



COLORADO

**Department of
Regulatory Agencies**

Public Utilities Commission

In the Matter of the Commission's Implementation of § 40-4-120, C.R.S., the Study of Community Choice in Wholesale Electric Supply

Investigative Report of the
Public Utilities Commission
of the State of Colorado

Proceeding No. 22I-0027E

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Mission and Acknowledgements

The Colorado Public Utilities Commission serves the public interest by effectively regulating utilities and facilities so that the people of Colorado receive safe, reliable, and reasonably-priced services consistent with the economic, environmental and social values of our state.

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Introductory Background

National Context

Across the United States, policy makers, utility commissions, utilities, and a variety of advocates and interested parties are grappling with rapid changes happening to and within the energy system. The nation's electric grids were built, and utilities were regulated, to deliver safe, affordable, and reliable power while expanding electric service to all citizens. Today, technology advances, pressure to reduce greenhouse gas emissions and environmental impacts, customer desires to know more and have a greater decision-making role in their electric service, distributed generation that feeds power back to the grid, and changes in load shapes due to electrification of end uses traditionally served by other forms of energy—are all forcing a reevaluation of utility business models and the frameworks and rules for regulating them.

At the same time, the definition of the public interest—the core concept by which the electric grid is regulated—is evolving in many states to include both the traditional objectives of safe, reliable, and affordable power, as well as relatively new objectives such as reducing greenhouse gas emissions, fostering customer choice, and ensuring equitable impacts and outcomes. In response, many states are considering or have enacted changes to the way they regulate utilities. These changes include new or improved frameworks for utility resource planning from generation to transmission to distribution, implementation of new customer programs and advanced rate designs, and development of metrics and associated incentives or penalties to influence utility performance.

How states respond to both the changing energy system and the evolving definition of the public interest is dependent on their basic regulatory framework. Some states have created competitive power generation markets by restructuring their monopoly utilities, requiring them to sell off their power plants and instead become companies that deliver power from competitive suppliers to customers. Other states, like Colorado, have maintained vertically integrated¹ utilities that generate and deliver power to customers, but in doing so must comply with a variety of requirements and regulatory frameworks that seek to protect the public interest in lieu of competition.

In some states that have enabled competitive electric supply, customers may choose among different power suppliers in a similar fashion to how individuals may choose among different providers for cellular service. Other states have enabled community choice energy (also called community choice aggregation)—a model in which local governments, or authorities formed by local governments, may negotiate with suppliers to bulk purchase power for all residents and businesses in their community. Typically, the residents and businesses are automatically signed up to receive power from the provider selected by their local government entity but may choose to opt-out and receive power from a different supplier. In some states, the purchasing

¹ Vertically integrated means that a single company provides power generation, transmission, and distribution. By contrast, in restructured markets, companies that provide power generation typically cannot also provide transmission and distribution, and vice versa.

authorities may also offer customer programs and services to meet the specific needs of their community.

There are also two states—California and Virginia—that have enabled community choice energy but are not completely restructured. Notably, California restructured its utilities in the late 1990’s, leading to the California Energy Crisis that occurred in 2000-2001. In response, the state implemented a series of laws and subsequent regulations that effectively created a hybrid model for electric supply, with elements of both restructured and vertically integrated models. Among these new laws was the enablement of community choice energy (referred to as community choice aggregation in California).² Today, California has 26 active community choice aggregators.³ Virginia does not yet have any active community choice aggregators, but some communities are exploring the opportunity.⁴

House Bill 21-1269 and Proceeding No. 22I-0027E

Colorado Governor Jared Polis signed into law House Bill (HB) 21-1269 on June 21, 2021. This legislation, codified as § 40-4-120 C.R.S., directed the Colorado Public Utilities Commission (Commission) “to evaluate the viability of the wholesale, opt-out model of CCE in Colorado” and in doing so, to answer a series of 23 investigatory questions. HB 21-1269 further directed the Commission to “open an investigatory docket to accept testimony and documentation from stakeholders,” clarifying that “the goal of the proceeding is to consider the regulatory implications and legal impacts of possible future CCE-enabling legislation and provide recommendations to the general assembly.” The Commission was further directed to “summarize its findings, conclusions, and recommendations from the investigatory docket in a final report submitted to the transportation and energy committee of the senate and the energy and environment committee of the house of representatives” by December 15, 2022.

The Commission subsequently issued Decision No. C22-0032 on January 12, 2022, opening Proceeding No. 22I-0027E “to collect comment and information helpful in evaluating the viability of [the] wholesale, opt-out model of Community Choice Energy (CCE) in Colorado and to answer key questions about CCE in Colorado pursuant to § 40-4-120 C.R.S.” In the same order, the Commission listed the 23 questions from HB 21-1269 and added an additional 15 questions for parties to submit initial comments on by March 1, 2022 and responsive comments

² For a detailed description of California’s grid history, see Michael Colvin, Diane I. Fellman, Raisa Ledesma Rodriguez, *California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market*, with contributions by Alison La Bonte, ed. Rohimah Moly (California Public Utilities Commission, August 2018)1-3, 78-80, https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/utilities_and_industries/energy_-_electricity_and_natural_gas/cal-customer-choice-report-8-7-18-rm.pdf

³ *Community Choice Aggregation and Energy Service Provider Formation Status Report* (California Public Utilities Commission, April 2022), 3-4, https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/utilities_and_industries/energy_-_electricity_and_natural_gas/cal-customer-choice-report-8-7-18-rm.pdf

⁴ “Recent Development,” Community Choice Aggregation in Virginia, Virginia Clean Energy, accessed October 26, 2022, <https://www.virginiacleanenergy.org/cca-in-virginia.html>

by April 15, 2022. A broad list of parties representing a diverse range of perspectives submitted comments, which are summarized in this report.

Based on the significant interest in California's experience with CCE in comments submitted by many different stakeholder groups in Proceeding No. 22I-0027E, the Commission held a Commissioners' Information Meeting (CIM) on June 13, 2022 to learn more about the California experience with CCE. The meeting included a panel of different perspectives on California's CCE experience, including an independent researcher, a regulator, a CCE operator, and a municipality that evaluated the CCE opportunity but ultimately chose not to join a CCE authority. The CIM revealed that CCE in California is complicated—there are many CCE authorities operating in the state and many success stories and benefits from the CCE model; yet there have also been stories of failure and many challenges that California's regulators have needed to invest significant resources towards addressing. Notably, California's regulation of CCE authorities continues to evolve in seeking to enable the CCE model while also protecting the public interest.

The Commission also held a public comment hearing on October 18, 2022, where roughly thirty-three members of the public expressed to the Commission their perspectives on CCE and its perceived benefits and drawbacks.

About This Report

This report fulfills the Commission's duties under § 40-4-120, C.R.S., and in doing so, accomplishes the following:

- Summarize the perspectives shared through comments in Proceeding No. 22I-0027E in response to the 23 questions from the legislature and the 15 additional questions posed by the Commission, as well as through the October 18, 2022 public comment hearing.
- Based on those comments, identify a list of potential opportunities and benefits of enabling CCE in Colorado as well as a list of potential risks and drawbacks.
- Provide a list of Commission findings with respect to the impacts of enabling CCE in Colorado and what would be needed from a legislative and regulatory perspective to enable the potential opportunities and benefits while seeking to mitigate against the potential risks and drawbacks.

The next section of this report is a list of the opportunities, benefits, risks, and drawbacks across a series of key topics that relate to the public interest, based on comments submitted into Proceeding No. 22I-0027E. The subsequent section is a list of the Commission's findings and recommendations with respect to the impacts of enabling CCE in Colorado and what would be needed from a legislative and regulatory perspective to enable the potential opportunities and benefits while seeking to mitigate against the potential risks and drawbacks. Appendix A provides detailed summaries of perspectives shared through comments filed in Proceeding No. 22I-0027E in response to the 23 questions from HB 21-1269 and the 15 additional questions posed by the Commission. Appendix B summarizes general comments that do not relate specifically to questions posed by the legislature and the Commission, including comments from the October 18, 2022 public comment hearing. Appendix C provides information on CCE implementation in other states.

Summary of Potential Opportunities, Benefits, Risks, and Drawbacks

While community choice energy has been implemented in other states, parties who submitted comments into Proceeding No. 22I-0027E have made clear that there is no existing CCE model that has been implemented in a regulatory context equivalent to Colorado's. Many commenters noted that California provides the most similar example, but even California is different due to its size, unique regulatory history, and hybrid wholesale power procurement model as briefly described previously in this report.

For this reason, the opportunities, benefits, risks, and drawbacks of implementing any CCE model in Colorado can only be described as potential. Undoubtedly, implementing CCE in Colorado would be a dramatic change to the state's utility regulatory framework and would necessarily create a variety of new challenges and uncertainties when compared to the status quo. As the list below shows, CCE may also enable a variety of opportunities and benefits. The question that policymakers in Colorado must grapple with is whether those potential opportunities and benefits are worth the potential risks and drawbacks.

Importantly, these potential opportunities, benefits, risks, and drawbacks assume that, if CCE is enabled in Colorado, it would follow the wholesale, opt-out model, and that it would only be allowed for customers of the state's investor-owned utilities.

Resource Adequacy and Reliability

Opportunities and Benefits

- i. If the rules for enabling CCEs are written to allow them to provide complementary demand side programs, CCEs might invest in energy resilience initiatives that are tailored to their communities, with the potential for enhancing reliability and resilience and reducing resource adequacy needs. This may become especially valuable as Colorado seeks to decarbonize its electricity system because demand side management programs may help to shape loads to accommodate variable and intermittent renewable energy generation.
- ii. Some of the risks described below may be mitigated when Colorado joins an organized wholesale electricity market, an action that is expected to happen around 2030.

Risks and Drawbacks

- i. Maintaining resource adequacy and reliability at the power generation level requires sophisticated modeling and operations to align load with variable demand—a task that is made more complicated by variable renewable energy resources such as wind and solar and by changing climatic conditions that can lead to more extreme weather events. Enabling CCEs in Colorado would increase the complexity of resource adequacy planning because it will require coordination and regulation of more actors—a concept that some commenters have referred to as fragmentation. Ensuring resource adequacy

in a more complex environment, with more actors, may require more resources at the commission and perhaps enhanced regulatory authority, and could result in higher costs for both IOU and CCE customers. It could also potentially create conditions for inadequate resources if the actors involved are not all able to successfully navigate this increased complexity.

- ii. Enabling an opt-out model of CCE could make resource adequacy planning more challenging and costly because both CCEs and IOUs will need to plan around the uncertainty of customers switching between providers. If large groups of customers switch in either direction, it could leave a provider without adequate resources to serve load. The magnitude of this risk would depend on the specific rules for how and when customers may opt-out of CCE service and return to service from the incumbent IOU, and vice versa. Protecting against this may also increase costs, because both IOU and CCE providers may need to maintain some amount of load in reserve, should a large shift in the number of customers occur.
- iii. In order to lower costs and compete on price, CCEs may have a natural incentive to minimize the power generation resources they procure and lean on the reserve resources of the incumbent investor-owned utilities. If this occurs, it could result in Colorado having inadequate resources to serve load during times of peak electricity demand. As noted below, regulation of CCE resource adequacy would be needed to protect against this happening. California regulators have communicated that the CCE model in California has significantly complicated and likely harmed efforts to maintain resource adequacy and system reliability in California and that it is challenging to develop effective pricing and other mechanisms to address these resource adequacy concerns.
- iv. If Colorado were to enable CCEs without being part of a regional wholesale power market, it would be the only state in the nation to do so. This may increase the difficulty of ensuring resource adequacy and reliability. However, this may only be a temporary issue until Colorado joins an organized wholesale market, which it must do by 2030.
- v. As noted in House Bill 21-1269, the Commission has recently made decisions related to the acquisition of generation and transmission to meet future needs. Enabling CCEs would likely impact or otherwise delay those investments because they were decided based on load projections that did not envision the enablement of CCE. Those decisions may need to be revisited and revised under the assumption that CCE authorities could form and change IOU load forecasts.

Affordability

Opportunities and Benefits

- i. CCE authorities may be able to offer electricity with the attributes that their community members desire at lower costs than the electricity provided by the incumbent IOU.
- ii. Competition between CCE authorities and IOUs could drive both entities to reduce costs.
- iii. Depending on the rules for customer programs, CCEs may be able to offer bill assistance programs that are more effective than similar programs offered by the IOUs. This may include program outreach that is tailored to the CCE's communities.

Risks and Drawbacks

- i. Exit fees, also known as transition fees, are the fees that CCE authorities would pay to the incumbent IOU to make up for loss of revenue due to customers shifting to pay for generation from the CCE rather than the IOU. These fees would pay for generation resources and any other costs that the IOU invested in before CCEs were enabled and that it cannot reasonably sell off or downscale. Commenters submitted many recommendations as to how Colorado should calculate and address exit fees if the state were to enable CCE. There are a few affordability related risks with respect to exit fees:
 - a) The process of calculating and regulating exit fees will likely be costly for all parties involved, including for the Commission, the IOUs, CCEs, and other stakeholders.
 - b) In order for CCEs to provide power to their customers at a rate equal to or less than the IOUs, they need to be able to purchase power at a cost low enough to allow them to also charge customers for the exit fees. If they cannot do this, the cost of power from the CCE will be higher than that of the IOU. This may be acceptable to some customers if the more expensive power is also more renewable or has lower emissions, but it may be unacceptable to other customers.
- ii. Whether due to exit fees or other factors, CCE authorities may ultimately not be able to offer electricity with the attributes that their community members desire at lower costs than the electricity provided by the incumbent IOU. If CCE is enabled, this issue would likely be discovered in the process that a local government would undergo to evaluate the CCE opportunity and that local government would choose not to form a CCE authority. However, it is possible that this could occur as conditions change over time, resulting in CCE authorities with higher electricity costs than the incumbent IOU. In this case, some customers may choose to stay with the CCE authority if the higher cost is paired with other benefits, such as higher percentages of renewable energy or better customer service; other customers may opt back into IOU service—if a large number of CCE customers take this action, it could drive up costs for the remaining CCE customers and could ultimately lead the CCE authority to go defunct. If this occurs, it may be difficult to determine who

should pay any remaining costs on behalf of the CCE, such as exit fees to be paid to the IOU.

- iii. CCEs could choose to opt all their customers, including low-income customers, into purchasing power that is more renewable, but also more expensive. In this case, customers who are already facing challenges with paying their electricity bills would receive more expensive electricity service unless and until they opt-out—a step that requires CCEs to make the opt-out option and process accessible and informative and that requires action on behalf of customers. Notably, the Legislature or Commission could establish regulations to protect against this risk.
- iv. If CCEs were enabled, the legislature or the Commission would need to establish clear regulations for how bill assistance programs will work, with attention to protecting customers with lower incomes.
- v. If CCEs are allowed to offer their own bill assistance programs, those programs may be less effective than the programs offered by the incumbent investor-owned utilities.

Customer Programs, Satisfaction, Innovation, and Service Quality

Opportunities and Benefits

- i. CCEs may be able to develop and offer innovative customer programs and rate designs to meet the specific needs of the communities that they serve, resulting in more effective programs and rate designs and higher customer satisfaction. This would be dependent on rules that would need to be established around whether and how CCEs could offer their own customer programs.
- ii. As not-for-profit entities, CCEs may pursue energy efficiency, demand response, distributed energy resources, and other customer programs and rate designs more aggressively than IOUs, because they would be seeking to achieve public policy goals rather than to produce shareholder returns.
- iii. Enabling CCEs in Colorado may foster competition between CCEs and IOUs to develop more effective and innovative customer programs and increase service quality. Competition may also lead to more cost-effective customer programs.
- iv. Enabling CCEs in Colorado may provide opportunities for CCEs and IOUs to collaborate towards developing more effective customer programs and rate designs.

Risks and Drawbacks

- i. Since CCEs will be new entities, and likely smaller than the IOUs, CCEs may have fewer resources to put towards the development of customer programs and rate designs, potentially resulting in programs that are less effective or more costly than similar programs offered by the incumbent IOUs. This risk

only applies to a scenario in which CCEs are able to offer their own customer programs or rate designs.

- ii. If CCE is enabled, the Commission may need to implement a proceeding to determine regulatory rules for CCEs to offer their own programs, including how those programs are funded between CCEs and IOUs and which entity is most appropriate to offer a particular program. Such a proceeding could be contentious and draw significant resources from the Commission, CCEs, IOUs, and other stakeholders.
- iii. Depending on the specific rules that would need to be established if CCE were enabled, allowing CCE authorities to develop their own customer programs and rate designs, in addition to IOU programs and rate designs, may cause duplication in services and confusion for customers and regulators.
- iv. Multiple commenters have suggested that CCEs and IOUs should collaborate on customer facing programs. However, many commenters have also suggested that enabling CCEs should foster competition. It may be challenging for the Commission to foster both competition and collaboration; the risk being that IOUs and CCEs end up competing in areas where customers would be better served by collaboration, such as in complementary customer programs.
- v. Similar to resource adequacy, depending on the rules established for when and how frequently customers may switch between CCE and IOU service, both entities may need to plan for large changes in the number of customers in their respective programs.

Renewable Energy and Greenhouse Gas Emissions

Opportunities and Benefits

- i. Enabling CCE could provide an opportunity for local governments to have greater control over the production of electricity for their community members and, depending on the specific rules for CCE operation, over the electricity programs and services made available to their community members, both of which could impact the emissions of the electricity being consumed within their community. For some local governments, this may help them achieve their local policy goals.
- ii. Many CCE authorities in other states offer 100 percent renewable energy options to their customers and some have selected this as the default option; it is therefore likely that CCE authorities, if enabled, would seek to offer similar options in Colorado, whether by default or by customer selection. Depending on how quickly CCE authorities would be able to form in Colorado, this may allow some communities to access higher percentages of renewable energy, and potentially at lower costs, than is available from their incumbent IOU.

- iii. Enabling CCE in Colorado may create competition for both IOUs and CCE authorities to aggressively pursue higher percentages of renewable energy generation while keeping costs as low as possible, expediting achievement of emissions reduction targets.
- iv. As noted above, CCEs may pursue energy efficiency, demand response, distributed energy resources, and other customer programs and rate designs more aggressively than IOUs—if effectively implemented, these programs can reduce loads, thereby reducing generation needs and resulting in either lower cost power, more renewable power, or both.

Risks and Drawbacks

- i. Enabling CCE would require many changes to Colorado’s current statutory framework for regulating emissions from electricity generation; these changes may result in increased complication and uncertainty that could slow the state’s ability to deploy renewable energy and reduce greenhouse gas emissions.
- ii. It is possible, given market conditions, exit fees, and other factors, that CCE authorities could struggle to achieve electricity service that provides higher percentages of renewable energy than IOUs at reasonable costs. If this occurs, the legislature, the Commission, local governments, IOUs, and many other actors may invest significant resources developing a CCE model that ultimately proves not to be an improvement upon the status quo with respect to the deployment of renewable energy and reduction of greenhouse gas emissions.
- iii. Depending on the specific rules set forth for CCEs with respect to renewable energy and greenhouse gas emissions compliance, CCE authorities may not necessarily increase the overall procurement of renewable electricity in Colorado; in the worst case, they may procure electricity that has higher percentages of fossil fuel generation than the incumbent IOUs.
- iv. In the time that it takes to enable CCE in Colorado, allow local governments to evaluate the opportunity, develop appropriate regulations, secure investments, and form CCE authorities, Colorado’s IOUs may be on a trajectory to achieving much higher percentages of renewable energy; the risk is that by the time CCE authorities are able to operate in Colorado, the marginal renewable energy and greenhouse gas emissions benefits of CCE enablement may have decreased significantly, making the additional effort of enabling CCEs less worthwhile.
- v. Enabling CCE in Colorado could interfere with IOU efforts to invest in higher percentages of renewable energy generation, from either a financing standpoint or a regulatory approval standpoint, if CCE is seen as potentially creating a situation where such investments would become unused or uneconomic due to shifting customer loads.

- vi. Unless SB 19-236 is updated, IOUs will need to comply with the requirement to reduce energy generation emissions 80 percent by 2030 from 2005 levels and achieve 100 percent clean energy by 2050. To the extent that CCE formation increases the costs of IOU compliance with SB 19-236, CCE authorities may need to pay those excess costs in their exit fees, thereby hurting the CCE value proposition.

Procedural Considerations

Opportunities and Benefits

- i. Enabling CCE in Colorado would provide an opportunity for local governments to have greater control over the production of electricity for their community members and, depending on the specific rules for CCE operation, over the electricity programs and services made available to their community members. This includes contract terms that CCE authorities may negotiate with independent power producers to meet the needs of their communities.
- ii. CCE authorities may be able to bring forth funding and investment into the electricity sector that typically isn't available to IOUs, such as grants and debt instruments. The addition of these funding sources may benefit customers.

Risks and Drawbacks

- i. Commenters have raised several questions about the financial viability of CCE authorities, including their ability to secure financing and what the impacts would be to customers if they formed and later became insolvent and were liquidated.
- ii. Determining appropriate exit fees is likely to be a significant and ongoing challenge that will require a large input of resources on behalf of the Commission, IOUs, CCE authorities, and other stakeholders. Moreover, it may be difficult if not impossible to establish exit fees that hold harmless non-CCE customers, given the complexity of the electric system and the numerous utility decisions that the Commission has approved over time. Even with the best guiding principles and intentions, the exit fees challenge poses a risk of unintended or unforeseen consequences to both IOU and CCE customers.
- iii. It is not clear how a CCE model could be successfully implemented and function prior to the implementation of an effective, transparent, and liquid wholesale market in Colorado.⁵

⁵ However, several commenters suggested that bilateral contracts with independent power producers could include stipulations for resource adequacy.

Commission Findings

In this section of the report, the Commission lists its findings with respect to the potential impacts of enabling CCE in Colorado and what would be needed from a legislative and regulatory perspective to maximize the potential opportunities and benefits while seeking to mitigate against the potential risks and drawbacks. As with the list above, these findings assume that, if CCE is enabled in Colorado, it would follow the wholesale, opt-out model, and that it would only be allowed for customers of the state's investor-owned utilities.

While the Commission does not make a recommendation to the legislature about the overall appropriateness of enabling or not enabling CCE in Colorado, it presents its findings below, based on the record in this proceeding.

Overall Regulatory and Legislative Framework

The Commission finds that:

1. The legislature is the appropriate body to determine whether enabling CCE is appropriate for Colorado.
2. While there may be benefits to enabling CCE, there are also significant costs, risks, and uncertainties that suggest that a cautionary approach may be appropriate. Enabling CCE in Colorado will undoubtedly make electricity regulation in Colorado, which is already complex, more complex and challenging. The Commission therefore urges the legislature to carefully consider whether the benefits and opportunities of CCE would outweigh the costs and risks.
3. Legislation would be needed to enable CCE in Colorado, and the enabling legislation should accomplish the following to protect the public interest and give Colorado the best chance at developing a successful CCE model based on lessons learned from other states:
 - a. require that the implementation of CCE does not result in worse outcomes for customers and communities with respect to issues that the Commission regulates, including reliability, affordability, service quality, and environmental impacts, as compared to service from the state's IOUs;
 - b. provide a new definition for CCE authorities that clarifies that they are not municipal or cooperative utilities, and that gives local governments the legal authority that they would need to aggregate their electric loads, form CCE authorities, and allow those CCE authorities to procure wholesale power on behalf of their aggregated customers;
 - c. stipulate that CCE authorities may only aggregate the loads of IOU customers in their respective communities and may not aggregate the loads of customers of municipal or cooperative utilities;
 - d. establish that the Commission has regulatory oversight over CCE authorities on all topics, functions, and issues as those related to IOUs unless explicitly stated otherwise in legislation, in order to protect the public interest and ensure that

CCE is implemented in a way that does not result in worse outcomes for customers;⁶

- e. stipulate that CCE authorities must apply for a Certificate of Public Convenience and Necessity (CPCN) to provide electricity service in Colorado; further, stipulate that the Commission may revoke such CPCNs if the Commission determines such action is needed to protect customers and assure that customers are receiving service on a non-discriminatory basis;
- f. stipulate that CCE authorities are subject to § 40-2-112(2), C.R.S., such that they will be assessed fees by the Department of Revenue equal to the administrative expenses reasonably anticipated to be incurred by the Commission for regulating them;
- g. establish a code of conduct for IOUs, CCE authorities, and local governments seeking to form CCE authorities, that serves to provide a level playing field for all entities involved and protect the public interest, including but not limited to the following stipulations:
 - i. IOUs may not use ratepayer funding to conduct anti-CCE public information or marketing activities and similarly, CCE authorities may not use ratepayer funding to conduct anti-IOU public information or marketing activities, and
 - ii. IOUs and CCE authorities must be reasonably responsive to one another on issues that require communication between the two entities, such as with respect to data sharing and customer programs;
- h. establish rules for how local governments may form CCE authorities, such as through ordinance or ballot initiative;
- i. either establish or give the Commission authority to establish rules for how local governments forming CCE authorities must notify IOU customers of their intent to aggregate loads through a CCE model and provide appropriate outreach and information to customers to enable them to decide whether to opt out of joining the CCE authority before such formation occurs;
- j. give the Commission authority to regulate disputes that may arise between IOUs and CCE authorities or local governments seeking to form CCE authorities and to establish new regulatory rules that can prevent such disputes from occurring in the future;

⁶ Importantly, this is not meant to imply that the Commission would necessarily regulate CCE authorities the same way that it regulates IOUs; there may be issues for which the Commission determines that CCE authorities can self-regulate with minimal Commission oversight. However, given the existing complexity of electric system regulation, and the additional complexity that enabling CCE would impose, this finding is necessary to give the Commission the authority to protect the public interest by using its resources and expertise to make decisions about the appropriate level of regulation for CCE authorities, especially given that regulations will need to adapt and evolve over time.

- k. either establish or give the Commission authority to establish and regulate rules for the opt-out process for customers receiving CCE service, both during the initial formation of a CCE authority and on an ongoing basis;
- l. give the Commission authority to regulate exit fees, including to initiate one or more proceedings to determine an appropriate exit fee calculation methodology and to approve exit fees for individual IOUs and CCE authorities;
- m. establish guidance for calculating and implementing exit fees, including but not limited to the following:
 - i. exit fees are Commission-approved fees that CCE authorities would pay to the incumbent IOU to offset their fair share of stranded costs due to departing CCE loads;
 - ii. exit fee amounts should be sufficient to provide recovery of all costs reasonably associated with departing load while taking into account IOU prudence in incurring and managing those costs;
 - iii. exit fees should be structured so as to hold harmless non-CCE customers while also not unduly burdening CCE customers; this principle must include consideration of the possibility that CCE formation would harm non-CCE customers who could be stuck paying for older, more expensive forms of energy generation until those assets can be prudently retired or sold;
 - iv. exit fees must be approved by the Commission prior to the initial departure of customers from an IOU to a CCE authority;
 - v. exit fees must be updated annually based on customers switching between IOU and CCE service, with the updates proportionate to the change in load;
 - vi. exit fees must stipulate the time period over which they will be assessed and such time period must be established so as to hold harmless non-CCE customers while also not unduly burdening CCE customers;
 - vii. exit fees must account for past renewable energy investments because such investments helped grow the renewable energy market, bringing down costs for both IOU and CCE authority customers;
 - viii. exit fees must account for the additional generation resources that IOUs must retain to serve as the provider of last resort for CCE customers;
 - ix. in developing exit fees, IOUs must review their energy procurement plans and propose changes to those plans that would be warranted given the potential for departing load due to CCE authority formation, while maintaining assets necessary to ensure resource adequacy as the provider of last resort;
 - x. exit fees should be as predictable and transparent as reasonably possible;
- n. establish that a CCE customer's incumbent IOU will be their provider of last resort if that customer opts out of CCE service or if their CCE authority is unable to continue providing service.

4. Enabling CCE in Colorado would require significantly more Commission resources because the Commission will need to continue providing the same level of regulation over IOUs, update many existing IOU regulations, and develop and maintain many new regulations for CCE authorities. This would result in many new Commission proceedings. While some of the necessary funding could be assessed to CCE authorities under § 40-2-112(2), C.R.S., there are likely to be regulatory functions for which it would be difficult to assign costs to a single CCE authority, such as developing an overall regulatory framework and rules that will need to be in place before local governments could realistically evaluate the option of forming a CCE authority. This non-assignable funding would need to be secured through some other mechanism, such as through an appropriation to the Commission in the state budget process.

CCE Formation and Consumer Protection

The Commission finds that:

5. The legislature is the appropriate body to determine the process by which local governments may form CCE authorities, such as through ordinance or ballot initiative.
6. A Commission proceeding should be initiated to determine what data IOUs must share with local governments seeking to form CCE authorities to allow those local governments to evaluate the opportunity while protecting data privacy and trade secret information.
7. The Commission should be given regulatory authority to establish and enforce rules for how local governments forming CCE authorities must notify IOU customers of their intent to aggregate loads through a CCE model and provide appropriate outreach and information to customers to enable them to decide whether to opt out of joining the CCE authority before such formation occurs, unless such rules are clearly established and enforceable through CCE enabling legislation.
8. The Commission should be given regulatory authority over CCE customer complaints, with such complaints subject to the Commission's established dispute resolution process.

Resource Adequacy, Reliability, and Procurement

The Commission finds that:

9. Enabling CCE would require a significant change in how resource adequacy is regulated in Colorado. The Commission would be required to update resource adequacy regulations for IOUs, develop new regulatory rules and frameworks for CCE resource adequacy, and would need additional staffing capacity to regulate resource adequacy among a larger number of wholesale power providers. This burden may be lessened when Colorado joins a wholesale power market, which it must do by 2030.
10. To ensure reliability, CCE authorities should be held to the same or similar resource adequacy standards as the incumbent IOUs. The specific regulatory frameworks and requirements for CCE authorities should be developed in a Commission proceeding. The Commission further finds that potential standards or requirements for independent

power producers supplying CCE authorities and for CCE authority requests for proposals for power production should be considered and determined in the same proceeding.

11. The Commission should have regulatory authority over CCE procurement of power generation, with the discretion to develop CCE-specific procurement regulations where needed to protect the public interest.
12. Legislation enabling CCE should either establish or give the Commission authority to establish clear rules for when and how frequently customers would be allowed to opt out of CCE service and opt back into CCE service. This would be necessary to enable resource adequacy planning given the potential for changes in load due to customers switching between CCE and IOU service.

Customer Programs, Rate Designs, and Service Quality

The Commission finds that:

13. One of the benefits of enabling CCE would be to tailor customer programs, rate designs, and service quality to community-specific needs and desires. Therefore, CCE authorities should be able to offer customer-facing programs and rate designs that are complementary to programs offered by IOUs, including but not limited to, energy efficiency, demand response, customer-sited distributed generation and energy storage, community-scale distributed generation and energy storage, net-metering, transportation electrification programs, building electrification programs, industrial electrification programs, and microgrids. Moreover, the specific rules for when and how CCE authorities may offer complementary programs and rate designs, and how both CCE and IOU programs and rate designs are funded and billed to customers, should be established in a Commission proceeding.
14. The Commission should retain regulatory oversight of all customer programs and rate designs—including those offered by IOUs and CCE authorities—to ensure program quality and cost-effectiveness, and to mitigate against duplication of programs or confusion among customers. Moreover, the Commission should use its discretion to develop CCE-specific customer program and rate design regulations where needed to protect the public interest. Finally, this regulatory authority should apply to all programs and rate designs currently under Commission regulation of IOUs, including but not limited to energy efficiency, demand response, customer-sited distributed generation and energy storage, community-scale distributed generation and energy storage, net metering, transportation electrification programs, building electrification programs, industrial electrification programs, and microgrids.
15. CCE-enabling legislation should either establish or give the Commission authority to establish clear rules for data sharing between IOUs and CCE authorities with respect to customer programs and rate designs. Additionally, the Commission should have regulatory oversight of data sharing between IOUs and CCE authorities, including over addressing data sharing disputes between IOUs and CCE authorities with respect to customer programs and rate designs.

16. There may be some customer programs and rate design elements that should be offered by IOUs to CCE customers. Accordingly, the Commission should retain regulatory authority over IOU customer programs and rate designs for both IOU and CCE customers.

Affordability

The Commission finds that:

17. The Commission would need to retain regulatory oversight over the CCE authority formation and opt-out processes with respect to the impacts on customers with lower incomes and on bill assistance programs.
18. The Commission should initiate a proceeding to develop clear guidance and rules for how energy assistance programs should be funded and operated, including how revenues should be collected, and with a focus on ensuring that CCE enablement does not ultimately result in worse outcomes for customers with lower incomes.

Renewable Energy and Greenhouse Gas Emissions

The Commission finds that:

19. Given recent legislative and regulatory developments, decreasing costs of renewable energy, increasing commitments from electric utilities to decarbonize, and the potential legal and regulatory challenges of enabling CCE, it is unclear whether enabling CCE in Colorado will result in greater percentages of renewable energy generation and incremental reductions in greenhouse gas emissions at a pace faster than the status quo. In the worst-case scenario, enabling CCE may result in a series of legal and regulatory challenges that could significantly delay the progress that Colorado is making toward increasing renewable energy deployment and decreasing greenhouse gas emissions.
20. CCE authorities should be subject to the same renewable energy and emissions reduction laws and regulations that apply to the investor-owned utilities. The Commission and the Air Quality Control Commission should retain regulatory oversight over CCE authorities' compliance with Colorado's renewable energy standards, greenhouse gas emissions reduction targets, and greenhouse gas emissions accounting standards.
21. If the legislature passes CCE-enabling legislation, it could take several years for municipalities to consider and pass ordinances to join a CCE community. By then, the Commission will likely have approved IOU plans for increased clean energy investments. By the time CCE communities form, it is likely that contracts for the development of these projects will be in effect.
22. CCE authorities should be required to submit clean energy plans or similar CCE-specific plans to the Commission for approval, and CCE generation emissions should be excluded from IOU clean energy plans. Further, IOUs would need to update their clean energy plans to account for changing load projections.
23. If the requirements as passed in SB 19-236 are not updated, IOUs will need to comply with the requirement to reduce energy generation emissions 80 percent by 2030 from 2005 levels and achieve 100 percent clean energy by 2050. If CCE is enabled, the

Commission will need to initiate a proceeding to determine the impacts of CCE formation on IOU compliance with the requirements in SB 19-236 and, to the extent those impacts increase costs, assess those costs in the exit fees to be paid by CCE authorities.

Transmission, Distribution, and RTO Considerations

The Commission finds that:

24. The Commission should be given regulatory authority to ensure that CCE authorities are provided transmission and distribution services by their respective IOUs under fair and reasonable rates and conditions. However, such authority should be carefully crafted so as to not conflict with the Federal Energy Regulatory Commission's jurisdiction over transmission access.
25. The Commission may need to implement a proceeding to ensure that IOUs are making adequate and prudent transmission and distribution investments to serve both their own and CCE authorities' loads.
26. It may be difficult to implement the CCE model without the existence of a liquid and transparent wholesale power market. Delaying the formation of CCE authorities until after Colorado joins a wholesale power market, which it is required to do by 2030, may significantly increase the chances of success of the CCE model and could greatly reduce some Commission resources and staffing needs to regulate CCE authorities.

Appendix A: Summary of Stakeholder Comments

Appendix A summarizes stakeholder comments filed in Proceeding No. 22I-0027E. The comments address the questions posed by the legislature in House Bill 21-1269 (LQ), as well as the additional questions posed by the Commission in Decision No. C22-0032 (CQ). The questions, and their responses from commenters, are presented by general theme and category rather than by the order in which they are listed in House Bill 21-1269 and Decision No. C22-0032. This is done to categorize certain related questions and issues with each other.

The following comment summaries are provided for informational purposes only and are not to be considered the findings, conclusions, or recommendations of the Colorado Public Utilities Commission or of any individual Commissioner.

Overall Legislative and Regulatory Framework

LQ1: Whether the Commission would require additional statutory authority to conduct a rule-making proceeding concerning the creation of CCE authorities in Colorado; except that the commission’s determination that additional statutory authority is not required does not preclude the general assembly from increasing or amending the commission’s statutory authority

Most commenters felt that the legislature has a role in granting the Commission the statutory authority to conduct a rule-making proceeding concerning the creation of CCE authorities in Colorado, though the magnitude of that role varied by commenter.

One commenter stated that because of the potential for CCE authorization to impact the electricity industry and resource planning in Colorado, “it would be imperative for the legislature to establish parameters for any form of quasi-deregulated CCA⁷ (‘wholesale competition’) program.” According to this commenter, subsequent legislative decisions based on the Commission’s statutory authority should be based on whether the Commission recommends pursuing CCE authorization, and what form of CCE authorities (partially or fully regulated) would be approved under this action. Specifically, this commenter recommends the following legislative considerations:⁸

- Determining which existing rate riders “unbundled” customers of new CCE authorities should continue to pay for, and how to enforce such requirements.
- Whether customers of CCE authorities would be required to pay Renewable Energy Standard Adjustment (RESA) or Electric Commodity Adjustment (ECA) fees.
- How CCE authorities can fund and/or support demand-side management (DSM) programs

⁷ Some commenters used the term “community choice aggregation,” or CCA, which is the name given to the CCE model used in several other states, including California. In this report, the terms CCA and CCE refer to the same energy model.

⁸ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 2-5. Proceeding No. 22I-0027E.

- Whether to establish “Load Serving Entities” (LSEs) or an equivalent novel type of energy provider under § 40-1-103, C.R.S. to clearly differentiate CCE authorities from IOUs, municipal utility providers, and electric cooperative associations.

One commenter identified that because “[a] utility’s right to provide service under a [Certificate of Public Convenience and Necessity (CPCN)] is a valuable property right that cannot be affected without due process,” the Commission would not have the authority to redact that territorial right and instead grant it to a CCE authority.⁹ Another commenter expanded on this, stating that if CCE is authorized in Colorado, the legislature would in fact need to develop an entirely new legal framework (with the potential for constitutional complications) that ensures that CCE authorities do not “harm non-participants and investor-owned utilities [or] jeopardize achievement of Colorado’s energy policy goals,” but also “maintains system reliability, and ensures that customers of CCEs are adequately protected.”¹⁰

Another commenter offered a comparison to other states in which CCE authorities are enabled. This commenter noted that enabling legislation was required in nine out of the ten states in which CCE has been authorized¹¹ (only New York did not require dedicated enabling legislation), and Colorado does not have existing legislation that would grant the Commission the authority to enable or oversee CCE authorities due to a legal conflict with Article XX of the Colorado Constitution, *Home Rule Cities and Towns*. This commenter also expanded upon the implications associated with this lack of authority, stating that, “The Commission also does not appear to have the authority under existing statute to confer this right on local communities through a rulemaking or other Commission action. Additional legislation is necessary to create a legal right of local communities to aggregate their loads, form CCEs, and enter into contracts with wholesale electricity suppliers.”¹²

LQ2: The appropriate scope of regulatory oversight of CCE operations, on a scale ranging from comprehensive, as with investor-owned electric utilities, to minimal, as with municipally owned electric utilities

Commenters had varied perspectives regarding the appropriate scope of regulatory oversight of CCE operations, often depending on the area that would be regulated. Perspectives ranged from full regulation to a regulatory strategy that would be much more limited in scope.

Several commenters expressed resource adequacy concerns related to CCE authorization. Commenters generally agreed that CCE authorities should be subject to some degree of

⁹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 2. Proceeding No. 22I-0027E.

¹⁰ Initial comments of Public Service Company of Colorado (March 1, 2022), p. 16-17. Proceeding No. 22I-0027E.

¹¹ CCA/CCE is currently authorized in the following ten states, though other states are investigating the potential for CCA/CCE authorization: California, Illinois, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, and Virginia.

¹² Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 33-34. Proceeding No. 22I-0027E.

resource adequacy regulation and regulation related to consistency with statewide clean energy goals, but perspectives regarding the extent of regulation appropriate for these areas varied. These concerns—as well as proposed regulatory strategies to address these concerns—are summarized in detail in response to LQ3A and CQ14.

Perspectives regarding whether CCE authorities should be subject to rate regulation, and the extent of rate regulation that would be appropriate, were more varied. Commenters did not generally agree that rate regulation would (or would not be) appropriate. Commenters' perspectives regarding the appropriate scope of regulatory oversight of CCE authorities with respect to rates are summarized in LQ3E.

