POLR Decision, it will inform the Joint CCAs through this process.

III. THE COMMISSION SHOULD ADOPT THE REVISED FINANCIAL MONITORING GUIDANCE DOCUMENT TO MAKE CLEAR AREAS OF THE DECISION THAT WERE NOT EXPLICIT

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4 Joint Utilities' protest at 8.

5 *Id.* at 8-9.

The Joint Utilities took issue with two specific clarifications that CalCCA requested in its Advice Letter. First, the Joint Utilities objected to clarifying that a letter of credit was not the only credit instrument acceptable in calculating Days Liquidity on Hand (DLOH).[6] Second, the Joint Utilities find it unacceptable to allow a CCA reasonable opportunity to perform typical monthly financial reviews, accept the financial statement, and then report if necessary.[7]

The Joint Utilities interpret the Decision as strictly defining DLOH. However, the concept of DLOH is used worldwide for many reasons. It is designed to demonstrate how long an entity can continue paying its obligations given its access to cash, investments, and financial instruments at its disposal. In doing so, limiting the financial instruments to one specific instrument, such as a letter of credit (LOC), is unnecessarily limiting and was not the intent of the Commission. In fact, the Commission has recognized that CCAs have access to other instruments, allowing a LOC ***and*** a surety bond to satisfy a financial security requirement.[8] Further, the Joint Utilities' claim that a credit agreement "does not represent a flexible or readily available source of liquidity that can be used for general operational needs"[9] is false. Credit agreements are flexible and can be used as a source of liquidity for operational and working capital needs. Credit agreements and other lines of credit are simply other instruments that can provide liquidity.

In recognizing that there is more than one instrument, the use of a LOC in the Decision should not be construed as limiting the financial instruments that may be used as that should not have been the intent of the Decision. CalCCA added "credit agreements" to clearly reflect how the calculation would be performed in order to comply with the intent of the calculation for this purpose as well as the standard used worldwide.

The Joint Utilities also claim that the Financial Monitoring Guidance Document would extend the compliance period beyond what is contemplated in the POLR Decision with respect to noticing the Energy Division regarding Tier 2 triggers that require calculations using financial data.[10] This claim is false. Four of the Tier 2 triggers – a drop in credit rating below investment grade, defaulting on a resource adequacy procurement contract, defaulting to the California Independent System Operator Corporation's scheduling coordinator, or filing for bankruptcy – are discrete events that are easily identifiable. However, the DLOH, Debt Service Coverage ratio, and cash reserves assessments require calculations that rely on financial data that do not become available until the end of a given reporting period and are then reviewed as part of unaudited financial statements for the reporting period. CalCCA discussed this topic with Energy Division staff and concluded that the Commission did not intend to create a monitoring burden that is not feasible or practical. In fact, the Joint Utilities' example where they selected the trigger event occurring on July 5th is impractical given the calculation of the condition could only

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6 Joint Utilities' protest at 4.

7 *Id.* at 6-7.

8 The Decision at Conclusions of Law 30.

9 Joint Utilities' protest at 4.

10 The Tier 2 triggers that require calculations using financial data include: (i) DLOH is less than 45 days and Adjusted Debt Service Coverage Ratio is less than 1.0; and (ii) cash reserves for the CCA fall below 5% of annual expenses.

occur after the financial data becomes available at the end of a given reporting period, like the end of the month.

The Joint Utilities' example also shows why "days" should mean "business days." The example the Joint Utilities provide would be the day after a holiday and demonstrates why "days" not meaning "business days" is unreasonable. Taken to an extreme, had the trigger happened the day before Thanksgiving Day, the next four days would be consumed by a holiday and weekend. This would then leave only six days (with the last being the following weekend) for the CCA to validate that the trigger had been hit and to file the necessary letter. Also, the Joint Utilities' description of when Energy Division would request a meeting[11] does not make sense, as it would follow that Energy Division would request the meeting after the letter is sent notifying a Tier 2 condition had been met.

