



## *Report to the Legislature*

# Issues and Progress on the Implementation of Community Choice Aggregation

Fourth Quarter Report  
Submitted October 31, 2011





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## **Executive Summary**

This report is submitted to the legislature by the California Public Utilities Commission (CPUC) in order to summarize the progress, issues, and costs associated with the Community Choice Aggregation (CCA) program,<sup>1</sup> pursuant to the Supplemental Report Language (SRL)<sup>2</sup> of the 2010-2011 Budget Act. This is the fourth, and last, quarterly report on this topic which addresses the following three areas:

- (a) The process provided by the commission to allow prospective or existing community choice aggregators to identify specific matters on which the utility is not considered to be cooperating fully. As required, the report includes a detailed summary of each matter identified and initiated by the community choice aggregator, and a detailed verification of the utility's actions taken to address and resolve these issues.
- (b) Information obtained by the commission from the electrical corporations in order to monitor the electrical corporations' activities and expenditures made to facilitate, or oppose, community choice aggregation. The information includes an itemization of all activities undertaken by an electrical corporation, as identified by the commission or by a community pursuing community choice aggregation, the costs of those activities, and whether the costs were paid by ratepayers or shareholders of the electrical corporation.
- (c) Actions taken by the commission to ensure customer "opt out" requirements established pursuant to the Public Utilities Code Section 366.2 are properly implemented and to ensure full compliance by an incumbent electrical corporation.

Most of the activities that have been described pursuant to this reporting process have related to the formation and launch of the first operational CCA program in California: Marin Clean Energy (MCE), which operates in parts of Marin County. MCE is administered by the Marin Energy Authority (MEA), a joint powers authority formed by several communities in Marin County for the purpose of implementing the CCA program.<sup>3</sup> The incumbent utility serving MCE's service territory is Pacific Gas and Electric Company (PG&E).

As described in the first three quarterly reports, the formation and launch of MCE, and PG&E's activities surrounding MCE's implementation, has at times engendered a great deal of controversy. Before, during, and since the launch of MCE, the CPUC has been engaged in mediating disputes and modifying implementation rules in an effort to create a level playing field while enabling Marin County customers to make a clear and informed choice regarding MCE provided service.

Some of the outstanding issues concern access by MCE to the utility's confidential customer information. PG&E has submitted Advice Letter 3841-E-C in order to

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<sup>1</sup> Codified in Public Utilities Code §366.2, et seq.

<sup>2</sup> A copy of the SRL is contained as Attachment 1 to this report.

<sup>3</sup> MCE began serving its phase one customers on May 7, 2010. The Marin jurisdictions currently participating in MCE are: City of Belvedere, Town of Fairfax, City of Mill Valley, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, and the County of Marin. During the drafting process of this fourth, and last, quarterly report, the CPUC was informed by MEA that MCE's membership is scheduled to expand. The CPUC is awaiting a revised MEA/MCE implementation plan submittal that will update staff on the details regarding CCA expansion in Marin County.

address these issues, which if approved, would modify PG&E's CCA information tariff and its CCA Non Disclosure Agreement (NDA) tariff, allowing certain non-public customer information to be made available to CCAs and to potential CCAs. Draft Resolution E-4420 proposes the adoption of PG&E Advice Letter 3841-E-C with minor modifications.<sup>4</sup> The CPUC issued draft Resolution E-4420 on October 5, 2011 which is scheduled to be voted on during the November 10, 2011 Commission meeting.

In addition to drafting Resolution E-4420, CPUC staff continues to mediate the outstanding issues raised by MEA/MCE in an attempt to reach a fair resolution on these matters.

A resolution or near-resolution has been reached on 12 of the 19 issues that MEA/MCE has raised during the first three quarters. Three new issues were raised by MEA/MCE in the fourth quarter of this SRL reporting process; the two issues that MEA/MCE filed on October 26, 2011 are not included in this report.<sup>5</sup>

The table on the following page lists all the issues that have been timely raised, to date, through the SRL reporting process – identifying those issues that have been resolved and those issues that need further effort from the parties (labeled “open” or “partially resolved”). A more detailed summary of the outstanding issues is provided in Attachment 2.

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<sup>4</sup>The draft resolution directs PG&E to clarify the fact that *Electric Schedule E-CCAINFO–Information Release to Community Choice Aggregators* enables data to be shared with CCAs as well as with communities wishing to explore CCA program implementation – currently this Schedule indicates that only “CCAs” can request and receive data.

<sup>5</sup> On October 26, 2011, MCE submitted two additional fourth quarter issues labeled 4.4 and 4.5. This legislative reporting process requires the CPUC to allow the IOUs to provide a response to an issue raised by a prospective or existing CCA within a reasonable timeframe. We do not include these two new issues herein since PG&E did not have adequate time to respond to them; we will, however, work with MCE and PG&E in order to resolve these issues.

<b>Status of Resolution of Issues Raised by Marin Clean Energy as of October 31, 2011.</b>
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<b>Issue</b>	<b>Subject - formally raised prior to January 31, 2011</b>	<b>Status</b>
1.0	Phone banking impacts verification	<a href="#">open</a>
1.1	No differentiation between generation & non-generation charges on bill	<a href="#">partially resolved</a>
1.2	Bundled rate factors showing up on MCE bills	resolved
1.3	Need for third-party viewing of customer bills	Draft Resolution E-4420
1.4	PG&E call center providing mis-information to customers	resolved
1.5	CARE data not being provided to MCE	Draft Resolution E-4420
1.6	Balanced Payment Plan customers being double billed for generation	resolved
1.7	"Return to Bundled Service" form directs customer to PG&E for opt out	pending tariff approval
1.8	PG&E not providing usage to MCE	resolved
1.9	Net energy metering: bill presentment	<a href="#">open</a>
1.10	New customers being opted out by PG&E	<a href="#">partially resolved</a>
1.11	Invoice cancellation transaction support	<a href="#">open</a>
1.12	Conservation Incentive Adjustment	Commission Decision <sup>6</sup>

<b>Issue</b>	<b>Subject - formally raised between January 31 and April 30, 2011</b>	<b>Status</b>
2.1	Billing arrangements not disclosed	Draft Resolution E-4420
2.2	CARE discount not fully covered	resolved
2.3	Usage data submitted late: CAISO compliance issue	<a href="#">open</a>
2.4	Code of Conduct	<a href="#">open</a>

<b>Issue</b>	<b>Subject – formally raised after April 30, 2011</b>	<b>Status</b>
3.1	Automated Clearing House transfers	<a href="#">partially resolved</a>
3.2	MEA's proposed fee schedule payable by PG&E	<a href="#">open</a>

<b>Issue</b>	<b>Subject – formally raised after July 31, 2011 <sup>7</sup></b>	<b>Status</b>
4.1	Outstanding MEA payment invoice to PG&E	<a href="#">open</a>
4.2	Conservation Incentive Adjustment billing capability concerns	<a href="#">open</a>
4.3	New MEA customer notification is untimely	<a href="#">open</a>

<sup>6</sup> Issue 1.12 is a ratemaking issue that is outside the scope of this legislative reporting process.

<sup>7</sup> On October 26, 2011, MCE submitted two additional fourth quarter issues labeled 4.4 and 4.5. We do not include these two new issues herein since PG&E did not have adequate time to respond to them; we will, however, work with MCE and PG&E in order to resolve these issues.