Several parties also provided comments related to potential regulatory oversight requirements related to CCE programs. Commenters' perspectives regarding the appropriate scope of regulatory oversight of CCE authorities with respect to programs are summarized in LQ3D.

Additionally, commenters provided a range of perspectives regarding whether the labor and contract requirements that IOUs must meet should also apply to CCE authorities. Commenters' perspectives regarding the appropriate scope of regulatory oversight of CCE authorities with respect to jobs and labor are summarized in LQ22.

LQ8: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues

CCE authorities (or equivalent entities, such as CCA authorities) are currently authorized in California, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Virginia, Illinois, and Ohio. Commenters overwhelmingly referenced regulatory and legal issues that have arisen in California, but one commenter identified additional issues that occurred in New York and Massachusetts. The regulatory issues that arose in these three states are included below.¹³

California

In California, the CCE model is more commonly referred to as community choice aggregation, or CCA. One commenter referenced several California legislative initiatives that have addressed (or attempted to address) some problems with the state's CCA model. Some of these initiatives include the requirement that CCA entities file Integrated Resource Plans (IRPs) (also identified by other commenters), as well as the following two requirements established under SB 350 and SB 100, respectively, both of which are applicable to all LSEs, including CCA entities:¹⁴

¹³ Note that commenters did not identify all potential regulatory or legal issues associated with CCE authorization that have arisen in other states that have adopted the wholesale, opt-out model. For additional details regarding potential regulatory and legal issues that have occurred under a CCE model or that could potentially occur if such a model is approved, please reference the questions that correspond to those specific issue areas. Additionally, please refer to Appendix C for case studies of specific CCE authorities in other states.

¹⁴ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 5-8. Proceeding No. 22I-0027E.

SB 350 (2015): “A retail seller may enter into a combination of long- and short-term contracts for electricity and associated renewable energy credits. Beginning January 1, 2021, at least 65 percent of the procurement a retail seller counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of 10 years or more in duration or in its ownership or ownership agreements for eligible renewable energy resources.”¹⁵ Several other commenters also referenced this procurement requirement and recommended that Colorado consider adopting a similar standard.^{16 17}

SB 100 (2018): “The quantities of eligible renewable energy resources to be procured for all other compliance periods reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves... 33 percent by December 31, 2020, 44 percent by December 31, 2024, 52 percent by December 31, 2027, and 60 percent by December 31, 2030. The Energy Commission shall establish appropriate multiyear compliance periods for all subsequent years that require the local publicly owned electric utility to procure not less than 60 percent of retail sales of electricity products from eligible renewable energy resources.”¹⁸

The commenter that referenced SB 350 and SB 100 also referenced two additional regulatory and/or oversight concerns at the California PUC and at CAISO: According to this commenter, California struggled to assess what would constitute a “fair share” of renewable integration costs, resulting in increased compliance costs for CCA entities. Additionally, California struggled with accurately accounting for greenhouse gas emissions associated with CCA entities’ electricity resources that originated outside of California.¹⁹

This commenter also identified procedural issues associated with the ways that California’s CCA entities do (or do not) engage in California PUC proceedings. According to this commenter, the CCA model providers are not necessarily required to participate in all proceedings. This commenter recalled an experience several years ago in which they asked officials from a CCA provider their thoughts on the California PUC’s Distribution Resource Planning and Integrated Distributed Energy Resource initiatives, and found the provider had not heard of either,

¹⁵ Clean Energy and Pollution Reduction Act of 2015, SB 350, 2015-2016 session of the California State Legislature (CA, October 7, 2015), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350

¹⁶ Initial comments of Larry Miloshevich (March 1, 2022), p. 23. Proceeding No. 22I-0027E.

¹⁷ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), pp. 5-6. Proceeding No. 22I-0027E.

¹⁸ California Renewables Portfolio Standard program: emissions of greenhouse gases, SB 100, 2017-2018 session of the California State Legislature (CA, September 10, 2018), https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB100

¹⁹ Ibid. (Karey Christ-Janer, pp. 5-8)

suggesting a potential lack of engagement with regulatory energy proceedings at the state commission.²⁰

Another commenter focused on California's regulatory challenges related to resource adequacy under California's CCA model. According to this commenter, to address resource adequacy concerns and better ensure reliability, "California CCAs now must submit load forecasts and year ahead resource adequacy filings for the subsequent year. They also must procure dedicated minimums of resource commitments up to three years ahead," in addition to the integrated resource planning requirements identified by other commenters.²¹

Another commenter referred to California's SB 790, which was intended to address the lack of cooperation between IOUs and CCA providers. SB 790 established, "a code of conduct, associated rules, and enforcement procedures, applicable to electrical corporations in order to facilitate the consideration, development, and implementation of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization by ratepayers."²² ²³ This commenter noted that California faced additional regulatory challenges related to resource adequacy and exit fee calculation, as well as the regulatory burdens associated with both of those areas. Another commenter also referred to SB 790 and PUC Decision 12-12-036, which adopts this code of conduct.²⁴

With respect to exit fees and regulatory burden, this commenter explained that, "As California has gained more experience with CCAs, the CPUC has had to adjust the methodology for calculating exit charges annually and this has resulted in regular increases in the cost that CCAs pay to IOUs for the cost of the legacy system. These increases have sharply reduced CCA year-to-year stability and understanding of their future financial stability." Additionally, with respect to the regulatory burden associated with CCA resource adequacy, this commenter noted that, "California initially required CCAs to meet RA [Resource Adequacy] requirements across three resource areas identified under state regulations: flexible, system, and local categories. However, due, in part, to thermal resource retirements, which drove up RA prices in the state, and the fact that many CCAs are in urban areas, many CCAs were not able to meet the local RA requirements. In response to this challenge, the CPUC recently reversed the requirement that CCAs meet local RA obligations."²⁵

²⁰ Ibid. (Karey Christ-Janer, pp. 5-8)

²¹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 7-8. Proceeding No. 22I-0027E.

²² Electricity: community choice aggregation, SB 790, 2011-2012 session of the California State Legislature (CA, October 8, 2011), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB790

²³ Response comments of the Colorado Energy Office (April 15, 2022), p. 6. Proceeding No. 22I-0027E.

²⁴ Response comments of Larry Miloshevich (April 15, 2022), pp. 23-27. Proceeding No. 22I-0027E.

²⁵ Response comments of the Colorado Energy Office (April 15, 2022), pp. 9-11. Proceeding No. 22I-0027E.

Another commenter expanded upon California's regulatory challenges related to exit fees (referred to as a Power Charge Indifference Adjustment fee, or PCIA, in California). In response to several years in which exit fees were too low, the California PUC changed the method through which the PCIA fee should be calculated. In Pacific Gas & Electric's service territory, the PCIA fee has risen more than 600 percent since 2013 to cover legacy investment costs, and CCA advocates and providers continue to oppose the fee.²⁶ Several other commenters agree that California's approach to exit fees has been problematic.

Another commenter that referred to California's integrated resource planning requirements identified this as an area of potential regulatory burden, noting that, "The Colorado PUC has approximately 40 CCE LSE IRPs to review, and it is important that the Colorado Commission have the appropriate funding and staffing levels to ensure meaningful review of this significant additional workload."²⁷

Another commenter that referred to California's PCIA fee challenges emphasized that California grappled with, "how to equitably allocate costs that were incurred by the incumbent utility on behalf of customers that subsequently depart for CCE service, and how to ensure above market costs were recovered without shifting costs between bundled and departing load customers. California adopted a methodology used to calculate these stranded resource costs and assign that rate component across both bundled customers (i.e., customers that receive both delivery and supply service from the incumbent utility) and unbundled customers (i.e., customers that receive supply service from an alternative supplier, such as through a CCE) to ensure that utility shareholder's *[sic]* remained indifferent to departing load." This commenter noted that the California PUC has convened a working group to identify ways to improve PCIA fees and emphasized that Colorado should do the same.²⁸ Another commenter concurred with this commenter's perspective, noting that the requirement that bundled customers remain indifferent to CCA formation in California has caused frequent and complicated changes to the PCIA fee setting process. As a result, CCA fees in California are often unpredictable, are subject to changes, and do not have an established end-date.²⁹ Other commenters agreed that this is a significant regulatory problem.^{30 31}

²⁶ Response comments of IBEW Local #111 (April 15, 2022), pp. 3-5. Proceeding No. 22I-0027E.

²⁷ Initial comments of the Interwest Energy Alliance (March 1, 2022), pp. 3-4. Proceeding No. 22I-0027E.

²⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 30-33. Proceeding No. 22I-0027E.

²⁹ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 4-6. Proceeding No. 22I-0027E.

³⁰ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 9-10. Proceeding No. 22I-0027E.

³¹ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), pp. 5-6. Proceeding No. 22I-0027E.

One commenter identified provider-of-last-resort (POLR) determination as a key issue of regulatory concern that arose in California. According to this commenter, California is currently revisiting its criteria for determining what entity will serve as the POLR in areas served by CCA providers in the event that the CCA entity cannot provide service.³²

One commenter also identified regulatory issues related to data sharing requirements that arose in California. For a detailed summary of this commenter's (and other commenters') perspectives related to utility information data sharing, please refer to LQ14.

New York

The one commenter that identified regulatory issues in New York referred to challenges associated with the jurisdictional determination of CCE authorities. This commenter referred to an order from the New York Public Service Commission, which found that the municipal utility framework is not applicable to CCE authorities. Accordingly, New York considers establishing a CCE authority to be, "an exercise in municipal home rule law authority where local jurisdictions enact local laws giving themselves the power to act as aggregators."³³

Massachusetts

The one commenter that identified regulatory issues in Massachusetts explained that though Massachusetts exhibits less regulatory oversight over its CCE authorities than it exhibits over its IOUs, the state is heavily involved in program design, "requiring aggregators to develop programs in consultation with the Department of Energy Resources and gain approval from the Department of Public Utilities," to ensure consistency with state energy goals.³⁴

LQ16: The appropriate considerations for ensuring that the implementation of CCE does not include customers in the certificated territories of municipally owned electric utilities or cooperative electric associations

One commenter clarified that this would only be a risk for "extra-territorial customers" (i.e., customers that are located outside of a municipality's jurisdictional limits but still within the municipal utility's service territory as established under C.R.S. § 40-3.5-101). This commenter emphasized the importance of accurate, up-to-date service territory maps for IOUs, municipal utilities, and electric cooperative associations, and recommended that the Commission work cooperatively with all utility providers to verify service territory map accuracy to address this risk.³⁵

³² Ibid. (MRW & Associates, pp. 4-6)

³³ Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), p. 11. Proceeding No. 22I-0027E.

³⁴ Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), p. 8. Proceeding No. 22I-0027E.

³⁵ Response comments of Colorado Association of Municipal Utilities (April 15, 2022), p. 4. Proceeding No. 22I-0027E

Other commenters considered how legislation could ensure that there is not overlap between municipal or cooperative provider territories and potential CCE authority territories. One commenter suggested that it is likely that the legislature would revise § 40-1-103(2)(a), C.R.S. to establish “Load Serving Entities” (LSEs) (or equivalent entities) as a new category of energy provider in Colorado.³⁶ In California, such entities include community choice aggregation providers, direct providers, and IOUs. This commenter stated that establishing CCEs as a form of LSEs in the statute would provide for opportunities to clarify territorial boundaries of CCE authorities, municipally owned electric utilities, and cooperative electric associations.³⁷

To further ensure that CCE boundaries do not include customers within municipal or cooperative utility provider service territories, multiple other commenters recommended legislative clarification on this matter.³⁸ ³⁹ One of these commenters also clarified that the process of establishing a CCE authority would help mitigate this risk. They stated that through this process, CCE authorities, “will request customer specific data for customer classes within specific geographic boundaries, including by zip code. These requests are submitted to the IOU, not to a municipal utility or a coop. An IOU will not provide data for customers it does not serve.” Specifically, this commenter explained that CCE authorities would request customer class information by zip code from IOUs, and IOUs can only practically provide such information for customers that they serve.⁴⁰

CQ10a: Are cities, counties, combined cities and counties, or groups of cities and counties implementing CCE public utilities as defined in § 40-1-103, C.R.S.?

Respondents generally agreed that under current statute, CCE authorities would qualify as public utilities, but also suggested that the legislature consider revisions to statutory language to eliminate ambiguity.

One respondent noted that in Decision No. C08-1182 (Proceeding No. 07A-265E), the Commission has stated it has regulatory authority over public utilities if those public utilities meet one or both of the following criteria:

- it is an electrical corporation operating for the purpose of supplying to the public; or
- it is declared to be affected with the public interest.⁴¹

36 Initial comments of Karey Christ-Janer (March 1, 2022), p. 3. Proceeding No. 22I-0027E

37 Initial comments of Karey Christ-Janer (March 1, 2022), p. 24. Proceeding No. 22I-0027E

³⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 23. Proceeding No. 22I-0027E.

39 Response comments of Colorado Rural Electric Association (April 15, 2022), p. 3. Proceeding No. 22I-0027E.

40 Ibid. (LEAN Energy, p. 3)

41 Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 15-17. Proceeding No. 22I-0027E.

The commenter provided further information regarding legislative determinations as to what constitutes an electric utility provider being affected with the public interest, emphasizing that statutory revisions should clarify that CCE authorities are not municipal utilities, and therefore would not be exempt from Commission regulation.⁴² This commenter (in addition to another who believes that CCE authorities would be public utilities) references § 40-1-103(2)(a), C.R.S., which states:

“Every cooperative electric association, or nonprofit electric corporation or association, and every other supplier of electric energy, whether supplying electric energy for the use of the public or for the use of its own members, is hereby declared to be affected with a public interest and to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission.”⁴³

The second commenter who referenced this statute emphasized that if CCE authorities were clearly defined as Load Serving Entities (LSEs) in the statute, there would not be ambiguity and it would be clear that CCE authorities are public utilities but are not municipal utilities.⁴⁴

Other parties agree that CCE authorities would be public utilities but provide additional clarity regarding the roles and responsibilities of the Commission in regulating a CCE public utility. One commenter argues that “Commission oversight over CCEs is appropriate in certain areas such as resource adequacy and renewable energy and carbon reduction standards. However, regulating the rates of CCEs, which are subject to their own local government oversight, is unnecessary and would undermine CCEs’ ability to achieve their unique, local goals.”⁴⁵

A final commenter expressed a desire for more extensive Commission regulation, including, “oversight over the operations, rates and other aspects of CCEs as well as the interaction between CCEs and incumbent utilities... to ensure that roles, responsibilities, and expectations are clearly defined. Unlike nonprofit generation and transmission electric corporations or municipally owned utilities, the creation and operation of a CCE authority would have significant year-after-year ongoing impacts on investor-owned utilities and their customers.”⁴⁶

42 Ibid (Black Hills Colorado Electric, LLC pp. 15-17)

43 Title 40, Utilities. C.R.S. <https://leg.colorado.gov/sites/default/files/images/olls/crs2022-title-40.pdf> § 40-1-103. Public utility defined. 2022.

44 Initial comments of Karey Christ-Janer (March 1, 2022), pp. 3, 33. Proceeding No. 22I-0027E.

45 Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 52-53. Proceeding No. 22I-0027E.

46 Initial comments of Public Service Company of Colorado (March 1, 2022), p. 17. Proceeding No. 22I-0027E.

CQ10b: Despite Article XX of the Colorado Constitution, does the General Assembly need to define cities, counties, combined cities and counties, and groups of cities and counties implementing CCE as municipal utilities, such that they are excluded from Commission authority or jurisdiction or subject to limited Commission authority or jurisdiction?

One commenter stated that they had no preference regarding whether cities, counties, combined cities and counties, or group of cities and counties implementing CCE should be defined as municipal utilities, but that such a determination should be made by the legislature. They also clarified that if the legislature does define cities, counties, combined cities and counties, or group of cities and counties implementing CCE as municipal utilities, such a determination should not be used to extent Commission control to municipal utilities more broadly.⁴⁷

All other commenters expressed a general consensus that cities, counties, combined cities and counties, or group of cities and counties implementing CCE should not be defined as municipal utilities, with varying rationale and details provided. One commenter clarified that because CCE authorities would be nonprofit organizations, “general rate regulation of CCEs is both unnecessary and inappropriate, as it is for municipal utilities and co-ops” because rates would simply cover costs, rather than generate profits on top of the cost of service.⁴⁸ Another commenter who stated that cities, counties, combined cities and counties, or group of cities and counties implementing CCE would be public utilities, but not municipal utilities, provided further details, stating that “Commission oversight over CCEs is appropriate in certain areas such as resource adequacy and renewable energy and carbon reduction standards. However, regulating the rates of CCEs, which are subject to their own local government oversight, is unnecessary and would undermine CCEs’ ability to achieve their unique, local goals.”⁴⁹

These perspectives contrast with the view of another commenter who agreed that cities, counties, combined cities and counties, or group of cities and counties implementing CCE authorities would not be municipal utilities, but would be public utilities subject to Commission regulation “in furtherance of the public interest.” Accordingly, this commenter recommended revisions to § 40-1-103(2)(a), C.R.S. to clarify that CCE authorities are not exempt from Commission regulation.⁵⁰

Another commenter appeared to share the general perspective that cities, counties, combined cities and counties, or group of cities and counties implementing CCE should not be defined as municipal utilities and should be subject to Commission regulation. This commenter

⁴⁷ Response comments of Colorado Association of Municipal Utilities (April 15, 2022), p. 5. Proceeding No. 22I-0027E.

⁴⁸ Response comments of Larry Miloshevich (April 15, 2022), p. 13. Proceeding No. 22I-0027E.

⁴⁹ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 52-53. Proceeding No. 22I-0027E.

⁵⁰ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 16. Proceeding No. 22I-0027E.

recommended that the Commission have the authority to exercise full regulatory oversight, “over the operations, rates and other aspects of CCEs as well as the interaction between CCEs and incumbent utilities... [because] ...the creation and operation of a CCE authority would have significant year-after-year ongoing impacts on investor-owned utilities and their customers.”⁵¹

Commenters also described alternative governance structures that may better suit cities, counties, combined cities and counties, or groups of cities and counties implementing CCE authorities. One commenter noted that instead of defining such entities as municipal utilities, the legislature should, “define CCEs as a new type of ‘shared service’ entity in Colorado’s Public Utilities Law and... clearly delineate the scope and limits of the Commission’s jurisdiction over CCEs.”⁵² This commenter suggests that the Commission review § 30-28-105, et Seq. (“Regional Planning Commissions”) to identify whether the statute grants municipalities the authority to establish joint power agreements or joint power agencies (JPAs) that would separately operate a CCE authority.⁵³ Another commenter identified that California’s community choice aggregation model authorizes jurisdictions to coordinate and establish JPAs that serve the community choice aggregation service territory. This contrasts to New York’s approach, which authorizes local jurisdictions to establish local ordinances that authorize the jurisdictions themselves as power aggregators.⁵⁴ According to this commenter, the Commission should analyze potential implications of these different regulatory scopes and approaches.

One commenter provided rationale from prior Colorado Supreme Court decisions (*City & County of Denver v. Public Utilities Commission*, *City of Fort Morgan v. Colorado Public Utilities Commission*, and *City of Greeley v. Poudre Valley Rural Electric Association*) as to why cities, counties, combined cities and counties, and groups of cities and counties implementing CCE should not be defined as municipal utilities, barring specific geographic considerations. According to this commenter, “The Colorado Supreme Court has explained that the ‘balance of powers within Colorado’s constitution and statutes relating to public utilities respects municipal utility and governance powers while providing the Commission with the ability to ensure adequate utility service to people and businesses throughout the state,’” to ensure that local electorates have sufficient democratic power over their municipal power provider.⁵⁵

This commenter further stated that this municipal utility exemption from Commission regulation according to these Supreme Court decisions establishes that, “The Commission may only require that a municipally owned utility obtain a [Certificate of Public Convenience and Necessity] CPCN if it seeks to serve customers outside of its municipal boundaries. If the

⁵¹ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 17-18. Proceeding No. 22I-0027E.

⁵² Ibid. (LEAN Energy pp. 52-53)

⁵³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 41. Proceeding No. 22I-0027E.

⁵⁴ Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), pp. 10-11. Proceeding No. 22I-0027E.

⁵⁵ Response comments of the Colorado Energy Office (April 15, 2022), pp. 10-11. Proceeding No. 22I-0027E.

boundaries of a CCE were coextensive with the boundaries of a municipality, then the CCE would likely be treated in the same manner as a municipally owned utility and would only be subject to limited Commission regulation. However, if the boundaries of a CCE moved beyond the boundaries of a municipality—for example if two cities wanted to form a CCE that covered and served both cities—it seems less likely that the CCE should be treated as a municipally owned utility without further direction from the legislature. This is particularly true given the Colorado Supreme Court’s emphasis on the fact that municipally owned utilities are subject to control by the local electorate.”⁵⁶

CQ10c: If it is determined by the General Assembly that cities, counties, combined cities and counties, or groups of cities and counties implementing CCE are public utilities subject to full or limited Commission authority or jurisdiction, should those cities, counties, combined cities and counties, or groups of cities and counties be assessed fees by the Department of Revenue pursuant to § 40-2-112, C.R.S.?

Commenters agreed that CCE authorities should be subject to fees pursuant to § 40-2-112, C.R.S. to cover regulatory costs. One commenter noted that if CCE authorities are not subject to such fees, there is a risk that non-participants would inadvertently financially subsidize CCE customers by covering such costs.⁵⁷ Another commenter suggested that the fee structure should be more similar to that required of nonprofit generation and transmission electric cooperatives, which are not rate-regulated and are subject to more limited regulatory oversight, than that required of IOUs.⁵⁸

CQ10d: Considering that Colorado’s investor-owned utilities are currently vertically integrated, are cities, counties, combined cities and counties, or groups of cities and counties implementing CCE subject to a determination of recovery of stranded costs by the Federal Energy Regulatory Commission pursuant to Order 888?

One commenter acknowledged that Federal Energy Regulatory Commission (FERC) Order No. 888 established a cost recovery requirement, but noted that in California, the California Public Utilities Commission has regulatory authority over establishing, determining, and adjusting exit fees.⁵⁹ Another commenter provided additional details regarding California’s approach to stranded cost recovery, noting that, “California now applies a much more expansive definition of stranded costs to its CCEs than set forth in either AB 117 or FERC Order 888.”⁶⁰

⁵⁶ Ibid. (Colorado Energy Office pp. 10-11)

⁵⁷ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 21-22. Proceeding No. 22I-0027E.

⁵⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 54. Proceeding No. 22I-0027E.

⁵⁹ Initial comments of Karey Christ-Janer (March 1, 2022), p. 33. Proceeding No. 22I-0027E.

⁶⁰ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), p. 16. Proceeding No. 22I-0027E.

Another commenter provided an extensive response to this question and clarified that IOUs, “along with all other FERC-jurisdictional utilities, must comply with FERC Order 888.”⁶¹ This commenter recommended that to identify when cities, counties, combined cities and counties, or groups of cities and counties implementing CCE should be subject to a determination of recovery of stranded costs, the Commission should refer to the three types of costs that IOUs are authorized to recover in accordance with FERC Order No. 888:^{62 63}

1. “Costs caused by wholesale customers using open access to choose a different power supplier than the host utility;
2. Costs caused by retail choice where retail customers are able to use open access to take transmission service to choose a different power supplier than the host utility; and
3. Stranded costs associated with municipalizations where the new municipal utility uses open access to choose a different power supplier than the host utility.”

According to this commenter, “FERC will only regulate stranded costs for departing retail customers when state regulators do not have authority under state law. In Colorado, statute does not clearly assign such stranded cost authority to the state or the Commission. In situations in which FERC has stranded cost jurisdiction, FERC regulations govern the process for determining the stranded costs associated with departing customers.” Accordingly, FERC Order No. 888 establishes the stranded cost obligation (SCO) for departing entities, which is, “an estimate of what the departing entity must pay to the host utility in order to hold harmless the utility and its remaining retail customers.”⁶⁴

FERC Order No. 888 provides the following calculation for SCO, which the commenter referenced:

$$SCO = (Revenue\ Stream\ Estimate - Competitive\ Market\ Value\ Estimate) \cdot Length\ of\ Obligation$$

As defined in FERC Order No. 888, the Revenue Stream Estimate refers to the “average annual revenues from the departing generation customer over the three years prior to the customer’s departure... less the average transmission-related revenues that the host utility would have recovered from the departing generation customer over the same three years under its new wholesale transmission tariff.”

The Competitive Market Value Estimate is, “determined in one of two ways, at the customer’s option: Option (1) the utility’s estimate of the average annual revenues [over the reasonable

⁶¹ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 12-13, 26. Proceeding No. 22I-0027E.

⁶² Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 30-33. Proceeding No. 22I-0027E.

⁶³ Federal Energy Regulatory Commission (FERC) Order No. 888: Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities’ Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 18 CFR Parts 35 and 385 (April 24, 1996), <https://www.ferc.gov/sites/default/files/2020-05/rm95-8-00v.txt>

⁶⁴ Ibid. (Public Service Company of Colorado, pp. 30-33)

expectation period...] that it can receive by selling the released capacity and associated energy, based on a market analysis performed by the utility; or Option (2) the average annual cost to the customer of replacement capacity and associated energy, based on the customer's contractual commitment with its new supplier(s)."

The Length of Obligation (also referred to as the reasonable expectation period) is "the period of time the utility could have reasonably expected to continue to serve the departing generation customer... If the parties cannot reach agreement as to the length of the customer's obligation, this period is to be determined through litigation as part of the threshold issue of whether the utility had a reasonable expectation of continuing to serve the customer."⁶⁵

One commenter expressed agreement that there are valuable aspects of FERC's recommended approach (specifically the consideration of lost revenues in exit fees), but that to ensure accuracy, this calculation requires additional inputs and requires, "the IOU experiencing the departed load taking actions to minimize the stranded costs and lost revenue."⁶⁶ Several other commenters agreed that FERC's "revenues lost" approach offers valuable guidance, but should not be required or adopted as standard practice, emphasizing that a "production cost modeling" approach could be preferable.^{67 68}

The commenter that originally suggested using FERC's SCO calculation recommends that the Commission, "conduct an inquiry into the reasonable expectation [Length of Obligation or reasonable expectation period] of the host utility." This commenter also stated that, "because customers would have the ability to opt out of CCE service (in effect re-joining the utility), restrictions would be necessary to prevent excessive rate arbitrage between CCE and non-CCE rates," and recommended that the Commission consider developing additional formulas and/or methodologies to determine appropriate cost allocation.⁶⁹

This commenter expressed further concern about potential stranded cost recovery implications relating to customer departures, noting that, "under Order No. 888, FERC has held that a retail-turned-wholesale customer's responsibility for past generation investments cannot be mitigated even if the customer's departure allows the utility to defer making new generation investments, and that the departing customer's stranded cost liability remains unaffected unless the relevant state commission makes a specific finding that the cost shifts to the other remaining customers are reasonable and recoverable in retail rates... Because the customer's departure impairs the utility's opportunity to acquire lower cost resources to serve growing demand, the customer's departure creates the same level of stranded costs burden for remaining customers whether or not the utility experiences load growth in the future. Thus,

⁶⁵ Ibid. (FERC Order No. 888)

⁶⁶ Response comments of MRW & Associates, LLC (MRW) (April 15, 2022), p. 2. Proceeding No. 22I-0027E.

⁶⁷ Response comments of Larry Miloshevich (April 15, 2022), p. 5. Proceeding No. 22I-0027E.

⁶⁸ Response comments of Colorado Community, Faith, Justice, and Business Groups (April 16, 2022), pp. 5-6, 14. Proceeding No. 22I-0027E.

⁶⁹ Ibid. (Public Service Company of Colorado, pp. 30-33)

load growth does not reduce the magnitude of stranded costs created by a customer's departure."⁷⁰

Resource Adequacy and Reliability

LQ3: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of:

A) Resource adequacy planning;

Commenters expressed general agreement that CCE authorities should be subject to at least some Commission regulatory oversight with respect to resource adequacy and reliability requirements, but perspectives varied regarding what form this regulation should take and the degree of regulation to which CCE authorities should be held.

One commenter offered a comparison to CCE models implemented in other states and expressed a preference for resource adequacy regulatory oversight related only to standards required under statute. This commenter explained that, "California cities and counties are capable of fulfilling electricity procurement and rate-setting responsibilities with minimal state oversight, just as they fulfill procurement and rate-setting responsibilities for other essential services they provide. The appropriate focus of state regulatory oversight is statutory state mandates applicable to both state regulated utilities and CCEs."⁷¹ This commenter further emphasized that because CCE authorities are not fully dependent on the resource adequacy of IOUs, they are able to identify resource adequacy requirements based on state-provided information, rather than depending on IOUs themselves.

One commenter considered it appropriate for CCE authorities to be subject to resource adequacy obligations equivalent to those that IOUs must meet, noting that the Commission should require that CCE authorities, "provide a reasonable forecast of its future load requirements and to demonstrate that the CCE has a plan in place to serve that load," as this is consistent with Commission authority over Electric Resource Plan [ERP] proceedings for IOUs. This commenter clarified, however, that the Commission may find that CCE authorities' governance structure and local oversight would allow for a less detailed proceeding process. With consideration for this governance structure, this commenter recommended that, "the Commission... evaluate which of its ERP rules pertain to the basic showing of resource adequacy, and therefore should apply to CCEs, and which rules are unnecessary to apply to CCEs given their unique role and function as load aggregators."⁷²

This commenter specifically noted that because of CCEs' position as relatively independent, local governmental entities, it would be inappropriate for the Commission to require that CCE

⁷⁰ Ibid. (Public Service Company of Colorado, pp. 12-13, 26)

⁷¹ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), p. 4. Proceeding No. 22I-0027E.

⁷² Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp., 35-36. Proceeding No. 22I-0027E.

authorities meet the competitive bidding requirements that IOUs are obligated to meet in their own ERPs. Instead, this commenter, “recommends that the Commission not exercise the same level of oversight with respect to CCEs’ resource acquisition processes because procurement policies are better left to the local communities that form CCEs.” Similarly, with respect to reliability as it relates to resource adequacy, this commenter stated that, “Because CCEs are only responsible for energy supply, they are not responsible for reliability issues that arise on the distribution or transmission systems... CCEs are responsible for ensuring that service to their customers is reliable with respect to the ability of their supply resources to meet load at all times.”⁷³

In comparison, Public Service Company of Colorado considered CCE authorities’ independent governance structure to be a risk worthy of careful consideration because, “while the Commission may have jurisdiction, depending on the CCE structure, over the CCEs within Public Service’s electric service territory, they may not have jurisdiction over all utilities in Colorado and all CCEs within Colorado.”⁷⁴ Public Service further states that it “will still maintain the responsibility for managing the entire balancing area and the Commission will need to consider how to appropriately manage this responsibility.”⁷⁵ Additionally, Public Service explained that this challenge is further complicated by an opt-out CCE model, which makes longer-term resource adequacy planning more complicated because it is difficult for generators to know when customers are likely to remain CCE customers or opt out of CCE service. “This risk of defection,” states Public Service, “may have reduced the investments in utility scale resources leaving potential resource adequacy shortages as customers opt back into utility service.”⁷⁶

Notably, several commenters emphasized that CCE authorities should be held to the same (or similar) resource adequacy standards and regulatory oversight to which the Commission holds IOUs. One commenter provided some geographic/service territory considerations, stating that, “CCEs should have [the] same resource adequacy planning obligations as the utilities from which CCE customers are drawn.”⁷⁷ Several other commenters expressed larger concerns about the risk potential of CCE on Colorado’s energy resource adequacy more broadly. These commenters emphasized that CCE authorities should be required to comply with the same resource adequacy regulatory requirements that IOUs must meet, specifically due to concerns regarding the potential for CCE authorization to result in more widescale, statewide resource adequacy problems.

One such commenter stated that, “Under procuring of generation is a natural incentive for a CCE authority as it is a method to attempt to lower customer costs of service in order to entice customers to depart service from incumbent utilities. Under procuring of resources will necessitate unwarranted and imprudent leaning on neighboring utilities, which may lead to

⁷³ Ibid. (LEAN Energy, pp. 35-36)

⁷⁴ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 38. Proceeding No. 22I-0027E.

⁷⁵ Ibid.

⁷⁶ Ibid., pp. 18-19, 36-39. Proceeding No. 22I-0027E.

⁷⁷ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 2. Proceeding No. 22I-0027E.

cascading reliability concerns throughout the State.”⁷⁸ This commenter did emphasize, however, that that full Commission regulation over CCE authorities’ resource adequacy could help mitigate against this risk.

Another commenter that expressed concerns about potential adverse resource adequacy impacts that could arise with CCE authorization focused on the fact that if Colorado were to authorize CCE despite not currently participating in a wider wholesale energy market, Colorado would be the only state in such circumstances to have done so; all other states that have authorized CCE authorities are members of a regional transmission organization or independent system operator (RTO/ISO). In addition to not currently participating in an RTO/ISO, this commenter notes that were Colorado to wait until it joins a wholesale energy market to authorize CCE, “much of the state will already be at or beyond 80 percent carbon emissions reductions.”⁷⁹

This commenter provided further detail regarding potential resource adequacy concerns associated with CCE authorization in the midst of Colorado’s energy transition, noting that, “The transition to wind, solar, and energy storage greatly complicates resource adequacy as their generation is conditional on the weather or limited by its storage capacity. Consideration of variable and energy-limited resources requires sophisticated planning reserve margin studies as well as capacity contribution studies (i.e., Equivalent Load Carrying Capacity studies) to be rigorously applied to current resources and considered in procurement of future resources - as is done in electric resource plans. These activities would not be easily replicated by CCEs. Instead, CCEs will need rules to follow to ensure they will provide customers with reliable power for all hours of the year.” This commenter emphasized that Commission oversight—especially oversight related to resource planning proceedings—is crucial if CCE is authorized in Colorado.⁸⁰

This commenter linked their resource adequacy concerns to additional concerns regarding how potential resource adequacy shortcomings could impact reliability in Colorado by calling attention to reliability failures in California and Texas, in which energy resources were fragmented in such a manner that they contributed to widespread grid failure. The commenter clarified that climate change furthers this risk because, “as extreme weather events become more common, commodity price and volatility increases, and the electric generation fleet transitions to rely on variable intermittent resources and new technologies,” making resource adequacy planning increasingly challenging and crucial.⁸¹ This commenter emphasized that the CCE model further complicates resilience efforts for IOUs that would be likely to serve as the Provider of Last Resort (POLR) for CCE customers. Because of this unique challenge, this commenter emphasized that if CCE authorities are authorized in Colorado, IOUs would need to

⁷⁸ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 3-4. Proceeding No. 22I-0027E.

⁷⁹ Ibid. (PSCo pp. 18-19, 36-39)

⁸⁰ Ibid. (PSCo pp. 18-19, 36-39)

⁸¹ Ibid. (PSCo pp. 18-19, 36-39)

establish highly specific resource adequacy standards in collaboration with the Commission and in accordance with policy established by the legislature.

For additional commenter perspectives regarding how to assure and finance reliability in Colorado if CCE authorities are authorized, please refer to LQ3B below.

B) Assurance of reliability and how this is paid for;

The response to this question pertains primarily to how to finance reliability initiatives in Colorado under a system in which CCE is authorized. For a detailed summary of commenters' perspectives regarding potential benefits and risks to resource adequacy and reliability in Colorado if CCE authorities are authorized, please refer to LQ3A above.

One commenter stated that CCE authorities should be subject to the same reliability requirements to which IOUs are held, but CCE authorities should have the opportunity to determine how to meet (and finance meeting) those requirements.⁸² This commenter did not specify which reliability requirements CCE authorities should be subject to.

Another commenter asserted that reliable electricity service would remain the responsibility of the IOU. According to this commenter, under the CCE model, "the utility retains ownership and control of its transmission and distribution systems and is responsible for ensuring the reliability of these systems. CCE customers remain customers of the utility and continue to contribute to the cost of maintaining the reliability of the distribution and transmission systems through the delivery charges on their bills."⁸³ According to this commenter, the only reliability consideration related to CCE authorization would be ensuring that CCE authorities procure resources sufficient to serve their customers, which CCE authorities would accomplish via contracts with wholesale power providers.

Another commenter provided examples of different ways that CCE/CCA entities in California have ensured and financed reliability for their customers. This commenter explained that in California, some CCA authorities are investing in "energy resilience assets" when they have the opportunity, but those opportunities have been limited by financial obligations related to other challenges including opt-out risks, exit fees, and wholesale energy market prices. Still, with respect to reliability costs and financing, this commenter clarifies that, "Overall service reliability currently depends primarily on grid infrastructure, the costs of which are recovered through rates and by electricity supply from diverse sources, the costs of which are also recovered in rates."⁸⁴

⁸² Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 2. Proceeding No. 22I-0027E.

⁸³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 36. Proceeding No. 22I-0027E.

⁸⁴ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), pp. 4, 13. Proceeding No. 22I-0027E.

LQ15: How CCE might facilitate or impede...

C) resource adequacy and reliability, and what regulatory approaches would be needed to maximize positive impacts and mitigate negative impacts

As indicated throughout several responses to LQ3, most parties agree that it would be reasonable and appropriate for CCE authorities to be subject to some resource adequacy and/or reliability oversight from the Commission. However, commenters' perspectives regarding potential regulatory approaches vary. Several commenters provided examples of regulatory approaches from community choice aggregation providers California, including a recent requirement that providers develop integrated resource plans for submittal to the California Public Utilities Commission.⁸⁵

Another commenter emphasized the important role that the Commission must play to mitigate potential resource adequacy and reliability risks associated with CCE authorization. Specifically, this commenter stated that, "it is critical the Commission retain its jurisdiction over CCE authorities in a similar manner exercised on investor-owned utilities... Such jurisdiction is the best mechanism to ensure that customers in CCE authorities do not receive declining... reliable service... Customers should not lose the benefits of the regulatory improvements that the Commission has worked diligently to craft over time."⁸⁶ This commenter also emphasized that the Commission must have the capacity to review CCE authorities' resource planning efforts to mitigate against potential resource adequacy concerns,

Another commenter expressed an interest in a regulatory system in which both the Commission and other relevant regulatory agencies (specifically the Air Quality Control Commission) have regulatory authority over CCE providers, though the scope of this regulatory authority would shift over time. Specifically, this commenter suggests that, "the Public Utilities Commission and Air Quality Control Commission retain oversight of CCE compliance with these requirements until Colorado joins an organized wholesale electricity market. At that time, the market entity must assume oversight of resource adequacy and assurance of reliability while renewable energy standard and emissions reduction targets would remain under the purview of the Public Utilities Commission and Air Quality Control Commission."⁸⁷

Additionally, as indicated in response to LQ3, one commenter recommends that CCE authorities be subject to the Commission's ERP rules (especially those related to resource adequacy), with the exception of any ERP rules specific to competitive bidding processes, including resource procurement.⁸⁸ This commenter emphasized that CCE authorities would inherently be held accountable for their performance due to their role as quasi-governmental organizations subject to local-level board oversight. Another commenter further expanded upon this

⁸⁵ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 22-23. Proceeding No. 22I-0027E.

⁸⁶ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 7-8, 11-12. Proceeding No. 22I-0027E.

⁸⁷ Initial comments of the City of Boulder (March 1, 2022), p. 5. Proceeding No. 22I-0027E.