The clarification that CalCCA therefore sought is that the definition of "days" meant "business days" as is more applicable to business-related activities. In addition, CalCCA sought clarification that the Commission did not intend for infeasible monitoring and that related monitoring calculations could be reasonably performed along with regular accounting processes based on month-end data during normal unaudited financial statement preparation and reviewed to ensure the accuracy of any needed reporting.

IV. CONCLUSION

For the reasons outlined herein, CalCCA recommends the Commission reject the Joint Utilities' protest and adopt the revised Financial Monitoring Guidance Document attached to this Reply.

Respectfully,

CALIFORNIA COMMUNITY CHOICE ASSOCIATION

Evelyn Kahl
General Counsel and Director of Policy

cc via email:
Service List: R.21-03-011

[11] Joint Utilities' protest at 7.

ATTACHMENT A

TO

CALCCA REPLY TO JOINT UTILITIES' PROTEST TO APPLE VALLEY CHOICE ENERGY ADVICE LETTER 15-E, *ET AL.* (CONSOLIDATED) SUBMITTED BY CALCCA ON BEHALF OF THE JOINT CCAS TO AID IN THE IMPLEMENTATION OF COMMUNITY CHOICE AGGREGATOR FINANCIAL MONITORING AND REPORTING REQUIREMENTS ADOPTED IN DECISION 24-04-009

REVISED FINANCIAL MONITORING GUIDANCE DOCUMENT
REVISED JULY 29, 2024
CLEAN

COMMUNITY CHOICE AGGREGATORS (CCA)
FINANCIAL MONITORING AND REPORTING GUIDELINES
UPDATED JULY 29, 2024

Decision (D.) 24-04-009 adopted two tiers of financial monitoring and reporting requirements for CCAs. Under the first tier, all CCAs, regardless of their financial standing or years of operation, are required to provide the Energy Division with a copy of their most recent audited financial information. The audited financial statement shall be provided once a year, in January or July, whichever comes earlier relative to the availability of the audited financial statement. Under the second tier, CCAs must report additional financial information if they meet certain conditions indicative of financial strain. This guideline document supplements D.24-04-009 with additional guidance on (1) how and when to evaluate the conditions for tier-two financial reporting, and (2) reported financial information for tier-two reporting.

1. Conditions that Trigger Tier-Two Financial Reporting

Tier 2 reporting applies to CCAs that meet any of the following conditions in Table 1:

Table 1: Tier-Two Reporting Conditions

Condition	Explanation
The CCA receives a credit rating below BBB-/Baa3 from S&P & Moody's	This condition applies only to CCAs who are downgraded from an investment grade rating to a noninvestment grade rating. This condition does not require all CCAs to obtain a credit rating.
Days Liquidity on Hand (DLOH) is less than 45 days *Note: this condition triggers Tier 2 reporting only if the Adjusted DSCR trigger is also met.*	DLOH is defined as a CCA's available unrestricted cash and investments and eligible unused bank letters of credit, credit agreements, and capacity under commercial paper programs, multiplied by 365. This amount shall then be divided by the total of the last twelve months of the CCA's operating and maintenance expenses, excluding depreciation and amortization.
Adjusted Debt Service Coverage Ratio (DSCR) is less than 1.0 *Note: this condition triggers Tier 2 reporting only if the DLOH trigger is also met.*	Adjusted DSCR is defined as: Numerator: For the last twelve months, recurring revenue plus interest income plus withdrawals from a Rate Stabilization Fund, minus recurring cash operating expenses and General Fund Transfers over the prior twelve-month period (where recurring revenue and recurring expenses exclude special, one-time items, and annual operating expenses exclude depreciation and amortization expenses).