## **Introduction**

The CPUC prepared and submits this report to the legislature in compliance with 2010-2011 Budget Act SRL that directs the CPUC to report as follows:

*On or before January 31, 2011, and quarterly thereafter, the California Public Utilities Commission shall submit to the relevant fiscal and policy committees of each house of the Legislature, a report on its activities related to Community Choice Aggregation. The report shall include detailed information on the formal procedures established by the Commission in order to monitor and ensure compliance by electrical corporations with Chapter 838, Statutes of 2002. (the entire SRL language is provided in Attachment 1)*

The SRL requires information covering three broad areas:

- a. A detailed description of the commission’s process for enabling communities interested in becoming community choice aggregators, communities currently in the process of becoming community choice aggregators, and existing community choice aggregators to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which, among other things, requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”
- b. A detailed description of information obtained by the commission from the electrical corporations in order to monitor the electrical corporations’ activities and expenditures made to facilitate, or oppose, community choice aggregation.
- c. A detailed description of the actions taken by the commission to ensure customer “opt out” requirements established pursuant to the Public Utilities Code Section 366.2 are properly implemented and to ensure full compliance by an incumbent electrical corporation.

In order to comply with the requirements listed above, the CPUC staff has taken the following actions in order to establish relevant processes and obtain information from the investor-owned utilities (IOUs or utilities) that interact with prospective or existing CCAs:

1. established a standardized process to enable prospective and existing CCAs to obtain timely utility compliance (pursuant to part (a) of the SRL);
2. obtained information about the IOU’s activities and expenditures made to facilitate, or oppose, community choice aggregation (pursuant to part (b) of the SRL);
3. compiled data summarizing all opt-out activity with respect to CCAs that have commenced operation (pursuant to part (c) of the SRL).

Similar to the first three quarterly reports, this fourth quarter report provides updates to part “a”, “b”, and “c” of the 2010-2011 Budget Act SRL requirement.



## **Background**

This section of the report provides a brief background on the CCA statute and the actions taken by the CPUC to implement the law.

AB 117 was passed by the legislature and signed by the Governor in August and September 2002, respectively. At that time, AB 117 was either supported, or not opposed, by all investor-owned utilities under the regulatory authority of the CPUC.

AB 117 added several sections to the Public Utilities Code requiring the Commission to take certain actions. After spending first half of 2003 taking informal, short-term actions to support CCAs, the CPUC opened a formal Rulemaking in October, 2003 in order to complete the actions necessary to implement the law.

The Commission issued major implementing decisions in 2003, 2004, and 2005, following several informal public workshops that supported its Rulemaking activity. The Commission believed by the end of 2005 that its efforts to implement AB 117 were essentially complete.

In 2006 and 2007, the San Joaquin Valley Power Authority (SJVPA) began efforts to implement a CCA program. During the course of those efforts, in June 2007, SJVPA filed a formal Complaint with the Commission, alleging that PG&E was acting in violation of Decision 05-12-041 in its efforts to address the formation of a CCA by SJVPA. That complaint was eventually the subject of a settlement between SJVPA and PG&E, which was adopted by the Commission in June 2008.

The Complaint proceeding was the first indication received by the CPUC that PG&E intended to oppose the formation of CCAs in an organized manner and that PG&E had formally changed its corporate stance with respect to the Community Choice Aggregation program. As mentioned above, when the CCA law was passed, PG&E did not oppose it. However, by the time period of April or May 2007, public statements by PG&E indicated its intent to view CCAs as competitors and actively campaign against them.<sup>8</sup> However, after adoption of the settlement agreement between SJVPA and PG&E, Commission staff concluded from the outcome of the complaint proceeding that PG&E's efforts to oppose CCA would be conducted at its shareholders' expense.

As to the efforts of SJVPA to form a CCA, the Commission certified its CCA implementation plan in April, 2007. In June, 2009 SJVPA announced the temporary suspension of its CCA program activities. Along with a tight credit market, the volatility in energy prices, and the uncertainty with California's

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<sup>8</sup> See Commission Decision 08-06-016, page 4, citing Settlement Agreement in Attachment A, Article 3 and Section 4.1, [http://docs.cpuc.ca.gov/PUBLISHED/FINAL\\_DECISION/84216.htm](http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/84216.htm)

energy regulations, SJVPA cited strong opposition from PG&E as one of the factors leading to its decision to suspend the program.<sup>9</sup>

Another issue emerged in March, 2009, when SJVPA raised a concern with CPUC staff regarding PG&E efforts to convince customers in the SJVPA area to “opt-out” of CCA service, even though SJVPA had neither notified these customers that CCA service was beginning, nor offered them the terms and conditions of that service. Although there was no formal tariff or other rule prohibiting this activity, these activities appeared to Commission staff to be contrary to the spirit of AB 117, which requires CCA notification of terms of service prior to processing opt-out requests from individual consumers. PG&E declined to implement some, but not all, informal Commission staff requests to halt or amend this activity, arguing – correctly – that there was nothing in the existing tariffs that prohibited their activity.

In order to clarify the opt-out rules, CPUC staff prepared a Resolution for the Commission’s consideration and approval. However, due to the complexity and controversial nature of the topic, a total of 13 months passed between the time the issue was first raised by SJVPA in March 2009 and the adoption of Resolution E-4250 (see Attachment 4) by the Commission in April, 2010.

Consideration of this resolution coincided with the efforts of MEA to commence operations of a CCA program for parts of Marin County. Beginning in late 2009, Commission staff held numerous meetings with MEA and PG&E to try to resolve implementation issues to allow MEA to commence CCA service by May of 2010.

This was also the period in which PG&E was conducting its public relations campaign in support of Proposition 16, which was on the statewide ballot in June 2010 and would have required a 2/3 (affirmative) vote of the residents of each community prior to forming a CCA. Consequently, the convergence of these activities made for a great deal of controversy and acrimony between PG&E and MEA, as well as other communities exploring CCA formation including the City and County of San Francisco (CCSF).

During this period, to help clarify the requirements of AB 117 and the implementation rules developed by the CPUC, and at the request mainly of MEA, Commission staff began attending community events in Marin County where the CCA program was being discussed.

In March and April, 2010, in an effort to mediate ongoing disputes between MEA and PG&E, CPUC senior staff, including the Executive Director and General Counsel, initiated several informal negotiating sessions designed to reach resolution on the servicing agreement required to be signed by PG&E and MEA prior to commencement of CCA service. These sessions resulted in successful resolution of those disputes and a servicing agreement was signed on February 16,

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<sup>9</sup> “PG&E’s marketing and lobbying efforts continue unabated, creating obstacles and demands upon our limited resources.” July 1, 2009 letter from SJVPA General Manager David Orth to CPUC Executive Director Paul Clanon.

2010. Marin Clean Energy began serving customers on May 7, 2010. However, a number of ongoing implementation issues remained between PG&E and MEA.

In May 2010, the Commission issued Decision 10-05-050, in response to a petition by CCSF for modification to one of the original Commission implementation decisions for AB 117. This decision mainly clarified the permissible extent of utility marketing with regard to CCA programs. The Decision also allowed CCAs to manage their customer opt-out processes<sup>10</sup> and clarified the Commission's authority regarding IOU violations of Commission policy.

On January 31, 2011, the CPUC submitted the first quarter report to the legislature pursuant to the Supplemental Report Language included in the 2010-2011 Budget Act; on April 30, 2011 and on July 31, 2011 the CPUC submitted the second and third quarter reports, respectively. This fourth quarter report updates the status of the outstanding issues initially raised by MEA in the first three quarterly reports, while addressing three new issues that have been raised by MEA since July 31, 2011<sup>11</sup>

The remainder of this fourth quarter report provides additional detail regarding this brief history, the actions taken by the CPUC in response to certain CCA-related developments, and the CPUC's ongoing efforts to implement the CCA law.