⁸⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 35-36. Proceeding No. 22I-0027E.

perspective, emphasizing that, “CCEs should be required to file Electric Resource Plans that demonstrate assurance of Resource Adequacy and therefore also demonstrate assurance of generation-based Reliability” This commenter specifically stated that CCE authorities should demonstrate resource adequacy by demonstrating that they have “firm resources including reserve margin.” Like the previous commenter, this commenter noted that, “The Commission should oversee Resource Adequacy generally, but not the specifics of the choice of resources and contracts that are signed, as a CCE might go about addressing resource needs differently than an IOU (e.g., more sensibly and innovatively),” because CCE authorities are not profit-seeking.⁸⁹

One commenter emphasized the importance of careful regulation and planning because of the potential for CCE to either help key resource adequacy and reliability efforts or hinder them via fragmentation. This commenter provided examples from California, noting that resource adequacy has long been, and continues to be, “a major concern of the California PUC decades after CCE was first authorized.” This commenter identifies California’s resource adequacy concerns as key drivers for legislative action in 2002, in which California mandated long-term procurement planning and authorized community choice aggregation. In 2015, California followed with legislation mandating that CCA authorities develop integrated resource plans. This commenter quoted concerns expressed by the California PUC, which stated that, “without a coherent and comprehensive plan, the current policies in place may drift California to an unintended outcome and breakdown in services like the Energy Crisis,” and expressed further concerns that such fragmentation could also occur in Colorado without adequate Commission oversight, noting potential implications to the regional Western Power Pool Western Resource Adequacy Program.⁹⁰ Today, California is responsible for reviewing approximately 40 integrated resource plans for various LSEs, and Colorado should ensure that its own Commission has sufficient resources to conduct detailed reviews of submitted CCE resource plans.⁹¹

Several commenters expressed fragmentation as a significant concern that—if CCE is authorized—must be mitigated through regulatory approaches. One commenter reiterated previously mentioned concerns regarding the potential for fragmentation to adversely affect resource adequacy. This commenter also provided example context from California, which, “initially required CCAs to meet RA [resource adequacy] requirements across three resource areas identified under state regulations: flexible, system, and local categories. However, due, in part, to thermal resource retirements, which drove up RA prices in the state, and the fact that many CCAs are in urban areas, many CCAs were not able to meet the local RA requirements. In response to this challenge, the CPUC recently reversed the requirement that CCAs meet local

⁸⁹ Response comments of Larry Miloshevich (April 15, 2022), p. 17. Proceeding No. 22I-0027E.

⁹⁰ California Public Utilities Commission, *California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market*, Draft Green Book (May 17, 2018), p. 5. https://www.cpuc.ca.gov/-/media/cpuc-website/files/uploadedfiles/cpuc_public_website/content/utilities_and_industries/energy_-_electricity_and_natural_gas/cal-customer-choice-report-v5-17-18.pdf

⁹¹ Initial comments of the Interwest Energy Alliance (March 1, 2022), pp. 3-5. Proceeding No. 22I-0027E.

RA obligations. Because CCAs can fragment responsibility for RA, there are open questions about how resource adequacy at the system level can be addressed in a CCE regime.” This commenter explained that resource adequacy is one of several areas of regulatory concern related to CCE authorization, and authorizing CCE authorities in Colorado, “would require significant overhaul of current legal and regulatory frameworks.”⁹²

Another commenter provided examples from California regarding regulatory approaches to better ensure resource reliability. This commenter stated that the California Public Utilities Commission has procurement mandates (based on a statewide integrated resource planning process) that are intended to, “ensure local and system-wide grid reliability... Individual load serving entities, including CCEs, are required to submit procurement plans so that state regulators can assess the combined impact on grid reliability. When resource deficiencies are identified at either a system level or in transmission-constrained local areas, the Public Utilities Commission has the authority to order the IOUs to procure additional resources, with the cost of those resources allocated to affected customers including those of the CCEs.”⁹³

Another commenter that referred to several of California’s regulatory efforts emphasized that though California identified that CCE regulation was critical, the potential for regulation to mitigate against potential adverse resource adequacy and reliability impacts is not yet fully known. Specifically, this commenter noted that, “In the last several years, California has shored up its markets through increased regulation, apparently having recognized that stability and decarbonization require a steady hand.” Some regulatory approaches that California has taken to mitigate against potential reliability concerns include, “requiring public utilities to serve as the providers of last resort; mandating that CCEs must comply with resource planning requirements; and requiring that 65% of renewable energy be procured under long-term contracts.”⁹⁴

One commenter emphasized that the Commission must be granted statutory authority from the legislature to ensure that CCE approval, “does not harm non-participants and investor-owned utilities, does not jeopardize achievement of Colorado’s energy policy goals, maintains system reliability, and ensures that customers of CCEs are adequately protected.”⁹⁵ This commenter notes that the legislature would need to develop a novel policy framework to guide CCE program development, but that this framework could present potential constitutional concerns and questions. This commenter clarified that the increasingly complicated resource adequacy planning and reliability environments (discussed in greater detail in response to LQ3) suggest that “CCEs should be subject to Commission authority, with capacity accreditation and planning reserve margins set in resource planning proceedings. Reliability cannot be devolved to a pure

⁹² Response comments of the Colorado Energy Office (April 15, 2022), pp. 12-13. Proceeding No. 22I-0027E.

⁹³ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 10. Proceeding No. 22I-0027E.

⁹⁴ Response comments of IBEW Local #111 (April 15, 2022), pp. 9-10. Proceeding No. 22I-0027E.

⁹⁵ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 16-17, 37-38. Proceeding No. 22I-0027E.

market function, with CCEs competing for customers without the responsibility of ensuring reliable service.”⁹⁶

This commenter further emphasized the importance of Commission oversight regarding CCE authorities’ resource selection, and additionally noted that stakeholders should have the opportunity to provide their own comments on CCE authorities’ proposed resources. This commenter also proposed a novel “intervention by right” approach which would apply to certain key parties (i.e., transmission and distribution utilities, regional load balancing entities, RTOs/ISOs) if CCE is authorized. According to this commenter, such a right is important because, “no entity should have singular ability to dictate the resources that will maintain the safe and reliable operation of the grid.”⁹⁷

CQ14: Could recent decisions by the Commission related to the acquisition of generation and transmission to meet future needs be negatively impacted by implementation of CCE in Colorado?

Commenters agree that there is potential for CCE authorization to adversely affect recent Commission decisions related to the acquisition of generation and transmission to meet future needs, but perspectives differ regarding the magnitude of those adverse impacts, and whether they can be reasonably mitigated. One commenter cautioned that IOU resource and transmission plans, “do not have contingencies included to reflect departing load to CCE authorities, the different generation resources that may need transmission capability to serve CCE authorities, or assessments of the impact to greenhouse gas emissions,” and further notes that any contingencies that would be developed would be speculative in nature.⁹⁸

Another commenter expresses similar concerns, suggesting that CCE approval could adversely impact IOUs’ upcoming competitive bid processes for electricity resources that would address peak demand gaps identified in long-term resource planning documents. This commenter asserts that, “The introduction of CCEs may have the unintended effect of slowing these larger and more beneficial utility scale investments in carbon free generation if a CCE structure leads to uncertainty in future load and long-term need planning. Generation investments are long-term investments and the potential risk that they are not needed in the future because communities may form CCEs could chill a utility’s investments and/or chill regulators’ approval of these investments for fear of creating potential unused or uneconomically available generation. It may also produce uncertainty for bidders who seek to participate in the

⁹⁶ Ibid. (Public Service Company of Colorado, pp. 16-17, 37-38)

⁹⁷ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 23-24. Proceeding No. 22I-0027E.

⁹⁸ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 21-22. Proceeding No. 22I-0027E.

solicitation process but would also have to consider the utility's risk of not needing the proposed generation. This could lead to higher cost bids or fewer bids.”⁹⁹

Another commenter provides some recommendations for ways to mitigate potential effects on recent Commission generation and transmission resource acquisitions resulting from CCE authorization. This commenter recommends that utilities, “periodically update the PUC with departing load forecasts to avoid over procurement and unnecessary claims of stranded assets.” The commenter suggests that this can be accomplished via, “a mechanism in Rulemaking that allows and requires cancelling or downsizing of approved utility asset acquisitions in the out years of a resource plan if found to be appropriate given changes in load departure forecasts.”¹⁰⁰

Exit Fees

LQ4: The appropriate principles and considerations for calculating the amount and duration of reasonable transition fees, also known as exit fees, that communities forming a CCE authority would pay to the incumbent investor-owned electric utility to offset their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved, in amounts sufficient to provide cost recovery for stranded investor-owned electric utility assets and contracts and direct transition costs while protecting non- CCE customers but without unduly burdening CCE customers. The principles and considerations shall include:

- A) The age or the date of initial service of generation assets and existing contracts;
- B) The potential for exit fees to vary over time or by location;
- C) The potential for exit fees to vary over time or by location;
- D) Measures to mitigate exit fees through potential contract transfer or resale to CCE authorities or other buyers, and appropriate forecasting of departing load to avoid over-procurement

Commenters generally discussed Parts A-D of LQ4 holistically. The response below therefore summarizes perspectives in response to all four of these sub-questions, while LQ4E is discussed separately.

One commenter listed the following four key exit fee planning considerations for CCE authorities. According to this commenter, in order for the CCE authority to adequately plan, it must know:¹⁰¹

- “What the liability will be;

⁹⁹ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 23-24. Proceeding No. 22I-0027E.

¹⁰⁰ Initial comments of Larry Miloshevich (March 1, 2022), pp. 31-32. Proceeding No. 22I-0027E.

¹⁰¹ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 3-4. Proceeding No. 22I-0027E.

- How the exit fee will be calculated (i.e., full transparency);
- Over how long the exit fee liability will be collected; and
- Who will pay the exit fee and how (e.g., lump sum payments by the CCE, per-kWh charge collected from CCE customers, per-kWh charge collected from the CCE, etc.)”

This commenter emphasized that, “The fees must... be fair and cover an appropriate amount of stranded costs created by the CCE’s formation.” To ensure this, the commenter suggested that the Commission require affected IOUs, “to take all appropriate steps to minimize the costs, such as by changing its procurement plan to reflect the reduced load, selling excess power to willing off-takers (even the CCE), and divesting generating resources and/or buying out or transferring off-taker rights of stranded PPAs.” The commenter stated that ideally, some IOU power resources could continue to support customers that departed IOU service and became CCE customers but acknowledges that this would be very difficult in practice because it would either require the IOU to divest all or part of some of its power generation facilities to the CCE authority or would require third-party PPA providers to transfer the IOU’s PPAs to the CCE authority.¹⁰²

This commenter also noted that though FERC Order No. 888 provides helpful information related to stranded costs and lost revenues, lost revenues alone should not be the only consideration when calculating and establishing exit fees. Specifically, this commenter emphasized that developing an exit fee based only on lost revenues does not leave room for, “the IOU experiencing the departed load [to take] actions to minimize the stranded costs and lost revenue,” which is also a critical consideration in exit fee calculation.¹⁰³

This commenter recommended that the CCE authorities be held to advance notice requirements as part of CCE formation to better inform departing load forecasts, and developed and proposed the following “straw proposal” framework that it recommends the Commission follow when establishing exit fees if CCE is authorized in Colorado:¹⁰⁴

- “Be sure to establish the terms of the exit fees prior to the CCE’s departure.
- Use CCE_{in}/CCE_{out} production cost modeling to advise the energy cost portion of the fee. This would account for the reduced energy load served by the IOU as well as any changes in resource dispatch.
- Require the IOU to adjust their procurement plans. That is, if the CCE would remove 200 MW in two years, how would the IOU’s procurement plan change? One would expect delays in PPAs and new plants. Once the IOU is no longer ‘long’ and their procurement matches their load, the CCE exit fee should end.”

To facilitate CCE planning obligations related to exit fees, this commenter suggested an approach in which the exit fee calculation would be based on a specific timeframe, that, “would

¹⁰² Ibid. (MRW & Associates, LLC, pp. 3-4)

¹⁰³ Response comments of MRW & Associates, LLC (MRW) (April 15, 2022), pp. 1-3. Proceeding No. 22I-0027E.

¹⁰⁴ Ibid. (MRW & Associates, LLC, pp. 3-4)

be no later than the point where the IOU had no excess generation attributable to the CCE,” due to the expiration of a PPA, retirement of generation facilities, etc. Accordingly, this calculation requires that IOUs adjust their own procurement plans based on potential load shifts related to customers joining CCE authorities. According to this commenter, this incentivizes the IOU to better consider the implications of CCE load departure on their own loads and ensures that, “the remaining customers are not burdened with the costs associated with the excess capacity. This provides a strong financial incentive to the IOU to adapt its procurement to the departed load.”¹⁰⁵

Another commenter agreed that IOUs have a role of responsibility in an appropriate exit fee formula. Specifically, this commenter provided the following recommended guidelines (based on proposed CCE-enabling legislation from 2019 in Oregon and 2021 in New Mexico) for the legislature and Commission regarding exit fee establishment, which include the expectation that IOUs update departing load forecasts:¹⁰⁶

- **Exit fees should expire in a set maximum period of time.** The duration of the exit fee, such as 5 years or 10 years... should not be too short or the exit fee will be too large... but it should also not too long to ensure that the CCE sees a light at the end of the tunnel and is not tied to the IOU seemingly indefinitely. Enabling legislation could set an upper bound, with the actual duration determined during Rulemaking. Greater certainty than in California will aid in rate planning, and is consistent with the way that stranded assets were successfully paid off when the deregulated states restructured. The exit fee may vary over that time period if found to be appropriate.
- **Measures that minimize exit fees should be specified.** Enabling legislation should generally outline these measures and constraints to minimize exit fees, and Rulemaking should define them more specifically. Defection of 100 MW of utility load to a CCE definitely does not mean that the CCE is responsible for compensating the utility for 100 MW of its most expensive undepreciated generation. Stranded generation should be assigned to the CCE in order from least expensive to most expensive. Generation assets or contracts should not simply be shut down and charged to the CCE, but should be transferred or sold at fair market value to the CCE or other buyers.
- **Utilities should periodically update the PUC with departing load forecasts to avoid overprocurement and unnecessary claims of stranded assets.** There should be a mechanism in Rulemaking that allows and requires cancelling or downsizing of approved utility asset acquisitions in the out years of a resource plan if found to be appropriate given changes in load departure forecasts. Furthermore, future load growth will soak up much IOU renewable generation, especially as the transportation and buildings sectors electrify, thereby reducing assets classified as stranded and reducing the need to acquire future generation. A shorter time horizon for the resource acquisition period of an ERP may be appropriate nowadays (even apart from CCE considerations), because

¹⁰⁵ Ibid. (MRW & Associates, LLC, pp. 1-3)

¹⁰⁶ Initial comments of Larry Miloshevich (March 1, 2022), pp. 30-34. Proceeding No. 22I-0027E.

renewable resources can be bid, developed and interconnected much faster than the fossil resources of old that required a decade-long time horizon.

This commenter referred to New Mexico's 2021 proposed CCE-enabling legislation, which stipulates that exit fees apply only to, "the above-market cost of power that was procured on behalf of local choice energy customers prior to their departure from the public utility or cooperative."¹⁰⁷ The New Mexico legislation also contains a requirement that IOUs demonstrate that exit fees are reasonable (based on IOU projections of departing load and taking into consideration the IOU's efforts to sell stranded assets), which this commenter recommends Colorado also adopt.¹⁰⁸ This commenter expanded upon the value of restricting exit fees to above-market costs, stating that, "Exit fees should not increase substantially after a CCE is established, in part because the exit fee is based on the above-market stranded costs that the CCE creates at the time of its formation, and the CCE is not responsible for new assets procured by the IOU after the CCE begins operations." The commenter clarified that "vintage" exit fees (exit fees associated with the date that a CCE authority is established) could vary by CCE authority, even if they do not change significantly over time. For example, a more recently established CCE authority could be responsible for paying for an IOU's assets that a CCE authority established years prior would not be responsible for, because the IOU had not yet made those investments.¹⁰⁹

This commenter also referred to the cost recovery approach included in Oregon's 2019 proposed CCA-enabling legislature. If approved, the legislation would require that exit fee calculations, "be based only on information relevant to the period of 5 years following the date that a CCA authority commences service [and be] limited to investments incurred prior to the date that a CCA files its implementation plan with the PUC." This calculation considers not only departing load, but also how that departing load may result in avoided utility investment costs. The exit fee calculation includes a credit to CCA customers for these avoided investments. Furthermore, Oregon's proposed exit fee calculation was based on wholesale market prices and prohibited the IOU from recovering costs that were not prudently mitigated.¹¹⁰

Based on the proposed Oregon and New Mexico legislation and additional information, this commenter provided the following recommendations related to exit fees in Colorado:¹¹¹

- "Vintaging should be used to more accurately calculate the stranded costs that new communities joining an existing CCE (or JPA) at different times are responsible for.

¹⁰⁷ Local Choice Energy Act, Senate Bill 83, 55th Legislature of the State of New Mexico, First Session (2021), (NM, February 11, 2021), https://www.nmlegis.gov/Sessions/21%20Regular/Amendments_In_Context/SB0083.pdf

¹⁰⁸ Ibid. (Larry Miloshevich, pp. 30-34)

¹⁰⁹ Response comments of Larry Miloshevich (April 15, 2022), pp. 9-13. Proceeding No. 22I-0027E.

¹¹⁰ Ibid. (Larry Miloshevich, pp. 30-34)

¹¹¹ Ibid. (Larry Miloshevich, pp. 9-13)

- Exit fees should not increase after a CCE begins operations, except in specific circumstances that are specified and well justified in the Rules, such as large changes in the opt-out rate that meaningfully impact the IOU's capacity reserves.
- Utilities should be required to demonstrate their efforts to minimize the stranded costs that CCEs are responsible for, such as through the sale of assets or transfer of contracts to the CCE or to other buyers at market rates, including the sale of energy, capacity, or ancillary services from said assets into the wholesale market. Such actions should reduce the exit fee over time if stranded costs are reduced below their expected level at the time of CCE formation. The PUC, CCEs, and other stakeholders should have opportunity to propose measures that would reduce stranded costs.
- High-level principles concerning the calculation of exit fees should be written into CCE-enabling legislation to ensure that subsequent Rulemaking establishes rules that are not only fair to the IOU but also enhance the viability and prosperity of CCEs.
- ...Enabling legislation should grant the authority to the state to recover stranded costs, so that jurisdiction and the method of cost recovery do not default to FERC. The "revenues lost" approach for calculating stranded costs that is outlined in FERC Order 888, while available to the Commission for guidance, should not become the default or the required approach."

Comparatively, a different commenter argued that the Commission should refer to FERC Order No. 888 for guidance regarding cost recovery in the context of exit fees. This commenter summarized the following three types of costs that, under FERC Order No. 888, IOUs are authorized to recover:^{112 113}

- "Costs caused by wholesale customers using open access to choose a different power supplier than the host utility;
- Costs caused by retail choice where retail customers are able to use open access to take transmission service to choose a different power supplier than the host utility; and
- Stranded costs associated with municipalizations where the new municipal utility uses open access to choose a different power supplier than the host utility."

This commenter provided detailed comments regarding IOUs' authority to recover stranded costs under FERC Order No. 888. A detailed summary of those comments is included in response to CQ10d. Specifically, this commenter suggests that "a revenues approach along the lines of

¹¹² Federal Energy Regulatory Commission (FERC) Order No. 888: Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities' Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 18 CFR Parts 35 and 385 (April 24, 1996), <https://www.ferc.gov/sites/default/files/2020-05/rm95-8-00v.txt>

¹¹³ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 29-34. Proceeding No. 22I-0027E

FERC Order No. 888... would make more sense in order to minimize litigation efforts and fast-track CCE formation.”¹¹⁴

This commenter also provided perspectives regarding appropriate timelines for exit fees based on when a customer elects to depart an IOU’s service and become a customer of a CCE authority, and when a customer may re-elect to become an IOU customer after having been a CCE customer. This commenter stated that, “The current CCE structure allows customers to opt-out at the time the CCE is formed or at a future date and the timing of that opt-out has different impacts. When a customer chooses to opt-out after formation of and participation in a CCE, the utility has made changes to its investment and operations under the assumption they are no longer serving that customer... this risk of defection may have reduced the investments in utility scale resources leaving potential resource adequacy shortages as customers opt back into utility service.” This commenter acknowledges that, “while exit fees provide an appropriate safeguard when the CCE is initially formed or a customer chooses to opt out of utility service, by the same logic, customers choosing to return to the electric utility should be responsible for the incremental costs required to serve them.” This commenter recommends that customers choosing to return to an IOU’s service should be subject to an entrance fee (that they must pay prior to receiving service) to account for these challenges, and the IOU should have a grace period to meet compliance standards associated with the new load requirements resulting from the return of this customer.¹¹⁵

In response to these complications, this commenter identified the following two key issue areas related to exit fees that cause uncertainty for CCE authorities when they are trying to identify how much liability they have towards the incumbent IOU and present additional cost increase risks:¹¹⁶

- “The fluctuating nature of exit fees;” and
- “The lack of an expiration date for the applicability of exit fees.”

Accordingly, this commenter suggested that if CCE is authorized in Colorado, the resulting exit fee strategy should, “have predictable pricing and have a set expiration date,” but that a universal formula would not adequately account for all necessary variables including, “flexibility for exit fees to change over time as the industry and markets evolve.” For this reason, this commenter recommended that the Commission—rather than the legislature—hold the authority to set exit fees because, “the Commission can oversee narrowly focused rulemakings with workshops and information gathering processes among important stakeholders and subject matter experts.”¹¹⁷

¹¹⁴ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 9-14. Proceeding No. 22I-0027E.

¹¹⁵ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 38-39. Proceeding No. 22I-0027E.

¹¹⁶ Ibid. (Public Service Company of Colorado, pp. 9-14)

¹¹⁷ Ibid. (Public Service Company of Colorado, pp. 9-14)

With respect to exit fee mitigation strategies, this commenter expressed that any proposed mitigation strategies that included selectively excluding certain generation resources (such as, “assets [that] were not prudently acquired by the host utility or had become too costly,” would be inequitable with respect to determining which customers were and were not responsible for contributing to those assets, would be inherently litigious, and would present significant regulatory burden (and, accordingly, high costs). This commenter further emphasized that because many of IOUs’ assets are and would be renewable resources, their costs would be “stranded” for a long timeframe, given that the resources have or would have substantial remaining generation timeframes.¹¹⁸

This commenter also provided feedback on a proposed exit fee mitigation strategy that would, “allow load growth to reduce the duration of the obligation,” because as load departs an IOU because it is diverted to a CCE when customers change providers, “the need to build generation resources to accommodate future load growth [is reduced], so stranded assets become less stranded over time if they can serve the growth in load rather than building new resources.” This commenter warns that this conflicts with IOUs’ current obligations to plan for, make investments that support, and deploy sufficient resources to support future load growth. IOUs must make these investments well in advance of the date that they are projected to be needed, meaning that investments may be made before certain customers even have the opportunity to depart for a CCE authority. Furthermore, if an IOU were not to make generation investments because of the possibility that some customers may depart for a CCE authority, “remaining customers would still be harmed... because the remaining customers would be forced to rely on legacy generation for a longer time than otherwise would have been needed.”¹¹⁹

This commenter also provided feedback related to a third proposed exit fee mitigation strategy, which would, “allow for the sale of the host utility’s generation assets, or the assignment of its purchased power contracts, to the CCE or a third party,” essentially “un-stranding” the financial dimensions of these assets. This commenter argued that it is unlikely that, “the host utility would receive full market value for the generation resource, due to the illiquidity of the market for generation resources, and the host utility would likely sell the resource at a loss. Any net loss due to the premature sale of a generation resource would have to be recovered from the departing CCE through the exit fee.” The commenter did acknowledge, though, that this mitigation strategy could be effective if the CCE authority itself is the purchasing party.¹²⁰

Finally, this commenter brought up concerns related to incremental costs if incumbent IOUs remain the Provider of Last Resort (POLR) for departing customers that become CCE customers. Commenters’ perspectives regarding POLR considerations are summarized in response to LQ5 and LQ9.

¹¹⁸ Ibid. (Public Service Company of Colorado, pp. 9-14)

¹¹⁹ Ibid. (Public Service Company of Colorado, pp. 9-14)

¹²⁰ Ibid. (Public Service Company of Colorado, pp. 9-14)

Based on their comments, this commenter provided the Commission with the following recommendations for how to address exit fees if CCE is authorized:¹²¹

- “Introduce a rulemaking proceeding whereby a framework for setting exit fees is established that allows for fees to fluctuate as circumstances change and markets evolve;
- Consider a revenues-based approach rather than a cost-based approach to determining exit fees in order to minimize controversy and delayed effectiveness of CCE formation; and
- Ensure that exit fees are equitable for all customers by including all costs associated with the departing load, including any stranded resource costs over the full duration of their remaining useful lives, and any ongoing incremental costs such as resource adequacy-related costs stemming from being the provider of last resort.”

Another commenter agreed with the previous commenter that exit fees present a resource planning risk due to the additional difficulty they introduce with respect to load forecasting. This commenter noted that if CCE is authorized in Colorado, many of Colorado’s municipalities that have 100 percent renewable energy goals would be likely to pursue those goals through CCE establishment. The commenter suggests that one could feasibly establish an exit fee based on an estimated opt-out rate of customers that could be served by the CCE authority, but this strategy would have substantial uncertainty. The impacts of this could be even more substantial if a large electricity consumer (such as an industrial customer) does not act in the manner “anticipated” by the model. This is even further complicated by the fact that customers can join, depart from, and re-join a CCE authority at their discretion. According to this commenter, any calculation based on departing load in an opt-out CCE model would at best be a “snapshot in time” and should not be used to calculate exit fees more broadly. However, this commenter does acknowledge that an opt-in model with specific time commitments could help mitigate against some of these calculation risks.¹²²

This commenter further discussed potential implications that exit fees could have on resource planning in the context of Colorado’s Clean Energy Plan requirements, which establishes significant clean energy investments for the state’s IOUs. According to this commenter, these investments could potentially result in extremely high exit fees if IOU customers depart for an alternative CCE authority. Like the prior commenter, this commenter also noted that CCE authorization could cause the prompt stranding of new clean energy resources developed as part of IOUs’ Clean Energy Plans, leading to exit fee impacts.¹²³

Also like the prior commenter, this commenter cautioned against, “trying to create a neat formula prescribed within future CCA-enabling legislation for the exit fee aspect of CCA.” This commenter argued that “for the legislature to try to write rules could actually be dangerous for the stability of the Colorado market... Only the Commission would have the expertise to

¹²¹ Ibid. (Public Service Company of Colorado, pp. 9-14)

¹²² Initial comments of Karey Christ-Janer (March 1, 2022), pp. 8-10. Proceeding No. 22I-0027E.

¹²³ Ibid. (Karey Christ-Janer, pp. 8-10)

slosh through all of the implications and write effective Rules, and critically, with adequate stakeholder input.”¹²⁴

Three other commenters provided different perspectives. One commenter argued that exit fees should have different timeline considerations to facilitate planning and projections for CCE authorities. According to this commenter “Year-to-year exit fee variations should be phased in so as to be non-disruptive to CCEs. Long term variations should be accurately forecastable based on publicly available information and data.” This commenter stated that, “Exit fees remain valid and publicly beneficial only during a transition period,” indicating that their benefit would wane once CCE authorities in Colorado become well-established.¹²⁵

Another commenter offered the following two recommendations to be considered in the development of exit fees, with specific consideration for potential resource planning complications associated with developing exit fee calculation models:¹²⁶

- “Do account for the cost of legacy renewables, especially those procured under state mandates. These contracts seeded today’s renewable energy opportunity and should be borne by all customers.
- Don’t use transition fees to cover costs associated with poor judgment by utility management (such as building a coal plant in the past 20 years when it was very unlikely to remain competitive).”

A final commenter recommended that the Commission, “consider initiating a working group of industry experts to see which of the various models makes the most sense for the Colorado market,” to address exit fee concerns, questions, and considerations. Specifically, this commenter recommends that the work group explore all aspects of this question, in addition to the following key considerations:¹²⁷

- “Whether it is appropriate to include utility-owned generation in the exit fee calculation, and if so, what is the appropriate depreciation schedule.
- Various payment methods to reduce CCE/customer cost exposure and to increase exit fee certainty (e.g., on-bill payments, exit fee securitization, pre-payments, etc.); and
- Full transparency regarding the above and below market costs that are included in the exit fee calculation and methodology used to set it (i.e., no black box calculations).”

Specifically, this commenter suggested that Colorado should avoid an approach to exit fee calculation that is burdened with the “complexity, volatility, and lack of a sunset date,” associated with California’s exit fees (discussed in greater detail below in response to LQ4E).

¹²⁴ Ibid. (Karey Christ-Janer, pp. 8-10)

¹²⁵ Initial comments of the Integrated Renewable Energy Systems Network (IRESN) (March 1, 2022), p. 2. Proceeding No. 22I-0027E.

¹²⁶ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), p. 6. Proceeding No. 22I-0027E.

¹²⁷ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 50-51. Proceeding No. 22I-0027E.

This commenter agreed with the first commenter’s “straw proposal” because it “would achieve the goal of holding utility customers harmless without burdening the Commission, the utilities, and CCEs with constant regulatory disputes.” However, this commenter emphasized that “the requirement that utilities adjust their procurement plans to account for departing CCE load” would be critical to the success of this straw proposal.¹²⁸

Like the other commenters, this commenter agreed that the Commission should be responsible for determining exit fees, but stated that the legislature had a role in, “enshrine[ing] principles for the calculation in any implementing legislation.” Specifically, this commenter recommended that the legislature establish the following requirements of Commission-determined exit fees, which should:¹²⁹

- “Be calculated once at the outset of CCE formation,
- Incentivize the utility to manage its legacy resource portfolio prudently, and
- Sunset at a predetermined time.”

E) Pitfalls encountered in other states related to exit fees and how those pitfalls could be avoided or mitigated by up-front consideration.

The summarized responses below provide a general overview of exit fee pitfalls and challenges encountered in California, but they do not provide case-specific details. For detailed case study summaries related to specific CCE/CCA authorities in other states, please refer to Appendix C.

Several commenters identified California’s approach to exit fees as problematic and presented the approach as an example of how not to structure a CCE exit fee model, but others suggested that California offered some potential approaches that may be worth considering.

One commenter discussed the challenges associated with departing (and returning) load between IOUs and CCE authorities. This commenter asserted that though departing load is very challenging to predict accurately and can change rapidly, “it is commonly estimated that a full 85% of load in IOU territories in California will migrate to the CCA model within the next few years. Then again, they could also migrate back again -- and in either direction.” According to this commenter, because California’s exit fees (PCIA fees) change every year, “rate shock and customer migration are very real risks.”¹³⁰ Another commenter similarly stated that as exit fees have shifted over time in California, they have made it increasingly difficult for CCA authorities to offer cost savings when compared to the incumbent IOU. This commenter specifically stated that California’s CCA authorities “were able to sign newer Power Purchase Agreements... at lower prices and were able to pass on those lower costs to customers in the form of lower rates... As California has gained more experience with CCAs, the CPUC has had to adjust the methodology for calculating exit charges annually and this has resulted in regular increases in the cost that CCAs pay to IOUs for the cost of the legacy system... These changes have, in some

¹²⁸ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), pp. 15-18. Proceeding No. 22I-0027E.

¹²⁹ Ibid. (LEAN Energy, pp. 15-18).

¹³⁰ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 8-10, 33. Proceeding No. 22I-0027E.

instances, begun to erode the benefits of lower cost PPAs that CCAs have been passing on to customers.”¹³¹

Another commenter recommended that the Commission review the ways that different states (specifically California), approached exit fees to determine potential strategies applicable or not applicable to Colorado. This commenter warned that, “while the experience of other states may offer useful insights regarding stranded cost recovery, such legacy practices should not be assumed to be appropriate or applicable to Colorado’s present-day context.” Still, the commenter referred to the California Public Utilities Commission’s 2017 Rulemaking 17-06-026, which was intended “to review, revise, and consider alternatives to the exit fee.” Rulemaking 17-06-026 identified the following key issues with California’s PCIA fees, as identified by the commenter:¹³²

- “Application of PCIA/exit fee to customers in special rate programs;
- PCIA methodology including establishing a cap on PCIA rates;
- Market benchmarking;
- Prepayment/securitization;
- Portfolio optimization;
- Voluntary Allocation and Market Offer (VAMO) framework;
- CPUC oversight re: utility over procurement.”

Another commenter emphasized exit fees as a “crucial feature” of the CCE model due to their role in protecting customers who remain with their incumbent IOU, but also highlighted the many challenges that California has faced related to its PCIA fees. This commenter asserted that California’s exit fees were initially too low, leading to the California Public Utilities Commission modifying the exit fee calculation methodology in 2018. However, in 2000, several California CCA authorities located within Pacific Gas & Electric service territory issued a petition to the California Public Utilities Commission because their PCIA fees had risen more than 600 percent since 2013.¹³³

Another commenter also underlined that California’s approach to exit fees has made operations more challenging for the state’s CCA/CCE authorities. According to this commenter, California’s approach has caused the following key issues:¹³⁴

- Unpredictable, non-transparent exit fee determinations,
- Inadequate revenues to support CCE engagement in support of local projects and robust local programs beneficial to member jurisdiction economies, and

¹³¹ Response comments of the Colorado Energy Office (April 15, 2022), p. 9. Proceeding No. 22I-0027E.

¹³² Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 50-52. Proceeding No. 22I-0027E.

¹³³ Response comments of IBEW Local #111 (April 15, 2022), pp. 3-5. Proceeding No. 22I-0027E.

¹³⁴ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), pp. 6-7. Proceeding No. 22I-0027E.

- A disrupting effect of exit fees on long term CCE planning and financial stability.

According to this commenter, had California established clear financial responsibilities for customers departing IOU service and entering a CCE authority's service, as well as established a timeline for those financial responsibilities, such pitfalls could have been avoided.¹³⁵

One commenter specifically referred to California's approach as "an example of how not to implement a CCE exit fee." According to this commenter, because California's PCIA fees are regularly adjusted and do not have an established sunset date, there is "continuous uncertainty that complicates the planning, operations, and ratemaking of both the CCE and the IOU." To address some of these shortcomings, the commenter recommended that Colorado consider establishing the following guidelines related to exit fees, which are described in greater detail above in response to LQ4A-D:¹³⁶

- "Exit fees should expire in a set maximum period of time.
- Measures that minimize exit fees should be specified.
- Utilities should periodically update the PUC with departing load forecasts to avoid overprocurement and unnecessary claims of stranded assets."

This commenter also provided example approaches to exit fees based on proposed CCE enabling legislation in both Oregon and New Mexico.¹³⁷ A summary of this commenters' views on those approaches is also included above in response to LQA-D.

A different commenter expressed that California's approach to exit fees presented shortcomings, but also learning opportunities. Like prior commenters, this commenter stated that California's repeated revisions to its exit fee process did correct prior imperfections, but also, "resulted in a highly complex calculation process; contentious proceedings both in setting the exit fee calculations but also in what should be routine implementation dockets; volatile fees charged to CCE customers; and no sunset date on the fees." To avoid such issues, this commenter suggested that Colorado pursue an approach in which, "exit fees are set coincident with the CCE's formation, that those fees would not change once set, and that there would be a finite collection period."¹³⁸

This commenter also stated that California provided potential regulatory insights related to exit fees. This commenter emphasized that as local entities subject to local governance, California's CCAs have relatively substantial local decision-making authority so long as they continue to meet statewide reliability and renewable portfolio standards. However, according to this commenter, state-level "regulatory creep" has continued to interfere with California's CCA authorities, and they are increasingly required to comply with additional state requirements and standards. The commenter recommended that if Colorado seeks to expand local energy

¹³⁵ Ibid. (IRESN, pp. 6-7)

¹³⁶ Initial comments of Larry Miloshevich (March 1, 2022), pp. 30-34. Proceeding No. 22I-0027E.

¹³⁷ Ibid. (Larry Miloshevich, pp. 30-34)

¹³⁸ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 4-5. Proceeding No. 22I-0027E.

procurement and decision-making authority, it avoid the “regulatory creep” to which California’s CCA authorities have been subjected.¹³⁹

Opt-Out Process and Provider of Last Resort (POLR)

LQ5: The appropriate conditions, limitations, and procedures under which customers may opt out of CCE and receive bundled service from the incumbent investor-owned electric utility

Commenters generally agreed that the Commission should establish opt-out (and in some instances opt-back-in) conditions, limitations, and procedures through a proceeding, but provided different recommendations related to those conditions, limitations, and procedures.

One commenter focused on the risks associated with opt-out (and opt-back-in) provisions, including their potential to contribute to load uncertainties when customers regularly switch between providers, and financial risks to independent power producers in the event that a CCE authority goes bankrupt. Several commenters described several of the challenges related to these areas that Western Community Energy (Riverside, CA) faced prior to going bankrupt.¹⁴⁰ This commenters’ perspectives regarding this case study are summarized in detail in response to LQ4E. Because of these risks, this commenter recommended that if Colorado authorizes CCE, it should authorize an opt-in (rather than opt-out) CCE model.¹⁴¹

Another commenter generally agreed with the previous commenter that opt-out provisions come with risks but did not specifically suggest that Colorado pursue an opt-in CCE model instead. This commenter also identified a third potential equity risk associated with opt-out provisions: if customers opt-out of CCE service, and the CCE is not held to the same energy standards and program requirements as incumbent IOUs, those customers may have differential access to programs compared to customers that did not opt-out of a CCE authority.¹⁴²

Another commenter also expressed concerns similar to those expressed by the first commenter. Like the first commenter, this commenter acknowledged that opt-out provisions establish the potential for customers to switch between a CCE authority and an IOU as a service provider based on rate preferences, making long-term financial and resource planning difficult (and, accordingly, introducing resource adequacy concerns). This commenter recommended the following three strategies to mitigate this risk:¹⁴³

¹³⁹ Ibid. (MRW & Associates, LLC, pp. 4-5)

¹⁴⁰ Response comments of IBEW Local #111 (April 15, 2022), pp. 8, 11-15. Proceeding No. 22I-0027E.

¹⁴¹ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 11-12. Proceeding No. 22I-0027E.

¹⁴² Initial comments of the City of Boulder (March 1, 2022), p. 7. Proceeding No. 22I-0027E.

¹⁴³ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 32-34, 38. Proceeding No. 22I-0027E.

- Potential CCE customers should be required to commit to a service agreement with the CCE for a set period and provide advance notice in the event the customer seeks to terminate that agreement.
- If a customer chooses to terminate their service agreement... there may be additional or incremental costs associated serving this new load and the customers switching providers should be assessed those incremental costs without subsidization by other customers.
- At the initial formation of a CCE there would need to be a grace period to allow customers time to opt-out of CCE service before making a longer-term commitment. This allows time for customers to understand their options, make informed decisions, and for the various load serving entities to plan for the change.

According to this commenter, these strategies would better allow the electricity provider (be that provider the CCE authority or the incumbent IOU) to plan for load needs, operational resources, and long-term investments. This commenter recommended that costs should be calculated via FERC Order No. 888 or another existing methodology.¹⁴⁴ This commenter also emphasized that, “The potential for mass migration of customers from a failed CCE is not one that either utilities or independent generation developers should need to plan for; nonetheless, CCE implementation will require that both stakeholders actively plan for these risks.” Like the first commenter, this commenter stated that, “If... customers are free to jump between providers with little friction, IPPs will be left wondering if their CCE or utility offtakes will default on their obligations.”¹⁴⁵

Another commenter recommended that opt-out rules and requirements be set via a Commission Rulemaking process, where “stakeholders [can] weigh in on more specific rules for switching between the IOU and CCE that discourages or prevents frequent switching.” As an example, this commenter explained a potential model in which “[o]ne change per year could be allowed with no penalty or with only a minimal administrative charge. More than one change per year could be allowed with a greater change fee, unless the change occurs within 30 days of a significant rate change at either the IOU or the CCE,” and in which these rules would apply for both opting out and opting into CCE service.¹⁴⁶

Another commenter also established potential opt-out timeframe considerations, based on California’s opt-out process. According to this commenter, in California, “customers may opt out of CCE service at no cost for two months prior to the CCE potentially delivering service to the customer and two months after the CCE has begun service to the customer. In that time, the customer must receive at least four notices that they are being switched to the CCE: two notifications before service and, assuming the customer has not opted out, two notifications after service has begun.” After this timeframe, customers can choose to return to IOU service, but in doing so, they must, “remain on the CCE service for at least 6 months and remain on

¹⁴⁴ Ibid (Public Service Company of Colorado, pp. 32-34, 38)

¹⁴⁵ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 5-6. Proceeding No. 22I-0027E.