	Denominator: Aggregate debt service over the prior twelve-month period (i.e., principal, interest, and fees, as applicable, associated with the debt).
Cash reserves for the CCA fall below 5 percent of annual expenses	Cash reserves are defined as cash, cash equivalents, short-term investments, and unused credit facilities. The measure of cash reserves must be directly tied to the CCA. It shall not consider a city's general fund cash reserves. Where "annual expenses" are defined as the last twelve months of the CCA's operating and maintenance expenses, excluding depreciation and amortization.
The CCA defaults on one or more procurement contracts required to meet RA requirements due to non-payment	This condition is specific to the occurrence of an event of default for buyer non-payment after opportunities for disputes and cures have been exhausted as provided within the contract.
The CCA defaults to its CAISO scheduling coordinator due to non-payment	N/A
The CCA becomes insolvent or files for bankruptcy, or the CCA has a reasonable expectation that either event will occur	N/A

2. Tier-Two Reporting Requirements

The following conditions must be reported via a letter to the Director of Energy Division within 10 business days of the occurrence:

- The CCA receives a credit rating below BBB-/Baa3 from S&P & Moody's;
- The CCA defaults on one or more procurement contracts required to meet RA requirements due to non-payment;
- The CCA defaults to its CAISO scheduling coordinator due to non-payment; and
- The CCA becomes insolvent or files for bankruptcy, or the CCA has a reasonable expectation that either event will occur.

The following conditions must be reported via a letter to the Director of Energy Division within 10 business days of the CCA's acceptance of a financial statement:[1]

- DLOH is less than 45 days and DSCR is less than 1.0; and

[1] CCAs regularly review and update financial statements. Unaudited financial statements should be prepared as soon as practicable and, in any event, within sixty days after the end of each month in which the trigger occurred. If updated financial information is obtained after such submittal, the CCA will provide that update to the Director of the Energy Division to help inform any prior trigger reporting.

- Cash reserves for the CCA fall below 5 percent of annual expenses.

Upon meeting any of the Tier 2 reporting conditions above and submitting the letter to Energy Division, the CCA must meet with Energy Division as requested, up to one meeting per month, and provide the following information:

- Energy and hedging contracts for the next six months with term details;
- Status of all procurement contracts, in particular, those at risk of default;
- Detailed financial information as requested by the Commission including, but not limited to, the CCA's most recent financial statements and DLOH;
- Plan for financial correction and/or market exit.

3. Graduating from Tier-Two Reporting Requirements

A CCA will graduate from the Tier 2 reporting requirements if it does not meet any Tier 2 triggers (except for the insolvency/bankruptcy condition) for six consecutive months.

4. Confidentiality

If a CCA believes that its letter notifying the Energy Division of a triggered Tier 2 condition, or any of its attendant reporting, is market sensitive, the CCA must follow the regular Commission process for securing confidential treatment.

5. Enforcement

A CCA that fails to submit a letter to the Energy Division by the deadlines outlined in Section 2 will incur a penalty of $1,000 per incident plus $500 per day for the first ten days the filing was late and $1,000 for each day thereafter. Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands, or requirements.

ATTACHMENT B

TO

CALCCA REPLY TO JOINT UTILITIES' PROTEST TO APPLE VALLEY CHOICE ENERGY ADVICE LETTER 15-E, *ET AL.* (CONSOLIDATED) SUBMITTED BY CALCCA ON BEHALF OF THE JOINT CCAS TO AID IN THE IMPLEMENTATION OF COMMUNITY CHOICE AGGREGATOR FINANCIAL MONITORING AND REPORTING REQUIREMENTSADOPTED IN DECISION 24-04-009

REVISED FINANCIAL MONITORING GUIDANCE DOCUMENT
REVISED JULY 29, 2024
REDLINED

COMMUNITY CHOICE AGGREGATORS (CCA)
FINANCIAL MONITORING AND REPORTING GUIDELINES
UPDATED JULY 291, 2024

Decision (D.) 24-04-009 adopted two tiers of financial monitoring and reporting requirements for CCAs. Under the first tier, all CCAs, regardless of their financial standing or years of operation, are required to provide the Energy Division with a copy of their most recent audited financial information. The audited financial statement shall be provided once a year, in January or July, whichever comes earlier relative to the availability of the audited financial statement. Under the second tier, CCAs must report additional financial information if they meet certain conditions indicative of financial strain. This guideline document supplements D.24-04-009 with additional guidance on (1) how and when to evaluate the conditions for tier-two financial reporting, and (2) reported financial information for tier-two reporting.

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