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<sup>10</sup> As a result of D.10-05-050, made effective on May 20, 2010, MCE was able to take over its customer opt-out processes on June 1, 2010.

<sup>11</sup> On October 26, 2011, MCE submitted two additional fourth quarter issues labeled 4.4 and 4.5. This legislative reporting process requires the CPUC to allow the IOUs to provide a response to an issue raised by a prospective or existing CCA within a reasonable timeframe. We do not include these two new issues herein since PG&E did not have adequate time to respond to them; we will, however, work with MCE and PG&E in order to resolve these issues.

**Report Section (a): “Timely IOU compliance”**

Part (a) of the Budget Act Supplemental Report Language requires detailed information on the following:

***“A detailed description of the commission’s process for enabling communities interested in becoming community choice aggregators, communities currently in the process of becoming community choice aggregators, and existing community choice aggregators to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”***

***The description shall include the process provided by the commission to allow prospective or existing community choice aggregators to identify specific matters on which the utility is not considered to be cooperating fully. For each identified matter, the prospective or existing community choice aggregator shall detail in writing the issue, the lack of full cooperation, and the personnel at the utility with whom the community choice aggregator is working. The utility shall be required to respond in writing by providing a specific solution to the matter raised by the prospective or existing community choice aggregator, including a date-specific timeline for accomplishing the solution, and the names of personnel responsible for providing the solution.***

***The commission’s report to the Legislature shall provide a detailed summary of each matter identified and initiated by the community choice aggregator, and a detailed verification of the utility’s actions taken to address and resolve these issues, including verification of the satisfaction of the community choice aggregator. The report shall also itemize any matters that have been improperly raised by the community choice aggregator using this process.”***

As described in the Background section above, the early efforts of Commission staff to implement the CCA law and to facilitate the formation of CCAs in California relied heavily on informal collaborative efforts, and were premised on the assumption that the utilities would cooperate fully in any such activities initiated by Commission staff. The expectation that utilities would do so is reflected in Commission decisions on CCA implementation, which in turn reflect the fact that the IOUs either supported or did not oppose the CCA law when originally passed.<sup>12</sup>

However, as the first CCA (Marin Clean Energy) took steps to become operational, it became clear that informal and collaborative approaches alone are not as effective when the issues at hand involve directly competing interests or behaviors. What became clear, over the course of the past several years, was that PG&E, as an institution, took the position of viewing the CCAs as competitors, rather than partners

<sup>12</sup> See, e.g., D.05-12-041, page 18: [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/52127.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/52127.pdf)

## Report Section (a): “Timely IOU compliance”

with customers in common. This approach was not contemplated in the law or in the CPUC decisions originally implementing the law. Thus, when issues arose, there was no clear framework within which to view the activities of the utilities or the CCAs.

Specifically regarding the contents of this section of the report, part (a) of the SRL requires:

*“A detailed description of the commission’s process for enabling communities interested in becoming community choice aggregators, communities currently in the process of becoming community choice aggregators, and existing community choice aggregators to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to ‘cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.’”*

To comply with this section of the SRL, the CPUC staff developed a three-step process and met with PG&E and MCE (as the only currently operating CCA) and obtained their agreement to follow the process. Briefly, the process is structured as follows:

- Step 1 The CCA is required to submit a form that identifies each specific matter on which the utility is not considered to be cooperating fully with the CCA.
- Step 2 The utility is required to respond to each issue identified by the CCA, providing a solution and a timeline for implementing that solution.
- Step 3 The Commission staff verifies that the solution is acceptable to the CCA.

Beginning on December 10, 2010, MCE submitted a total of 13 outstanding issues as part of the first quarter SRL reporting process. On April 6, 2011, MCE submitted four more issues, and on June 13, 2011 MCE submitted two additional issues. On September 8, 2011 MCE submitted three new issues – and on October 26, 2011, MCE submitted two more new issues.<sup>13</sup> This legislative reporting process requires the CPUC to enable the utilities to provide a response to an issue raised by a prospective or existing CCA – as explained in the SRL section 1(a).<sup>14</sup> PG&E has indicated that it needs the standard 10 day period in order to address these two new issues via a formal

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<sup>13</sup> MEA/MCE provided the following explanation for its late submittal on issues 4.4 and 4.5: *“We have some new information regarding PG&E and MEA that is resulting in two new issues being submitted for the 4th quarterly Legislative Report. We have copied PG&E representatives to expedite the process and facilitate their response...We apologize for the lateness of the submittals but they are issues we believed were being resolved until this week and we are aware that you have limited time to finalize the report.”*

<sup>14</sup> SRL 1(a) states in part: *“...The utility shall be required to respond in writing by providing a specific solution to the matter raised by the prospective or existing community choice aggregator, including a date-specific timeline for accomplishing the solution, and the names of personnel responsible for providing the solution...”*

## Report Section (a): “Timely IOU compliance”

response. As such, we do not include these two new issues to this report, although we will continue to work with MCE and PG&E in order to reach a resolution to these issues. PG&E, nonetheless, has responded to issues 4.1 through 4.3 and CPUC staff has reviewed and considered these responses.

As noted in the first three reports, the one basic challenge of the CCA implementation process is that as new market entrants the CCAs must depend on the well-established market participant, in this case a monopoly utility, to act in good faith in order to facilitate its commencement of service. This good-faith cooperation is clearly contemplated by AB 117 and has been the focus of the CPUC while attempting to solve the issues raised by MCE.

## Summary of Resolved/Outstanding Issues

### First Quarter Issues

Four of the 13 issues that were initially raised by MCE as part of the first quarter reporting process have been resolved.<sup>15</sup>

- The resolution of issue 1.2 (“Bundled rate factors showing on MCE bills”) has resulted in rate factors appearing on PG&E/MCE customer bills that now reflect the exact charge for service rendered by each entity: non-generation service by PG&E and generation service by MCE.
- The resolution of issue 1.4 (“PG&E call center providing misinformation to customers”) resulted in a modified PG&E Customer Service Representative script that, as of April 15, 2011, has been used by PG&E representatives in order to address CCA-related questions and concerns.
- The resolution of issue 1.6 (“Balanced Payment Plan customers being double billed for generation”) resulted from an agreement worked out by the CPUC’s Energy Division staff enabling MCE to review a subset of customers’ redacted bills so the MCE could verify that MCE customers on the Balanced Payment Plan were not being charged twice for generation service.
- Issue 1.8 (“PG&E not providing usage data to MCE”) was deemed to be a one-time-a-year issue that PG&E/MCE plan to flag ahead of time and prevent from recurring.

In addition to the resolution of the above issues, issues 1.3 and 1.5 are scheduled to reach resolution once the Commission approves Advice Letter 3841-E-C via the adoption of draft Resolution E-4420, which is scheduled to be voted on during the November 10, 2011 Commission meeting. Issue 1.7 should be disposed of once PG&E files an advice letter containing a modified Return to Bundled Service form.

### **Proposed Resolution of Issues via PG&E’s Advice Letter Process**

- Issue 1.3 (“Need for third-party viewing of customer bills): would enable MCE staff to view MCE customers’ bills while providing customer service support.
- Issue 1.5 (“CARE data not being provided to MCE”): would enable MCE to receive ongoing updates from PG&E regarding MCE’s CARE customer eligibility status.
- Issue 1.7 (“Return to Bundled Service’ form): would result in a revised process, involving MCE, that MCE customers must follow when requesting to return to PG&E bundled service.<sup>16</sup>

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<sup>15</sup> In the third quarter report, we incorrectly reported that issue 1.10 had been resolved – this issue has been partially resolved.