¹⁴⁶ Initial comments of Larry Miloshevich (March 1, 2022), p. 41. Proceeding No. 22I-0027E.

bundled service for at least 12 months.” In California, fees are permitted for customers switching electricity providers. This customer noted that this strategy is intended to address some of the planning challenges associated with departing (and returning) load that previous commenters also identified.¹⁴⁷

This commenter did acknowledge that even with the described mitigation strategy, California has encountered problems with its opt-out model. One problem, stated the commenter, is that despite outreach attempts, many customers are not aware that they are being served by a CCE/CCA. Like a prior commenter, this commenter also identified the Western Community Energy bankruptcy case study, in which this was a key issue area.¹⁴⁸

Another commenter emphasized the importance of customer clarity in addressing opt-out concerns. This commenter recommended that, “The procedures to permit opt out should be transparent, customer-centric, easy to understand, and without delay,” and stated that, “The Commission should require CCE authorities to provide widespread and comprehensive information to customers on their rights to opt out.” Like other commenters, this commenter acknowledged that communications efforts would be critical to minimize customer confusion and, “to ensure customers have the information they need to make informed choices of their service provider.” This commenter also suggested that “the Commission should retain authority to review and assess a CCE authority’s communication campaign to ensure it is consistent with the public interest,” and stated that customers should have the right to opt out at any time by contacting any relevant party (the CCE authority, the IOU, or the Commission).¹⁴⁹

A final commenter emphasized the role of opt-out provisions as an aspect of consumer choice critical to CCE authorities. This commenter suggested that “customers should have the ability to opt-out prior to, during, and after a CCE launches, with few if any limitations,” but also—like several other commenters—recommended notification requirements. This commenter suggested that “CCEs should be required to mail one or more notifications to customers prior to (and potentially after) commencement of service. Notifications should inform customers regarding program rate impacts and other considerations” and recommended that customers be able to both opting out and opt back into a CCE provider, “via a toll-free phone number, email, website, or postal service.” This commenter recommended that opt-out notifications be consistent for all customers (not just new customers), and that customers who request to opt in or out of CCE or IOU service should be switched to the alternative provider, “on the date of their next billing period.”¹⁵⁰

¹⁴⁷ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 5. Proceeding No. 22I-0027E.

¹⁴⁸ Ibid. (MRW & Associates, LLC, p. 5)

¹⁴⁹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 6-7. Proceeding No. 22I-0027E.

¹⁵⁰ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 23-24. Proceeding No. 22I-0027E.

LQ9: Whether an investor-owned electric utility that remains the sole provider of distribution, transmission, and other services traditionally provided by the utility, such as metering and billing, should also be the provider of last resort for supplying electricity to customers who opt out of CCE

Most commenters recommended that incumbent IOUs be the providers of last resort (POLR) for customers served by CCE authorities, but some commenters identified other options, and others identified concerns with retaining IOUs as the POLR.

One commenter that recommended that if CCE is authorized in Colorado in a way that is, “fully-regulated and only designed to ‘close the gap’ to 100% clean energy,” CCE customers would remain bundled to the incumbent IOU, and the incumbent IOU would be able to serve as POLR without significant disruption.¹⁵¹

Another commenter agreed that establishing IOUs as POLR would be, “the obvious and most efficient path for serving CCE opt-outs, as it would require very little effort since all CCE and IOU customers receive their bills from the IOU.” This commenter also presented an alternative scenario in which a competitive supplier selected through an RFP process would be the POLR. However, this commenter acknowledged that this alternative was underdeveloped. For this reason, they recommended that “the default POLR should be established in CCE-enabling legislation to be the IOU.”¹⁵²

Another commenter also presented some alternative scenarios. This commenter emphasized that, “Electric utilities are not the only entities capable of serving in the POLR role. CCEs, co-ops and other providers may also have the resources and capability to serve as a POLR, and these alternative options are also worth further consideration.” This commenter recommended that if the incumbent IOU does serve as POLR, “The requirements for and application of a utility’s POLR designation should be studied thoroughly to understand best practices, including ways to avoid cost shifting, higher costs and the appropriate management of POLR-related procurement.” This commenter warned that insufficient consideration of the POLR’s energy resource procurement could result in a poor and costly use of resources and could impact the energy market more broadly if the POLR procures resources that CCE authorities themselves could purchase. This commenter therefore suggests additional study on POLR challenges, opportunities, and scenarios, including, “the process of transitioning customers to POLR, the duration of POLR service before customers are enrolled in standard utility or other service, the regulatory obligations of POLR (e.g., meeting renewables or emissions goals), and the structure of cost recovery.”¹⁵³

Another commenter suggested that establishing any entity other than the incumbent IOU as the POLR for transmission, distribution, and metering services, “would effectively create patchwork of municipal utilities out of IOU service areas,” but that the IOU would not be the

¹⁵¹ Initial comments of Karey Christ-Janer (March 1, 2022), p. 14. Proceeding No. 22I-0027E.

¹⁵² Initial comments of Larry Miloshevich (March 1, 2022), p. 41. Proceeding No. 22I-0027E.

¹⁵³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 42-43. Proceeding No. 22I-0027E.

sole entity able to provide billing services. This commenter stated that if the IOU does remain the sole billing provider, they could establish a billing scenario in which it is clear to the customer which charges pertain to IOU services and which pertain to CCE services. This commenter stated that in this scenario, the customer pays the IOU, who then pays the appropriate sum to the CCE. This is the approach used in California, but it requires data sharing between the CCE authority and the incumbent IOU.¹⁵⁴ For commenters' perspectives on data sharing, please refer to LQ14.

This commenter also presented a second scenario in which the CCE authority and the IOU separately bill for the services they provided. This commenter noted that this reduces data sharing complexity, "but [creates] a duplicative burden on the CCE ('Why create a duplicative billing infrastructure?') and [creates] confusion on the part of customers ('Why am I receiving two bills for electricity?')." ¹⁵⁵

This commenter also presented a third scenario in which, "the CCE could become the sole billing agent: sending the bill on behalf of the CCE and IOU and remitting the IOU's share of the customer payment to the IOU." This commenter did not recommend this strategy because it would not reduce the need for large and complicated data sharing between the CCE authority and the IOU, it would place the entirety of the billing burden on a new, less experienced entity, and has the potential to further confuse customers.¹⁵⁶

With respect to power supply obligations as POLR in the event of CCE failure, this commenter further stated, "power supply contracts entered into by the CCEs can be required to contain provisions that the incumbent utility would have the right, but not obligation, to take over the contract in the event of the CCE failure." For this reason, this commenter recommended that the legislature consider the potential scenario of a CCE failure in its decision making.¹⁵⁷

Other commenters expressed POLR considerations related to establishing appropriate exit fees. One such commenter discussed their concerns related to this issue in the context of resource adequacy, stating that the Commission should, "Ensure that exit fees are equitable for all customers by including all costs associated with the departing load, including any stranded resource costs over the full duration of their remaining useful lives, and any ongoing incremental costs such as resource adequacy-related costs stemming from being the provider of last resort."¹⁵⁸ Another commenter similarly expressed exit fee concerns related to resource adequacy challenges that the POLR could experience if CCE is authorized, stating that, "With the customer's right to opt out of service from a CCE, incumbent utilities will need to consider

¹⁵⁴ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 6. Proceeding No. 22I-0027E.

¹⁵⁵ Ibid. (MRW & Associates, LLC, p. 6)

¹⁵⁶ Ibid. (MRW & Associates, LLC, p. 6)

¹⁵⁷ Response comments of MRW & Associates, LLC (MRW) (April 15, 2022), p. 6. Proceeding No. 22I-0027E.

¹⁵⁸ Response comments of Public Service Company of Colorado (April 15, 2022), p. 14. Proceeding No. 22I-0027E.

how their capacity resources may be impacted... it is thus critically important that the exit fee reflect a utility's costs to carry capacity reserves to stand ready as a utility of last resort.”¹⁵⁹

CCE Formation, Risks, Process, and Impacts

LQ7: Potential challenges for CCE start-up or continuing operations, including the availability of financing and credit rating considerations, and strategies to overcome those challenges

In response to this question, commenters identified several potential challenges for CCE start-up and/or continued operation including market manipulation, predatory pricing, and accessibility to data and information. However, the most common challenge identified was obtaining and/or establishing a credit rating. One commenter highlighted that this obstacle would prevent CCE authorities from accessing low-cost financing and negotiating longer term Power Purchase Agreement (PPA) contracts.¹⁶⁰ If CCE authorities are able to establish a credit rating, they, “are unlikely to have the kind of credit rating that [would] permit them to enter into long-term or advantageous contracts.”¹⁶¹ Another commenter provided an example from California, explaining that credit weakness is so inherent in the state's CCE business model that one CCE (Western Community Energy) had to declare bankruptcy.¹⁶²

Commenters offered some suggestions on ways to overcome these challenges, such as establishing a level playing field between CCE authorities and IOUs and ensuring financial integrity. One commenter identified the Commission as the rule enforcer, explaining that they, “will need to monitor [the] market for manipulation, untruthful communications, predatory pricing price squeezing, etc. between CCEs and IOUs ... [and] ensure that operational access to data, information, and functionality is provided on a non-discriminatory, timely and open access basis.”¹⁶³

Another strategy suggested by one commenter focused on requiring that CCEs meet certain standards. This commenter suggested that “CCEs should be required to demonstrate to the Commissioners that the community and the CCE authority have financial means to support resources acquisition and operational costs before they are able to provide services,” including demonstration of credit worthiness, projected revenue costs, and sufficient operating reserves to accommodate revenue shortfalls. Furthermore, this commenter suggested that the Commissioners should also ensure that CCEs “do not pose an existential risk to decarbonization

¹⁵⁹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 8. Proceeding No. 22I-0027E.

¹⁶⁰ Initial comments of Karey Christ-Janer (March 1, 2022), p. 30. Proceeding No. 22I-0027E.

¹⁶¹ Response comments of IBEW Local #111 (April 15, 2022), p. 13. Proceeding No. 22I-0027E.

¹⁶² Ibid. (IBEW Local #111, p. 13.)

¹⁶³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 16. Proceeding No. 22I-0027E.

goals or broader investment community.”¹⁶⁴ This commenter recommended that all these standards should be met before a CCE authority can begin offering services.¹⁶⁵

Another commenter provided an example of a credit rating methodology scorecard (Moody’s credit rating methodology for US Municipal Joint Action Agencies) to assess a CCE authority’s ability to address potential challenges. Specifically, this methodology, “discusses a variety of relevant risk factors and management best practices and includes scorecard metrics for full requirement CCEs.”¹⁶⁶ This scorecard has six key considerations, each with a specific weighting factor, as listed below:

- Cost recovery framework (25%),
- Willingness to recover costs with sound financial metrics (25%),
- Competitiveness (15%),
- Leverage and coverage (15%),
- Energy risk management (10%), and
- Liquidity (10%).

The commenter noted that “favorable assessments will lower the CCE’s risk profile as a counterparty and strengthen participation and competition during the solicitation process.”¹⁶⁷

LQ10: The appropriate process for approval of CCE on behalf of customers within a jurisdiction, whether by ordinance, by vote of the people, or otherwise.

Commenters noted that CCE authorities can generally be established via local governmental action (a referendum or ordinance, including one that may be the result of a representative vote by local elected officials) or a public voting process/ballot initiative. Some commenters identified that in states that have authorized CCE authorities, the state’s utility governance structure (fully or partially restructured) has implications on which approval process may be more appropriate, but neither approval strategy is universally appropriate.

Only Illinois and Ohio (both fully restructured) require public votes to establish a CCE authority, but only when establishing a CCE authority that would adhere to an opt-out model; when a proposed CCE authority would adhere to an opt-in model, jurisdictions are authorized to approve the entity via ordinance.¹⁶⁸ When an opt-out CCE authority is proposed in either of these two states, entity approval is pursued through a local ballot initiative. Historically in these two states, IOUs have not substantially opposed these ballot initiatives because as utilities

¹⁶⁴ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 21-22. Proceeding No. 22I-0027E.

¹⁶⁵ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 39-41. Proceeding No. 22I-0027E.

¹⁶⁶ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 13. Proceeding No. 22I-0027E.

¹⁶⁷ Ibid (LEAN Energy, p 13.)

¹⁶⁸ Ibid. (Colorado Communities for Climate Action (CC4CA), pp. 8-9.)

operating in fully restructured states, these IOUs are not significantly involved in electricity procurement, but one commenter suggests that this situation could differ in a state like Colorado.¹⁶⁹ One commenter expressed a preference for this approval process—specifically for CCE authorities that would follow an opt-out model—stating that, “customers within a jurisdiction should have a say in whether they agree with their jurisdiction entering into a CCE authority... before a customer is defaulted to a CCE authority, its local jurisdiction [should] conduct a public vote of the intent to join a CCE authority... [to] promote vetting of the CCE, assist in understanding customer input on the CCE, and assist in educating customers.”

In comparison, CEE entity approval via local governmental decision making (ordinance) is the most common strategy by which CEE entities have been established in the ten states in which they are currently authorized. Local elected officials in partially restructured states (California, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Virginia) are authorized to establish a CCE authority via local ordinance.¹⁷⁰ One commenter expressed a preference for this approval process, stating that, “the governing body (City Council or County Board) has the ability and the resources to conduct thoughtful due diligence and make a truly informed decision, and as with all major municipal decisions, this decision would be made in a transparent public process with full citizen participation.”¹⁷¹ However, this commenter specified that public voting should not be a prohibited approval process. Another commenter noted that in these partially restructured states—California in particular, in which CCE authorities are approved by a representative local governmental body vote—IOUs often become heavily involved in opposing proposed CCE authorities, which IOUs view as competitors. This commenter predicts that in a state like Colorado, CCE authorities would likely receive similar political opposition from incumbent IOUs, which makes the ballot initiative approach less favorable than the local government action approach.¹⁷²

Another commenter provided more granular details on the initial approval process for community choice aggregation in California. This commenter noted that while local government units have the authority to establish CCA authorities through a representative vote (e.g., city council vote) upon completion of a “favorable feasibility study,” a statewide ballot initiative in 2010 (Proposition 16) had the potential to substantially modify the approval process. If approved, Proposition 16 would have required a two-thirds majority public vote in an election to approve a community choice aggregation entity, and IOUs participated heavily in support of this more challenging barrier to entry for potential community choice aggregators.¹⁷³ This commenter provided no clear preference for whether CCE authorities should generally be established via local governmental action or public votes/ballot initiatives, stating that, “a

¹⁶⁹ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 22-23. Proceeding No. 22I-0027E.

¹⁷⁰ Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), pp. 8-9. Proceeding No. 22I-0027E.

¹⁷¹ Response comments of Larry Miloshevich (April 15, 2022), pp. 21-22. Proceeding No. 22I-0027E.

¹⁷² Ibid. (Local Energy Aggregation Network (LEAN Energy), pp. 22-23)

¹⁷³ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 14-15. Proceeding No. 22I-0027E.

simple majority vote from electors could be a viable option for local governments, because it would be an opportunity to ‘take the temperature’ of local residents in order to gauge the interest in the CCE concept... if no vote is held, it would be up to the interested local government to essentially poll its constituents as to their level of interest in the proposed CCE program. Another option would be for the local government to market the concept and take ‘pre-subscriptions’ with the goal of gauging the potential number of megawatts to plan to develop.”¹⁷⁴

LQ14: What, if any, data-sharing requirements should be imposed on investor-owned electric utilities to help ensure that a CCE authority or a jurisdiction investigating whether to form or join a CCE authority can reasonably evaluate its financial and technical viability and implement its CCE program

Participants expressed several perspectives related to IOU data sharing requirements, data sharing requirements (and prohibitions) for CCE authorities, and regulatory and/or legislative requirements related to data sharing.

Several commenters expressed that IOUs should be subject to some data sharing requirements. One such commenter referred to Commission Rule No. 3035, *Community Energy Report*, which requires that Tier I utilities¹⁷⁵ develop and publish (for public access) an annual community energy report that contains the following information:¹⁷⁶

- The annual kilowatt hours consumed by customers, provided by residential, commercial, and industrial classes, and street lighting;
- The average number of customers in the residential, commercial, industrial class, and street lighting;
- The utility’s emissions factor;
- The utility’s electric generation resource mix;
- The total capacity of retail renewable distributed generation...installed in the local government’s jurisdiction and the total annual kilowatt hours produced from that generation; and
- The total annual energy saved (in kilowatt hours) from energy efficiency measures installed.

This commenter stated that in accordance with Commission Rule No. 3035, at minimum, all incumbent utilities (IOUs, electric cooperative associations, and municipal providers) should

¹⁷⁴ Ibid. (Karey Christ-Janer, pp. 14-15)

¹⁷⁵ 4 CCR 723-3 defines Tier I electric utilities as electric utilities serving at least more than 150,000 electric customers, and Tier II electric utilities as electric utilities serving 150,000 or fewer electric customers.

¹⁷⁶ Colorado Department of Regulatory Agencies, Public Utilities Commission, 4 CCR 723-3, Rules Regulating Electric Utilities: Section 3035, Community Energy Reports, 22 (2015), https://drive.google.com/file/d/0B8qvU2knU8BkcEJneE93YkNRQmM/view?resourcekey=0-XGWvr_3zVqbuKs9g1SpG1Q

share, “the number of customers, annual megawatt-hour energy consumption and kilowatt-month peak demand and revenue by rate schedule and the community load factor for the previous five years,” in a manner consistent with Commission privacy requirements to support communities considering establishing or joining an CCE authority.¹⁷⁷

Other commenters strongly disagreed with this perspective. One such commenter stated that, “a CCE authority or a jurisdiction investigating whether to form or join a CCE authority should be prohibited from requesting data regarding customers served by a cooperative electric association.”¹⁷⁸ Another commenter acknowledged that data including average customer profiles can help CCE authorities identify potential service opportunities, but emphasized that IOUs’, “customer information is confidential information and should not be shared consistent with the Commission’s rules.” This commenter noted that if IOUs are required to share any data with potential CCE authorities, such data, “should be limited to the number of customers by rate class, or other types of aggregated customer information.”¹⁷⁹

Another commenter acknowledged that some data will be required when communities are considering forming or joining a CCE authority. This commenter emphasized that because, “utilities are required to take significant steps to protect customer data and typically can only share such data with the consent of the customer,” Commission oversight and regulation of data sharing is crucial. This commenter suggested that communities exploring CCE options be subject to existing Commission data privacy rules, and “the Commission should provide explicit direction and guidance to regulated utilities on what data is necessary for this exploration, how it should be shared, and how a CCE should maintain these records.” This commenter also expressed broad concerns that CCE authorities—which would be unlikely to have access to the same data security technologies as IOUs—could be more subject to data breaches than their IOU counterparts.¹⁸⁰

One commenter who strongly agreed that IOUs should be required to provide data to communities joining or considering establishing a CCE authority (but was silent on whether those requirements should be extended to cooperative electric associations or municipal providers) emphasized that this data is necessary for existing or potential CCE authorities to more accurately estimate how much power they will need to provide to how many potential customers, and how much revenue they could potentially generate, which is data necessary for rate-setting. This commenter specifically suggested that “the best data are one to three years of interval data for each customer who could join the CCE, with any customer identifiers (names, addresses) removed and subject to nondisclosure agreements signed by any data recipients,” according to experience in California. The commenter also suggested an

¹⁷⁷ Initial comments of the City of Boulder (March 1, 2022), pp. 8-9. Proceeding No. 22I-0027E.

¹⁷⁸ Response comments of Colorado Rural Electric Association (April 15, 2022), p. 3. Proceeding No. 22I-0027E.

¹⁷⁹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 11. Proceeding No. 22I-0027E.

¹⁸⁰ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 22-23. Proceeding No. 22I-0027E.

alternative data option, in which IOUs would be required to provide, “customer counts per class, the monthly billing determinants for each customer class in the potential CCE’s area for the past 3 years, plus IOU average class-specific load shapes.”¹⁸¹

Another commenter cited the United States Supreme Court case *Munn v. Illinois* as rationale for imposing a data sharing requirement on IOUs. This commenter reasoned that, “In *Munn*, the Court reasoned that although the property of a utility may be private, its use was public. Consequently, regulated IOUs should be required to share information they are able to obtain because they enjoy a privileged monopoly status that has insulated them from competition.”¹⁸²

Another commenter emphasized data accessibility and security issues, recommending that the Commission, “require the utilities to post a schedule of authorized data files for CCEs along with a pricing schedule and the timing within which data requests must be met by the utility. It should be noted that data files are typically free (as in NY) or low cost (as in CA) to the CCE and requesting municipalities. Most utilities require service NDAs to be signed by any CCE staff member or vendor who will have access to the data as well as data attestation/approval forms signed by the participating municipalities.”¹⁸³ This commenter provided several community choice aggregation data sharing forms from Pacific Gas & Electric in California in attachments to their filings.

In reflection of those forms, this commenter identified the following data sources that IOUs are commonly required to share with communities considering joining existing CCE authorities or considering establishing new CCE authorities, but emphasized that the provided list was non-exhaustive and did not reflect every potential CCE authority’s likely data needs:¹⁸⁴

- “Last 12-24 months aggregate monthly usage (kWh) by rate schedule and zip code for each customer class;
- Any “public goods charge” or similar payments (by customer) within a proposed CCE service territory (if applicable);
- Estimated annual generation revenues within specified CCE service territory;
- Data related to Time of Use rates (if applicable);
- Customer specific information from the last 12 billing periods consisting of: meter number, service agreement number, name/service address, monthly kWh usage, monthly maximum demand, low income or other rate discount program participation, monthly rate schedule for all accounts within service CCE service territory, historical billing info, monthly interval meter data (if available);

¹⁸¹ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 7-8. Proceeding No. 22I-0027E.

¹⁸² Initial comments of K.K. DuVivier (March 15, 2022), p. 2. Proceeding No. 22I-0027E.

¹⁸³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 19-21. Proceeding No. 22I-0027E.

¹⁸⁴ Ibid. (Local Energy Aggregation Network, pp. 19-21)

- Customer list with personally identifiable information redacted until needed for pre- and post- enrollment mailings.”

The commenter also listed data that would be required once a CCE authority is established and operational. The commenter considered these data to be essential, and accordingly IOUs should be required to provide it:¹⁸⁵

- “Daily exchange of EDI transaction sets in support of CCE operations (810 / 814 / 820 / 824 / 867 / 997 / 248);
- Monthly kWh meter data for each customer service agreement and meter number delivered via EDI 867 transaction set;
- Daily payment files (EDI 820) with accompanying detail that references each payment by customer service agreement;
- Receipt of daily EDI 810 invoice data for bill ready IOU billing;
- Delivery of daily EDI 810 invoice data for rate ready IOU billing (to allow for shadow billing and auditing of invoice accuracy);
- Daily exchange of EDI 814 transactions in support of enrollments, terminations, and account maintenance such as name change, meter read date change, rate change, new move-in, new premise, six month returns;
- Daily delivery of EDI 824 transactions noting acceptance or rejection of EDI 810 invoice data if bill ready IOU billing; 8. Daily delivery of EDI 997 acknowledgement transactions;
- Returned Receivables Reporting (via EDI 248 or spreadsheet) to provide CCE information for collections or write-offs activity;
- Ongoing delivery (weekly preferably) of territory-wide customer lists that include, at a minimum: customer name, customer account number, service agreement number, mailing address, service address, rate schedule, customer class type, meter read schedule, billing schedule, account start date, account end date, account status, service location identifier, service location town or municipality, tax status by town code (rate & exemptions), customer program identifies (low income programs, payment plans, level pay plans, up-to-date customer phone number and email address (where possible));
- Territory-wide access to interval meter data as close to power flow date as possible to support forecasting, DER programs, other customer programs, analysis of load impacting events (weather, grid, outages, etc).
- Publicly published rate tariffs and history of tariffs.”

Other commenters specifically recommended that data sharing requirements be established at least in part via legislative action. One such commenter noted that, “CCE-enabling legislation should include the high-level principle that IOUs must provide the data necessary for a jurisdiction to assess the economic viability of CCE and to issue accurate procurement RFPs, including but not limited to high-resolution load data for multiple years, and costs for the remaining IOU services.” This commenter did provide the caveat, however, that, “The legislation should leave it to Rulemaking for the details of data access so that communities,

¹⁸⁵ Ibid. (Local Energy Aggregation Network, pp. 19-21)

competitive suppliers, and others can weigh in on what data are practically needed to make decisions about the viability and operation of a CCE.” This commenter recommended that non-disclosure agreements should be used “sparingly, if at all.”¹⁸⁶

LQ20: The risks a CCE authority might face that merit consideration, such as resource price risks, contract risks, or load defection, and the significance of those risks

Commenters identified numerous potential risks that a CCE authority might face. A detailed summary of those risks is provided in response to their associated questions. Below is a list of identified risks by overarching topic, and the questions that can be referenced to review a detailed summary of commenters’ perspectives on those risks.

Risk/drawback	Refer to the following question(s)
Resource Adequacy and Reliability	
Maintaining generation-level resource adequacy and reliability	LQ3: <i>Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of</i> a. <i>Resource adequacy planning</i> b. <i>Assurance of reliability and how this is paid for</i> LQ2: <i>The appropriate scope of regulatory oversight of CCE operations, on a scale ranging from comprehensive, as with investor-owned electric utilities, to minimal, as with municipally owned electric utilities</i> LQ15c: <i>How CCE might facilitate or impede resource adequacy and reliability, and what regulatory approaches would be needed to maximize positive impacts and mitigate negative impacts</i>
Resource adequacy concerns related to an opt-out model of CCE	LQ3A: <i>Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of resource adequacy planning</i>
Peak load resource adequacy	LQ3A: <i>Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of resource adequacy planning</i> LQ15C: <i>How CCE might facilitate or impede resource adequacy and reliability, and what regulatory approaches would be needed to maximize positive impacts and mitigate negative impacts</i>
Resource adequacy concerns related to Colorado’s position outside of a regional wholesale power market	LQ16: <i>The appropriate considerations for ensuring that the implementation of CCE does not include customers in the certificated territories of municipally owned electric utilities or cooperative electric associations</i>

¹⁸⁶ Initial comments of Larry Miloshevich (March 1, 2022), p. 42. Proceeding No. 22I-0027E.

	<i>LQ3A: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of resource adequacy planning</i>
Resource adequacy implications related to potential impacts on recent Commission generation and transmission decisions	<i>LQ3A: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of resource adequacy planning</i> <i>CQ14: What, if any, data-sharing requirements should be imposed on investor-owned electric utilities to help ensure that a CCE authority or a jurisdiction investigating whether to form or join a CCE authority can reasonably evaluate its financial and technical viability and implement its CCE program</i>
Affordability	
Exit fee cost implications and calculation complexity	<i>LQ8: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues</i> <i>LQ4: The appropriate principles and considerations for calculating the amount and duration of reasonable transition fees, also known as exit fees, that communities forming a CCE authority would pay to the incumbent investor-owned electric utility to offset their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved, in amounts sufficient to provide cost recovery for stranded investor-owned electric utility assets and contracts and direct transition costs while protecting non- CCE customers but without unduly burdening CCE customers. The principles and considerations shall include</i> <i>a. The age or the date of initial service of generation assets and existing contracts</i> <i>b. The potential for exit fees to vary over time or by location</i> <i>c. The potential for exit fees to vary over time or by location</i> <i>d. Measures to mitigate exit fees through potential contract transfer or resale to CCE authorities or other buyers, and appropriate forecasting of departing load to avoid over-procurement</i>
CCE authorities being unable to offer electricity at rates lower than those offered by the incumbent IOU	<i>LQ6: Whether any additional consumer protections would be required and the means of providing those protections</i>
CCE opting all customers into purchasing power that is more renewable making cost higher for customers, including low-income	<i>LQ19: The impact of CCE on low-income households and communities disproportionately impacted by electricity generation, including the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low-income households and communities disproportionately impacted by electricity generation</i> <i>CQ10g: Should investor-owned utilities be obligated to offer demand-side management programs pursuant to § 40-3.2-104,</i>

	<i>C.R.S., to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded</i>
Legislature or Commission would need to establish clear rules on bill assistance programs	<i>LQ19: The impact of CCE on low-income households and communities disproportionately impacted by electricity generation, including the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low-income households and communities disproportionately impacted by electricity generation</i>
Independent CCE bill assistance program may be less effective than those of the incumbent IOUs	<i>LQ19: The impact of CCE on low-income households and communities disproportionately impacted by electricity generation, including the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low-income households and communities disproportionately impacted by electricity generation</i>
Customer programs, satisfaction, and service quality	
CCEs have fewer resources to put towards development of customer programs and rate designs	<i>LQ5: The appropriate conditions, limitations, and procedures under which customers may opt out of CCE and receive bundled service from the incumbent investor-owned electric utility</i>
Inefficient utilization of Commission resources to implement a proceeding to determine regulatory rules for CCEs	<i>LQ8: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues</i>
Duplication of CCE and IOU services causing confusion for customers and regulators	<i>LQ3D: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of standards for requests for proposals</i>
IOUs and CCEs competing on customer facing programs where customers would be better served by collaboration	<i>LQ5: The appropriate conditions, limitations, and procedures under which customers may opt out of CCE and receive bundled service from the incumbent investor-owned electric utility</i> <i>LQ6: Whether any additional consumer protections would be required and the means of providing those protections</i>
Large shift in the number of customers in specific programs	<i>LQ5: The appropriate conditions, limitations, and procedures under which customers may opt out of CCE and receive bundled service from the incumbent investor-owned electric utility</i> <i>LQ4E: The appropriate principles and considerations for calculating the amount and duration of reasonable transition fees, also known as exit fees, that communities forming a CCE authority would pay to the incumbent investor-owned electric utility to offset their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved, in amounts sufficient to provide cost recovery for stranded investor-owned electric utility assets and contracts and direct transition costs while protecting non- CCE customers but without unduly burdening CCE customers. The principles and considerations shall include pitfalls encountered in other</i>

	<i>states related to exit fees and how those pitfalls could be avoided or mitigated by up-front considerations</i>
Renewable energy and greenhouse gas emissions	
Complications and uncertainty in changing Colorado's current framework to include CCEs regarding regulating emissions from electricity generation	<i>LQ8: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues</i>
CCE authorities struggling to achieve electricity service that provides higher percentages of renewable energy than IOUs at reasonable costs	<i>LQ3C: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of compliance with renewable energy standards and emissions reduction targets</i>
CCEs potentially procuring electricity with a high percentage of fossil fuel generation than IOUs	<i>LQ3C: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of compliance with renewable energy standards and emissions reduction targets</i>
By the time CCEs are established, marginal renewable energy and greenhouse gas emissions benefits may have decreased significantly	<i>LQ3C: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of compliance with renewable energy standards and emissions reduction targets</i>
CCEs could interfere with IOU efforts to invest in renewable energy generation	<i>LQ3C: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of compliance with renewable energy standards and emissions reduction targets</i>
CCE formation increases the cost of IOU compliance with SB 19-236	<i>LQ3C: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of compliance with renewable energy standards and emissions reduction targets</i>
Procedural considerations	
Financial viability of CCE authorities	<i>LQ8: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues</i> <i>LQ3B: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of assurance of reliability and how this is paid for</i>
Determining appropriate exit fees	<i>LQ8: What regulatory and legal issues have arisen in other states that have adopted the wholesale, opt-out model of CCE and possible solutions for those issues</i>

LQ18: The impact, both positive and negative, of CCE in communities that have formed or joined a CCE authority in states that have enabled the wholesale, opt-out model of CCE

For detailed case study summaries related to the positive and negative impacts of CCE in communities in other states, please refer to Appendix C.

LQ23: How the procurement process works and how it varies from one CCE or CCA authority to another, especially in California.

Commenters provided several perspectives regarding how CCE/CCA authorities can procure both electricity resources, and other resources required to operate a CCE authority.

One commenter stated that new CCE authorities often rely upon third parties (i.e., power marketing companies) to fulfill their energy procurement needs, but transition into conducting this work internally and entering into their own Power Purchase Agreements (PPAs) once they develop the expertise to do so. According to this commenter, “CCE procurement practices typically involve issuing requests for offers (RFOs), evaluating proposals, and negotiating supply contracts,” and some California CCA authorities have pursued joint RFOs to improve procurement process efficiency.

This commenter also described the California Public Utilities Commission’s procurement mandates, which are based on a statewide integrated resource planning process and are intended, “to ensure local and system-wide grid reliability.” Under these procurement mandates, “Individual load serving entities, including CCEs, are required to submit procurement plans so that state regulators can assess the combined impact on grid reliability. When resource deficiencies are identified at either a system level or in transmission-constrained local areas, the Public Utilities Commission has the authority to order the IOUs to procure additional resources, with the cost of those resources allocated to affected customers including those of the CCEs.”¹⁸⁷

Another commenter focused on CCE authorities’ ability to conduct their own procurements, whether they do so internally or through an outside contractor, emphasizing that, “The majority [of CCEs] have hired expert procurement staff and/or energy portfolio managers to provide the requisite operating model functionality. Energy portfolio managers structure and actively manage diversified portfolios of physical and financial energy products on behalf of their CCE clients, which are typically either entities providing all-requirements electricity supply to retail customers (e.g., power marketers, CCEs, utilities in vertical markets) or financial institutions engaged in energy trading (the commodity trading arms of investment banks).”¹⁸⁸

Like the previous commenter, this commenter referenced California’s integrated resource planning requirements and noted that California’s, “CCEs employ a variety of more sophisticated analytical platforms to guide medium-to-long term portfolio optimization

¹⁸⁷ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 10-11. Proceeding No. 22I-0027E.

¹⁸⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 16-18. Proceeding No. 22I-0027E.

activities and contract valuation analysis during procurement events,” including analytical strategies that have been supported by Colorado-based companies.¹⁸⁹

This commenter also provided recommendations related to regulatory oversight of CCE authorities’ procurement processes. Though this commenter stated that CCE authorities should be subject to the same resource adequacy standards as IOUs, “the Commission may determine that CCEs can make this showing without providing the same level of detail the Commission requires from the investor-owned utilities given that CCEs have independent government authority and oversight from their governing boards.” Specifically, this commenter recommended, “that the Commission not exercise the same level of oversight with respect to CCEs’ resource acquisition processes because procurement policies are better left to the local communities that form CCEs. If this recommendation is adopted, provisions of the Commission’s ERP rules pertaining to competitive bidding would not apply to CCE resource plans.”¹⁹⁰

This commenter further emphasized the value of competition for procurement processes, stating that, “As a vertically integrated state, competitive market forces make only limited appearances in Colorado’s utility landscape. Public Service and Black Hills procure most of their electricity supply through the ERP Phase II competitive bidding process overseen by the Commission. While this process may be the ‘gold standard’ of utility RFP processes, it is a far cry from a dynamic, competitive market with numerous buyers and sellers such as exists in states that have adopted CCE.”¹⁹¹ This commenter also expressed specific concerns about this ERP process because, “Infrequent and limited sales opportunities have prevented some developers from investing in Colorado and have led others to leave the state in favor of other markets that offer more opportunities on a more frequent basis.”¹⁹²

Like this commenter, another commenter also emphasized that as entities subject to local governance, California’s CCE authorities, “are capable of fulfilling electricity procurement and rate-setting responsibilities with minimal state oversight, just as they fulfill procurement and rate-setting responsibilities for other essential services they provide.” This commenter stated that, “expert power procurement experience has been available to CCEs (prior to and after start-up) from various sources, including power procurement consultants and agents, non-incumbent IOUs and large municipal utilities,” reiterating that CCE authorities should be able to conduct necessary procurement without substantial regulatory oversight.¹⁹³

Another commenter also emphasized the value a local entity (like a CCE authority) being the entity responsible for procurement, specifically in the context of procuring energy that may

¹⁸⁹ Ibid. (LEAN Energy, pp. 16-18)

¹⁹⁰ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 35-36. Proceeding No. 22I-0027E.

¹⁹¹ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), p. 4-7. Proceeding No. 22I-0027E.

¹⁹² Ibid. (LEAN Energy, p. 4-7)

¹⁹³ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), pp. 4, 11. Proceeding No. 22I-0027E.

better reflect local values and boost local energy resources. This commenter emphasized that, “Community choice agencies don’t just purchase renewable energy, they also procure it from new, local sources... Community choice also allows for better coordination between electricity procurement goals and city planning around climate and clean energy.” This commenter also discussed the role that the community itself can plan in procurement when procurement is done in a more local fashion. This commenter specifically referred to California’s, “community advisory councils, where local residents advise the agency on its procurement and programs... some advisory councils focus on ensuring representation from specific stakeholders, including low-income residents, labor, and others.”¹⁹⁴

In contrast to some prior commenters, one commenter viewed California’s procurement experiences as examples of why CCE authorities’ procurement in Colorado should be regulated, if CCE is authorized in the state. This commenter stated that California’s CCA authorities are not procuring sufficient local renewable power through local renewable development efforts to meet demands. Accordingly, California’s CCA authorities have procured power from out-of-state sources, including non-renewable sources. This commenter stated that this also has labor implications, because less local renewable resources are being built than was anticipated. Furthermore, this commenter stated that California’s CCAs have “balkanized” energy procurement planning in the state due to the growing number of CCA authorities, each with their own rules, approaches, and procurement processes. This commenter stated that, “a fully-regulated CCE program would be coordinated and dovetail with existing IOU resource planning,” thus mitigating some of the procurement risks associated with resource adequacy.¹⁹⁵

Another commenter also focused on the labor implications of CCE procurement processes and procured resources, but instead viewed the procurement process as a labor opportunity. Specifically, this commenter stated that, “CCE legislation or Rulemaking would open the door to the possible inclusion of [Best Value Employment Metrics (BVEM)] requirements associated with CCE procurement of projects and contracts,” similar to California’s widespread approach of including, “language that new construction must be built under a Project Labor Agreement (PLA) or pay the prevailing wage. Usually this is negotiated and agreed to before the Power Purchase Agreement moves very far forward, and often the CCA states in its RFP that this is how they wish to structure agreements. The most common method in California is the ‘five craft labor agreement’, where the five crafts consist of union carpenters, electricians, Ironworkers, operators and laborers. In California, most new generation facilities constructed for CCAs are constructed under Five Craft PLAs and union members get the work.”¹⁹⁶ For further details on this commenter’s perspectives on potential impacts that CCE authorization could have on jobs and union labor in Colorado, please refer to LQ21 and LQ22.

A final commenter focused on the procurement risks that CCE authorities may face or have faced in other states. This commenter stated that several large renewable projects for an

¹⁹⁴ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), pp. 4-5. Proceeding No. 22I-0027E.

¹⁹⁵ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 17, 29-31. Proceeding No. 22I-0027E.

¹⁹⁶ Initial comments of Larry Miloshevich (March 1, 2022), pp. 36-38. Proceeding No. 22I-0027E.

incumbent IOU, that would have been owned by an independent power producer (IPP) failed and were not built, despite the IOU's extensive procurement experience. This commenter expressed concerns that such outcomes may be even more likely among CCE authorities, who likely would not have a similar background in procuring and overseeing large contracts.¹⁹⁷ This commenter recommended that CCE authorities be subject to the same procurement and resource adequacy requirements as IOUs because the procurement requirements that Colorado's IOUs must meet are part of, "a nationally recognized model for acquiring low-cost renewable resources and achieving deep carbon reductions." For this reason, this commenter recommended that the legislature and the Commission, "consider whether elements of this process should be carried over to ensure that CCE customers continue to benefit from the processes developed, implemented, and refined over the past two decades by a broad and diverse set of stakeholders."¹⁹⁸

CQ10e: What has been the experience in communities where CCE has been implemented with regard to the overall cost of electricity provided to CCE participating customers as compared to similarly situated customers opting to receive bundled service from the incumbent investor-owned electric utility?

For detailed case study summaries related to communities' CCE experiences related to electricity costs (compared to similarly situated customers that continue receiving electrical service from the incumbent IOU), please refer to Appendix C.

Customer Programs, Rates, and Protections

LQ3: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of:

D) Supplemental demand-side management programs offered by CCE authorities

The summary response below provides only a brief overview of commenters' perspectives related to DSM program offerings. For additional details, please reference the responses to LQ11 and CQ10g.

Most response comments indicated that CCE authorities should be allowed to offer and fund DSM programs. Furthermore, one commenter recommended that CCE authorities should be allowed to offer and fund alternative programs which have equal or superior intents and benefits than existing IOU DSM programs.¹⁹⁹ All commenters agreed that CCE authorities should contribute to the funding of their DSM programs. One commenter suggested that external funds that IOUs receive to implement programs should instead be directed towards CCEs if they are

¹⁹⁷ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 19-22. Proceeding No. 22I-0027E.

¹⁹⁸ Response comments of Public Service Company of Colorado (April 15, 2022), p. 20. Proceeding No. 22I-0027E.