<sup>16</sup> October 19, 2011 email update from PG&E staff on issue 1.7: “...MEA has its own return to bundled service form, and that we hope to make an advice filing with MEA’s support that will delete the current reference in Rule 23 to PG&E’s return to bundled service form. We’ll also need to revise that currently approved PG&E form, since it will still be needed for direct access customers, but not CCA customers...”

The following five issues were formally raised as part of the first quarter reporting process; their respective resolution is still work-in-progress as of October 31, 2011. PG&E's updated response / updated proposed solution to these issues are described in Attachment 2.<sup>17</sup>

- Issue 1.0 (“Phone banking impact verification”): MCE seeks to obtain the account numbers of customers that MCE believes were opted out of MCE service under false pretenses. The Energy Division’s management is working with PG&E’s management in order to reach a resolution on this matter; this issue remains unresolved.
- Issue 1.1 (“No differentiation between generation and non-generation charges on bill”): MCE argues that some customers have opted out of MCE service because they believe they are being double-charged for electricity, paying both PG&E and MCE for the same electric usage quantities demonstrated on their bill. This issue is being dealt with in Commission proceeding A.10-03-014 but currently remains unresolved.
- Issue 1.9 (“Net energy metering: bill presentation”): MCE notes that credits generated by MCE’s NEM customers should only be applied to the electric generation portion of these customers’ accounts. PG&E plans to make additions/changes to its bills within the next two months in order to solve this problem; this issue remains unresolved.
- Issue 1.10 (“New customers being opted out by PG&E”): MCE notes that new and relocated customers in MCE’s service territory have experienced “default” opt outs of CCA service which is contrary to the Commission’s intent of CCA program implementation (See Attachment 3). This issue seems to be resolved; however, a somewhat related issue regarding retroactive opt-outs being processed by PG&E without MEA/MCE’s authorization now needs to be addressed.
- Issue 1.11 (“Invoice cancellation transaction support”): MCE argues that PG&E is not supporting a standard invoice cancellation process, resulting in PG&E issuing bills that may not contain the most up to date information on the MCE portion of the bill; this issue remains unresolved.

### Second Quarter Issues

Issues 2.1 through 2.4 were raised by MCE during the second quarter reporting process. To date only issue 2.2 has been resolved; issue 2.1 is pending advice letter approval for its resolution via the adoption of draft Resolution E-4420, which is scheduled to be voted on during the November 10, 2011 Commission meeting.

- Issue 2.1 (“Billing arrangement not disclosed”): is pending Commission approval of AL 3841-E-C which, if approved, will revise the CCA Non

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<sup>17</sup> Issue 1.12, dealing with the Conservation Incentive Adjustment, which was raised during the first quarter reporting process, is a ratemaking issue that was deemed to be outside the scope of this legislative reporting process.



Disclosure Agreement. This agreement should enable MCE to identify which customers have made payment plan arrangements with PG&E.

- Issue 2.2 (“CARE discount not fully covered”): this issue was resolved during the second quarter reporting process, whereby PG&E explained that CARE discounts were accurately calculated.
- Issue 2.3 (“Usage data submitted late: CAISO compliance”): MCE requests that PG&E provide it with MCE-customers’ usage information within 43 days after these customers’ respective meter-read is conducted. PG&E reports that it has made some system changes in order to automate customers’ usage transmittal to MCE, but that further work is required in order to fully address MCE’s concerns; this issue remains unresolved.
- Issue 2.4 (“Code of Conduct”): MEA seeks to create a code of conduct/service agreement side-letter with PG&E in order to address technical, mechanical, marketing, and cost allocation issues that MCE believes are not adequately addressed in the current PG&E-MEA Service Agreement. PG&E is willing to consider amending its Service Agreement or creating a side-agreement with MEA; this issue remains unresolved.

### Third Quarter Issues

Two issues were raised during the third quarter reporting process.

- Issue 3.1 (“Automated Clearing House transfers”): When necessary, MEA requests that PG&E automatically provide MEA with an explanation of the reason why a timely ACH revenue transfer has not occurred and a notice of when the revenues will be transferred to MEA; this issue has improved but remains unresolved.
- Issue 3.2 (“MEA’s proposed fee schedule payable by PG&E”): MEA argues that there is no mechanism in place for MEA to receive reimbursement from PG&E for the costs that result from any lack of PG&E cooperation. As such, MEA proposes a fee structure that PG&E would be liable for paying; this remains unresolved.

### Fourth Quarter Issues

Three issues were raised during the fourth quarter reporting process. Issues 4.1 through 4.3 remain open as of the date of this report. (The two issues that MEA/MCE filed on October 26, 2011 are not included in this report).

- Issue 4.1 (“Outstanding MEA payment Invoice to PG&E”): MEA submitted an invoice to PG&E in the amount of \$1,297 in order to cover what MEA alleges are costs incurred by MEA – i.e. lost customer revenue, legal, data management, and customer communication costs – due to PG&E’s inadvertent opt outs of customers during the past 24 months; this issue remains unresolved.
- Issue 4.2 (“Conservation Incentive Adjustment billing capability concerns”): MEA is concerned that PG&E has not begun to verify whether its billing system can accurately decouple generation versus non-generation charges billed to CCA customers. CIA implementation is scheduled to occur in July 2012; this

- issue remains unresolved (although MEA seems to repeat some issues that are being addressed in other sections of this report).
- Issue 4.3 (“New MEA customer notification is untimely”): MEA claims it is not receiving timely notices from PG&E when a new customer begins MCE service. MEA claims that up to a month can lapse before it learns of a new customer; as such, the following problems can occur: 1) MEA cannot provide accurate meter data to the California Independent System Operator, 2) procurement and planning is more challenging, 3) MEA cannot process opt-out requests of customers whose account information it has not yet been received. This issue remains unresolved.

## Report Section (b): “IOU activities and expenditures”

### **Report Section (b): “IOU activities and expenditures”**

Part (b) of the SRL requires detailed information on the following:

***“A detailed description of information obtained by the commission from the electrical corporations in order to monitor the electrical corporations’ activities and expenditures made to facilitate, or oppose, community choice aggregation. The information shall include an itemization of all activities undertaken by an electrical corporation, as identified by the commission or by a community pursuing community choice aggregation, the costs of those activities, and whether the costs were paid by ratepayers or shareholders of the electrical corporation. For each activity, the commission shall provide a detailed explanation as to whether the activity or expenditure is legally permissible, and, if not, of the actions taken by the commission in response.”***

In order to comply with part “b” of the SRL requirement, CPUC staff has requested information from each utility regarding its respective expenditures to either facilitate, or oppose, the CCA program.

In general, if the Commission orders a utility to undertake activity to implement a law or a program – and that activity creates new, incremental costs for the utility – that utility is allowed to seek funding for this activity by requesting an increase in its revenue requirement, which is subsequently collected in rates from all ratepayers. Such funding requests are processed in each utility’s General Rate Case.

On the other hand, if a utility undertakes activities that are not required by normal operations, the Commission requires that utility shareholders pay these costs.

This distinction is summarized in PG&E’s publication entitled “*Below The Line Accounting Procedures*”:<sup>18</sup>

In general, expenses attributable to normal utility operations are “above the line” (ATL) and recoverable in rates (paid for by ratepayers). The California Public Utilities Commission requires that certain other costs be borne solely by shareholders, not customers, and therefore those costs are classified “below the line.” (The terms “above the line” and “below the line” refer to whether an income or expense item appears above or below the operating income line on a utility’s regulatory income statement.) Examples of below-the-line activities/expenses include:

- Political activities and contributions
- Charitable contributions
- Brand image advertising

Source: PG&E “*Below The Line Accounting Procedure*”, Updated: 10/16/2007  
Obtained by CPUC Energy Division, November 2009

<sup>18</sup> As indicated in the first three quarterly reports, a separate but related category of PG&E expenditures were made in 2010 to support Proposition 16, a ballot measure that would have made it much more difficult for CCAs and municipal utilities to form, had it been approved by voters. Proposition 16 was defeated in the June 2010 election. This report takes no position on the ballot measure itself, but simply notes that PG&E reports spending \$46 million on Proposition 16.

## Report Section (b): “IOU activities and expenditures”

With the above distinction in mind, the CPUC staff sought information from each utility that summarized both its “above-the-line” CCA-related GRC-approved expenses (a proxy for expenditures to facilitate the CCA program) and its “below-the-line” expenditures funded by shareholders related to the CCA program. This information has been obtained by means of a standardized “data request” issued to PG&E, SCE, and SDG&E by CPUC staff.

Report Section (b): “IOU activities and expenditures”

**PG&E (Ratepayer Funded) Expenditures to Facilitate the CCA Program**

PG&E’s reported “above-the-line” (ATL) expenditures that were funded by ratepayers are provided in the table below. As this table illustrates in the “unclassified” column, a substantial part of these expenses are not attributable to a specific CCA but, rather, apply to PG&E’s CCA-related activities in general.

<b>SF, Marin &amp; SJVPA Above the Line Spending: 2007 to August 2011</b>					
	<b>SJVPA</b>	<b>San Francisco</b>	<b>Marin County</b>	<b>Unclassified</b>	<b>Totals</b>
2007 Labor and Labor Related	\$ 30,334	\$ 4,776	\$ 1,679	\$ 125,422	<b>\$162,211</b>
2007 Materials and Contracts	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	<b>\$ 30,334</b>	<b>\$ 4,776</b>	<b>\$ 1,679</b>	<b>\$ 125,422</b>	<b>\$162,211</b>
2008 Labor and Labor Related	\$ 2,484	\$ 1,300	\$ 2,111	\$ 184,833	<b>\$190,728</b>
2008 Materials and Contracts	\$ -	\$ -	\$ -	\$ 96	<b>\$ 96</b>
<b>Subtotal</b>	<b>\$ 2,484</b>	<b>\$ 1,300</b>	<b>\$ 2,111</b>	<b>\$ 184,929</b>	<b>\$190,824</b>
2009 Labor and Labor Related	\$ 3,642	\$ 273	\$ 407	\$ 203,647	<b>\$207,969</b>
2009 Materials and Contracts	\$ -	\$ -	\$ -	\$ 149,149	<b>\$149,149</b>
<b>Subtotal</b>	<b>\$ 3,642</b>	<b>\$ 273</b>	<b>\$ 407</b>	<b>\$ 352,796</b>	<b>\$357,118</b>
2010 Labor and Labor Related	\$ 1,190	\$ 26,037	\$ 39,315	\$5,911,252 <sup>19</sup>	<b>\$5,977,794</b>
2010 Materials and Contracts	\$ -	\$ -	\$ -	\$ 221,656	<b>\$ 221,656</b>
<b>Subtotal</b>	<b>\$ 1,190</b>	<b>\$ 26,037</b>	<b>\$ 39,315</b>	<b>\$ 6,132,908</b>	<b>6,199,450</b>
2011 Labor and Labor Related	\$ -	\$ 204	\$ 33,959	\$ 73,286	<b>\$ 107,449</b>
2011 Materials and Contracts	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Subtotal</b>	<b>\$ -</b>	<b>\$ 204</b>	<b>\$ 33,959</b>	<b>\$ 73,286</b>	<b>\$ 107,449</b>
<b>Grand Total</b>	<b>\$ 37,650</b>	<b>\$ 32,386</b>	<b>\$ 43,512</b>	<b>\$ 6,796,055</b>	<b>6,909,603</b>

<sup>19</sup> MEA’s CCA implementation occurred in 2010, which may partially explain the spike in the unclassified labor and labor-related costs reported for 2010.

## Report Section (b): “IOU activities and expenditures”

### **PG&E’s Shareholder Funded Expenditures to Oppose the CCA Program**

#### ***San Joaquin Valley Power Authority***

As part of the settlement pursuant to the SJPVA/PG&E complaint case, PG&E agreed to provide information to SJVPA regarding its shareholder spending. PG&E reports that it has not spent shareholder funds on CCA-related activities in SJVPA’s service area during any part of 2011, to date. There has, however, been a slight reported increase in PG&E’s “unclassified – BTL” spending since the third quarter report was filed in July 31, 2011.

#### **San Joaquin Valley Power Authority (SJVPA) Below the Line Spending: February 2007 - February 2011**

<b>Feb 2007 - Dec 2007</b>		
Labor and Labor Related	\$	837,235
Materials and Contracts	\$	35,808
Subtotal	\$	873,043
<b>Jan 2008 - December 2008</b>		
Labor and Labor Related	\$	515,668
Materials and Contracts	\$	983,178
Subtotal	\$	1,498,846
<b>Jan-09</b>		
Labor and Labor Related	\$	(21,903)
Materials and Contracts	\$	-
Subtotal	\$	(21,903)
<b>Feb 2009 - Dec 2009:</b>		
Labor and Labor Related	\$	380,421
Materials and Contracts	\$	35,808
Subtotal	\$	416,229
<b>Jan 2010 - Dec 2010:</b>		
Labor and Labor Related	\$	5,049
Materials and Contracts	\$	7
Subtotal	\$	5,055
<b>Jan 2011 - August 2011:</b>		
Labor and Labor Related	\$	-
Materials and Contracts	\$	-
Subtotal	\$	-
<b>Unclassified – BTL (through August 2011)</b>		
Labor and Labor Related	\$	514,061 <sup>20</sup>
Materials and Contracts	\$	669,169
Subtotal	\$	1,183,230
<b>TOTALS</b>		
<b>Labor and Labor Related</b>	<b>\$</b>	<b>2,230,531</b>
<b>Materials and Contracts</b>	<b>\$</b>	<b>1,723,970</b>
<b>Grand Total</b>	<b>\$</b>	<b>3,954,501</b>

<sup>20</sup> The Unclassified – BTL: labor and labor related was reported to amount to \$507,779 as of July 31, 2011.

Report Section (b): “IOU activities and expenditures”

***Marin Clean Energy***

The information provided in the table below updates PG&E’s CCA-related shareholder funded expenditures that have been incurred through August 31, 2011 in Marin County and in response to Marin Clean Energy’s formation.

PG&E has spent \$25,118 on below-the-line CCA-related expenditures in Marin County from January to August of 2011.