¹⁹⁹ Initial comments of Larry Miloshevich (March 1, 2022), p. 35. Proceeding No. 22I-0027E.

implementing a Commission-approved program that serves as an alternative to that offered by an IOU. That same commenter further suggested that CCE authorities also be allowed to add line-item charges to fund and customize programs they want to implement.²⁰⁰

Commenters offered various recommendations regarding CCE program options and program design. One commenter noted that if a CCE authority's DSM program is approved, they should have the flexibility to implement more locally relevant program designs compared to IOU program offerings, which tend to follow a generic one-size-fits-all design.²⁰¹ Furthermore, this commenter recommended that CCE authorities include on-bill financing of consumer energy efficiency and renewable energy upgrades as a program option.²⁰²

Commenters apprehensive of CCE DSM programs warned against allowing these new programs to become duplicative of existing IOU programs, which would create confusion among customers and administrative inefficiencies. Furthermore, they noted that the Commission's current statutory authority does not clearly indicate that the Commission could sufficiently oversee CCE authorities' DSM programs in a way that would ensure that non-participants and IOUs are protected from cost burdens and additional potential harms.²⁰³

E) Time-of-use rates or other rate requirements if mandated for investor-owned electric utilities

Respondents had conflicting views regarding whether the Commission should have time-of-use rate-setting regulatory authority over CCE providers. One commenter noted that in California, the California Public Utilities Commission's rate design requirements apply only to IOUs. Despite this, argues the commenter, California's CCE authorities' rates and rate structures still generally mirror those of the regulated IOUs. However, the commenter does refer to one case in which a California CCE offers only a cost-of-service rate structure (which was often a higher rate than that of the incumbent IOU) to large commercial and industrial customers.²⁰⁴

Another commenter argued against Commission authority to rate-regulate CCE authorities despite the potential for CCE rates to be higher in certain circumstances, stating that, "Setting rates or imposing requirements on CCE rates would undermine CCEs' ability to achieve their local communities' goals in forming the CCE. Some CCEs may provide rate options that are cheaper than the incumbent utility, some may offer rate options that are modestly more expensive but cleaner than the incumbent utility's supply mix, and some CCEs may offer several other green options for customers to choose from. Rate regulation would undermine CCEs'

²⁰⁰ Ibid. (Larry Miloshevich, p 39)

²⁰¹ Ibid. (Larry Miloshevich, p 39)

²⁰² Ibid. (Larry Miloshevich, p 39)

²⁰³ Initial comments of Public Service Company of Colorado (March 1, 2022), p. 16. Proceeding No. 22I-0027E.

²⁰⁴ Initial comments of Larry Miloshevich (March 1, 2022), p. 2-3. Proceeding No. 22I-0027E.

ability to provide these options.”²⁰⁵ Another commenter shared a similar perspective, stating that rate regulation of CCE authorities is unnecessary and inappropriate due to their nonprofit business model, which inherently protects against profiteering. With respect specifically to time-of-use rates, however, this commenter noted that, “CCEs should have the option to either adopt the IOU program or to design (and pay for) its own program that is approved by the Commission and that meets any statutory requirements and addresses the intended public interest, such as reducing peak load and/or reducing emissions.”²⁰⁶

One commenter disagreed that CCE authorities should be exempt from Commission rate regulation, but states that the extent of rate regulation required would depend on the CCE model that would be established. This commenter notes that because “a CCE could design a time of use rate program that differs from that of the incumbent utility in order to maximize the value of their own generation portfolio, Commission oversight is necessary to ensure that time of use rates offered by the CCE do not incentivize customer behavior that conflicts with the incumbent utility’s efforts to create system benefits, reduce peak demand, and reduce carbon emissions.” Specifically, this commenter argues that at a minimum, CCE authorities should cover the administrative costs of rate regulation consistent with § 40-2-112(2), C.R.S.²⁰⁷

LQ6: Whether any additional consumer protections would be required and the means of providing those protections

Commenters identified several consumer protection considerations related to CCE authorization, as well as some ways to address those concerns.

One commenter emphasized that because CCE authorities would be nonprofit entities subject to local oversight and governance, and because customers would have the option to opt-out of their local CCE provider, the Commission’s consumer protection role should, “be limited to resolving billing disputes, and other disputes of a similar nature that are specific to individual customers of the CCE.” This commenter noted that several research organizations have found that overall, CCE authorities, “have a positive influence on consumer protections in restructured electricity markets.”²⁰⁸ Notably, a different commenter that asserted that CCE authorities should be subject to *full* Commission regulation agrees with the notion that the Commission should play a core role in billing dispute resolution for CCE authorities. According to this commenter, “any customer complaint should go through the Commission’s dispute resolution process. This ensures that for any customer complaint, the customer, CCE, and utility rights can be appropriately represented and adjudicated. It also ensures that the Commission

²⁰⁵ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 37-38. Proceeding No. 22I-0027E.

²⁰⁶ Response comments of Larry Miloshevich (April 15, 2022), pp. 13-14. Proceeding No. 22I-0027E.

²⁰⁷ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 21-22. Proceeding No. 22I-0027E.

²⁰⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 24-25. Proceeding No. 22I-0027E.

can maintain accurate records of customer complaints and identify concerns with utility or CCE operations that may warrant rulemakings or other policy adjustments.”²⁰⁹

Another commenter referenced 2019 legislative discussions between the Colorado Office of Consumer Counsel (now the Colorado Office of the Utility Consumer Advocate) and the Investor-owned Utility Review Interim Study Committee. In these 2019 discussions, the Office of Consumer Counsel expressed, “concerns about the uncertainty of consumer protections and cost allocation between the utility and CCE customers.” The commenter emphasized that these concerns have not been ameliorated due to observed CCE challenges encountered in other states. Specifically, the commenter identifies the following key consumer protection concerns, and the associated rationale for their concerns:²¹⁰

- *Reliability interplay between IOUs and CCE authorities:* “Resource planning between the entities is vital to providing safe, reliable service to Coloradoans. As extreme weather events become more frequent, reliability concerns arise for utilities and that issue becomes more acute with the introduction of CCE authorities. Resource procurement and resource adequacy will become increasingly complex if Colorado welcomes more actors within the market, as the utilities will remain burdened with procuring adequate service when the costs of that burden may be uncertain.”
- *Affordability:* “Those that wish to opt out of the IOU system should be required to pay a reasonable transition fee or exit fee to offset their fair share of costs of utility assets and contracts to provide cost recovery for stranded investor-owned electric utility assets and contract and direct transition costs. The [commenter] has concerns that the allocation of these uncertain costs will negatively impact those that remain on the IOU system, by increasing rates for the remaining pool of customers. The potential for stranded assets increases as customers opt out of IOU service, and those costs become incorporated into the rates for a diminishing pool of customers. Those customers left with the IOU are those who are least likely to afford leaving the IOU system, creating a situation that is deeply unaffordable.”
- *Colorado’s environmental goals:* “It is also unclear how CCE authorities, who are still dependent upon IOUs for service, will manage compliance with state energy goals and whether CCE’s can expand upon programmatic elements typically offered by IOUs.”
- *Disproportionately impacted communities and income qualified customers:* [The commenter], “encourage[s] discussion around how to maintain the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low income households and communities disproportionately impacted by electricity generation.

²⁰⁹ Response comments of Public Service Company of Colorado (April 15, 2022), p. 28-29. Proceeding No. 22I-0027E.

²¹⁰ Initial comments of the Colorado Office of the Utility Consumer Advocate (March 1, 2022), pp. 1-4. Proceeding No. 22I-0027E.

Additional policies may need to be implemented to ensure that low-income customers are able to maintain affordable and reliable service should they opt out of IOU service.”

- *Regulatory framework:* “While regulatory oversight of a CCE is required, developing a plan to determine the extent of that oversight is necessary, but seemingly complex. How will Colorado identify the scope of its regulatory oversight and how will that decision impact consumer advocates?”

Another commenter emphasized that though, “CCE authorities would act with local interests at the top of their minds, the impacts of these decisions do not stop at the city limits,” and thus argued for full Commission regulation over CCE authorities to ensure systemwide consumer protection. This commenter stated that, “the Commission should maintain its oversight on, the issues of exit fees, emissions compliance, IPP standards, data sharing, resource adequacy, and other consumer protections.”²¹¹

This commenter expanded upon their position, emphasizing that not only should the Commission have full regulatory authority for the purpose of ensuring adequate consumer protection, but that the Commission should be the party primarily responsible for:²¹²

- “The tracking and publishing of CCE rates;
- “The marketing language of CCEs with respect to regulated utilities and regulated utilities with respect to CCEs; and
- Resolution of customer complaints.”

This commenter warns that because authorizing CCE authorities has the potential to introduce further confusion regarding who supplies a customer’s power, “the Commission should maintain a website where rates for any energy supply entity - CCEs and regulated utilities - are published and regularly updated to ensure an independent representation of the costs are available.” This is similar to an existing system in California and allows the Commission to act as a trusted third-party source of rate information.²¹³

This commenter also noted that just as CCE advocates argue that IOUs’ influence gives them an unfair marketing opportunity, CCE authorities could overstate the potential benefits and risks associated with joining a CCE. To address this consumer protection risk, the commenter suggested, “that whenever a utility or CCE plans to submit marketing material to customers that encourages the adoption of a CCE, compares or contrasts the costs and benefits of the utility and CCE authority, or discusses opt-out rights, the Commission should have the opportunity to review and approve the messaging prior to dissemination.”²¹⁴

Finally, this commenter recommended that, “CCEs, like utilities, should be responsible for submitting compliance plans for review by the Commission,” for their customer programs. The

²¹¹ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 8-9. Proceeding No. 22I-0027E.

²¹² Ibid. (Public Service Company of Colorado, p. 28-29)

²¹³ Ibid. (Public Service Company of Colorado, p. 28-29)

²¹⁴ Ibid. (Public Service Company of Colorado, p. 28-29)

commenter argues that so long as CCE authorities are responsible for complying with and making progress towards statewide goals, the Commission should have the authority to oversee CCE programming operations to ensure that progress is made in a just and fair way, that customers can reasonably access relevant programs, and that CCE programs complement—rather than inhibit—similar IOU programs that also aim to make progress toward state goals.²¹⁵

To address potential information gaps that CCE customers may experience, another commenter emphasized the value of customer notification and outreach requirements regarding CCE structure, as well as specific CCE programs, rates, and opt-out rules, particularly in California. This commenter suggests, “that CCE enabling legislation should require minimum customer notification requirements that are at least as robust and specific as those in California, and must include certain information such as rate impacts, opt-out or opt-up or opt-down options, and contact information for questions. This information and additional details should also be available on a website that is referred to in all customer outreach messages.”²¹⁶

According to both this commenter and another commenter, California’s notification requirements (specifically related to opting out of CCE service) require that, “when a CCE is formed, customers may opt out of CCE service at no cost for two months prior to the CCE potentially delivering service to the customer and two months after the CCE has begun service to the customer. In that time, the customer must receive at least four notices that they are being switched to the CCE: two notifications before service and, assuming the customer has not opted out, two notifications after service has begun.”^{217 218} This commenter emphasized that CCE authorities’ more local governance structure provides increased opportunities for customer feedback, thus providing, “more customer opportunities to complain, raise issues, and have a direct impact on their service than is possible with IOUs.”²¹⁹

LQ11: Whether CCE authorities should be allowed to offer demand-side management programs that either expand upon or replace such programs offered by the incumbent investor-owned electric utility

Commenters generally discussed DSM programming comprehensively, rather than in the context of only one potential provider. The circumstances in which IOUs, CCE authorities, and/or both parties should be permitted (or required) to offer DSM programs are therefore discussed in detail in response to CQ10g. The summarized responses to LQ11, below, cover additional considerations specific to CCE authorities’ potential roles and responsibilities related to IOU-offered DSM program offerings.

As explained in detail in response to Question CQ10g, commenters’ views regarding this topic ranged from CCE authorities being obligated to offer programs, prohibited from offering

²¹⁵ Ibid. (Public Service Company of Colorado, p. 28-29)

²¹⁶ Response comments of Larry Miloshevich (April 15, 2022), pp. 18-19. Proceeding No. 22I-0027E.

²¹⁷ Ibid. (Larry Miloshevich, pp. 18-19)

²¹⁸ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 18. Proceeding No. 22I-0027E.

²¹⁹ Ibid. (Larry Miloshevich, pp. 18-19)

programs (i.e., program responsibilities would remain with the incumbent IOU), or authorized to offer programs that would beneficially supplement existing IOU program offerings.

One commenter recommended that CCE authorities either be obligated to offer and fund programs (including DSM programs), or be permitted, “to offer and fund alternative programs which are equal to or superior to the IOU programs in terms of intent and benefits, if the alternative CCE program is approved by the Commission.” This commenter further clarified that, “CCEs should be allowed to offer and fund their own supplemental programs, both these PUC-required programs and other innovative programs such as on-bill financing of consumer energy efficiency and renewable energy upgrades.”²²⁰ This commenter additionally emphasized that, “a CCE might make greater use of DER and DSM than an IOU, because these are less profitable resources from the IOU's perspective, but from the CCE's perspective these are more cost-effective approaches for customers that also accelerate decarbonization and enhance local reliability and resilience.” In conclusion, this commenter suggested that the Commission, “consider recommending that any CCE-enabling legislation should allow CCEs to either adopt and fund required IOU customer programs or to institute and fund their own equivalent or superior alternatives subject to Commission review and approval,” but also that the Commission should retain oversight over any DSM programs.²²¹

Another commenter agreed that CCE authorities should not only be permitted to, but rather be obligated to offer DSM programming, in addition to other customer programs including net metering, electric vehicle infrastructure, beneficial electrification, and low-income energy assistance programs. This commenter asserted that, “These requirements are essential to avoid a scenario in which a community seeks to create a CCE authority to avoid compliance with Colorado legislation to which they would otherwise be subject in the absence of a CCE authority,” and acknowledged that because CCE-offered DSM programs would only apply to distribution-side DSM (leaving IOUs still responsible for generation- and transmission-related DSM programs) the PUC should be responsible for program approval.²²²

Another commenter expressed that, “allowing community choice entities to take over operation of utility energy efficiency programs... removes conflicts of interest from program operation, where most investor-owned utilities earn profits on the construction of infrastructure... that can be avoided with greater investments in energy efficiency.” According to this commenter, because CCE authorities do not have any incentives to expand infrastructure in pursuit of profit, they offer a good venue for DSM and efficiency programs. However, this commenter acknowledged that CCE authorities must have access to the same customer data that utilities have to deliver an effective DSM program.²²³

²²⁰ Initial comments of Larry Miloshevich (March 1, 2022), pp. 39-40. Proceeding No. 22I-0027E.

²²¹ Response comments of Larry Miloshevich (April 15, 2022), p. 17-20. Proceeding No. 22I-0027E.

²²² Initial comments of the City of Boulder (March 1, 2022), pp. 5-8. Proceeding No. 22I-0027E.

²²³ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), pp. 1-2. Proceeding No. 22I-0027E.

Another commenter also recommended allowing (but not necessarily requiring) CCE authorities to offer DSM programs. According to this commenter, this strategy would allow the CCE authorities to, “make informed procurement decisions on behalf of their customers and manage customer load in a manner that is consistent with the State’s climate goals,” because of DSM’s usefulness as a load management tool. This commenter did not suggest that CCE-provided DSM programs should replace IOU-provided DSM programs, but stated that, “in other jurisdictions, CCEs have proved themselves nimble organizations that can act on a faster timeline than incumbent investor-owned utilities to develop effective load-management and energy efficiency programs.”²²⁴

This commenter also described the following systemwide benefits of allowing CCE authorities to offer DSM programs:

- *“Innovation:* by considering demand flexibility generally rather than focusing on measure-specific utility programs, CCEs are better positioned to pay for results that matter most to their communities, and to support the deployment of technologies most relevant to savings in the local climate.
- *Customer engagement:* CCEs’ close customer relationships will serve to not only design programs more suited to the local population, but will also increase awareness of these programs and drive community participation.
- *Localized job growth:* by having the freedom to design critical program elements, such as price signals and payment terms, local workforce development can benefit by ensuring local contractors are more heavily engaged in demand management opportunities.”²²⁵

This commenter also emphasized that another benefit of allowing CCE authorities to offer DSM programs is that “there are no competitive pressures on Colorado’s utilities to offer the most innovative or cost-effective programs available in the marketplace. In California, CCEs offer customer programs in these areas that complement or go beyond the utility’s programs without duplicating them; in this way, customers have the benefit of existing utility programs and those that are offered through the CCE.”²²⁶

Another commenter expressed a similar perspective and stated that allowing CCE authorities to offer DSM programming is beneficial and necessary because, “the focus of many DSM programs is to reduce consumption of electricity, which directly contradicts an IOU’s traditional profit model of selling more.” According to this commenter, because CCE authorities do not share this incentive, they may be better motivated to offer their customers more impactful DSM opportunities, such as the energy conservation opportunities associated with the adoption

²²⁴ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 43-45. Proceeding No. 22I-0027E.

²²⁵ Ibid. (Local Energy Aggregation Network, pp. 43-45)

²²⁶ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), p. 8. Proceeding No. 22I-0027E.

of time-of-renewables rates.²²⁷ ²²⁸ Like other commenters, this commenter agreed that PUC oversight over CCE-offered DSM programs can maximize program benefits overall. Similarly, another commenter noted that in California, CCE customers can generally participate in any IOU-offered DSM programs (barring special rate programs including Critical Peak Pricing and Real-Time Pricing), and CCE authorities can provide additional DSM programs that would be subject to PUC review if those programs would be funded by IOUs' own DSM initiatives.²²⁹

Another commenter further described the value of local control in energy programming, stating that CCE authorization, "presents an opportunity to explore new options for the State of Colorado to accelerate the transition to cleaner energy by empowering cities and counties to acquire wholesale energy supplies for their constituents and develop new and innovative customer-facing programs," using an alternative to the profit-focused utility business model. This commenter referenced CCA programming in California, which complements and supplements (rather than replaces) similar IOU programs.²³⁰ ²³¹

Other commenters felt that CCE authorities should either not be responsible for any DSM programs or should be the entity fully responsible for such programs. One commenter stated that, "Because CCE programs operate solely in the wholesale space, CCEs should not be responsible for implementing any retail programs," and that responsibility should remain with the incumbent IOU. This commenter further explained that with respect to low-income households and disproportionately impacted communities, "CCEs should not institute any retail programs, and any retail programs offered through IOUs to assist such households and communities should remain available, regardless of wholesale provider."²³² Another commenter did not explicitly state that CCE authorities should be prohibited from offering DSM programs, but did state that, "it may be difficult for new CCEs to offer comparable DSM programs as it may not be financially prudent in the initial stages of development."²³³

In comparison, another different commenter asserted that CCE authorities should be responsible for establishing and managing their own DSM programs, but those programs should

²²⁷ Initial comments of K.K. DuVivier (March 15, 2022), pp. 1-2. Proceeding No. 22I-0027E.

²²⁸ DuVivier, K.K. and Balentine, Haley, Time of Renewables (September 2, 2021). 28 Boston University Journal of Science and Technology Law 63 (2022), Available at SSRN: <https://ssrn.com/abstract=3916390> or <http://dx.doi.org/10.2139/ssrn.3916390>

²²⁹ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 2. Proceeding No. 22I-0027E.

²³⁰ Response comments of Vote Solar (April 15, 2022), pp. 2-3. Proceeding No. 22I-0027E.

²³¹ This commenter also provided a reference link to the programs offered by California's CCA's. The provided resource is cited and available here:

"CCA programs," California Community Choice Association (website), accessed November 2, 2022, <https://cal-cca.org/CCA-programs/>.

²³² Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), pp. 9-10. Proceeding No. 22I-0027E.

²³³ Initial comments of the Colorado Office of the Utility Consumer Advocate (March 1, 2022), p. 3. Proceeding No. 22I-0027E.

still be subject to Commission oversight. This commenter noted that allowing CCE customers to access both CCE-administered DSM programs and IOU-administered DSM programs could result in customer confusion and would complicate program funding strategies. This commenter also clarified that the intended impacts of a CCE-administered DSM program and an IOU-administered DSM program are different: A CCE-administered DSM program would be intended to overall curtail use and conserve energy, whereas an IOU-administered program would be more focused on achieving, “energy and capacity savings... to avoid higher-cost utility resources over the long term.”²³⁴ This commenter further stated that, “an IOU could neither claim demand and energy savings going to a CCE nor justify charging one set of customers for programs that garner savings to a different set of customers.”²³⁵

One commenter did not provide feedback specifically related to DSM program administrative responsibilities but did state that an environment that fostered collaboration between CCE authorities and incumbent IOUs could result in, “Energy efficiency, demand-side management and energy resilience programs that consider and respond to local energy usage profiles and vulnerabilities.”²³⁶

LQ15: How CCE might facilitate or impede:

- A) Increased integration of distributed energy resources, such as rooftop solar, community solar, and battery energy storage into distribution systems;

Commenters generally presented two different perspectives regarding how CEE authorization would affect DER integration. Some commenters stated that CCE authorization would facilitate increased integration of DERs, investment in beneficial electrification, and microgrid deployment, noting that CCEs have the potential to provide better, more locally relevant customer programs. Alternatively, other commenters were concerned about the potential for CEE authorization to adversely affect DSM deployment by creating more complexity and establishing power providers that would be unable to provide sufficiently robust programs. One commenter provided context to these concerns noting that though California’s CCAs are subject to IRP submittal requirements, recent CCA IRPs indicated a lack of ability to adequately conduct resource planning.²³⁷ Another commenter warned that authorizing CCEs could create opportunities for customers to opt out of DSM existing programs, explaining that programs with lower costs cannot come with a reduction in programs necessary to support residents and businesses.²³⁸

²³⁴ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022) p. 9. Proceeding No. 22I-0027E.

²³⁵ Response comments of Black Hills Colorado Electric, LLC (April 15, 2022), p. 4. Proceeding No. 22I-0027E.

²³⁶ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), p. 2. Proceeding No. 22I-0027E.

²³⁷ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 22-24. Proceeding No. 22I-0027E.

²³⁸ Initial comments of the City of Boulder (March 1, 2022), p. 6. Proceeding No. 22I-0027E.

Despite disagreements around the potential for CCEs to either benefit or impede DSM resource integration, there was general consensus that the Commission should retain jurisdiction and oversight of DSM programs to ensure that comprehensive regulations and standards are in place regardless of whether it is a CCE- or IOU-offered program.

B) Increased investment in beneficial electrification, including electrification of transport; and

In response to LQ15B, commenters generally echoed the same remarks presented in LQ15A, with one commenter expanding on a CCE authority's obligation to "make investments or offer incentives to facilitate the deployment of customer-owned or utility-owned electric vehicle charging infrastructure and make investments or offer incentives to facilitate beneficial electrification."²³⁹

LQ19: The impact of CCE on low-income households and communities disproportionately impacted by electricity generation, including the availability of low-income programs offered through the investor-owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low-income households and communities disproportionately impacted by electricity generation

Most commenters that discussed the potential for CCE authorization to affect low-income households and communities disproportionately impacted by electricity generation stated that those impacts would be positive. These commenters suggested that CCEs should offer low-income assistance programs, but some other commenters explicitly suggested that CCE authorities should be obligated to provide low-income programs, while others suggested that CCEs should be allowed to offer low-income programs that supplement incumbent IOU low-income programs. One commenter specified that CCE customers should appropriately pay into these programs, similarly to programs administered by IOUs.²⁴⁰

All commenters that supported CCE low-income programs noted that CCEs must have a clear and accessible opt-out option in the event that CCE costs exceed IOU costs. Moreover, a few commenters agreed that IOUs should continue offering low-income programs to CCE customers. Several commenters emphasized that CCEs could help address local issues in a way that IOUs cannot since they are community-based. Additionally, one commenter noted that contrary to IOUs, which are financially rewarded for their investments, CCEs are inherently encouraged to provide electricity and related services to customers at the lowest cost.²⁴¹ Similarly, another commenter asserted that "because CCE is community-based, low-income households and communities disproportionately impacted by electricity generation should have more opportunities for input about their needs and accessing resources than they have with the

²³⁹ Ibid. (City of Boulder, p. 7.)

²⁴⁰ Initial comments of Larry Miloshevich (March 1, 2022), p. 35. Proceeding No. 22I-0027E.

²⁴¹ Response comments of Vote Solar (April 15, 2022), pp. 2-3. Proceeding No. 22I-0027E.

current system that is complex and favors insiders who have the expertise or financial resources to impact outcomes.”²⁴²

There also was a significant emphasis on ensuring that low-income customers are protected from being negatively impacted by electricity costs. Specially, CCEs must not burden low-income customers with high electricity costs, and policies must be put in place to ensure that low-income customers are able to maintain affordable and reliable services regardless of whether they switch to a CCE provider or opt-out of CCE service and continue to receive electricity from their incumbent IOU.

One commenter expressed a dissenting opinion that identified the potential for CCE authorization to have a negative impact on low-income households and disproportionately impacted communities. This commenter noted that CCE authorization would likely result in duplicative programs, thus increasing service complexity for both CCE and IOU customers. This commenter said that “CCEs would introduce an unnecessary level of complexity to the existing system without providing any clear benefits not already established by IOUs.”²⁴³ To further this idea, another commenter provided an example from California, where CCE program complexity can mean that different customers—even customers within the same community—can have different opportunities or access to services under these programs.²⁴⁴

Commenters that remained hesitant of the potential implications of CCE-administered low-income programs provided some alternative options, including allowing a single administrator, (likely the IOU), to be responsible for providing energy assistance, or requiring both IOUs and CCE authorities to provide energy assistance. One such commenter brought up the caveat that the second option would likely require additional administrative costs. Nonetheless, it is suggested that the Commission and legislature should provide guidance on the allocation of revenue and consider how low-income program funding is collected.²⁴⁵ Another commenter suggested that CCE authorities create their own independent low-income programs that are separate from IOU low-income programs and associated funding, so as to reduce redundancy and potential confusion associated with program duplication.²⁴⁶ Given the ever-changing social and economic climate, one commenter recommended that the state employ a longer time horizon when considering whether and how CCE can benefit low-income households and disproportionately impacted communities.²⁴⁷

²⁴² Initial comments of K.K. DuVivier (March 15, 2022), p. 3. Proceeding No. 22I-0027E.

²⁴³ Initial comments of Public Service Company of Colorado (March 1, 2022), p. 34. Proceeding No. 22I-0027E.

²⁴⁴ Response comments of Karey Christ-Janer (April 15, 2022), pp. 26-27. Proceeding No. 22I-0027E.

²⁴⁵ Initial comments of Public Service Company of Colorado (March 1, 2022), p. 35. Proceeding No. 22I-0027E.

²⁴⁶ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp 13-14. Proceeding No. 22I-0027E.

²⁴⁷ Response comments of Colorado Communities for Climate Action (CC4CA) (April 15, 2022), p. 7. Proceeding No. 22I-0027E.

CQ10g: Should investor-owned utilities be obligated to offer demand-side management programs pursuant to § 40-3.2-104, C.R.S., to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Commenters generally spoke about programs comprehensively, rather than speaking about individual types of programs. For this reason, the response to this question includes a summary of commenters' perspectives regarding whether IOUs should be obligated to offer DSM, net metering, charging infrastructure, beneficial electrification, and low-income energy assistance programming. One commenter also provided detailed comments related specifically to billing considerations for low-income energy assistance programs. These comments are included in response to CQ10k. For additional information regarding potential CCE authority roles and responsibilities related to DSM programming, please refer to LQ11.

One commenter identified four key areas of consideration with respect to customer programming broadly:²⁴⁸

- *Regulatory oversight.* Incumbent IOUs are responsible for making decisions that will help Colorado meet its energy and climate goals through initiatives including DSM, transportation electrification, and beneficial electrification. The Commission is responsible for regulatory oversight of these initiatives including reviewing IOU-submitted plans and providing IOUs with the direction necessary to successfully implement their plans. If additional parties (such as CCE authorities) establish additional programs, the Commission must either commit to regulating those programs (thus expanding regulatory burden) or not regulating those programs, which leaves little oversight.
- *Customer engagement.* Customer participation in the numerous offered IOU programs is crucial to program access. Additionally, continued customer involvement in programs is contingent on program clarity. If several similar or overlapping programs exist, program opportunities and eligibility may become more confusing to customers, potentially interfering with customer engagement overall. Not all CCE authorities would necessarily provide a program portfolio that is as comprehensive as that of the incumbent IOU, meaning that former IOU customers that become CCE customers may no longer have access to the types of programs they once participated in, potentially interfering with statewide goals.
- *Cost causation.* Different programs can drive different investment trends. For example, DSM programs can delay infrastructure investments by promoting energy use reduction, while electrification programs can expedite investments in generation, transmission, and distribution infrastructure to support expanded electricity use. Historically investment costs have been distributed across a utility's customer base, but when a third-party (such as a CCE authority) also offers such programs to its own customers,

²⁴⁸ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 26-29. Proceeding No. 22I-0027E.

those customers do not contribute to the investment costs that are still required from the IOU.

- *System operation:* Energy programs are part of a complementary energy system that requires careful management to ensure reliability and cost-effectiveness. Introducing additional parties that offer their own programs, but that do not also support broad systemwide management efforts, could potentially interfere with successful system operations.

According to this commenter, any actions that would shift potential program regulatory oversight or customer engagement away from its current paradigm has potential cost causation and systemwide operational implications. This customer emphasized that if CCE is authorized in Colorado, program management responsibility should remain with the incumbent IOU, and regulatory oversight over those programs should remain with the Commission.²⁴⁹

With specific respect to DSM programs, this commenter anticipates that DSM strategies will change significantly in the coming years. The parties most able to manage these changes will likely be parties with existing knowledge about program operations and systemwide utility infrastructure.

Another commenter provided the opposite perspective. This commenter argued that “[r]equiring the incumbent utility to continue providing these programs to customers of CCE authorities will lead to unnecessary customer confusion of service providers and offerings. In addition, such a scheme will confuse the incumbent utility’s own efforts, as these types of programs are managed holistically to support the public interest, lower costs to customers, and are direct inputs into the generation decisions of the utility.” This commenter stated that CCE authorities, rather than incumbent IOUs, should provide programs and program management services to its customers.²⁵⁰

Other commenters offered nuanced perspectives between these program management and delivery models. One commenter felt that IOUs should be obligated to offer DSM programs to customers served by CCE authorities, and further notes that, “funding mechanisms could be established by the Commission or through enabling legislation even in a CCA paradigm.” This commenter suggests that as long as CCE customers remain “bundled” with IOU customers (and, accordingly, contribute to the costs associated with IOU infrastructure investments that still benefit CCE customers), this approach would be feasible.

According to this commenter, bundling has proven itself especially critical in the net metering context in California. In California, only bundled CCA customers can participate in IOU net metering programs; CCA providers can offer their own net metering programs but bundling offers clear benefits. This commenter also provided an example of the importance of collaboration between CCA/CCE providers and IOUs when programming is intended to supplement and/or expand upon existing IOU programs. Specifically, this commenter referred

²⁴⁹ Ibid. (Public Service Company of Colorado, pp. 26-29)

²⁵⁰ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 18-19. Proceeding No. 22I-0027E.

to supplemental programming from Sonoma Clean Power in California, which resulted in a successful electric vehicle program, but acknowledges that collaboration between CCE authorities and IOUs is necessary for successful results. Another commenter also emphasized the importance of collaboration between CCA/CCE authorities and IOUs, noting that improved collaboration could result in several programmatic benefits, including, “economically beneficial integration of electricity transport infrastructure and locally owned electricity generation; and energy efficiency, demand-side management and energy resilience programs that consider and respond to local energy usage profiles and vulnerabilities.”²⁵¹

The prior commenter further stated that electric vehicle infrastructure and deployment is a prime example of the type of program that supports the value of full-scale Commission regulation of CCE authorities because, “While it is ideal for IOUs to partner with local governments on optimal location for EV infrastructure, a ‘patchwork quilt’ approach, differing from jurisdiction to jurisdiction, could severely hamper the transition to electric vehicles, and confuse customers who have already invested in an EV.”²⁵²

This commenter provided further details regarding low-income energy assistance programming. According to this commenter, “In California, both IOU and CCA customers may enroll in the CARE and FERA (low-income and medical-baseline programs), however, the 20% bill saving are applied to each separate entities’ base electric rates. So, for those CCAs whose rates have risen over-and-above their incumbent IOU’s rates, one CCA CARE customer would be paying more than a neighbor who opted out of the CCA, paying the IOU’s lower CARE rates and vice versa.” However, this commenter also stated that unlike California’s IOUs, California’s CCA entities have more flexibility when it comes to automatically enrolling customers in low-income programs, but that this flexibility is not always associated with positive outcomes. Notably, this commenter provided the example of East Bay Community Energy. Several cities within East Bay Community Energy service territory voted to automatically enroll all of their CCA customers into East Bay Community Energy’s higher-cost 100% renewable energy program, unless those customers were also enrolled in CARE and/or FERA. CARE and/or FERA-enrolled customers were not automatically enrolled in the higher-cost 100% renewable energy program, and by default were consuming a lower percentage of clean energy.²⁵³

This commenter also agreed with the perspective of another commenter, who stated that CCE programming should neither eliminate nor replicate existing IOU programs. This commenter emphasized that instead, the Commission should, “[ensure that] any potential CCE program meaningfully accelerates Colorado’s electricity-sector greenhouse gas emissions reduction goals and [ensure] that customer programs offered if CCE were to be advanced are integrated with incumbent utility programs.”²⁵⁴ Both this commenter and the prior commenter argued that

²⁵¹ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), p. 2. Proceeding No. 22I-0027E.

²⁵² Initial comments of Karey Christ-Janer (March 1, 2022), pp. 15-16, 34-36. Proceeding No. 22I-0027E.

²⁵³ Ibid. (Karey Christ-Janer, pp. 15-16, 34-36)

²⁵⁴ Initial comments of the City of Boulder (March 1, 2022), pp. 3, 9. Proceeding No. 22I-0027E.

this strategy allows CCE programming to complement mandatory IOU programming to “close the gap” to achieve emissions-free electricity.^{255 256}

Several other commenters agreed that there was an opportunity for both CCE authorities and IOUs to continue offering energy programming. One such commenter recommended a model in which IOUs are obligated to offer DSM, net metering, beneficial electrification, and low-income energy assistance programs to customers served by CCE authorities. This commenter further recommended that CCE authorities should also be required to offer DSM programs to their own customers and be permitted to offer other types of programs. For DSM programs, beneficial electrification, and low-income energy assistance programs, this commenter recommended that programs be funded through existing non-bypassable riders to be collected from all customers. For net metering programs, this commenter acknowledged that, “net metering tariffs will likely need to be reworked in recognition of the fact that CCE customers do not pay supply charges to the incumbent utility.” This commenter also noted that IOUs would need to share net metering data with CCE authorities to allow CCE authorities to develop their own net metering programs.²⁵⁷ For additional details regarding commenters’ perspectives on data sharing, please refer to LQ14.

This commenter also agreed with prior commenters’ views regarding CCE programming’s potential to function as an addition to—rather than a replacement of—similar IOU programs. This commenter stated that, “In California, CCEs offer customer programs in these areas that complement or go beyond the utility’s programs without duplicating them; in this way, customers have the benefit of existing utility programs and those that are offered through the CCE.” This commenter also provided financial rationale for a model in which both CCE authorities and IOUs can offer programs, stating that, “many customer programs are developed and/or implemented by third-party service providers. Having both utilities and CCEs offer customer programs pushes these service providers to develop new and innovative programs, and their competition for contracts drives down the cost of implementation, ultimately benefiting the end-use customer.”²⁵⁸

Another commenter who considered it reasonable for both IOUs and CCEs to offer programs provided insight into some challenges that CCE authorities may face. Specifically, this commenter stated that it is not yet known whether CCE authorities could expand upon existing IOU program offerings and acknowledged that if CCE authorities cannot offer comparable programs and a significant portion of an IOU’s customer base joins CCE authorities instead, program impact on statewide energy goals could be impacted. Furthermore, to ensure that access to low-income programs is not impacted, this commenter recommended consideration for, “how to maintain the availability of low-income programs offered through the investor-

²⁵⁵ Ibid (City of Boulder, pp. 3, 9)

²⁵⁶ Response comments of Karey Christ-Janer (April 15, 2022), p. 2. Proceeding No. 22I-0027E.

²⁵⁷ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 57-59. Proceeding No. 22I-0027E.

²⁵⁸ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), p. 8. Proceeding No. 22I-0027E.

owned electric utility to CCE customers and the ability of CCE authorities to establish additional programs to assist low income households and communities disproportionately impacted by electricity generation,” even if those low-income customers become CCE customers.²⁵⁹

Another commenter agreed with the several others that CCE programming should supplement (rather than replace or not contribute to) existing IOU programming efforts subject to PUC regulation. This commenter agreed that IOUs should be required to provide customer programs, but noted that, “a point of consideration is whether the CCE should have the option to decline to participate in (and pay into) certain types of IOU programs.” Like other commenters, this commenter recommended that, “CCEs should have full authority to institute (and pay for) their own supplemental programs,” under certain conditions, such as a CCE-developed program being “of equal or superior benefit” to the IOU’s comparable program.²⁶⁰

Another commenter noted that in California, CCE customers can participate in almost all IOU-offered DSM programs, barring Critical Peak Pricing and Real Time Pricing programs, and CCE authorities are also permitted to offer their own programs. In California, CCE-offered programs can be funded by IOU DSM dollars (in which case the CCE authority’s program is subject to California PUC oversight), or funded by CCE revenues, in which case PUC oversight is not required.²⁶¹

This commenter also emphasized that coordination between CCE authorities and IOUs is especially critical for net metering programs due to pricing dynamics. This commenter presented two potential scenarios, suggesting that, “if the IOU program offers full retail price for power injected into the grid by the NEM customer, then the IOU should bear the buyback costs associated with the non-generation related portion of the rates and the CCE would then bear the buyback costs of the generation portion of the NEM tariff. Alternatively, the could CCE set their own policy concerning buyback pricing for the energy exported to the grid by their customers.”²⁶²

CQ10h: Should investor-owned utilities be obligated to offer net metering incentives to customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Please refer to the response to CQ10g, which covers commenters’ perspectives on the roles of incumbent IOUs and CCE authorities with respect to programming including DSM, net metering, charging infrastructure, beneficial electrification, low-income energy assistance, and programming more broadly.

²⁵⁹ Initial comments of the Colorado Office of the Utility Consumer Advocate (March 1, 2022), pp. 3-4. Proceeding No. 22I-0027E.

²⁶⁰ Initial comments of Larry Miloshevich (March 1, 2022), pp. 35-36. Proceeding No. 22I-0027E.

²⁶¹ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 2, 12-13. Proceeding No. 22I-0027E.

²⁶² Ibid. (MRW, pp. 2, 12-13)

CQ10i: Should investor-owned utilities be obligated to make investments or offer incentives to facilitate the deployment of customer-owned or utility-owned charging infrastructure pursuant to § 40-5-107, C.R.S., for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Please refer to the response to CQ10g, which covers commenters' perspectives on the roles of incumbent IOUs and CCE authorities with respect to programming including DSM, net metering, charging infrastructure, beneficial electrification, low-income energy assistance, and programming more broadly.

CQ10j: Should investor-owned utilities be obligated to make investments or offer incentives to facilitate beneficial electrification pursuant to § 40-3.2-109, C.R.S., for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Please refer to the response to CQ10g, which covers commenters' perspectives on the roles of incumbent IOUs and CCE authorities with respect to programming including DSM, net metering, charging infrastructure, beneficial electrification, low-income energy assistance, and programming more broadly.

CQ10k: Should investor-owned utilities be obligated to offer low-income energy assistance programs for customers served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, and if so, how should such programs be funded?

Please refer to the response to CQ10g, which covers commenters' perspectives on the roles of incumbent IOUs and CCE authorities with respect to programming, including DSM, net metering, charging infrastructure, beneficial electrification, low-income energy assistance, and programming more broadly.

Further, one commenter provided detailed comments related specifically to billing considerations for low-income programs. This commenter noted that current legislative language indicates that IOUs would retain the responsibility for billing CCE customers, in addition to its own customers. The commenter cautioned that this increases administrative burden on the incumbent IOU and, accordingly, administrative costs. The commenter expressed concerns that non-CCE customers would likely unfairly bear some of these costs, which will be further exacerbated by IOU administration of low-income energy assistance programs.