<b>MARIN COUNTY/MCE “BELOW THE LINE” CCA EXPENSES</b>						
<b>FOR THE PERIOD: JANUARY 1, 2007 THROUGH AUGUST 31, 2011</b>						
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Totals</b>
Labor and Labor Related	\$97,573	\$487,422	\$251,399	\$488,122	\$25,118	<b>\$1,349,634</b>
Materials and Contracts	\$25,900	\$325,095	\$496,088	\$2,029,986	\$0	<b>\$2,877,069</b>
<b>Totals</b>	<b>\$123,473</b>	<b>\$812,517</b>	<b>\$747,487</b>	<b>\$2,518,108</b>	<b>\$25,118</b>	<b>\$4,226,703</b>

***City and County of San Francisco***

The CPUC staff requested the same information for PG&E’s San Francisco activities as it had requested for PG&E’s SJVPA and Marin County activities. Through August 31, 2011, PG&E’s 2011 below-the-line expenditures in San Francisco’s CCA service area totaled \$39,192.

<b>SAN FRANCISCO “BELOW THE LINE” CCA EXPENSES</b>						
<b>FOR THE PERIOD: JANUARY 1, 2007 THROUGH AUGUST 31, 2011</b>						
	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Totals</b>
Labor and Labor Related	\$187,326	\$37,145	\$66,960	\$156,029	\$32,546	<b>\$480,006</b>
Materials and Contracts	\$194,078	\$57,840	\$19,079	\$873,431	\$6,646	<b>\$1,151,074</b>
<b>Totals</b>	<b>\$381,404</b>	<b>\$94,985</b>	<b>\$86,039</b>	<b>\$1,029,460</b>	<b>\$39,192</b>	<b>\$1,631,080</b>

## Report Section (b): “IOU activities and expenditures”

***“For each activity, the commission shall provide a detailed explanation as to whether the activity or expenditure is legally permissible, and, if not, of the actions taken by the commission in response.”***

As noted in the first three quarterly reports, expenditures approved as part of PG&E’s General Rate Cases have already been reviewed and found permissible by the CPUC. Thus, they are deemed legally permissible.

Expenditures funded by shareholders are not subject to regulation by the CPUC. However, the CPUC has the authority to inspect records and the duty to ensure that there is no improper subsidization of shareholder directed activities by regulated utility staff. The CPUC has a legitimate interest in ensuring that the utility does not enrich shareholders by not spending the funds authorized by the CPUC to undertake activities to meet its needs as a public utility. Pursuant to this authority, CPUC staff requested that PG&E – and SDG&E and SCE; the two subsequent sections contain this information – provide data regarding their expenditures related to CCA activities even if such expenditures were funded by shareholders. The data provided by PG&E shows that a substantial time was spent by PG&E’s staff on shareholder directed CCA-activities paid for by shareholders.

Another fact to note about the “below-the-line” spending presented in the tables above is that it is, at this time, self-reported by the utility. Thus, it is difficult to say with confidence, absent a formal audit, that the expenditures reported by PG&E are accurate.

PG&E’s accounting standards involve the use of “work orders” that direct certain activity to be undertaken on behalf of shareholders. PG&E-provided data shows that PG&E generated 78 such work orders related to CCA activities in MEA’s, San Francisco’s, and San Joaquin Valley Power Authority’s (SJVPA<sup>21</sup>) service areas. The table below indicates the nature of these work orders. Only a formal audit could determine their validity. CPUC staff would like to undertake a formal audit of PG&E’s CCA-related activities but lacks the auditing personnel or contractual funding resources to do so at this time.

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<sup>21</sup> SJVPA consists of the County of Kings and the cities of Clovis, Dinuba, Hanford, Kerman, Kingsburg, Parlier, Reedley and Sanger.



Report Section (b): "IOU activities and expenditures"

**PG&E Below-the-Line "Work Orders" and Amounts for Marin and San Francisco and San Joaquin Valley Power Authority CCA Activities (2007 – October, 2011)**

#	Work Order Number	Order Description	Total
1	202440	BTL - Community Choice Aggregation	\$ 3,731.93
2	304000	BTL - CCA SJVPA	\$ 11,281.36
3	304002	BTL - CCA Marin/U#3010537	\$ 9,251.46
4	3006058	Area 2: Research & Polling	\$ 31,176.94
5	3006097	Area 1: Consulting	\$ 11,500.00
6	3006103	Area 3: Consulting	\$ 95,000.00
7	3008078	Political Consulting	\$ 57,985.63
8	3010323	BTL - Municipalization Campaign	\$ 13,935.25
9	3010357	SF Competitive Efforts	\$ 70,643.61
10	3010397	BTL-KRCD/SJVPA-CC-10306	\$ 1,296,542.84
11	3010398	BTL-KRCD/SJVPA-CC-12514	\$ 124,276.21
12	3010399	BTL-KRCD/SJVPA-CC-10314	\$ 5,252.78
13	3010400	BTL-KRCD/SJVPA-CC-12245	\$ 70,860.90
14	3010417	BTL -Marin-CC-10306	\$ 611,948.40
15	3010418	BTL -Marin-CC-12248	\$ 426,417.49
16	3010440	BTL - CCA Media Relations	\$ 48,468.06
17	3010537	Marin CCA - BTL	\$ 8,069.01
18	3010557	San Francisco CCA - BTL	\$ 62,224.32
19	3010898	BTL - KRCD/SJVPA-CC-12514	\$ 15,543.87
20	3013498	BTL - CCA Area 1	\$ 34,688.31
21	8055773	IV-Metering,Billing & Credit:ESP Service	\$ 3,779.28
22	8055808	IV-Tariff,Reg,Industry Info:ES&S SalesOp	\$ 6,358.76
23	8055823	IV-Tariff, Reg, Industry Info:ESPService	\$ 47,027.08
24	8082496	Competitive Threat Abatement Proj.	\$ 294,507.66
25	8082658	SA - CCA-SF	\$ 261,917.88
26	8082808	Service Analysis-KRCD/SJVPA-CCA B.T.L.	\$ 74,326.53
27	8083198	BTL- Serv and Sales - Area 1- SF/Peninsu	\$ 38,309.63
28	8083199	BTL- Serv and Sales - Fresno	\$ 532,479.48
29	8084756	SA - East Bay - CCA Below-The-Line	\$ 28,106.07
30	8084757	SA - Marin County - CCA Below-The-Line	\$ 475,137.40
31	8084846	KRCD/SJVPA-CCA-Contact Ctrs QA	\$ 3,129.75
32	8085076	CCA - San Joaquin Valley - BTL	\$ 96,510.30
33	8085078	CCA - San Francisco - BTL	\$ 2,299.73
34	8085081	ATL-CCA-MARIN-OTHERS	\$ 1,748.16
35	8085082	CCA - Marin - BTL	\$ 34,660.22
36	8085218	BTL-Serv and Sales - North Coast	\$ 66,918.20
37	8085219	BTL-CCA-OTHER-ACCT SER	\$ 5,721.89
38	8085222	CCA-BTL- Serv and Sales -Kern/Los Padres	\$ 2,780.88
39	8085223	CCA (below-the-line) ES&S Area 5	\$ 24,910.57

Report Section (b): "IOU activities and expenditures"

40	8085224	BTL-Serv and Sales -ESP Svcs	\$ 15,482.93
41	8085227	IV-BTL- CCA - SS ESP&Sales Ops	\$ 253.63
42	8085228	BTL-CCA-SACMT-CUST CARE	\$ 147,308.32
43	8085247	SA - Sonoma County - CCA Below-The-Line	\$ 33,578.78
44	8085762	SA - CCA General Charges -Below-The-Line	\$ 38,875.19
45	8086117	Sust Comm BTL CCA Activities - Marin	\$ 396.03
46	8086119	CAT BTL CCA Activities - Marin	\$ 1,525.56
47	8086471	PEP BTL CCA Activities - Marin	\$ 14,463.10
48	8086665	CCA-BRC-Records	\$ 1,089.84
49	8087604	ATL-CCA-OTHER-OTHERS	\$ 7,531.28
50	8087606	CCA - General - BTL	\$ 821.86
51	8087899	S&S CCA MWC FK-BAM	\$ 2,618.39
52	8090238	SJVPA - BTL - Marketing	\$ 1,189.95
53	8099500	BTL Competitive Outreach	\$ 2,257,390.75
54	8100456	CCA - Below the Line	\$ 1,356,141.59
55	8100658	CCA - Below the Line - CENG Sr Dir	\$ 17,217.44
56	8100889	CCA - Contact Ctr	\$ 2,439.74
57	8101594	BTL - CCA SF	\$ 1,005.89
58	8101595	BTL - CCA Marin	\$ 7,684.89
59	8101901	CCA - Marin - ATL	\$ 4,754.28
60	8102280	CCA - SF - BTL - CENG Sr Dir	\$ 159.75
61	8102609	BTL - CCA SF	\$ 77.50
62	8103723	CCA Customer Bills - IT Project - ATL	\$ 15,247.28
63	8104252	MEA CCA Bill Format Changes	\$ 35,264.20
64	8106696	MTC - MEA Operational Issues	\$ 4,314.30
65	9013769	CCA Related Activities (BTL)	\$ 16,226.87
66	9013831	R&T CCA San Joaquin (Below the Line)	\$ 10,185.46
67	9013869	Com Choice Aggregation - Lgl Svcs - ATL	\$ 14,574.64
68	9013890	SVP Reg. Rel CCA San Joaquin - BTL	\$ 447.83
69	9013892	VP Reg. Rel. CCA San Joaquin - BTL	\$ 1,966.32
70	9013909	CCA - Marketing - LglSvcs - BTL	\$ 333,159.87
71	9014112	Rates CCA CCSF (ATL)	\$ 3,277.74
72	9014113	Rates CCA CCSF (BTL)	\$ 2,255.99
73	9014119	Rates CCA Marin (BTL)	\$ 16,030.90
74	9015469	SHS - CCA BTL	\$ 147.37
75	9015490	CCA - SF Below the Line	\$ 221.98
76	9015491	Marin BTL	\$ 472.37
77	70015040	2010 CCA project related	\$ 239,351.61
78	70015620	Community Choice Aggregation CCA NEMS	\$ 237,705.73
		TOTAL	\$ 9,852,284.96

Report Section (b): “IOU activities and expenditures”

**SDG&E’s Below-The-Line and Above-The Line-Expenditures regarding the Community Choice Aggregation Program**

The CPUC submitted a data request to SDG&E in order to obtain information regarding its below-the-line (shareholder) expenditures and above-the-line (ratepayer) expenditures related to the CCA program implementation. Below are SDG&E’s data responses pursuant to our fourth quarter data request.

**a. Below the Line CCA Expenditures**

“SDG&E has had no below the line CCA expenditures.”

**b. Above the Line CCA Expenditures**

“SDG&E does not have any CCA’s in its service territory, and therefore, has not had any direct above-the-line expenditures related to the CCA program. SDG&E has a balancing account (Community Choice Aggregation Implementation Balancing Account, or CCAIBA) to track any CCA implementation-related expenditures, but there have been no entries to this account. Should any community begin CCA-related activities which requires expenditures on SDG&E’s part, those expenditures will be tracked in the balancing account (CCAIBA) and reported to the CPUC as required.

SDG&E has participated in the Rulemaking regarding CCA (R.03-10-003) and has had general labor and labor-related expenses as required to participate. These expenditures have included legal, regulatory and business unit labor expense for time spent reviewing and preparing proceeding-related documents, participating in both internal and external meetings, and attending workshops and hearings in San Francisco. The only other CCA-related expenditures were direct expenses for employee travel to and from San Francisco to attend such meetings as were necessary. The attached excel spreadsheet (“CCA expenses 2007 to Q3 2011.xlsx”) includes these costs from 2007 to Third Quarter of 2011. Please note that the Second Quarter and Third Quarter of 2011 have no expenses.”

**CPUC Staff’s Note:**

The spreadsheet referenced in SDG&E’s response (“CCA expenses 2007 to Q3 2011.xlsx”) contains five tabs titled: “regulatory affairs”, “law department”, “customer choice”, “procurement risk management”, and “load analysis”. The totals from each of these tabs and the overall amount of these CCA-related ATL activities for the 2007 through the third quarter of 2011 timeframe are summarized in the table below:

<b>Regulatory Affairs</b>	<b>\$</b>	<b>54,245.17</b>
<b>Law Department</b>	<b>\$</b>	<b>172,337.45</b>
<b>Customer Choice</b>	<b>\$</b>	<b>15,428.18</b>
<b>Procurement / Risk Management</b>	<b>\$</b>	<b>114,230.05</b>
<b>Load Analysis</b>	<b>\$</b>	<b>3,223.21</b>
<b>Total</b>	<b>\$</b>	<b>359,464.07</b>

Report Section (b): “IOU activities and expenditures”

SCE

**SCE’s Below The Line and Above The Line Expenditures regarding the Community Choice Aggregation Program**

<b>SJVPA Related Above the Line Spending: 2006 to 2011<sup>22</sup></b>				
		<b>SJVPA</b>	<b>Unclassified</b>	<b>Totals</b>
<b>2006</b>	Labor and Labor Related	\$ 4,103	\$ -	\$ 4,103
<b>2006</b>	Materials and Contracts	\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>\$ 4,103</b>	<b>\$ -</b>	<b>\$4,103</b>
<b>2007</b>	Labor and Labor Related	\$ 156,081	\$ -	\$ 156,081
<b>2007</b>	Materials and Contracts	\$ 603,110	\$ -	\$ 603,110
	<b>Subtotal</b>	<b>\$ 759,191</b>	<b>\$ -</b>	<b>\$759,191</b>
<b>2008</b>	Labor and Labor Related	\$ 1,801,624	\$ -	\$ 1,801,624
<b>2008</b>	Materials and Contracts	\$ 72,581	\$ -	\$ 72,581
	<b>Subtotal</b>	<b>\$ 1,874,205</b>	<b>\$ -</b>	<b>\$1,874,205</b>
<b>2009</b>	Labor and Labor Related	\$ 378,210	\$ -	\$ 378,210
<b>2009</b>	Materials and Contracts	\$ 18,286	\$ -	\$ 18,286
	<b>Subtotal</b>	<b>\$ 396,496</b>	<b>\$ -</b>	<b>\$396,496</b>
<b>2010</b>	Labor and Labor Related	\$1,314	\$ -	\$ 1,314
<b>2010</b>	Materials and Contracts	\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>\$1,314</b>	<b>\$ -</b>	<b>\$1,314</b>
<b>2011</b>	Labor and Labor Related	\$ -	\$ -	\$ -
<b>2011</b>	Materials and Contracts	\$ -	\$ -	\$ -
	<b>Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
	<b>Grand Total</b>	<b>\$3,035,309</b>	<b>\$ -</b>	<b>\$3,035,309</b>

<sup>22</sup> SJVPA is the only entity that has attempted to implement the CCA program in SCE’s service area. SCE has not incurred below-the-line expenditures in 2006 through 2011 – and no above-the-line expenditures in 2011, to date.