With respect to low-income energy assistance programming, this commenter suggested that "one option is to require utilities and CCEs to both have a responsibility to provide energy assistance programs because both entities have revenue requirements," but warns that this approach would likely increase administrative burden for both CCE authorities and IOUs, and potentially third parties that provide supportive program assistance. Another option according to this commenter, would involve the IOU being the only administrative party for low-income

energy assistance programs, but this is not without its own complexity related to determining the order in which entities are paid and how to deploy energy assistance funding.

This commenter also emphasized that the Commission and the legislature will need to establish a clear means by which existing low-income energy assistance program funding is collected. According to this customer, if IOUs retain billing responsibilities for CCE customers, funding sources would likely not change (such programs are currently funded through fixed fees) and would not be impacted. Comparatively, if the IOU is not the sole party responsible for billing, the funding source would change, indicating a need for coordination between incumbent IOUs and CCE authorities.²⁶³

RTO Considerations

LQ12: Regulatory and policy considerations related to forming CCE authorities in a state that does not currently belong to a regional transmission organization or participate in a wholesale electricity market, and possible solutions, including considerations in the areas of:

A) Whether legislation should be adopted to guarantee open access and fair prices for transmission services;

Commenters agreed that CCE authorities should have non-discriminatory access to transmission services in accordance with utilities' Open-access Transmission Tariff (OATT). Still, several commenters suggest statutory clarification. One such commenter stated that, "anticipating a greater number of competitive wholesale suppliers actively serving CCE load, it seems prudent and appropriate to include language in CCE-enabling legislation and in subsequent Rulemaking that assures those suppliers will have the transmission access they need to serve their load at fair prices."²⁶⁴ This commenter clarified that a benefit to this rulemaking approach is that it would allow competitive power suppliers to provide the Commission with feedback regarding what they specifically need with respect to transmission.

This commenter provided examples of proposed CCE-enabling legislation with consideration for transmission access requirements in both New Mexico and Oregon. In New Mexico, proposed legislation required that "transmission owners... provide transmission services to CCE authorities under the same rates and conditions that apply to their own customers," and in Oregon, proposed legislation established that, "the utility must provide transmission, distribution, and ancillary services to CCE authorities under the same rates and conditions as apply to its own customers."²⁶⁵

Other commenters largely deferred to FERC's authority with respect to transmission access. One such commenter acknowledged that OATTs are required in Colorado, but, "any legislation authorizing CCE should include explicit direction to allow CCEs the same access to their

²⁶³ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 34-36. Proceeding No. 22I-0027E.

²⁶⁴ Initial comments of Larry Miloshevich (March 1, 2022), pp. 44-45. Proceeding No. 22I-0027E.

²⁶⁵ Ibid. (Larry Miloshevich, pp. 44-45)

incumbent utilities' transmission and distribution network that they have themselves and at the same cost.”²⁶⁶ Comparatively, other commenters who deferred to FERC's authority considered additional action to be unnecessary because FERC, “has already required direct access to transmission with just and reasonable rates.” Another commenter stated that, “Colorado should not seek to adopt legislation pertaining to open access or pricing for transmission services because such legislation would inevitably conflict with exclusive federal regulation of these areas.” However, this commenter did note that the Commission does have regulatory authority over the transmission service rates paid by retail utility customers (Transmission Cost Adjustment riders). Accordingly, this commenter suggested that “To ensure that CCE rate setting authority is not compromised, CCEs should be assessed transmission costs directly and permitted to recoup the expense in revenues collected from participating customers.”²⁶⁷

B) Recommendations for legislative or administrative measures, or both, concerning wholesale market access and development in Colorado;

Commenters had several recommendations for legislative or administrative measures concerning wholesale market access and development in Colorado for CCE authorities, if such entities are authorized, but most commenters agreed that wholesale market participation is not an absolute requirement for CCE functionality.

One such recommendation included a mandate that CCE authorities participate in policy-making efforts regarding distributed energy resource (DER) optimization and distribution system planning efforts. Through this approach, CCE authorities' and IOUs' resource planning processes would occur in alignment with one another, making RTO participation not inherently necessary.²⁶⁸

Another commenter similarly acknowledged that CCE implementation would likely be easier in an existing wholesale market environment like an RTO/ISO but agreed that such an environment is not a requirement. This commenter provided Colorado's existing municipal utility providers as examples of power providers, “that manage to procure their wholesale power in the current market environment over transmission lines they do not own. CCE authorities, which are similar to municipal utilities when it comes to procurement, could procure electricity from wholesale suppliers through bilateral contracts and pay established transmission charges to each transmission owner across whose wires the power flows.” This commenter noted, however, that because Colorado is obligated to join a wholesale power market by 2030, and CCE authorization and establishment will also take several years, “implementation of CCE should not be delayed until IOUs join a wholesale market.” In fact, this commenter argued that Colorado could benefit

²⁶⁶ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 7. Proceeding No. 22I-0027E.

²⁶⁷ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 39. Proceeding No. 22I-0027E.

²⁶⁸ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 17-18. Proceeding No. 22I-0027E.

from simultaneously pursuing both CCE authorization and wholesale market participation, because each initiative could help inform the other.²⁶⁹

Another commenter expressed similar views, emphasizing that RTO participation would help CCE authorities achieve their goals, but is not required for functionality. Like the previous commenter, this commenter recommended against postponing CCE approval until after 2030 because, “In the absence of an RTO, CCEs can enter into bilateral contracts with suppliers and pay for wheeling services pursuant to the utilities’ Open Access Transmission Tariffs.” Specifically, this commenter clarified that, “CCEs should be able to participate in SPP’s Western Energy Imbalance Service along with Public Service, Black Hills, and PRPA to purchase balancing services just like other load-serving entities.”²⁷⁰

One commenter did not provide a firm perspective regarding whether wholesale market participation was a required precursor for CCE authorization. Like others, this commenter stated that there are notable benefits to regional power market participation, and that without those markets available, CCE authorities would have fewer power supply options. This commenter recommended that wholesale market participation, required of Colorado’s IOUs by 2030 under Senate Bill 21-072, “should be factored into any assessment of how a CCE authority may participate in regional markets and when such participation may be possible.”²⁷¹

C) Whether other legislative and regulatory modifications are necessary to successfully implement CCE in Colorado

Commenters expressed several additional considerations regarding potential legislative and regulatory modifications that may be necessary to successfully implement CCE in Colorado.

One commenter suggested that Commissioners identify whether § 30-28-105, et. Seq. (“Regional Planning Commissions”) grants municipalities the authority to establish Joint Power Agencies/Joint Power Authorities (JPAs), which could be a means to operate a CCE authority.²⁷² For additional details regarding comments received regarding the potential for JPAs to operate CCE authorities in Colorado, and the history of JPA operation of community choice aggregation entities in California, refer to question CQ10b.

This commenter also suggested that the Commission evaluate “whether the implementation of a purchase of receivables (POR) program would be appropriate in Colorado,” and more broadly recommended that the legislature adopt, “a utility code of conduct which, among other things, would ensure that utilities are prohibited from using ratepayer funding to market against CCE. It could also specify certain timelines within which the utility must respond. Including a utility

²⁶⁹ Initial comments of Larry Miloshevich (March 1, 2022), pp. 43-44. Proceeding No. 22I-0027E.

²⁷⁰ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), p. 13. Proceeding No. 22I-0027E.

²⁷¹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 10. Proceeding No. 22I-0027E.

²⁷² Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 41. Proceeding No. 22I-0027E.

code of conduct in authorizing legislation would help ensure that CCEs have a somewhat more level playing field, especially in the early days of ordinances and implementation.”²⁷³

Another commenter recommended a regulatory approach in which not only the Commission, but also other relevant state agencies (particularly the Air Quality Control Commission) would have regulatory authority over CCE authorities, at least until CCE authorities are able to join a wholesale power market (at which point in time the independent market overseer would retain such responsibilities).²⁷⁴

CQ12: Does implementation of CCE in the near future introduce additional risks considering that Colorado’s investor-owned utilities have been directed, pursuant to § 40-5-108(2), C.R.S., to join an organized wholesale market on or before January 1, 2030?

Commenters identified several areas of potential risk worthy of consideration related to § 40-5-108(2), C.R.S., and CCE authorization, but commenters were clear that the degree of risk was variable.

One commenter identified the power provider fragmentation that would likely occur if CCE authorities are authorized in Colorado as a risk that, “could severely impact the development of regional organized wholesale markets and, without a coherent and comprehensive plan, create barriers that imperil the implementation of this sound policy.” This commenter emphasized that a significant benefit of joining the wholesale market would be the increased ability to meet load needs using resources from other regions within the market area, “allow[ing] all operating areas within the regional organized wholesale market to reliably meet peak electricity demand with less generating capacity, cumulatively saving large amounts of capital.” This commenter also references the value of having access to renewable energy resources across a large region, stating that, “Geographically diverse renewable resources have a smoother output profile, with fewer periods of both shortfall and oversupply. As a result, Colorado’s renewable resources will have more value and will be curtailed less if LSEs work in conjunction with each other, such as in a regional organized wholesale market.”²⁷⁵

Another commenter also expressed resource adequacy concerns related to the number of participants within the energy market, specifically in the context of reliability. This commenter states that, “As extreme weather events become more frequent, reliability concerns arise for utilities and that issue becomes more acute with the introduction of CCE authorities. Resource procurement and resource adequacy will become increasingly complex if Colorado welcomes

²⁷³ Ibid. (Local Energy Aggregation Network, p. 41)

²⁷⁴ Initial comments of the City of Boulder (March 1, 2022), p. 5. Proceeding No. 22I-0027E.

²⁷⁵ Initial comments of the Interwest Energy Alliance (March 1, 2022), pp. 6-7. Proceeding No. 22I-0027E.

more actors within the market, as the utilities will remain burdened with procuring adequate service when the costs of that burden may be uncertain.”²⁷⁶

Another commenter also expressed concerns regarding the increased complexity and uncertainty if CCE authorities are authorized as Colorado’s IOUs begin the process of joining an organized wholesale market by 2030. Specifically, this commenter stated that to join a wholesale market, IOUs will need to consider generation, load, transmission, and emissions. The introduction of CCE authorities would further complicate these factors, but the extent of uncertainty that would be introduced cannot yet be known.²⁷⁷

Another commenter further emphasized this uncertainty. This commenter warned that, “organized markets should not be seen as a panacea to the risks that CCEs face in the development of a reliable and affordable energy supply for their customers. While CCEs may possibly benefit from the development of an ISO or RTO in Colorado, participating in wholesale markets requires an increased level of sophistication to ensure that customers are protected from shortages and high market rates,” like those that customers experienced during Winter Storm Uri.²⁷⁸

This commenter, as well as several other commenters, was clear that they do not believe that RTO/ISO membership is a requirement before CCE authorities could be authorized in Colorado but did emphasize that RTO/ISO membership would likely offer a more ideal scenario for CCE authorization. This commenter cautioned that if Colorado authorizes CCE, it would be the only state to do so that is not already an RTO/ISO member, so several risks are unknown.²⁷⁹ Another commenter who also clearly stated that if Colorado’s IOUs were already members of an RTO/ISO, CCE implementation would likely be easier, identified Colorado’s existing municipal utilities as evidence that non-IOU providers do not necessarily need an existing wholesale market to successfully deliver electrical service.²⁸⁰

CQ13: Should implementation of CCE be delayed until the investor-owned electric utilities in Colorado join an organized wholesale market pursuant to § 40-5-108(2), C.R.S.?

Commenters’ responses to this question were highly variable. One commenter noted that CCE authority authorization would likely be easier if Colorado already participated in an RTO or other wholesale market, but that IOU participation in an organized wholesale market is not a required preliminary step prior to CCE approval. This commenter cited the successful power

²⁷⁶ Initial comments of the Colorado Office of the Utility Consumer Advocate (March 1, 2022), p. 2. Proceeding No. 22I-0027E.

²⁷⁷ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 20-21. Proceeding No. 22I-0027E.

²⁷⁸ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 25-27. Proceeding No. 22I-0027E.

²⁷⁹ Ibid. (Public Service Company of Colorado, pp. 25-27)

²⁸⁰ Initial comments of Larry Miloshevich (March 1, 2022), pp. 42-43. Proceeding No. 22I-0027E.

procurement capabilities of Colorado's existing municipal utilities as an example of this and emphasizes that they do not recommend that CCE implementation be delayed until Colorado's IOUs join a wholesale market. This commenter argued that "it may be advantageous to consider the implementation of CCE and the nature of wholesale market participation at the same time, as each impacts the other and therefore would inform the specifics of how both would best be implemented... The most reasonable course of action is to proceed on both fronts largely independently but with awareness of the other, so that their interplay can be taken into account at various decision points in both endeavors."²⁸¹

Another commenter echoed this commenter's views, stating that, "Membership in an RTO/ISO is not strictly necessary for CCEs because CCEs typically enter into bilateral contracts with energy suppliers and can purchase transmission services under the terms and rates specified in the relevant utility's [open-access transmission tariff (OATT)]." This commenter does believe, however, that joining a wholesale energy market like an RTO can support CCE development in Colorado because wholesale market participation can:²⁸²

- Reduce the risk of rate stacking, sometimes referred to as "rate pancaking,"
- Enhance competition, therefore reducing transmission service and wholesale power costs,
- Expand power supply options, and
- Ensure nondiscriminatory access to the transmission system.

One commenter expressed concerns that while a fully developed wholesale market is not a requirement for CCE authorities to function, CCE authorization itself could potentially delay or inhibit wholesale market development in Colorado, warning that "wholesale market development is yet another state policy initiative that could be needlessly imperiled by an effort to implement CCE," due to market fragmentation.²⁸³ Another party agreed with this commenter's fragmentation concern, stating that, "fragmentation of [load serving entities (LSEs)] could severely impact the development of regional organized wholesale markets... Colorado's renewable resources will have more value and will be curtailed less if LSEs work in conjunction with each other, such as in a regional organized wholesale market... The structure of any CCE authorization should not be counter to either the policy goal of regional organized wholesale market development or hinder the lower cost, lower emission outcomes that regional organized wholesale markets can bring."²⁸⁴ One party clarified that though they do not have an opinion as to how to best authorize CCE authorities in a state that is not yet participating in an organized wholesale electricity market, they recommend conducting a detailed analysis of this in the study. This party requested that the study, "evaluate and consider the differences in

²⁸¹ Initial comments of Larry Miloshevich (March 1, 2022), pp. 43-45. Proceeding No. 22I-0027E.

²⁸² Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 21-22. Proceeding No. 22I-0027E.

²⁸³ Response comments of Public Service Company of Colorado (April 15, 2022), p. 27. Proceeding No. 22I-0027E.

²⁸⁴ Initial comments of the Interwest Energy Alliance (March 1, 2022), pp. 6-7. Proceeding No. 22I-0027E.

implementing a CCE program in a regulated structure with or without an organized wholesale market compared to a deregulated (whole or partially) structure, as in the states which currently permit CCE programs.”²⁸⁵

Renewable Energy and Greenhouse Gas Goals

LQ3: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of:

C) Compliance with renewable energy standards and emissions reduction targets

Commenters generally provided two perspectives regarding potential implications of CCE authorization on Colorado’s greenhouse gas reduction goals and compliance with the state’s renewable energy standards. Some commenters asserted that authorizing CCE in Colorado would enhance and potentially expedite greenhouse gas emissions reductions and expand compliance with renewable energy standards. However, several other commenters asserted that authorizing CCE would introduce uncertainty regarding Colorado’s ability to meet these goals and make the state’s efforts to do so increasingly complicated. The summarized responses to this question are separated into the following two sub-sections:

- Comments asserting that CCE authorization would improve and/or expedite compliance with renewable energy standards and emissions reduction targets
- Comments asserting that CCE authorization would result in increased complication and uncertainty regarding compliance with renewable energy standards and emissions reduction targets

The detailed summary of commenters’ responses to this question also includes perspectives related to LQ17 due to the considerable overlap between these two questions.

Comments asserting that CCE authorization would improve and/or expedite compliance with renewable energy standards and emissions reduction targets

One commenter stated that CCE authorization would provide communities with a means to more rapidly achieve their clean energy and greenhouse gas reduction goals, many of which include commitments to achieve 100% clean energy on a timeline more aggressive than that being pursued by Colorado’s IOUs. However, this commenter also stated that, “CCEs should be subject to the same renewable energy standards and emission reduction targets that apply to the investor-owned utilities... Applying the statutory requirements to CCEs will also ensure that any local communities that do not share Colorado’s clean energy and climate goals do not form CCEs for the purpose of avoiding these requirements.”²⁸⁶

²⁸⁵ Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), pp. 4-5. Proceeding No. 22I-0027E.

²⁸⁶ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 37, 45. Proceeding No. 22I-0027E.

This commenter further clarified that a CCE authorization scenario in which the Commission does not oversee CCE rates but does ensure that CCE authorities are held “to the same standards as... utilities with respect to resource adequacy, reliability, the renewable energy standard, and decarbonization,” would be consistent with a wholesale opt-out CCE model. This commenter further asserted that “many CCEs [in California] have policies that prohibit or severely limit them from using unbundled RECs to meet renewable goals or obligations... Furthermore,” argued the commenter, “as CCEs sign long-term contracts for renewables and energy storage, and the projects come online, they rely less and less on system power/market purchases,” indicating that CCE authorities’ own policies and purchasing decisions could also help ensure advancement towards Colorado’s renewable energy goals.²⁸⁷

Another commenter agreed that CCE authorities offered potential energy transition benefits when compared to IOUs. This commenter stated that, “not only does PSCo not give renewable resources and storage credit for their benefits, such as providing operating reserve capability, but the company also penalizes these resources for the lack of flexibility of their existing fossil fuel generation sources. Consequently, CCE authorities that do not incorporate these biases against renewable generation and storage are more likely to accelerate the transition to cleaner sources of electricity, which will help Colorado reach its clean energy and greenhouse gas reduction goals.” This commenter recommended that to further ensure that CCE authorization advances progress towards Colorado’s clean energy and greenhouse gas emissions reduction goals, regulatory parties can (and should), “set a ‘floor’ for what communities that choose to form CCEs must achieve with respect to emissions and clean energy goals.”²⁸⁸ Specifically, this commenter recommended that both the Commission and Air Quality Control Commission retain oversight over CCE authorities to ensure that such authorities continue to advance the state’s emissions reductions goals.²⁸⁹

Another commenter expressed very similar views regarding regulatory oversight to ensure that CCE authorization helps advance Colorado’s clean energy and emissions reductions goals. Like this previous commenter, this commenter recommends that both the Commission and the Air Quality Control Commission oversee CCE authorities’ compliance with Colorado’s renewable energy standards, greenhouse gas emissions reduction targets, and greenhouse gas emissions accounting standards.²⁹⁰

Another commenter provided examples of clean energy portfolios from CCE providers in other states. This commenter stated that more than three-quarters of California’s CCAs offer 100%

²⁸⁷ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), pp. 10-15. Proceeding No. 22I-0027E.

²⁸⁸ This commenter also directed readers to a resource related to ways that communities not served by IOUs have advocated for lower-emissions power. This resource is referenced below.

“A Renewable Energy Future for Colorado Communities Served by the Municipal Energy Agency of Nebraska,” Sustainable Development Strategies Group (website), accessed November 2, 2022, <https://www.sdsq.org/mean-study>

²⁸⁹ Initial comments of K.K. DuVivier (March 15, 2022), p. 3. Proceeding No. 22I-0027E.

²⁹⁰ Initial comments of the City of Boulder (March 1, 2022), p. 5. Proceeding No. 22I-0027E.

renewable energy options, and approximately one-quarter of CCE authorities in Illinois, Massachusetts, and Ohio have a 100% clean energy default enrollment option. This commenter also emphasized that CCE authorities can both procure clean energy from elsewhere and purchase locally generated clean energy, offering the potential for additional local renewable energy benefits.²⁹¹

Another commenter also referenced the CCE model's local, community-focused clean energy decision making process as rationale for the model's potential to advance the state's clean energy goals. This commenter stated that CCE authorization, "presents an opportunity to explore new options for the State of Colorado to accelerate the transition to cleaner energy by empowering cities and counties to acquire wholesale energy supplies for their constituents and develop new and innovative customer-facing programs."²⁹²

Another commenter offered consideration for how CCE authorization can also drive progress towards increased clean energy procurement/development (and, consequently, decreased greenhouse gas emissions) among all parties. This commenter presented a "race to the top" scenario in which "IOUs choose to decarbonize more aggressively than they otherwise would, and work harder to contain costs, in a bid to meet the decarbonization and rate reduction goals of communities before those communities conclude that adopting CCE is their only viable path forward," especially given that in California's model, unbundled renewable energy credits cannot be used towards compliance with the state's renewable energy portfolio standards. This commenter therefore sees CCE authorization as a potential opportunity to accelerate IOUs' own clean energy portfolio development as the IOUs try to prevent the Colorado communities with 100 percent renewable energy goals from pursuing this goal through establishing a CCE authority.²⁹³

This commenter also referred readers to a 2019 analysis of California CCA's, which found that:^{294 295}

"64 of the communities that joined a CCA now have 100% renewable or clean energy as their default energy product. The vast majority of ratepayers automatically enrolled in a CCA decide to remain with that CCA and its 100% renewable energy or clean energy product (i.e. the vast majority do not opt-out or opt-down). This allows us to conclude

²⁹¹ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), p. 4. Proceeding No. 22I-0027E.

²⁹² Response comments of Vote Solar (April 15, 2022), p. 2. Proceeding No. 22I-0027E.

²⁹³ Initial comments of Larry Miloshevich (March 1, 2022), pp. 18-22. Proceeding No. 22I-0027E.

²⁹⁴ Ibid. (Larry Miloshevich, pp. 18-22)

²⁹⁵ This commenter provided the included quotation from the report referenced below:

UCLA Luskin Center for Innovation, The Rapid Growth of Community Choice Energy and its Acceleration of Renewable Energy: A California Case Study (Regents of the University of California, Los Angeles, November 2019), 3. https://innovation.luskin.ucla.edu/wp-content/uploads/2019/11/Rapid_Growth_of_Community_Choice_Energy.pdf

that these 64 communities have already met the transformational goal of a full transition to 100% clean energy.”

This commenter does, however, acknowledge that “due to the smaller size of many CCEs, and in recognition of the need for a startup period for new CCEs, accommodation should be made in the rules that govern clean energy and emissions reduction requirements.” Though this commenter recommends that CCE authorities be held to the same clean energy and emissions reductions requirements as PSCo (80%), CCE authorities should be granted a temporary grace period during which they will take the necessary actions to meet state clean energy and emissions reductions goals, and should be permitted to participate in a “trading scheme” in which a CCE authority that does not meet the 80% standard can partner with a CCE authority that exceeds it.²⁹⁶

This commenter also offered a critique of the assertion that Colorado’s incumbent IOUs already offer 100 percent renewable energy options (WindSource and RenewableConnect) to their customers. The commenter argues that because these are opt-in energy options, the success of these options is not publicly available, and a whole community cannot elect to opt in to such an option, WindSource and RenewableConnect are not comparable to the renewable portfolios that a CCE authority would offer.²⁹⁷

Comments asserting that CCE authorization would result in increased complication and uncertainty regarding compliance with renewable energy standards and emissions reduction targets

In comparison, some commenters expressed concerns that authorizing CCE in Colorado would either introduce uncertainty into Colorado’s ability to meet its clean energy and emissions reductions goals, or potentially even make it more difficult to achieve those goals.

One commenter referenced California’s original CCA-enabling legislation, which did not require CCA authorities’ portfolios to contain a specific percentage of clean or renewable energy.²⁹⁸ California addressed this in 2018 through SB 100, *California Renewables Portfolio Standard Program: emissions of greenhouse gases*, which required that all of California’s LSEs (which include CCA providers), “procure a minimum quantity of electricity products from eligible renewable energy resources so that the total kilowatt-hours of those products sold to their retail end-use customers achieve 44% of retail sales by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030,” and establishes that, “it is the policy of the state that eligible renewable energy resources and zero-carbon resources supply 100% of retail sales

²⁹⁶ Ibid. (Larry Miloshevich, pp. 18-22)

²⁹⁷ Response comments of Larry Miloshevich (April 15, 2022), p. 14. Proceeding No. 22I-0027E.

²⁹⁸ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 5-8, 24-25. Proceeding No. 22I-0027E.

of electricity to California end-use customers and 100% of electricity procured to serve all state agencies by December 31, 2045.”²⁹⁹

This commenter presented “easier” and “harder” scenarios through which Colorado could meet its greenhouse gas reduction goals, as described below:³⁰⁰

“The easier way to achieve state and local GHG reduction targets is for resource planning to remain integrated for all IOU customers, and therefore to follow through with current RES planning, the Clean Energy Plan and future plans, while supplementing these plans with a regulated CCE program which would allow local governments to accelerate GHG reduction up to 100%, and implement [some] custom energy management programs, again, over-and-above-and-including current DSM, DR, and EV initiatives, etc.

The harder way would be to fracture state resource planning through allowing quasi-deregulated CCA to flourish, therefore allowing uncoordinated, idiosyncratic and (by nature at start-up) inexperienced energy procurement, which ultimately are made by boards consisting of local politicians like mayors, city councilors, and essentially starting from the ground up and stranding resources, even early renewable PPAs at over-market prices, costs of which could eventually be included in ‘exit fees.’”

The commenter’s “easier” strategy—which they also described as a “close the gap” approach to CCE authorization—would need to be fully Commission-regulated to ensure that targets are being met.³⁰¹

Another commenter echoed this commenter’s views that whether CCE authorization would help or hinder Colorado’s progress towards meeting its clean energy and greenhouse gas reduction goals is not yet clear and depends on additional context. This commenter stated that PSCo and Black Hills Colorado Electric, LLC both have aggressive decarbonization and emissions reductions goals, which are further underlined by recent legislation.³⁰²

Accordingly, this commenter recommends that the Commission, “remain aware that CCE programs, unless otherwise restricted, could supply electricity from sources that are not renewable or low-carbon. In other words, CCE does not necessarily refer to only adding renewable energy or energy from low-carbon sources; a CCE program could also simply buy renewable energy credits from existing renewable generation or could develop new fossil fuel-based generation.” In contrast, this commenter also stated that, “if developing a CCE program resulted in displacing fossil fuel generation through the development of new renewable energy

²⁹⁹ California Renewables Portfolio Standard program: emissions of greenhouse gases, SB 100, 2017-2018 session of the California State Legislature (CA, September 10, 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB100

³⁰⁰ Ibid. (Karey Christ-Janer, pp. 5-8, 24-25)

³⁰¹ Ibid. (Karey Christ-Janer, pp. 5-8, 24-25)

³⁰² Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), pp. 5-7. Proceeding No. 22I-0027E.

generation, this could put Colorado on an accelerated trajectory to meet its goals,” further emphasizing that the true emissions reduction outcome of CCE authorization in Colorado is not yet known.³⁰³

This commenter also emphasized the importance of considering the challenges (including timeline, administrative, and regulatory oversight challenges) associated with developing and implementing effective greenhouse gas reduction programs. This commenter encouraged the Commission to consider this additional complexity (and the emissions that would occur prior to program deployment) when analyzing potential CCE impacts on Colorado’s greenhouse gas emissions reduction efforts.³⁰⁴

Similarly, another commenter warned that in the time it would take to implement CCE authorities in Colorado, the state’s incumbent IOUs will continue to decarbonize. This commenter further emphasized that, “Climate change is a global problem: It is hard to reconcile that fact with an intentional movement towards dozens of local ‘solutions’,” and instead encouraged a centralized response. Unlike the CCE authorities that would arise in Colorado if so authorized by the legislature, “California’s CCEs arose during a time when certain communities wanted access to cheaper, more renewable energy. For many Colorado ratepayers, whether CCEs would actually be cheaper is an open question; whether they would provide access to a higher load of renewables is not.” This commenter emphasized that Colorado’s IOUs are meeting or exceeding the state’s renewable energy and emissions reductions goals, and energy provider fragmentation would not help further advance those goals.³⁰⁵

With respect to IOUs’ current decarbonization efforts, another commenter stated that the IOUs’, “decarbonization requirements, coupled with other policy changes and declining prices for renewable resources like wind and solar will continue to push the state’s electric sector toward carbon-free generation.” This commenter recommended that the Commission, “should assess whether CCE will advance decarbonization more swiftly and lower costs for customers or whether the potential legal and regulatory challenges of implementing CCE may delay the progress that Colorado is making toward its climate, clean energy goals, just transition, and environmental justice goals.” This commenter further suggested that the Commission consider whether CCE authorization would be consistent with Colorado’s broader decarbonization and energy transition frameworks, including the GHG Reduction Roadmap released in January 2021.³⁰⁶

This commenter presented a further question for consideration related to their concerns, which was, “To what extent will CCE-procured renewable energy be additive to total renewable

³⁰³ Ibid. (Colorado Communities for Climate Action, pp. 5-7)

³⁰⁴ Ibid. (Colorado Communities for Climate Action, pp. 5-7)

³⁰⁵ Response comments of Black Hills Colorado Electric, LLC (April 15, 2022), pp. 28-30. Proceeding No. 22I-0027E.

³⁰⁶ Response comments of the Colorado Energy Office (April 15, 2022), pp. 5-7, 13. Proceeding No. 22I-0027E.

energy in the state versus simply shifting existing renewable energy from IOUs to CCEs?” According to this commenter, renewable energy depends not only procuring energy, but also on, “the ability to both increase and manage load flexibility and to deploy new forms of long-duration storage and zero-carbon firm generation, rather than by the level of additional renewable energy contracts that CCEs may enter into.”³⁰⁷

Another commenter expressed more direct concern about the potential for CCE authorization to negatively impact Colorado’s energy transition efforts. This commenter recommended that the Commission should retain comprehensive regulatory authority over CCE providers, who should be required to develop renewable energy standard plans to support the state’s progress towards decarbonization. This commenter also warned about the potential for CCE authorization to negatively impact IOUs’ existing resource plans, which, “do not have contingencies included to reflect departing load to CCE authorities, the different generation resources that may need transmission capability to serve CCE authorities, or assessments of the impact to greenhouse gas emissions.”³⁰⁸ To ensure that this risk is sufficiently considered, this commenter further recommended that the Commission, “take into consideration the reality of the CCE tradeoff between costs and carbon reductions and whether purchasing RECs with unknown generation sources may negatively impact state carbon reduction goals.”³⁰⁹

In consideration of these concerns, this commenter referenced HB 21-1269, the legislation that directs this investigative report, stating that, “The legislative declarations of House Bill 21-1269 support actions for stronger, not lesser, climate-related actions. Consistent with that intent, CCE authorities should ensure that customers do not lose their renewable protections they currently receive through their service with investor-owned utilities.”³¹⁰

A final commenter heavily emphasized the potential risks that CCE authorization could have on Colorado’s decarbonization efforts. According to this commenter, introducing CCE authorities into Colorado’s already rapidly decarbonizing energy sector “is unlikely to offer any significant, cost-effective benefit to the continued decarbonization of the electric system or advancement the State’s clean energy goals.”³¹¹

This commenter also expressed concerns regarding the potential cost implications that CCE authorization could have on IOUs’ expensive early investments in renewable resources. Specifically, this commenter stated that high-cost early investments in renewable resources, “were appropriate commitments made at the time and certain communities... should not be exempted from paying for them.” The commenter expressed further concerns regarding IOUs’

³⁰⁷ Ibid. (Colorado Energy Office, pp. 5-7, 13)

³⁰⁸ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 3-4, 17-18. Proceeding No. 22I-0027E.

³⁰⁹ Response comments of Black Hills Colorado Electric, LLC (April 15, 2022), p. 3-4. Proceeding No. 22I-0027E.

³¹⁰ Ibid. (Black Hills Colorado Electric, LLC, pp. 3-4, 17-18).

³¹¹ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 22-26. Proceeding No. 22I-0027E.

planned renewable investments moving forward, which could be adversely impacted by CCE authorization, which would have further cost implications on IOU customers.³¹²

This commenter warned that if CCE authorities are approved and established, they may interfere with IOUs' renewable resource development efforts because, "the potential risk that they are not needed in the future because communities may form CCEs could chill a utility's investments and/or chill regulators' approval of these investments for fear of creating potential unused or uneconomically available generation."³¹³ This commenter specifically referenced PSCo's Clean Energy Plan Settlement Agreement, which, "contemplates immediate early carbon reduction actions as well as an acquisition process to commence this year," compared to CCE establishment, which—if CCE authorities are approved to operate in Colorado—would not be operational until several years after approval. According to this commenter, it is also unlikely that a CCE authority could establish a clean energy portfolio as aggressive as PSCo's immediately upon commencing operation. This commenter also disagreed with a prior commenter's perspective that CCE authorities should be granted a temporary grace period during which they will take the necessary actions to meet state clean energy and emissions reductions goals, and argues that both waivers and emissions trading, "are contrary to state policy and should be disregarded as an option... because [they do] not encourage incremental clean energy resources."³¹⁴

This commenter also expressed concerns regarding greenhouse gas accounting challenges for CCE authorities. According to this commenter, in a model in which CCE customers are fully served by the CCE authority, the incumbent IOU would have no way to track the emissions associated with their generation sources, and as such should not be held accountable for such emissions because, "To not do so and leave that responsibility ambiguous creates an unfair cross-subsidization from non-participant customers to CCE participant customers."³¹⁵ Furthermore, this commenter urged against allowing CCE authorities to pursue more rapid decarbonization through the use of renewable energy credits (RECs) because, "RECs are an accounting mechanism and do not guarantee incremental emissions reductions nor the development of incremental clean energy in Colorado. In many ways, with SB 19-236 the General Assembly began moving away from RECs and in moving forward, we should not principally rely on them."³¹⁶

Because of these risks, this commenter strongly recommended that CCE authorities "be required to file plans with the Commission for review and approval so that emissions targets and resource adequacy can be simultaneously considered." This commenter expressed that these plans should require the same level of scope and detail and that expected from Colorado's regulated IOUs, including details related sales and demand forecasts, resource acquisition,

³¹² Ibid. (Public Service Company of Colorado, pp. 22-26)

³¹³ Ibid. (Public Service Company of Colorado, pp. 22-26)

³¹⁴ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 15-18. Proceeding No. 22I-0027E.

³¹⁵ Ibid. (Public Service Company of Colorado, pp. 22-26)

³¹⁶ Ibid. (Public Service Company of Colorado, pp. 15-18)

emissions estimates, and emissions compliance information, and these plans should also be subject to Air Quality Control Commission oversight.³¹⁷

LQ17: The impact of allowing CCE in Colorado on the ability of Colorado to reach its clean energy and greenhouse gas reduction goals and what legislative and regulatory requirements for CCE would be needed to facilitate reaching those goals

Commenters generally discussed their perspectives regarding LQ17 in the context of LQ3C. For a detailed summary of commenters' perspectives on the impact of allowing CCE in Colorado on the state's ability to reach its clean energy and greenhouse gas reduction goals, as well as commenters' recommended legislative and regulatory approaches to facilitate reaching those goals, please refer to LQ3C.

CQ10f: Should the renewable energy standards detailed in § 40-2-124, C.R.S., for municipally owned utilities apply to cities, counties, combined cities and counties, and groups of cities and counties implementing CCE, or should the renewable energy standards detailed in § 40-2-124, C.R.S., for investor-owned utilities apply?

Commenters generally agreed that CCE authorities should be subject to the renewable energy standards detailed in § 40-2-124, C.R.S., for IOUs. For a detailed summary of commenters' perspectives regarding renewable energy standards and decarbonization efforts to which CCE authorities should be held, please refer to LQ3C.

CQ10l: Should generation emissions from electricity served by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE be excluded from clean energy plans submitted by investor-owned utilities pursuant to § 40-2-125.5, C.R.S.?

Commenters had varied perspectives regarding whether generation emissions from electricity provided by cities, counties, combined cities and counties, and groups of cities and counties implementing CCE should be excluded from clean energy plans submitted by IOUs.

One commenter clarified that IOU electrical loads should not be conflated with CCE authorities' electrical loads, because "if the utilities included CCE supply resources in their clean energy plans, they would essentially be 'taking credit' for supply resources that the CCEs have procured, not the utilities," thus presenting a potential scenario in which emissions would be double counted.³¹⁸ Another commenter shared a similar perspective regarding how CCE authorities generation emissions should not be conflated with IOU emissions, stating that IOUs "would have limited-to-no ability to evaluate and give input into the selection of the generation resources selected by the CCE, to determine how those resources are operated, and no control over how a CCE determines compliance with emissions regulations. The conditions make it

³¹⁷ Ibid. (Public Service Company of Colorado, pp. 15-18)

³¹⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 59. Proceeding No. 22I-0027E.

inappropriate to assign any responsibility to the electric utility, i.e., Public Service, for emissions reductions compliance.”³¹⁹

This commenter brought attention to HB19-1261, which exempts IOUs, municipal utilities, and electric cooperative associations from additional Air Quality Control Commission regulation if they submit a Clean Energy Plan to the Commission and that plan is approved by the Commission. The commenter suggested that the legislature consider ways in which this strategy could be expanded to include (or a similar strategy could be developed that would apply to) CEE entities.³²⁰ Another commenter agreed that CCE authorities should be required to develop clean energy plans for submittal to the Commission.

Another commenter expanded upon this issue, suggesting that “CCE authorities should develop their own clean energy plans, supported by diverse resources to ensure the reliability and resilience of service that customers demand, consistent with the Governor’s Roadmap,” rather than depending on incumbent IOU generation resources. This commenter also clarified that in addition to CCE authorities developing their own clean energy plans, IOUs, “would need to factor into their emission profiles their wholesale sales of electricity to any CCE authority, similar to what they account for wholesale sales to any other entity.”³²¹

One commenter cautioned that the complexity associated with CCE approval could impede Clean Energy Plan progress at the Commission. This commenter stated that it would be difficult for the Commission to make progress on Clean Energy Plan review and approval for providers that are already subject to § 40-2-125.5, C.R.S. while simultaneously developing a regulatory strategy that suits the CCE model, “knowing that each paradigm could cancel out progress on one another, and CEP resources may very well become stranded.”³²²

Power Supplier Requirements and Standards

LQ13: What, if any, minimum requirements and standards should apply to independent power producers and power marketers who wish to supply energy to a CCE authority

Commenters had varied perspectives regarding whether independent power producers aiming to supply CE entities with energy should be subject to any sort of requirement or standard, and what the enforcement mechanisms associated with those requirements should be.

One commenter emphasized that CCE authorities should not be subject to any contractual requirements “beyond those applicable to any other entity authorized to engage in business.” This commenter argued that neither the Commission nor the legislature should establish standards that independent power producers must adhere to when engaging in business (or

³¹⁹ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 19-20, 24. Proceeding No. 22I-0027E.

³²⁰ Ibid. (Public Service Company of Colorado pp. 19-20, 24)

³²¹ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), p. 20. Proceeding No. 22I-0027E.

³²² Initial comments of Karey Christ-Janer (March 1, 2022), pp. 36-37. Proceeding No. 22I-0027E.

aiming to engage in business) with CCE authorities. According to this commenter, this allows CCE authorities to develop contract terms and conditions that are highly specific to the needs of their own customer base.³²³

Other commenters generally shared the perspective that independent power producers should be required to meet some minimum requirements or standards when engaging in business with CCE authorities, but commenters' proposed requirements themselves varied.

One such commenter largely agreed that CCE authorities should generally have the authority to establish requirements and standards within their own contracts with independent power producers and power marketers but noted that those requirements and standards should at least to some degree be subject to Commission jurisdiction. Specifically, this commenter stated that "the Commission should ensure that CCE authorities are adequately planning for the reliability of their systems, with adequate firm resources, reserve margins, and actionable plans to meet the State's emissions targets. The Commission should require a similar electric resource plan requirement on CCE authorities as it requires for investor-owned utilities."³²⁴

Another commenter felt that CCE authorization would provide a potential opportunity for Commission standards to establish independent power producer contractual standards related to labor, specifically Colorado's Best Value Employment Metrics (BVEMs) and/or Project Labor Agreements (PLAs). This commenter stated that, "There has been no success in holding Independent Power Producers to the BVEM requirements of the IOUs, even when associated with an Electric Resource Plan. CCE legislation or Rulemaking would open the door to the possible inclusion of BVEM requirements associated with CCE procurement of projects and contracts."³²⁵

Another commenter clarified that if Colorado joins an RTO/ISO, FERC Order No. 719 (issued in 2008) would provide adequate guidance regarding minimum standards or requirements for independent power producers intending to do business with CCE authorities. Until that time, however, the commenter recommends that if a fully regulated CCE model is approved, the Commission should establish rules and requirements to which CCE authorities would be held when contracting with independent power providers. This commenter warns that in a more traditional CCE model that would be subject only to partial Commission regulation, independent power producers "could actually carry more risk than local governments who approve and create CCA authorities, due to governmental immunity principles. This is exacerbated by the fact that it has taken the better part of a decade for CCAs in California to begin to achieve viable credit ratings, which, even as late as 2017, caused skittishness in the IPP community." Comparatively, a fully regulated CCE model would allow the Commission to, "secure rules such that any Clean Energy Plan resources are not stranded or otherwise affected adversely, because

³²³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 18-19. Proceeding No. 22I-0027E.

³²⁴ Initial comments of Black Hills Colorado Electric, LLC (March 1, 2022), pp. 10-11. Proceeding No. 22I-0027E.

³²⁵ Initial comments of Larry Miloshevich (March 1, 2022), pp. 37-38. Proceeding No. 22I-0027E.

a scenario where local CCEs could be limited to only ‘close the gap’ to 100% renewable energy could be set (over and above CEP and existing resources).”³²⁶

Another commenter provided examples of several instances in which clean energy projects owned by independent power producers were not completed, despite a robust competitive bidding process with an established IOU. The commenter stated that it is likely that the competitive bidding processes and procedures employed by incumbent IOUs are likely more robust than those that a novel nonprofit CCE authority would have, presenting an even greater risk of clean energy project fulfillment when CCE authorities enter contracts with independent power producers. “Such failures and delays,” warns the commenter, “can represent a significant risk to reliability and decarbonization. They also require the ability to quickly react, identify, and execute contingency plans that ensure reliability is maintained and other policy commitments are kept.”³²⁷

This commenter was particularly concerned about the financing challenges that CCE authorities would be likely to face when aiming to invest heavily in clean energy procurements soon after formation. To mitigate potential financial risks to CCE authorities and potential risks of clean energy procurement project failure, this commenter suggests that “there should be established standards set for CCE financial stability and for IPP commercial operation. These standards, set and reviewed by the Commission, will ensure that CCEs do not pose an existential risk to decarbonization goals nor to the broader investment community which CCE defaults could cause.” Accordingly, this commenter provided the following three core recommendations for how the Commission should establish minimum requirements and standards to independent power producers and power marketers who wish to supply energy to a CCE authority:³²⁸

- “Minimum standards for IPP solicitation processes and IPP contracts with CCEs should be regulated to ensure only projects with a high likelihood of success are adopted;
- IPPs should be required to provide production guarantees and project completion dates they are held to in order to ensure projects are completed in time to support decarbonization goals;
- CCEs should be required to provide evidence of financial stability to a state regulator such as the Commission to ensure there is minimal risk of default.”

LQ3: Which aspects, if any, of current or anticipated investor-owned electric utility regulation by the commission should apply to CCE authorities as well, and to what extent, including regulation in the areas of:

F) Standards for requests for proposals

Commenters did not believe that a regulatory entity should establish RFP standards to which CCE authorities should comply. One commenter stated that individual CCE authorities should

³²⁶ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 18-19. Proceeding No. 22I-0027E.

³²⁷ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 19-22. Proceeding No. 22I-0027E.

³²⁸ Ibid. (Public Service Company of Colorado, pp. 19-22)

have the opportunity to determine how they wish to conduct RFPs,³²⁹ and another commenter clarified that local communities are best suited to determine which standards that their respective CCE authority should include in RFPs. This commenter did, however, recommend several metrics by which potential vendors and financiers should evaluate CCE authorities to which they may provide certain services or financial support/credit, in particular if the CCE authority is operated by a JPA:³³⁰

- The experience and reputation of the JPA's leadership at the staff, Board, and committee levels.
- The political cohesion of participating communities and strength of cost-recovery provisions in the Joint Powers Agreement.
- The overall quality of governance and preparatory activities, including documents that demonstrate a credible understanding and outlook regarding the CCE's organizational requirements (e.g., financial projections, a budget and staffing plan, etc.).
- The capacity of the CCE to monitor and manage political risk at the General Assembly and the Public Utilities Commission.

Though they did not provide direct responses to this specific question, several commenters identified recommended approaches that CCE authorities should consider including (or be required to include) in contracts to protect union labor. Refer to LQ21 and LQ22 for further details on these perspectives.

Jobs and Union Labor

LQ21: The impact of CCE on jobs in the electricity sector, including the number and classification of jobs lost or gained at investor-owned utilities and CCA authorities in California

Commenters shared several thoughts regarding the impact of CCE on jobs in the electricity sector, and provided some specific examples associated with community choice aggregation in California.

One commenter emphasized that because "CCE concerns only the procurement of electricity and does not directly employ utility workers. Construction and maintenance of utility transmission and distribution infrastructure remains the domain of the IOU and is largely unaffected by CCE. There should be no loss of construction and electrical workers employed by the IOUs."³³¹ This commenter also emphasized that CCE approval could provide increased union labor opportunities in Colorado's renewable energy sector. Another commenter expanded upon this perspective, noting that "studies have found that CCE can generate economic and employment benefits by offering lower rates, directly creating jobs, and causing local

³²⁹ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 3. Proceeding No. 22I-0027E.

³³⁰ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 18-19, 38. Proceeding No. 22I-0027E.

³³¹ Initial comments of Larry Miloshevich (March 1, 2022), pp. 36-38. Proceeding No. 22I-0027E.

renewable energy and other projects to be built. The studies have also found that there were no job losses at the incumbent utilities, as the CCE did not offset any transmission, distribution, or administrative functions.” This commenter did clarify, however, that if CCE approval eventually drove an existing IOU to divest its generation assets, there could be job loss implications at the affected IOU-owned facilities.³³²

This commenter noted that in California, new construction is often subject to a Project Labor Agreement or another prevailing wage requirement. California’s community choice aggregators generally establish labor and wage requirements early in the PPA stage and adhere to a “five craft labor agreement” (union carpenters, electricians, ironworkers, operators, and laborers) for generation facilities that would serve community choice aggregator entities.³³³ An additional commenter referenced how the local procurement authority enabled by community choice aggregation in California helps support local hiring and prevailing wage criteria at Pioneer Clean Energy and a local development business plan at East Bay Community Energy.³³⁴

Another commenter, however, counters this perspective, stating that, “After remarkable growth, driven by RPS requirements under State law and clean energy policies... projects are not being built. ...because the investor-owned utilities, and to a lesser extent, the public utilities, have procured enough renewables to meet California state mandates. Since the investor-owned utilities are losing customers, they don’t need any more renewable power—and the CCAs can’t step in... Utility workers (and their unions) are having to deal with great uncertainty, as their employers lose customers and revenue.”³³⁵ This commenter noted that the community choice aggregation model, which inherently involves contracting out for services, does not provide for reliable, continuous union labor opportunities. Commenter provided a link to an IBEW newsletter regarding community choice aggregation in California (see footnote).³³⁶ Another commenter reiterated some of these views, stating that union workers often provide labor at existing IOU electric generation facilities including line workers, substation workers, electricians, mechanics, welders, inspectors, technicians, planners, control room operators, custodians, and more. This commenter stated that as power plants close, these union jobs are lost.³³⁷ Furthermore, they acknowledged that in addition to job losses at existing IOU facilities that could be attributable to CCE approval, there is no guarantee that CCE authorities will adhere to equivalent labor standards.

³³² Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 10. Proceeding No. 22I-0027E.

³³³ Ibid. (Larry Miloshevich, pp. 36-38)

³³⁴ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), pp. 4-5. Proceeding No. 22I-0027E.

³³⁵ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 29-31. Proceeding No. 22I-0027E.

³³⁶ "Community Choice Aggregation: What Does It Mean for the Future of California's Energy Marketplace?," IBEW1245, accessed October 20, 2022, updated October 20, 2017, <https://ibew1245.com/2017/10/20/community-choice-aggregation-what-does-it-mean-for-the-future-of-californias-energy-marketplace/>

³³⁷ Response comments of IBEW Local #111 (April 15, 2022), p. 24-25. Proceeding No. 22I-0027E.

Another commenter provided additional details regarding the CCE/community choice aggregation labor structure. This commenter clarified that in general, neither IOUs nor CCE authorities perform their own construction labor; instead, both rely on outside contractors to develop energy projects. Additionally, because even under a CCE model, “IOUs continue to maintain, build and operate the grid infrastructure which is where the vast majority of utility jobs are and will continue to be.”³³⁸ This commenter did, however, note that CCE authorities can support job diversification within the energy sector, including jobs related to energy procurement, customer support, and energy program employment opportunities (which this commenter notes have been referred to as “green collar” jobs in California) at local CCE providers. Another commenter echoed the perspective that CCE approval would not result in “worse” jobs but would instead introduce and incentivize different jobs. This commenter referenced Hearing Exhibit 2201 on Proceeding No. 21A-0141E, in which the witness states that renewable energy systems present opportunities for jobs related to several technical electrical areas.³³⁹

One commenter stated that CCE approval presents a risk to Colorado’s Best Value Employment Metrics (BVEM) established under C.R.S. § 40-2-129, in particular those related to project proposals that propose using Colorado labor consistent with BVEM standards (or conducting a comparable analysis of labor conditions). According to the commenter, this risk would be reduced, “if the Commission would have the same kind of regulatory authority over construction of new energy projects to supply CCEs as it does over generation construction for the IOUs.” However, “If the Commission’s role would be smaller in relation to CCE resource acquisition, only a requirement for [project labor agreements] could guarantee use of union labor in the construction of these projects.”³⁴⁰

In contrast to other California case studies, this commenter provided case studies of California’s Western Community Energy, Baldwin Park Resident Owned Utility District, Desert Community Energy, Pomona Choice Energy, and Orange County Power Authority, which encountered a variety of challenges including bankruptcy, financial difficulties and complex regulatory landscapes with increased renewable deployment, reductions in the carbon-free percentage of “green” portfolios, and rate increases.

LQ22: What options, including project labor agreements, would ensure that new energy projects built to supply CCE authorities are constructed using union labor?

In addition to the related perspectives provided in response to LQ21, commenters had varied perspectives regarding how to ensure that new energy projects built to supply CCE authorities would be constructed using union labor.

One commenter stated that, “If CCE is enabled in Colorado, there would be a Rulemaking and labor would have opportunity to advocate for its interests, such as a Just Transition and

³³⁸ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 27-28. Proceeding No. 22I-0027E.

³³⁹ Initial comments of K.K. DuVivier (March 15, 2022), p. 4. Proceeding No. 22I-0027E.

³⁴⁰ Response comments of IBEW Local #111 (April 15, 2022), p. 24. Proceeding No. 22I-0027E.

advances in binding arbitration in the renewable energy sector.” This commenter clarified that “most jobs directly associated with a CCE do not involve the union trades,” but emphasized that as part of the rulemaking, labor unions and advocates could request that CCE authorities (and parties that would contract with CCE authorities) be subject to the same BVEM labor standards to which IOUs must adhere. This commenter also suggested that labor unions and advocates in Colorado request that CCE authorities be subject to Project Labor Agreements (PLAs) and/or prevailing wage requirements like the “five craft labor agreement” (carpenters, electricians, ironworkers, operators, and laborers) required in California.³⁴¹

Several other commenters also expressed an interest in prevailing wage standards. One commenter referenced testimony filed in Proceeding No. 21A-0141E, the 2021 Electric Resource Plan and Clean Energy Plan proceeding filed by Public Service Company of Colorado. The referenced testimony discusses the benefits of complying with the prevailing wage requirements established under H.R. 5376 (then the Build Back Better Act, passed in 2022 as the Inflation Reduction Act).³⁴² Another commenter suggested that “A common way that community energy suppliers achieve their goals is by including labor-specific terms and conditions in their power supply and even vendor contracts. For example, some CCEs often include provisions establishing requirements on prevailing wage... workforce development, project labor agreements, and other relevant standards.”³⁴³ This commenter emphasized that because CCE authorities are inherently local, they will likely make operational decisions (including workforce decisions) that support their surrounding community. A third commenter provided Pioneer Clean Energy as an example of a community choice aggregation entity in California that hiring local labor and meets local prevailing wage standards.³⁴⁴

Another commenter emphasized the value of BVEM standards and PLAs in clean energy jobs. This commenter expressed concern that, “as currently designed, many BVEM requirements apply only to regulated electric utilities,” meaning that because the legislature and Commission have not come to a final decision regarding whether CCE authorities would be regulated or exempted from regulation, CCE authorities may not be subject to these same labor standards. This commenter also expressed concern that CCE authorities could elect to not adhere to those standards to provide lower electricity rates than the incumbent IOU that would be subject to such standards.³⁴⁵ In contrast, one commenter expressed the perspective that CCE authorities would be detrimental to union labor. According to this commenter, union labor supports IOU and electric cooperative associations with skilled line workers, substation workers, custodians, electricians, inventory control specialists, planners, and more. This commenter asserted that, “If the Commission would have the same kind of regulatory authority over construction of new energy projects to supply CCEs as it does over generation construction for the IOUs, the same

³⁴¹ Initial comments of Larry Miloshevich (March 1, 2022), pp. 35-37. Proceeding No. 22I-0027E.

³⁴² Initial comments of K.K. DuVivier (March 15, 2022), p. 49. Proceeding No. 22I-0027E.

³⁴³ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 48. Proceeding No. 22I-0027E.

³⁴⁴ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), pp. 4-5. Proceeding No. 22I-0027E.

³⁴⁵ Response comments of IBEW Local #111 (April 15, 2022), pp. 24-26. Proceeding No. 22I-0027E.

rules could apply as those now set out... for BVEM... If the Commission's role would be smaller in relation to CCE resource acquisition, only a requirement for PLAs could guarantee use of union labor in the construction of these projects." However, this commenter also emphasized that not all union labor jobs in the electrical industry relate to construction, meaning that labor regulations related new energy projects that would serve CCE authorities cannot simply protect construction-related employment.³⁴⁶

³⁴⁶ Response comments of IBEW Local #111 (April 15, 2022), pp. 24-26. Proceeding No. 22I-0027E.

Appendix B: Additional Comments and Public Hearing

This section summarizes commenters' perspectives on Proceeding No. 22I-0027E that do not relate specifically to the Commission and Legislative questions in the Summary of Commenter Responses to Questions, included above this report. These also include verbal comments during the public comment hearing that was held on October 18, 2022.

Comments and perspectives summarized in this section include comments expressing general support of CCE authorization in Colorado, general opposition to CCE authorization in Colorado, and some more topic-specific comments related to topics including cost differences among available service offerings, opportunities for collaboration, and whether California offers the most apt example of what CCE authorization may look like in Colorado.

The following comment summaries are provided for informational purposes only and are not to be considered the findings, conclusions, or recommendations of the Colorado Public Utilities Commission or of any individual Commissioner.

Summary of Comments in Support of Authorizing CCE in Colorado

Many parties submitted either written comments or verbal comments expressing general support for CCE authorization in Colorado. Broadly speaking, these comments did not relate specifically to any of the Commission or Legislative questions summarized previously in this report, but did indicate that participating parties generally supported the idea of CCE outside of the context of those questions.

Most verbal comments received at the October 18, 2022 public hearing expressed support for CEE authorization, which parties (especially parties representing local governments) viewed as a means to advance decarbonization and allow customers to access more favorable electricity rates. Several customers also expressed dissatisfaction with their experience with the IOU serving their territory and were interested in the potential benefits associated with an alternative provider option driven by expanded local control.

Commenters in support of authorizing CCE in Colorado were also strongly supportive of the Commission's investigation. These commenters identified the following questions and concerns that they recommended the Commission consider in its investigation:

- Will CCE help Colorado meet its decarbonization goals, and is CCE the quickest way for Colorado to decarbonize?
- Will the costs of CCE implementation be projected over a long enough timespan to ensure that the Commission can develop a realistic picture?
- Most studies on CCE focus on potential implications of CCE authorization within IOU service territories—what are the potential implications of CCE authorization on other providers, such as electric cooperative associations?
- What are the potential grid stability implications of CCE authorization?
- Could aggregators potentially be left with higher costs if their number of customers shrinks over time?

- What are some lessons learned from the successes and failures of other CCE/CCA initiatives?
- Concerns regarding CCE authorization timeline—even if CCE is authorized today, many communities will not have access to a CCE program until the end of this decade.
- For CCE authorization to be successful, help from the state is crucial.
- Commission must ensure that they have sufficient resources and funding to fully evaluate this as a potential option, which may warrant further requests for such resources from the legislature.
- Important that a CCE model allow aggregation of producers in addition to consumers; this would allow every electricity-generating business in the state to seize benefits by aggregating their generation into the community system.
- Exit fee policies should ensure that responsible investments in renewable energy are not neglected when ensuring that CCE customers are not responsible for past irresponsible investments.

Several oral and written comments received from parties supportive of CCE authorization expressed significant concern regarding the impacts of climate change both within Colorado and globally, and viewed CCE authorization as one tool to reduce the energy sector's contributions to climate change. One commenter viewed CCE authorization as a way to incentivize IOUs to pursue increased renewable resource deployment to ensure that they are resource-competitive with customers' potential CCE alternative, and also identified CCE authorization as an innovation opportunity for programs including microgrids and housing-related programs, like Holy Cross Energy's affordable housing project. Other commenters viewed CCE authorization as a tool that local communities can use to achieve their own 100 percent renewable energy resolutions, and as a tool to move away from the centralized power generation model, which several commenters considered technologically obsolete when compared to other options (i.e., virtual power plants).

Other commenters in support of CCE authorization focused on service shortcomings from their IOUs, and viewed CCE authorization as a way to offer additional service options through a competitive market-based approach. One such commenter stated that, "A competitive market for electricity would encourage the development of [innovative] technologies and business models in the production, storage, and distribution of electrical energy that would help Colorado meet its goals toward addressing climate change."³⁴⁷ Another such commenter argued that their IOU has exhibited poor cost discipline, as evidenced by their rates tripling while the customer base they serve has remained generally flat. Another commenter stated that authorizing the CCE model provides a means through which local governments can address IOUs' monopoly structure at the distribution level, which the federal government has long worked to address at the generation and transmission level.

Another commenter emphasized local control as a key Colorado value, stating that localities are "at the mercy of the IOU and the power sources they use, even if it's what the locality doesn't want." This commenter, who indicated that they reside in a part of Colorado that has

³⁴⁷ Initial comments of Wayne Seltzer (January 22, 2022), Proceeding No. 22I-0027E.

both high poverty rates and energy rates that are 40 percent higher than average, views CCE as an opportunity consistent with Colorado's values. Another commenter similarly viewed CCE as a more democratic energy model, further emphasizing the potential local choice opportunities associated with CCE authorization. Another commenter criticized their IOU's lack of transparency and emphasized that transparency is a key component of good public service; this commenter argued that if IOUs are unwilling to provide the transparency that customers want, the customers should have access to a provider that is willing to do so.

Several commenters also focused on CCE authorization as an opportunity for improved collaboration among several different parties. One such commenter focused on CCE as means to pursue regional collaboration among local governments looking to establish a CCE. Another commenter focused on potential collaboration opportunities between local governments and IOUs, and local governments and other renewable energy providers.

Summary of Comments in Opposition to Authorizing CCE in Colorado

Though most parties that participated in the October 18, 2022 hearing were in general support of CCE authorization in Colorado, some hearing participants—as well as several participants who submitted written comments—expressed general opposition to CCE authorization in Colorado.

One such commenter argued not that CCE could not successfully exist in Colorado, but rather that an opt-out CCE like that available in California could be devastating to Colorado, and that if Colorado authorizes CCE, it should authorize only a fully regulated opt-in model. Such a model would allow communities that establish CCE authorities to close the final gap of non-renewable resources that are not met through the IOU's portfolio. This commenter acknowledged that CCE authorization provided an enticing opportunity for local energy programs and locally driven energy initiatives, but questioned whether it was a prudent action to pursue so soon after Colorado's significant investments in its Clean Energy Plan.

Another commenter expressed several concerns related to the potential for CCE authorization to hinder, rather than help, Colorado's decarbonization efforts. This commenter specifically identified Colorado's transmission constraints as a key challenge; without additional transmission infrastructure, argued this commenter, CCE authorization could result in the curtailment of wind and solar resources in favor of "unspecified" (potentially fossil fuel) resources available on the wholesale market. If CCE authorities are eligible to purchase renewable energy credits, it could even further impede Colorado's decarbonization goals.

Though this commenter did not support CCE authorization in Colorado, they noted that if the legislature does authorize CCE, legislation should require that CCE authorities pay the full fair cost of their establishment, be regulated for compliance with emissions reduction standards, cover the costs of maintaining the incumbent IOU as the provider of last resort, and pay for programs that broadly benefit the public (demand-side management, beneficial electrification, low-income programs, etc.).

One local governmental entity submitted a comment in writing indicating strong opposition to CCE authorization because they have had positive experiences with their IOU. This commenter stated that their IOU's clean energy projections (85 percent carbon reduction by 2030) could not realistically be matched by a CCE authority within that same timeframe. This commenter

also questioned the value of potential duplicative efforts and programming among both CCE authorities and the incumbent IOU.³⁴⁸

Topic-specific Perspectives

Cost Differences among Available Service Offerings

One commenter focused on the fact that by introducing competition into customers' potential electricity service offerings, there is a natural incentive for both providers to offer services at a low cost. This commenter referenced a report which found that CCEs often offer at least one service offering that is cost-competitive with the incumbent IOU's offering, and may offer other service options that could cost more, but could be attractive to customers for other reasons.³⁴⁹ As stated in the referenced report:³⁵⁰

“In California, CCAs have historically remained both lower cost and cleaner than their IOU, with few exceptions. However, this does not necessarily mean that a CCA must always be the cheaper option. Increasingly, CCA member communities are opting for a more expensive default product with an even greater share of renewable energy, providing proof of a willingness to pay for cleaner energy.”

This commenter argued that though there are instances in which a CCE's default service offering may come at a higher cost than the alternative offered through the IOU, this “may reflect deliberate choices by the CCE to invest more in customer programs and/or cleaner energy mixes.”³⁵¹ Another agreed, but noted that, “for some customers, such premiums may be a reasonable price to pay for a carbon free or renewable energy based system; however, for many customers these costs are unaffordable and they may be unwittingly paying more because they are not aware of their participation in the CCA.”³⁵²

Another commenter provided an alternative perspective, stating that though CCA rates in California have generally been relatively cost-competitive (and in some cases lower than) IOU rates, this trend has recently shifted. According to this commenter, “In 2021, PG&E saw a veritable explosion of new subscription (almost by an order of magnitude) in its ‘Solar Choice’ GTSR [Green Tariff Shared Renewables] by commercial and industrial customers who took notice that suddenly their CCA rates rose enough to overtake the cost of the Solar Choice program.” To ensure that the IOU had sufficient resources available through its Solar Choice

³⁴⁸ Initial comments of the City of Lone Tree City Council (October 7, 2022), Proceeding No. 22I-0027E.

³⁴⁹ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), pp. 8-9. Proceeding No. 22I-0027E.

³⁵⁰ UCLA Luskin Center for Innovation, *The Role of Community Choice Aggregators in Advancing Clean Energy Transitions: Lessons from California* (Regents of the University of California, Los Angeles, October 2020), 25. https://innovation.luskin.ucla.edu/wp-content/uploads/2020/11/The_Role_of_CCAs_in_Advancing_Clean_Energy_Transitions.pdf

³⁵¹ Ibid. (LEAN Energy, pp. 8-9)

³⁵² Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 7-12. Proceeding No. 22I-0027E.

program, it had to receive special permission from the CPUC. Still, this indicates that some CCE customers found the cost of energy available through their CCE to not be cost-competitive when compared to certain IOU offerings.³⁵³

Another commenter that was generally supportive of CCE authorization in Colorado did acknowledge that these were significant potential issues. This commenter stated that, “A number of factors can force a CCE’s rates to exceed those of the IOU. If that happens, customers could (as provided for in California) return to the IOU.” This would result in the CCE having a smaller customer base from which to recover costs, “customers, causing rates to increase, causing even more customers to flee,” in what the commenter referred to as a rate risk “death spiral.”³⁵⁴

Collaboration Opportunities

Several commenters emphasized not only that authorizing CCE presented several opportunities for collaboration, but also highlighted the necessity of collaboration among parties for successful implementation of the CCE model.

Several such commenters focused on the importance of local collaboration and coordination with city planners as a means to guide successful CCE implementation and make progress towards achieving local climate and energy goals. One commenter stated that, “cities can work with their local and locally-run community choice agency to deploy charging for electric vehicles and integrate with local transportation plans... align local energy codes and permitting, design zoning and land use policies to support clean energy, and even coordinate electricity and energy storage procurement with local emergency and disaster planning and resilience.”³⁵⁵ Another commenter stated that, “California CCEs can already assist local government efforts to capture the decarbonization, economic and resilience benefits of local investment in renewable electricity supply and electricity storage. Longer term, California CCEs may emerge as primary implementers of energy related local climate action and adaptation in their service territories,” where they already provide several energy services including, “collaboration with local installers and local permitting authorities [and] demand side management programs... to align demand with generation profiles.”^{356 357}

However, this commenter also warned that because California’s IOUs often see CCE authorities “more as competitors and adversaries than as potential collaborators,” lack of successful

³⁵³ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 21-22. Proceeding No. 22I-0027E.

³⁵⁴ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), pp. 9-10. Proceeding No. 22I-0027E.

³⁵⁵ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), p. 5. Proceeding No. 22I-0027E.

³⁵⁶ Initial comments of the Integrated Renewable Energy Systems Network (IRESN) (March 1, 2022), pp. 2-3. Proceeding No. 22I-0027E.

³⁵⁷ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), p. 9-11. Proceeding No. 22I-0027E.

collaboration presents a potential threat to the energy democracy opportunities associated with CCE authorization.³⁵⁸ Another commenter agreed that local governments are the entities that best understand local planning needs and issues, and that, “In California, CCAs have often tended toward mistrust in their distribution utility IOUs as well as Commission processes,” but emphasized that a collaborative relationship between CCE authorities and IOUs would be ideal. This commenter provided Sonoma Clean Power’s electric vehicle program, which is implemented in partnership with the incumbent IOU (Pacific Gas & Electric) as an example of collaborative CCA/CCE-IOU success.³⁵⁹ Interestingly, a prior commenter provided Sonoma Clean Power as an example of successful collaboration between a CCA/CCE authority and local planning agencies, indicating that opportunities for collaboration could span numerous groups.³⁶⁰

The commenter that noted that in California, IOUs often view CCE authorities as competitors, also provided some potential strategies to address this division, which the commenter identifies as being the result of increasing exit fee costs that no longer reflect the intent of the 2002 California legislation that authorized the community choice model (AB 117). This commenter suggested that temporary exit fees and, “An expectation of collaborative local CCE/IOU planning and implementation of customer-facing program,” could help ameliorate these issues.³⁶¹ This commenter stated that, “New legislation and related regulation may be needed to structure CCE implementation so that 1) CCE and IOU roles are complementary, not competitive, and 2) IOUs and CCEs are incented to collaborate to advance state decarbonization and energy resilience goals... California will need to structure and reward IOU/CCE collaboration to facilitate investment in on-site solar, community solar and vehicle to grid infrastructure and their local integration, including integration enabled by neighborhood and community microgrids.”³⁶²

Another commenter agreed that collaboration is critical for successful decarbonization, but, unlike other commenters, viewed CCE authorization as a threat to existing collaborative efforts towards this goal. This commenter emphasized that, “Aggressive decarbonization efforts require utilities, regulators, communities, and IPPs to constructively collaborate to deliver nation leading carbon reductions,” and asserted that CCE authorization introduces additional complications and instabilities into existing collaboration among these parties.³⁶³

One final commenter emphasized the importance of CCE-IOU coordination for several crucial CCE responsibilities including data sharing and cost and load management. To ensure that each

³⁵⁸ Ibid. (IRESN, pp. 2-3)

³⁵⁹ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 15-16. Proceeding No. 22I-0027E.

³⁶⁰ Ibid. (Institute for Local Self-Reliance, p. 5)

³⁶¹ Revised response comments of the Integrated Renewable Energy Systems Network (IRESN) (September 20, 2022), pp. 1-4. Proceeding No. 22I-0027E.

³⁶² Ibid. (IRESN, p. 9-11)

³⁶³ Response comments of Public Service Company of Colorado (April 15, 2022), p. 31. Proceeding No. 22I-0027E.

entity's individual responsibilities, as well as their shared coordination and collaboration expectations, are clear, this commenter recommended that, "At the outset, the Commission should establish a clear division of responsibility and delineation of the role that the incumbent utility may continue to have with departed CCE customers." For areas that both require data access and that may have shared responsibilities (e.g., customer billing), this commenter stated that, "The Commission should establish data-sharing procedures that ensure coordination and a level-playing field across load-serving entities. This can be achieved by adopting careful confidentiality guidelines and requiring the utilities to share pertinent information at regular intervals." Finally, this commenter also stated that CCE-IOU coordination is a critical aspect of program development and implementation to prevent duplicative or confusing programming.³⁶⁴

California as an Example

Commenters' perspectives regarding whether California's CCA authorization did or did not offer an appropriate example model for Colorado's potential CCE authorization were varied. Despite this, commenters overwhelmingly provided examples of CCA successes and failures from California; only one commenter provided an example of a non-California CCE authority (Westchester Power in New York).³⁶⁵

One commenter noted that, "When studying the potential of CCE in Colorado, the Commission must carefully consider the regulated nature of Colorado's electricity sector," which differs from that of all other states in which CCE has been authorized because, "a deregulated electricity sector with access to a wholesale market is a significantly different landscape upon which to layer a CCE program."³⁶⁶

Comparatively, a different commenter argued that, "Only one state has chosen to implement community choice without fully unbundling and restructuring retail electricity markets - California - and it is the most apt comparison for Colorado because California still retains some traditional utility regulatory elements such as bundled retail service for most customers that are not served by CCAs."³⁶⁷ This commenter further warned that, "Based on the lack of similarly situated states, Colorado should take caution in basing any potential regulatory approach for CCEs on the approaches that other states have pursued."³⁶⁸ Another commenter provided a similar rationale for California being the best possible example for Colorado's investigation into community choice. This commenter argued that, "While not an exact match, California has the most similar regulatory structure to Colorado among states that are working to implement

³⁶⁴ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 30-33. Proceeding No. 22I-0027E.

³⁶⁵ Response comments of IBEW Local #111 (April 15, 2022), p. 11. Proceeding No. 22I-0027E.

³⁶⁶ Initial comments of Colorado Communities for Climate Action (CC4CA) (March 1, 2022), pp. 4-5. Proceeding No. 22I-0027E.

³⁶⁷ Initial comments of Public Service Company of Colorado (March 1, 2022), p. 7. Proceeding No. 22I-0027E.

³⁶⁸ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 7-8. Proceeding No. 22I-0027E.

community choice.” This commenter acknowledged that both, “California and Virginia, have some form of a vertically integrated regulatory structure, but only California has worked to implement community choice where it has been presented as an alternative to an IOU model.”³⁶⁹

One commenter specifically stated that, “California provides an example of how NOT to implement a CCE exit fee,” indicating that Colorado can look not only to California’s CCA successes, but also its CCA failures, when developing its own CCE model. However, with respect to rates, this commenter also stated that, “It is impossible to say what the impact of CCE would be on rates in Colorado based on considering the situation in California, as California's energy economics, history, and policy and regulation environment are much different than Colorado's, as is the stranded asset portfolio and the way that stranded assets would be handled.”³⁷⁰

³⁶⁹ Response comments of the Colorado Energy Office (April 15, 2022), pp. 5-6, 8-9. Proceeding No. 22I-0027E.

³⁷⁰ Initial comments of Larry Miloshevich (March 1, 2022), pp. 27-31. Proceeding No. 22I-0027E.

Appendix C: Lessons Learned

Appendix C includes detailed descriptions of three CCE/CCA providers in California that commenters mentioned in Proceeding No. 22I-0027E.³⁷¹ These three CCA providers reflect the providers most widely referenced among commenters in support of, in opposition to, and supportive of a modified approach to CCE in Colorado. All three CCA providers included in this analysis are located in California in part because commenters overwhelmingly referred to California CCAs as examples, but also because California's energy market is only partially restructured, making it an apt comparison to Colorado.

Peninsula Clean Energy	San Mateo County, CA and Los Banos, CA
MCE (Marin Clean Energy)	Marin, Contra Costa, Napa, and Solano Counties, CA
Western Community Energy	Western Riverside County, CA region (excludes the City of Riverside, which is served by its own municipal electric utility, Riverside Public Utilities)

This analysis summarizes the circumstances under which each of these entities were formed and some of their operational successes and/or challenges. This analysis is not intended to serve as a comprehensive overview of each CCA's history and all of its successes and challenges; rather, it focuses on the content that commenters identified, and supplements commenters' perspectives with additional information from reputable sources where necessary. Moreover, as noted above, these three CCA authorities are described here because they drew significant interest from commenters; they are not necessarily indicative of the performance of all CCAs in California.

This analysis also serves to provide a summary of commenters' perspectives on three questions included in Proceeding No. 22I-0027E, which relate to CCE/CCA experiences in states and communities that have authorized the wholesale community choice model. Commenters' perspectives in response to these three questions are provided collectively rather than providing a summary response to each question.

- **LQ4:** The appropriate principles and considerations for calculating the amount and duration of reasonable transition fees, also known as exit fees, that communities forming a CCE authority would pay to the incumbent investor-owned electric utility to offset their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved, in amounts sufficient to provide cost recovery for stranded investor-owned electric utility assets and contracts and direct transition costs while protecting non-CCE customers but without unduly burdening CCE customers. The

³⁷¹ California refers to its community choice model as Community Choice Aggregation (CCA), and Colorado refers to the community choice model being explored in this proceeding as Community Choice Energy (CCE). The terms are used interchangeably throughout this report, but in general, CCA is used when referring to California providers, and CCE is used when referring to the potential model in Colorado, unless a commenter on the proceeding used a different term.

principles and considerations shall include... e) Pitfalls encountered in other states related to exit fees and how those pitfalls could be avoided or mitigated by up-front consideration.

- **LQ18:** The impact, both positive and negative, of CCE in communities that have formed or joined a CCE authority in states that have enabled the wholesale, opt-out model of CCE.
- **CQ10e:** What has been the experience in communities where CCE has been implemented with regard to the overall cost of electricity provided to CCE participating customers as compared to similarly situated customers opting to receive bundled service from the incumbent investor-owned electric utility?

The following comment summaries are provided for informational purposes only and are not to be considered the findings, conclusions, or recommendations of the Colorado Public Utilities Commission or of any individual Commissioner.

Peninsula Clean Energy

Introduction to Peninsula Clean Energy

Peninsula Clean Energy's service territory includes San Mateo County (located on the San Francisco Peninsula between San Jose and San Francisco). Peninsula Clean Energy provides service to communities located within Pacific Gas & Electric (PG&E) service territory and operates via a Joint Powers Association (JPA) governance structure in which representatives from San Mateo County, all twenty cities located within San Mateo County, and the City of Los Banos (located in Merced County) hold an elected position on the CCA board.^{372 373} Peninsula Clean Energy was established in early 2016.

Summary of Commenters' Perspectives on Peninsula Clean Energy

Several commenters described Peninsula Clean Energy's rate structure as it relates to the IOU rates (i.e., Pacific Gas & Electric rates) for low-carbon electricity. One of these two commenters discussed this issue extensively.

The commenter who provided extensive comparative rate information between Peninsula Clean Energy and PG&E referenced both ECOplus (Peninsula Clean Energy's default 100-percent carbon-free and 52-percent renewable electricity option) and ECO100 (Peninsula Clean Energy's 100-percent renewable electricity option, which as of March 2022 was available at a rate \$0.01/kWh more expensive than the default option). As identified by this commenter, retail sales of electricity in California were required to be at least 33 percent renewable by the end of 2020 using California's Renewable Portfolio Standard (RPS) methodology as established under

³⁷² "FAQ," Peninsula Clean Energy (website), accessed November 14, 2022, <https://www.peninsulacleanenergy.com/faq/>

³⁷³ "Board of Directors," Peninsula Clean Energy (website), accessed November 14, 2022, <https://www.peninsulacleanenergy.com/board-of-directors/>

SB 350.³⁷⁴ ³⁷⁵ ³⁷⁶ Peninsula Clean Energy's own voluntary renewable energy goal is to provide 100 percent renewable energy to its customers each hour by 2025, and PG&E's own voluntary renewable energy goal is to provide 70 percent RPS-compliant clean energy by 2035, and intends to meet California's 100 percent carbon-free goal by 2045.³⁷⁷ ³⁷⁸

This commenter noted that in 2020, PG&E's resource mix was 31 percent renewable, thus offering its customers a lower share of renewable energy than Peninsula Clean Energy's default option.³⁷⁹ In the 2021 California Renewables Portfolio Standard Annual Report, the CPUC does not identify RPS compliance delineated by IOU, but does state that California's, "large Investor-Owned Utilities (IOUs)... executed renewable electricity contracts necessary to exceed the annual 2020 RPS target of 33 percent."³⁸⁰ PG&E's actual RPS-eligible 2020 renewable resource mix accounted for 33.1 percent of the IOU's portfolio.³⁸¹

This commenter provided the following data in a table (recreated below) comparing rates per kWh and average monthly bill across Peninsula Clean Energy's 52 percent renewable ECOplus option, Peninsula Clean Energy's 100 percent renewable ECO100 option, and PG&E's standard service for 2020 (though the commenter indicates that PG&E's standard service was 31 percent

³⁷⁴ Initial comments of Larry Miloshevich (March 1, 2022), pp. 27-29. Proceeding No. 22I-0027E.

³⁷⁵ Clean Energy and Pollution Reduction Act of 2015, SB 350, 2015-2016 session of the California State Legislature (CA, October 7, 2015),
https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB350

³⁷⁶ SB 100, passed in 2018, now requires California's Load Serving Entities to achieve 60 percent renewable energy by December 31, 2030.
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB100

³⁷⁷ "Strategic Plan," Peninsula Clean Energy (website), accessed November 14, 2022,
<https://www.peninsulacleanenergy.com/strategy/>

³⁷⁸ "Renewable Energy and Storage," Pacific Gas & Electric (website), accessed November 14, 2022,
https://www.pgecorp.com/corp_responsibility/reports/2022/pf03_renewable_energy_storage.html

³⁷⁹ Ibid. (Larry Miloshevich, pp. 27-29)

³⁸⁰ California Public Utilities Commission, *2021 California Renewables Portfolio Standard Annual Report*, Brent Tarnow, Michael Baltar, Cheryl Cox, Amanda Singh, and Mallory Albright. 2021, p. 7.
<https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/energy/rps/cpuc-2021-rps-annual-report-to-legislature.pdf> <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/documents/energy/rps/cpuc-2021-rps-annual-report-to-legislature.pdf>

³⁸¹ PG&E's resource portfolio contains several other zero-emissions sources including large hydroelectric generation and nuclear generation. In 2020, PG&E's total power mix was approximately 84 percent greenhouse gas-free, but only 33.1 percent of the IOU's total portfolio was RPS-eligible. In 2021, PG&E's greenhouse gas-free resource mix raised to approximately 91%.

"2020 Power Mix" Pacific Gas & Electric, accessed November 14, 2022,
https://www.pge.com/pge_global/common/pdfs/your-account/your-bill/understand-your-bill/bill-inserts/2021/1021-PowerContent.pdf

Ibid. (Pacific Gas & Electric, Renewable Energy and Storage)

renewable in 2020, the table lists the 33.1 percent value in accordance with California’s 2020 RPS requirements). It is worth noting that PG&E also offers 50 percent and 100 percent Solar Choice enrollment options (comparable to Peninsula Clean Energy’s ECOplus and ECO100 options) and a Regional Renewable Choice program, which allows customers to subscribe to any amount of renewable energy between 25-100 percent but is not restricted to solar energy.

Table 1: Rate comparison between Peninsula Clean Energy and PG&E (March 2021)

Rate (cents/kWh)	Peninsula Clean Energy ECOplus (100% carbon-free, 52% renewable)	Peninsula Clean Energy ECO100 (100% renewable)	PG&E standard offering (84% carbon-free, 33% renewable)
Electricity Generation	6.0	7.0	11.4
Delivery	17.1	17.1	17.1
Exit Fee (PCIA)	4.8	4.8	N/A
Total electricity cost	28.0	29.0	28.6
Average monthly bill (\$)	135.37	140.21	138.13

Notes: This table displays Residential E-1 rate schedules based on March 2021 average energy usage in the applicable service territory (425 kWh/month)

Sources: See footnotes. ³⁸² ³⁸³

As displayed in Table 1, Peninsula Clean Energy and PG&E are cost-comparable in terms of delivery rate, total electricity cost, and average monthly bill, but PG&E’s electricity generation rate is substantially higher than that of Peninsula Clean Energy’s ECOplus and ECO100 options, and PG&E customers are not subject to the PCIA fee that Peninsula Clean Energy customers must pay. This commenter acknowledged that potential bill comparisons between California and Colorado are complicated by overall energy cost differences between the two states. The commenter stated that, “because the magnitude of bills in Colorado is much lower than in California (Colorado residential rates are ~12 cents/kWh versus ~28 cents/kWh in California)... a given dollar difference in a California bill may seem like a lot to a Coloradan when it would seem more modest to a Californian.”³⁸⁴

The other two commenters that provided cost comparisons between PG&E and Peninsula Clean Energy represented the data as a cost differential. According to one of these commenters, Peninsula Clean Energy’s 2021 ECOplus rates resulted in an average monthly bill \$2.76 less than the average PG&E bill (an annual savings of \$33.12), while the ECO100 rates resulted in an average monthly bill \$2.08 more expensive than the average PG&E bill (an extra annual cost of \$24.96), which was also noted by the other commenter that discussed the PG&E/Peninsula Clean Energy cost differential.³⁸⁵ The initial commenter that discussed the cost differential in detail also clarified that many of California’s CCAs rely on large hydroelectric resources to fulfill

³⁸² Ibid. (Larry Miloshevich, pp. 27-29)

³⁸³ “PG&E-PCE Joint Rate Comparisons (rates as of March 2022)” Pacific Gas & Electric, accessed November 14, 2022, https://www.pge.com/pge_global/common/pdfs/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/pce_rateclasscomparison.pdf

³⁸⁴ Response comments of Larry Miloshevich (April 15, 2022), p. 7. Proceeding No. 22I-0027E.

³⁸⁵ Response comments of Colorado Community, Faith, Justice, and Business Groups (April 16, 2022), p. 10. Proceeding No. 22I-0027E.

some of their renewable resource mix, which, according to this commenter, are not widely available resources in Colorado.³⁸⁶ Large hydroelectric resources (which are not eligible for RPS requirements in California) accounted for 50.8 percent of the power mix that served Peninsula Clean Energy's ECOplus offering in 2021; in comparison, large hydroelectric resources only accounted for 9.2 percent of California's statewide power mix and 4 percent of PG&E's resource mix that year.^{387 388}

The initial commenter also referred to Peninsula Clean Energy's customer programs, which, "reduce carbon emissions and provide significant savings for customers."³⁸⁹ Peninsula Clean Energy offers several community-focused programs intended to reduce building- and transportation-related carbon emissions across the CCA's service territory. All CCA customers in California—including Peninsula Clean Energy customers—are eligible to continue receiving energy efficiency rebates, net metering, and other program services through the incumbent IOU (in this case PG&E).³⁹⁰ Many of PG&E's programs can and do provide local community benefits, but they are not inherently focused on specific small geographic communities, such as the community served by Peninsula Clean Energy.

Another commenter referenced one such community-focused initiative: The Peninsula-Silicon Valley Reach Code Initiative Project, which was facilitated by local governance.³⁹¹ The collaboration between Peninsula Clean Energy and Silicon Valley Clean Energy (a CCA serving the nearby Silicon Valley region) helped advance building and transportation sector decarbonization beyond California's state-required standards.³⁹² This commenter also referenced Peninsula Clean Energy's 2020 Community Impact Report, which describes a range of resilience, education, health, and electrification programs that benefit the local

³⁸⁶ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 7-12. Proceeding No. 22I-0027E.

³⁸⁷ "Power Mix," Peninsula Clean Energy (website), accessed November 14, 2022, <https://www.peninsulacleanenergy.com/power-mix/>

³⁸⁸ "Exploring clean energy solutions," Pacific Gas & Electric (website), accessed November 14, 2022, https://www.pge.com/en_US/about-pge/environment/what-we-are-doing/clean-energy-solutions/clean-energy-solutions.page?WT.mc_id=Vanity_cleanenergy

³⁸⁹ Ibid. (Larry Miloshevich, pp. 27-29)

³⁹⁰ "Community Choice Aggregation—Consumer Information," California Public Utilities Commission (website), accessed November 14, 2022, <https://www.cpuc.ca.gov/consumer-support/consumer-programs-and-services/electrical-energy-and-energy-efficiency/community-choice-aggregation-and-direct-access-/consumer-information-on-ccas---frequently-asked-questions>

³⁹¹ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 46-50. Proceeding No. 22I-0027E.

³⁹² "Peninsula-Silicon Valley Collaboration Recognized for Advancing Electrification in Building Codes, EV Infrastructure," California Community Choice Association (website), accessed November 14, 2022, <https://cal-cca.org/peninsula-silicon-valley-collaboration-recognized-for-advancing-electrification-in-building-codes-ev-infrastructure/>

community.³⁹³ ³⁹⁴ Today, Peninsula Clean Energy publishes annual Community Benefits Summaries that describe how each community within the CCA's service territory have benefitted from CCA services.³⁹⁵

Another commenter viewed program complexity as one of Peninsula Clean Energy's shortcomings. This commenter specifically referred to California's Disadvantaged Communities Green Tariff (DAC-GT) program, which offers clean energy at a 20 percent discount to income-qualified residential customers who are unable to install their own distributed solar resources. Both PG&E and Peninsula Clean Energy offer this program.³⁹⁶ ³⁹⁷ This commenter referred to Peninsula Clean Energy's DAC-GT advice letter, which was filed with the CPUC on February 1, 2022, and established the following DAC-GT program enrollment strategy, as proposed in the advice letter.³⁹⁸

"PCE will employ a three-tier process to automatically enroll eligible customers. First, PCE will identify customers that are currently participating in the Arrearage Management Program ("AMP") with service addresses in a PCE DAC and meet all other DAC-GT eligibility criteria. Second, PCE will identify customers that are currently eligible for the AMP but are not participating and with service addresses in a PCE DAC, and meet all other DAC-GT eligibility criteria. Third, PCE will identify all remaining DAC-GT eligible PCE customers and use a random selection protocol to enroll customers into the DAC-GT program. When program capacity becomes available in the future due to unenrollment or other reasons, PCE will perform the same three-tiered process to ensure that new AMP enrollees, newly AMP-eligible customers, and new residential PCE customers that meet the other DAC-GT eligibility criteria will be considered in the automatic enrollment selection process."

³⁹³ Response comments of Local Energy Aggregation Network (LEAN Energy) (April 15, 2022), pp. 2-4. Proceeding No. 22I-0027E.

³⁹⁴ Peninsula Clean Energy, *Community Impact Report*, April 2020, <https://www.peninsulacleanenergy.com/wp-content/uploads/2020/04/CIR-2020-glossy.pdf>

³⁹⁵ "Community Impact," Peninsula Clean Energy (website), accessed November 14, 2022, <https://www.peninsulacleanenergy.com/community-impact/>

³⁹⁶ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 26-27. Proceeding No. 22I-0027E.

³⁹⁷ "The Disadvantaged Communities Green Tariff DAC-GT Program," California Public Utilities Commission (website), accessed November 14, 2022, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/solar-in-disadvantaged-communities/the-disadvantaged-communities-green-tariff-dac-gt-program>

³⁹⁸ PCE Advice Letter 24-E: Peninsula Clean Energy Authority 2023 Budget Request and Outreach Plan for the Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs, and Confirmation of Automatic Enrollment, February 1, 2022, Letter from Peninsula Clean Energy to the California Public Utilities Commission, pp. 3-4, accessed November 14, 2022, <https://www.peninsulacleanenergy.com/wp-content/uploads/2022/04/PUBLIC-PCE-AL-24-E1.pdf>

This commenter asserted that Peninsula Clean Energy's DAC-GT enrollment decision process is overly complicated and would likely result in many customers located within the same community, who may be experiencing similar challenging economic circumstances, may not have the same access to DAC-GT low-income support resources.³⁹⁹

Peninsula Clean Energy: Lessons Learned

This brief discussion of Peninsula Clean Energy provides several insights about the CCA's successes and challenges. Peninsula Clean Energy appears to provide its customers with electricity that is relatively comparable in both cost and resource mix to the incumbent IOU's offerings. Peninsula Clean Energy also appears to offer a range of diverse, community-focused program offerings that may provide more granular services than those available through the IOU. However, Peninsula Clean Energy is at risk of overcomplicating some of these programs such that it is not always clear to customers what programs they may be eligible for, or why customers may not always have equivalent program results (from Peninsula Clean Energy's DAC-GT program, specifically).

Marin Clean Energy (MCE)

Introduction to MCE

First delivering electricity service in 2010, Marin Clean Energy (now officially known as MCE) was California's first CCA.⁴⁰⁰ MCE serves residential and commercial customers spanning Marin, Napa, Contra Costa, and Solana Counties (all located north and/or northeast of San Francisco).⁴⁰¹ Like Peninsula Clean Energy, MCE provides service to communities located within PG&E service territory and operates via a JPA governance structure consisting of representatives from 37 local governmental entities (25 cities, 8 towns, and 4 counties).^{402 403}

Summary of Commenters' Perspectives on MCE

The commenter that provided detailed rate-related information on Peninsula Clean Energy did not provide such information on MCE, but Table 2, which displays MCE's service offerings

³⁹⁹ Ibid. (Karey Christ-Janer, pp. 26-27)

⁴⁰⁰ "Celebrating 10 Years of CCA in California! 2010-2020: A Decade of CCA in California," California Community Choice Association, accessed November 15, 2022, <https://cal-cca.org/celebrating-10-years-of-cca-in-california/>

⁴⁰¹ Though also located north of San Francisco, Sonoma County is not within Marin Clean Energy's service territory. Most of Sonoma County is served by Sonoma Clean Power, another CCA. Sonoma Clean Power also serves most of bordering Mendocino County.

"Community Choice Aggregation (CCA) Service Areas," California Community Choice Association, accessed November 15, 2022, <https://cal-cca.org/wp-content/uploads/2022/09/CCA-Service-Areas.pdf>

⁴⁰² "Marin Energy Authority Joint Powers Agreement," Effective December 19, 2008, Amendment No. 14 issued November 21, 2019, https://www.mcecleanenergy.org/wp-content/uploads/2020/06/MCE-JPA-Agreement-36-Communities-Updated-November_21_2019_12.6.19.pdf

⁴⁰³ "Our Member Communities," MCE (website), accessed November 15, 2022, <https://www.mcecleanenergy.org/#MemberCommunities>

(compared to PG&E’s standard service) has been included below for consistency. Because MCE offers three different carbon-free service offerings (compared to the two offered by Peninsula Clean Energy), all three are provided in the table.

MCE’s standard service offering is named Light Green and is advertised as providing 60 percent electricity. In 2021, MCE’s Light Green resource mix consisted of approximately 61 percent eligible renewable resources (biomass and biowaste, geothermal, small-scale hydropower, solar, and wind energy), approximately 38 percent non-renewable carbon-free resources (nuclear energy and large hydropower), and approximately two percent “other” or unspecified market purchase resources.⁴⁰⁴ In 2021, MCE’s Deep Green option consisted entirely of renewable solar and wind resources, and MCE’s Local Sol option consisted entirely of solar energy produced locally at a solar generation facility within MCE’s service territory, but the option is limited to only 300 customers and is available on a first-come, first-serve basis.^{405 406}

Table 2: Rate comparison between MCE and PG&E (2022)

Rate (cents/kWh)*	MCE Light Green (98% carbon-free, 61% renewable)	MCE Deep Green (100% renewable)	MCE Local Sol (100% locally produced solar)	PG&E standard offering (84% carbon-free, 33% renewable)
Electricity Generation	10.7	11.7	14.2	12.5
Delivery	19.4	19.4	19.4	19.4
Exit Fee (PCIA)	2.1	2.1	2.1	2.7†
Total electricity cost	32.2	33.2	25.0	34.6
Average monthly bill (\$)	156.87	161.74	165.77	168.53

Notes:

*This table primarily displays Residential E-1 rate schedules based on June 2022 average energy usage in the applicable service territory (487 kWh/month). Total electricity cost for Marin Clean Energy’s Local Sol program was calculated based on average usage for PG&E’s Residential E-TOU C rate schedule (average monthly usage of 460 kWh/month), as this is the value that MCE used to provide Local Sol data.

†PG&E includes the PCIA fee as part of the Electricity Generation fee for bundled customers. The 2.7 cent PCIA fee has been listed as a separate line item in Table 2 to facilitate accurate comparison between PG&E and MCE rates.

Sources: See footnotes.^{407 408}

As displayed in Table 2, PG&E’s standard offering (as of June 2022) was both more carbon intensive and more expensive than MCE’s three options. However, the 2021 cost differential did not reflect this trend: in 2021, MCE’s Light Green option was on average \$11.18 per month more expensive than PG&E’s option, and MCE’s Deep Green option was on average \$16.52 per

⁴⁰⁴ Values do not add up to 100 percent due to rounding.

⁴⁰⁵ “Where our power comes from,” MCE, accessed November 15, 2022, <https://www.mcecleanenergy.org/energy-suppliers/>

⁴⁰⁶ “Local Sol 100% Locally-Produced Solar,” MCE, accessed November 15, 2022, <https://www.mcecleanenergy.org/100-local-solar/>

⁴⁰⁷ “PG&E–MCE Joint Rate Comparisons (rates as of June 2022)” Pacific Gas & Electric, accessed November 15, 2022, https://www.pge.com/pge_global/common/pdfs/customer-service/other-services/alternative-energy-providers/community-choice-aggregation/mce_rateclasscomparison.pdf

⁴⁰⁸ Ibid. (MCE, Local Sol 100% Locally-Produced Solar)

month more expensive than PG&E's option.⁴⁰⁹ This conflicts with the perspective of another commenter, who stated that "MCE rates are favorable to participating customers compared to local utility (PG&E) rates. The standard offer from MCE, a California CCA, provides 60% renewable energy at approximately the same total bill cost as the incumbent investor-owned utility which provides 29% renewable energy."⁴¹⁰

One commenter expressed concerns regarding MCE's "unspecified" resource mix. Though this commenter noted that they support local power generation within CCA territories (which is often a goal of CCA providers, and MCE pursues through its limited-enrollment Local Sol option), the provider secured several unbundled renewable energy certificates from IOUs as far away as eastern Colorado, indicating that "local choice" does not necessarily automatically correspond to "locally generated electricity."⁴¹¹ Another commenter clarified, however, that MCE discontinued its use of unbundled renewable energy certificates in 2019.⁴¹²

Though it is true that being a local power provider does not inherently mean that the provider only sells locally generated electricity, the initial commenter noted that MCE is also an example of local distributed energy success because its rates (which, as previously stated, were higher than PG&E's in 2021) resulted in very high net energy metering enrolment because higher rates lead to greater savings when a customer participates in net energy metering.⁴¹³ Any PG&E customers that are enrolled in PG&E's net energy metering program are automatically enrolled in MCE's net energy metering program when they switch providers. Additionally, another commenter identified MCE as a success story in local energy procurement, with 10 megawatts of local solar contracts alone.⁴¹⁴ Including all local renewable resources (solar, contracted solar, and landfill gas-to-energy), MCE sources 48 MW of renewable electricity locally.⁴¹⁵

The prior commenter also referenced the way that California's low-income DAC-GT programs (discussed previously in the context of Peninsula Clean Energy) do and do not apply to CCA authorities, and the associated complexity this caused with respect to MCE's DAC-GT program offering (and the lack of a requirement that all other CCAs provide an equivalent offering).

The commenter referenced a June 2018 CPUC decision document (Decision 18-06-027 for Rulemaking 14-01-002) intended to increase distributed-scale renewable resource deployment in disadvantaged communities, included through the DAC-GT program (as well as other focused

⁴⁰⁹ Ibid. (Public Service Company of Colorado, pp. 7-12)

⁴¹⁰ Initial comments of EmPower Our Future (February 25, 2022), p. 4. Proceeding No. 22I-0027E.

⁴¹¹ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 17, 20-21. Proceeding No. 22I-0027E.

⁴¹² Response comments of Public Service Company of Colorado (April 15, 2022), p. 3. Proceeding No. 22I-0027E.

⁴¹³ Ibid. (Karey Christ-Janer, pp. 17, 20-21)

⁴¹⁴ Initial comments of the Institute for Local Self-Reliance (March 1, 2022), p. 4. Proceeding No. 22I-0027E.

⁴¹⁵ "We promised local renewables. Now we're delivering," MCE (website), accessed November 16, 2022, <https://www.mcecleanenergy.org/local-projects/>

initiatives). Decision 18-06-027 established that the DAC-GT program, “will be available to customers who live in DACs and meet the income eligibility requirements for the California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance programs.”⁴¹⁶ The resolution required California’s regulated IOUs to offer a 20 percent discount on distributed renewable resources through the DAC-GT program and authorized CCA providers, “to offer their own parallel DAC-Green Tariff or Community Solar Green Tariff programs to their customers.”⁴¹⁷

The commenter referred to MCE’s perspective as expressed in Decision 18-06-027 that the DAC-GT, “would only be open to bundled customers, and if so, the use of GHG allowance proceeds would not be appropriate because those funds are intended to benefit all customers, bundled and unbundled. However, our DAC-Green Tariff would be open to both bundled and unbundled customers to the extent that CCAs and DA providers offer the program to their customers.” In response to MCE’s concerns, the CPUC determined that all customers should pay for the DAC-GT program, and that the program should, “first be funded through available GHG allowance proceeds. If such funds are exhausted, the DAC-Green Tariff program should be funded through public purpose program funds.” The CPUC established that CCA customers should be eligible to access a similar DAC-GT offering through their CCA, and “To facilitate this, CCAs may work with Energy Division and the IOU that provides distribution service to its customers to develop and implement their own DAC-Green Tariffs consistent with the requirements of this decision.”⁴¹⁸ Accordingly, MCE established its own DAC-GT through Advice Letter 42-E (submitted in May 2020 and approved by the CPUC in April 2021).^{419 420}

This commenter expressed concern that though MCE developed its own DAC-GT program, only approximately 30 percent of California’s CCAs have done so. Additionally, this commenter emphasized that because there is no prescriptive way through which CCA authorities in California must structure such a program if they choose to do so, actual program benefits are

⁴¹⁶ California Public Utilities Commission, Decision 18-06-027: Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering (June 21, 2018), pp. 3-4, Rulemaking 14-07-002.

⁴¹⁷ Ibid. (CPUC resolution, pp. 3-4)

⁴¹⁸ California Public Utilities Commission, Decision 18-06-027: “Order Instituting Rulemaking to Develop a Successor to Existing Net Energy Metering Tariffs Pursuant to Public Utilities Code Section 2827.1, and to Address Other Issues Related to Net Energy Metering (June 21, 2018), pp. 54-56, Rulemaking 14-07-002.

⁴¹⁹ Marin Clean Energy, MCE Advice Letter 42-E: “Establish and Implement the Disadvantaged Communities Green Tariff Program Rate and the Community Solar Green Tariff Program” (May 7, 2020), <https://www.mcecleanenergy.org/wp-content/uploads/2020/06/MCE-Advice-Letter-42-E.pdf>

⁴²⁰ California Public Utilities Commission, Resolution E-5124: Pursuant to Decision 18-06-027, Approving with Modification, Community Choice Aggregator Tariffs to Implement the Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs (April 15, 2020), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M378/K421/378421442.PDF>

not always universal, even within an individual CCA (as previously described in the context of Peninsula Clean Energy).

Another commenter referred to MCE's startup timeline as a potential area of concern worth consideration in Colorado. Though MCE began providing service (as Marin Clean Energy) in 2010, the Marin Clean Energy JPA was officially founded approximately 1.5 years earlier, in December 2008.⁴²¹ Investigations into the potential for a regional CCA began even earlier and included a demonstration project and feasibility study in 2004, follow-up studies in 2005 and 2006, and development of a business plan in 2007.⁴²² This commenter argues that if potential Colorado CCE authorities develop along a similar timeline (even a timeline ranging only four years, similar to the timeframe between MCE's 2007 business plan development and its initial service delivery in 2010), CCE authorities would not be operational until the mid- to late-2020s. This timeline, purports the commenter, is not aggressive enough to ensure that CCE authorities would have the opportunity to contribute significantly towards meeting Colorado's 2030 greenhouse gas emissions reduction goals.⁴²³

Several commenters expressed that financing and credit rating were both potential challenges for CCE providers in Colorado if CCE is authorized, but one commenter referred specifically to MCE as an example of a CCA in California with a strong credit rating, though this credit rating has been established over time since MCE was founded. The commenter provided MCE's S&P credit report as of March 4, 2021, which at the time had a credit rating of "A/Stable."^{424 425}

The 2021 S&P report describes several factors that contribute to this rating, including a diverse and growing customer base, specifications included within MCE's JPA agreement, a diverse supply of low-cost electricity, and MCE's renewable mandates, which position the CCA well to meet California's RPS requirements. The report also describes some potential risks, including competition with PG&E and the high risk that MCE customers may opt out of MCE's service if their electricity bills become substantially higher than what they would pay as a PG&E customer. The report also identifies the PCIA fee (exit fee) as a potential risk primarily because

⁴²¹ "Marin Energy Authority Joint Powers Agreement," Effective December 19, 2008, Amendment No. 14 issued November 21, 2019, https://www.mcecleanenergy.org/wp-content/uploads/2020/06/MCE-JPA-Agreement-36-Communities-Updated-November_21_2019_12.6.19.pdf

⁴²² "Marin Clean Energy (MCE) Startup Timeline and Funding," MCE, <https://www.mcecleanenergy.org/wp-content/uploads/2016/01/MCE-Start-Up-Timeline-and-Initial-Funding-Sources-10-6-14-1.pdf>

⁴²³ Response comments of Public Service Company of Colorado (April 15, 2022), pp. 20-21. Proceeding No. 22I-0027E.

⁴²⁴ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), p. 13. Proceeding No. 22I-0027E.

⁴²⁵ S&P Global Ratings, *Marin Clean Energy, California; Retail Electric*, Doug Snider, Alexandra Rozgonyi. March 4, 2021. https://www.mcecleanenergy.org/wp-content/uploads/2021/03/MCE-Ratings-Direct_Marin-Clean-Energy-California-Retail-Electric_03.04.21.pdf

it is uncertain and subject to change.⁴²⁶ Another commenter that acknowledged that CCA authorities often face start-up financing and credit risks noted that MCE initially obtained loans from both Marin County and the Town of Fairfax.⁴²⁷

The prior commenter also identified MCE as an example of a CCA that has successfully implemented a peak demand reduction program. Peak FLEXmarket—MCE’s peak demand reduction program—was approved by the CPUC in December 2021 (Decision 21-12-011, Rulemaking 13-11-005) and focuses on ways to improve electricity reliability in peak summer use periods. Peak FLEXmarket was one of several initiatives approved through CPUC Decision 21-12-011, and though the Decision requires that MCE and PG&E act collaboratively to maximize peak usage reductions, it establishes that, “MCE shall have an exclusive right to administer this program in its geographic area... since it was pioneered there [and] to reduce customer confusion and speed deployment in MCE’s area.”⁴²⁸

MCE’s Peak FLEXmarket program is available to commercial and residential customers and establishes energy efficiency markets that pay to incentivize energy conservation when it is needed. MCE partners with other energy aggregators who, in turn, work with local energy consumers to shift load. Aggregators are paid based on the positive impacts resulting from this load shift.⁴²⁹ This demonstrates a situation in which a CCA provider developed an innovative local solution to a problem with both local and regional implications.

MCE: Lessons Learned

As California’s first CCA, MCE provides several insights worth considering when evaluating potential CCA/CCE authorization structures in other jurisdictions. First, it does not appear that MCE’s service offerings are consistently more or less expensive than that of the incumbent IOU; in recent years, MCE has been both slightly more affordable than, and significantly more expensive than, comparable PG&E offerings.

MCE generally offers a cleaner resource mix across all its offerings than what is available through PG&E’s standard offering. MCE also provides a unique, fully local renewable offering through its Local Sol program, which would likely be of interest to local energy advocates, but participation in the program is highly restrictive, and is limited to only 300 customers on a first-come, first-serve basis. MCE has also proven its ability to offer innovative programs such as its Peak FLEXmarket program and has demonstrated that a CCA can have a strong credit rating.

⁴²⁶ Ibid. (S&P Global Ratings, *Marin Clean Energy, California; Retail Electric*)

⁴²⁷ Initial comments of MRW & Associates, LLC (MRW) (March 1, 2022), p. 9. Proceeding No. 22I-0027E.

⁴²⁸ California Public Utilities Commission, Decision 21-12-011: “Order Instituting Rulemaking Concerning Energy Efficiency Rolling Portfolios, Policies, Programs, Evaluation, and Related Issues: Energy Efficiency Actions to Enhance Summer 2022 and 2023 Electric Reliability,” (December 2, 2021), pp. 24-31, Rulemaking 13-11-005.

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M429/K805/429805997.PDF>

⁴²⁹ “Commercial and Residential Energy Efficiency Markets,” MCE (website), accessed November 16, 2022, <https://www.mcecleanenergy.org/market/>

However, MCE required substantial planning in its early stages in the form of a demonstration project, a feasibility study, several follow-up studies to the feasibility study, development of a business plan, and formation of a JPA. MCE finally began offering service to customers approximately six years after pursuing the demonstration project. If other potential CCE/CCA providers sought to establish themselves along a similar timeline starting today, customers likely would not begin receiving service until nearly 2030.

Western Community Energy

Case Study Summary: Western Community Energy

Western Community Energy began providing service to customers in several cities located in western Riverside County, California (Eastvale, Hemet, Jurupa Valley, Norco, Perris, and Wildomar) in April 2020, after having been officially established via a JPA in August 2018. In May 2021, Western Community Energy filed for Chapter 9 Bankruptcy. Western Community Energy formally deregistered⁴³⁰ with the CPUC in June 2021, and its approximately 113,000 customers returned to service provided by Southern California Edison (SCE), the incumbent IOU serving the region.^{431 432 433}

According to the CPUC and the Western Riverside Council of Governments, Western Community Energy's Chapter 9 bankruptcy filing was the result of the following factors:^{434 435}

- Increased residential energy use due to COVID-19;
- Electricity cost increases due to power market instability and power supply constraints;
- High electricity costs and demands during heatwaves in Summer and Fall 2020, with rates that were lower than those offered by Southern California Edison, but insufficient to cover costs;

⁴³⁰ Deregistration refers to a California CCA requesting that the CPUC terminate an approved CCA authority.

⁴³¹ *Community Choice Aggregation and Energy Service Provider Formation Status Report* (California Public Utilities Commission, April 2022), p. 3, <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/2022-status-report-on-community-choice-aggregation-formation.pdf>

⁴³² "Western Community Energy Frequently Asked Questions," Southern California Edison (website), accessed November 17, 2022, <https://www.sce.com/customer-service/community-choice-aggregation/wce-faq>

⁴³³ Mackin, Dina. "CPUC Public Agenda 3488: Agenda Item #39 Management Report on Western Community Energy." Presentation, California Public Utilities Commission, June 2, 2021, https://www.cpuc.ca.gov/-/media/cpuc-website/transparency/voting-meetings/presentations-archive/2021/6-24-2021_commeeting.pdf?sc_lang=en&hash=12BFCFE066A7BF61209A4AE6F093CB2D

⁴³⁴ Ibid. (Mackin, Dina. "CPUC Public Agenda 3488: Agenda Item #39 Management Report on Western Community Energy)

⁴³⁵ *Staff Report: WCE Declaration of Fiscal Emergency* (Western Community Energy, May 24, 2021), <https://www.cityofcalabasas.com/home/showpublisheddocument/21192/637575310315300000>

- Inaccurate energy purchase recommendations from hired consultants; and
- Inability to obtain bridge loans or use substantial COVID-19 American Rescue Plan funding to cover unpaid debts.

In accordance with standard industry practice, Western Community Energy, “had procured 90% of its electricity needs for the summer of 2020,” in advance of the severe heatwave, but because of the intensity of the heatwave, this procurement was insufficient, and “an additional \$12 million in energy costs were incurred throughout the 2020 summer season due to the unanticipated warm weather.” This, in combination with prohibitions on service disconnections due to the COVID-19 pandemic, resulted in Western Community Energy defaulting on considerable payments to lenders.⁴³⁶

Summary of Commenters’ Perspectives on Western Community Energy

Several commenters referenced Western Community Energy as an example of unsuccessful CCA implementation that must be avoided.

One commenter expressed concerns with Western Community Energy’s proposed repayment strategy. According to this commenter, the CCA proposes a \$5-10 rate increase on monthly customer bills, and according to Southern California Edison, impacted customers (i.e., former Western Community Energy customers who have returned to SCE service) will be subject to a “re-entry fee” which, on average, is less than five percent of the customer’s average monthly bill.^{437 438} The CPUC has provided clarification that even with the additional fee, former Western Community Energy customers can generally expect an overall reduction in the rates that they pay for electricity because Western Community Energy substantially raised rates in 2021 in an effort to recover costs. In June 2021 (immediately after filing bankruptcy), Western Community Energy’s standard “Choice” rate (37 percent renewable) was available at a rate of 12.7 cents/kWh, compared to SCE’s standard Base Rate (35 percent renewable), which was available at a rate of 9.6 cents/kWh.^{439 440}

Though this Western Community Energy analysis pertains predominantly to rates, as this was the theme most widely discussed among commenters, the CCA’s renewable resource portfolio is also briefly described for consistency with the Peninsula Clean Energy and MCE analyses included above. Table 3 displays 2020 rates and renewable service offerings for both Western Community Energy and SCE. Note that because Western Community Energy declared bankruptcy after only a year of providing service, and its customers have since returned to SCE’s service,

⁴³⁶ Ibid. (Staff Report: WCE Declaration of Fiscal Emergency, Western Community Energy)

⁴³⁷ Initial comments of Karey Christ-Janer (March 1, 2022), pp. 11-12. Proceeding No. 22I-0027E.

⁴³⁸ Ibid. (“Western Community Energy Frequently Asked Questions,” Southern California Edison)

⁴³⁹ Ibid. (Mackin, Dina. “CPUC Public Agenda 3488: Agenda Item #39 Management Report on Western Community Energy)

⁴⁴⁰ *Your Power Choices: Choose the energy source and rate plan that’s right for you.* (Western Community Energy and Southern California Edison, 2020), https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/pao/customer-notice/cn-2020/05_2020/2020-western-community-energy-joint-rate-mailer---residential.pdf

the data presented in Table 3 does not reflect current customer rates, nor does it necessarily reflect the current renewable percentages in SCE's service offerings.

Table 3: Rate comparison between Western Community Energy and SCE (2020)

Rate (cents/kWh)	Western Community Energy Choice (37% renewable)	Western Community Energy Choice Plus (100% Green)	SCE Base Rate (35% renewable)	SCE Green Rate (50% renewable)	SCE Green Rate (100% Renewable)
Electricity Generation	6.9	7.9	9.6	8.8	8.1
Delivery	11.5	11.5	12.0	12.0	12.0
Exit Fee (PCIA)	3.0	3.0	N/A	1.2	2.3
Total electricity cost	21.4	22.3	21.6	22.0	22.4s
Average monthly bill (\$)	119.86	119.11	115.37	117.46	119.56

Source: See footnote. ⁴⁴¹

As reflected in Table 3, Western Community Energy intended to offer energy cost savings to its customers (savings of 2-4 percent, according to one commenter),⁴⁴² but as indicated by the CPUC, rate increases intended to recover costs made that impossible once the CCA filed for Chapter 9 bankruptcy.

This commenter provided additional details regarding the bankruptcy filing, which was still ongoing at the time this commenter submitted their feedback. This commenter reiterated prior reasoning for Western Community Energy's financial crisis (impacts related to the COVID-19 pandemic, significant heatwaves, etc.) and emphasized that climate-related risks like those that contributed to Western Community Energy's bankruptcy filing are a continued risk in Colorado, which is susceptible to both extreme heat and extreme cold.⁴⁴³

This commenter also discussed Western Community Energy's credit challenges, including its need to secure a lender (Barclay's Bank) for an approximately \$11 million claim because they lacked a sufficient credit rating that would have allowed them to enter into more favorable contracts. The commenter also included a description of this challenge from Pilot Power Group, LLC, an energy broker that had a contract with Western Community Energy.⁴⁴⁴

"All of the hedges previously procured by WCE have been terminated due to WCE defaults. Its last hedge was terminated effective June 11, 2021. As a result, effective June 11, 2021, WCE is relying completely on the Imbalance Energy market at the California Independent System Operator ("CAISO") to supply power for its customers. However, Imbalance Energy pricing is not fixed price and is extremely volatile. Thus,

⁴⁴¹ Ibid. (Your Power Choices: Choose the energy source and rate plan that's right for you. (Western Community Energy and Southern California Edison)

⁴⁴² Response comments of IBEW Local #111 (April 15, 2022), pp. 10-14. Proceeding No. 22I-0027E.

⁴⁴³ Ibid. (IBEW Local #111, pp. 10-14)

⁴⁴⁴ Ibid. (IBEW Local #111, pp. 10-14)

WCE is entering the most expensive and crisis plagued months of the year, from an electricity usage perspective, with no hedge contracts in place.”

This commenter also provided the following perspective from SCE:⁴⁴⁵

“WCE is liable to SCE for re-entry fees arising from the mass involuntary return of its customers to SCE's procurement service on June 15, 2021. SCE has calculated the amount of these re-entry fees as \$14,715,891.88. SCE has drawn on a letter of credit securing the re-entry fees in the amount of \$147,000, leaving a residual re-entry fee amount due of \$14,568,891.88. To the extent that SCE cannot recover these residual re-entry fees from the Debtor, SCE will be entitled to recover them from WCE's former customers. SCE may seek similar recovery for any unpaid claims related to resource adequacy or services, as such resources and services were provided for the benefit of WCE's customers.”

This commenter asserted that Western Community Energy provides an example of a scenario in which a local entity does not necessarily produce the best outcome for the locality that it serves. Specifically, this commenter indicated that a local entity without experience in energy could potentially produce worse outcomes than a non-local, but highly experienced energy provider. “To the extent that CCEs form in or out of small communities without a prior role in the power market,” the commenter argued, “there is every reason to fear that limited resources, limited experience and limited expertise may make them (like WCE) subject to bad advice and even predatory producers.”⁴⁴⁶

Another commenter that mentioned Western Community Energy's financial crisis discussed some of the CCA authority's core challenges. This commenter referred to a Fitch Ratings report, which provided the following description of some of the challenges (and decisions) that contributed to Western Community Energy's Chapter 9 Bankruptcy filing:^{447 448}

“CCAs typically do not own physical generating assets and instead rely on contracts and market purchases for power supply. Inadequate risk management, unexpected spikes in demand and compliance with state mandates, including California Senate Bill 350 requiring 65% of renewable energy to be procured under contracts 10-years or longer, can all hinder a CCA's ability to manage costs and provide competitively priced power supply. Many of these factors appear to have contributed to higher than anticipated power needs and energy costs at WCE... Without the benefit of cash reserves built up over years of operation, WCE was unable to buffer the impact of increased pressure on cash flow resulting from both high power costs and rising delinquencies attributable to

⁴⁴⁵ Ibid. (IBEW Local #111, pp. 10-14)

⁴⁴⁶ Response comments of IBEW Local #111 (April 15, 2022), p. 27. Proceeding No. 22I-0027E.

⁴⁴⁷ Initial comments of Local Energy Aggregation Network (LEAN Energy) (March 1, 2022), pp. 25-27. Proceeding No. 22I-0027E.

⁴⁴⁸ “Community Choice Aggregator Risks Highlighted by Bankruptcy,” Fitch Ratings (website), accessed November 17, 2022, <https://www.fitchratings.com/research/us-public-finance/community-choice-aggregator-risks-highlighted-by-bankruptcy-02-06-2021>

the coronavirus pandemic, economic hardships and an inability to disconnect customers for nonpayment.”

This commenter further emphasized that one of Western Community Energy’s key downfalls was its over-reliance on potentially underqualified external consultants. This concern—also raised by other commenters and identified by Western Community Energy staff itself in its May 24th, 2021 report to its Board and the Western Riverside County Council of Governments—is one that the commenter argues could be addressed by better hiring practices. The commenter stated that, “the need to hire qualified staff to exercise oversight and management of third-party vendors, and to meaningfully participate in portfolio risk management decisions, is a widely understood and widely applied best practice in the CCE industry.”⁴⁴⁹ In its staff report, Western Community energy similarly stated that its, “reliance on consultants appeared to be a significant problem, particularly considering the decision not to purchase sufficient energy in advance for the summer 2021, which became apparent only after WCE staff conducted additional review of available power contracts.”⁴⁵⁰

Another commenter recommended that to prevent CCE/CCA authorities from falling into a financial crisis like that experienced by Western Community Energy and, accordingly, mitigate against potential financial risks to lenders and consumers, “a community and CCE should be required to demonstrate to the Commission or other appropriate regulatory agency that the community and CCE have the financial wherewithal to support the significant resource acquisition and operation costs associated with serving electric load.” This commenter specifically referred to the Western Community Energy case as a case of “a financial spiral,” in which a reduction in customers (or, in the case of Western Community Energy, a reduction in payment due to the COVID-19 pandemic) contributes to increased financial pressure on the utility provider. This commenter argues that the same scenario could occur if a CCE authority experiences an increasing number of opt-outs.⁴⁵¹

Though Western Community Energy’s circumstances are severe, the CPUC has stated that it is not currently aware of any other CCA providers in the state that are in comparable or near-comparable circumstances.⁴⁵²

Western Community Energy: Lessons Learned

Having only existed for one year, Western Community Energy serves primarily as a warning of the many potential risks associated with CCA authorization. Western Community Energy could not have foreseen the significant potential impacts of the COVID-19 pandemic (which affected all utilities and utility customers). However, its under-procurement of resources leading up to several extreme weather events emphasizes the importance of planning resource adequacy

⁴⁴⁹ Ibid. (LEAN Energy, pp. 25-27)

⁴⁵⁰ Ibid. (*Staff Report: WCE Declaration of Fiscal Emergency*, Western Community Energy)

⁴⁵¹ Initial comments of Public Service Company of Colorado (March 1, 2022), pp. 39-40. Proceeding No. 22I-0027E.

⁴⁵² Ibid. (Mackin, Dina. “CPUC Public Agenda 3488: Agenda Item #39 Management Report on Western Community Energy)

around a changing climate, rather than around historical industry norms (i.e., procuring only 90 percent of projected electricity needs in advance of the typical peak load season, despite weather events in that season becoming more severe). Commenters had differing perspectives regarding whether having more extensive internal staff resources could have prevented this: some commenters argued that this emphasized the value of staff over consultants, but others argued that there is no guarantee that local staff would be able to provide services comparable to or better than those of an outside party with prior experience in energy.

Western Community Energy also offers some warnings about the assumption that a CCA provider will automatically provide more affordable service than an IOU. As displayed in Table 3, even in 2020 when Western Community Energy was founded, the total average monthly bill was comparable in price to SCE's "cleanest" offering (SCE's Green Rate 100% Renewable option). Western Community Energy then had to raise its rates in an attempt to recover from its financial crisis. Former Western Community Energy customers that have returned to SCE service are likely pay less today than they paid as Western Community Energy customers, even with the additional re-entry fee owed to SCE.

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This concludes the Commission's investigative report.