## Report Section (c): “Implementation of customer “opt out” requirements”

### **Report Section (c): “Implementation of customer “opt out” requirements”**

Part (c) of the SRL requires detailed information on the following:

*A detailed description of the actions taken by the commission to ensure customer “opt out” requirements established pursuant to the Public Utilities Code Section 366.2 are properly implemented and to ensure full compliance by an incumbent electrical corporation. The description shall include an itemization of all actions taken to date by the commission to ensure compliance with these requirements, and a detailed description of the commission’s formal process for monitoring and ensuring timely compliance with the requirements.*

#### **Overview**

As explained in the first three quarterly reports, the Commission has taken extensive action to ensure compliance with the customer “opt out” requirements established pursuant to the Public Utilities Code Section 366.2. When PG&E continued to offer early opt-out of the CCA program throughout its territory despite the apparent inconsistency of that approach with respect to the intent of AB 117, the Commission adopted Energy Resolution E-4250 (see Attachment 4) in April 2010, which directed PG&E, SCE, and SDG&E to modify their CCA tariffs and clarified rules as follows:

1. Provided detailed direction on when customers may opt out of CCA service.
2. Clarified that the utilities cannot discriminate against CCAs and refuse to sell electricity to them simply because they are CCAs.
3. Clarified that utilities are prohibited from offering goods, services, or programs as an inducement for a local government not to participate in a CCA.

When PG&E continued to solicit customer opt-outs in Marin County and San Francisco, the Commission acted immediately:

- On May 3, 2010: A letter from the Commission’s Executive Director put PG&E on notice over violations regarding the CCA program.
- On May 12, 2010: The Commission’s Executive Director sent a second letter to PG&E regarding PG&E’s apparent continuing violations of CCA Rules.
- In the May 12 letter, the Commission’s Executive Director directed PG&E to immediately: (1) render ineffective every opt-out received since May 3, 2010, subject to later disposition by the Commission, (2) agree to provide a communication piece, to be prepared by Commission staff, to all customers who received any version of the attached letter, and (3) take effective steps internally at PG&E to prevent any further violation of the direction in his May 3<sup>rd</sup> letter. PG&E was directed to do all of this at no cost to PG&E’s ratepayers.

## Report Section (c): “Implementation of customer “opt out” requirements”

- On May 20, 2010: The Commission issued Decision 10-05-050<sup>23</sup>, which further refined utility marketing rules with respect to the CCA program.

For PG&E, the table on the following page provides data showing the number of customer opt outs from February 5, 2010 – the date on which MCE began the legally required customer opt-out process pursuant to AB 117 – to April 30, 2010. The table shows that, of the 2,095 opt-out requests received during this period, 24% were obtained by PG&E by methods found to be impermissible. Furthermore, of the 76% of opt-outs that appear “valid,” it is unknown how many of these customers were responding to the terms and conditions provided by MCE, and how many opted out without seeing these terms and conditions.

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<sup>23</sup> As a result of D.10-05-050, made effective on May 20, 2010, MCE was able to take over its customer opt-out processes on June 1, 2010.

Report Section (c): “Implementation of customer “opt out” requirements”

Weekly reports summarizing customer opt-outs in Marin County 2/5/2010 – 4/30/2010 <sup>24</sup>	
<b>Customer calls to (866) 743-0335</b>	
Phase 1a Opt Outs	532
Phase 1b Opt Outs	158
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>690</b>
<b>Customer visits <a href="http://www.pge.com/cca">www.pge.com/cca</a></b>	
Phase 1a Opt Outs	700
Phase 1b Opt Outs	198
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>898</b>
<b>Customer is directly contacted via marketing call then transferred to a Customer Service Representative to opt-out.</b>	
Phase 1a Opt Outs	79
Phase 1b Opt Outs	38
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>117</b>
<b>Account Manager (AM) contacts customer to discuss various programs (including CCA) or customer directly contacts AM to opt out. AM receives opt outs verbally and/or via e-mail/fax.</b>	
Phase 1a Opt Outs (Commercial)	52
Phase 1a Opt Outs (Residential)	14
Phase 1b Opt Outs (Commercial)	0
Phase 1b Opt Outs (Residential)	10
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>76</b>
<b>Account Manager receives opt outs in written form (letter).</b>	
Phase 1a Opt Outs (Commercial)	0
Phase 1a Opt Outs (Residential)	1
Phase 1b Opt Outs (Commercial)	0
Phase 1b Opt Outs (Residential)	0
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>1</b>
<b>Account Manager receives mail-in opt out form (from the Marin Independent Journal).</b>	
Phase 1a Opt Outs (Commercial)	0
Phase 1a Opt Outs (Residential)	19
Phase 1b Opt Outs (Commercial)	0
Phase 1b Opt Outs (Residential)	8
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>27</b>
<b>"Other": Customer Service Representative receives opt-out.</b>	
Phase 1a Opt Outs	233
Phase 1b Opt Outs	53
<b>Sub-Total Phase 1 (a and b) Opt Outs</b>	<b>286</b>
<b>Total</b>	<b>2,095</b>

<sup>24</sup> We continue to work with PG&E and MCE in order to resolve the “phone banking impact verification” issue raised by MCE – see issue 1.0 in Attachment 2. The Energy Division hopes to resolve this issue soon.

# Attachment 1

Supplemental Report Language,  
*“General Government, Item 8660-001-  
0462—California Public Utilities  
Commission”*



## General Government

### Item 8660-001-0462—California Public Utilities Commission

1. Community Choice Aggregation Oversight. On or before January 31, 2011, and quarterly thereafter, the California Public Utilities Commission shall submit to the relevant fiscal and policy committees of each house of the Legislature, a report on its activities related to Community Choice Aggregation. The report shall include detailed information on the formal procedures established by the Commission in order to monitor and ensure compliance by electrical corporations with Chapter 838, Statutes of 2002. The report shall include, but not be limited to, all of the following information:
  - (a) A detailed description of the commission’s process for enabling communities interested in becoming community choice aggregators, communities currently in the process of becoming community choice aggregators, and existing community choice aggregators to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.” The description shall include the process provided by the commission to allow prospective or existing community choice aggregators to identify specific matters on which the utility is not considered to be cooperating fully. For each identified matter, the prospective or existing community choice aggregator shall detail in writing the issue, the lack of full cooperation, and the personnel at the utility with whom the community choice aggregator is working. The utility shall be required to respond in writing by providing a specific solution to the matter raised by the prospective or existing community choice aggregator, including a date-specific timeline for accomplishing the solution, and the names of personnel responsible for providing the solution. The commission’s report to the Legislature shall provide a detailed summary of each matter identified and initiated by the community choice aggregator, and a detailed verification of the utility’s actions taken to address and resolve these issues, including verification of the satisfaction of the community choice aggregator. The report shall also itemize any matters that have been improperly raised by the community choice aggregator using this process.
  - (b) A detailed description of information obtained by the commission from the electrical corporations in order to monitor the electrical corporations’ activities and expenditures made to facilitate, or oppose, community choice aggregation. The information shall include an itemization of all activities undertaken by an electrical corporation, as identified by the commission or by a community pursuing community choice aggregation, the costs of those activities, and whether the costs were paid by ratepayers or shareholders of the electrical corporation. For each activity, the commission shall provide a detailed explanation as to whether the activity or expenditure is legally permissible, and, if not, of the actions taken by the commission in response.
  - (c) A detailed description of the actions taken by the commission to ensure customer “opt out” requirements established pursuant to the Public Utilities Code Section 366.2 are properly implemented and to ensure full compliance by an incumbent electrical corporation. The description shall include an itemization of all actions taken to date by the commission to ensure compliance with these requirements, and a detailed description of the commission’s formal process for monitoring and ensuring timely compliance with the requirements.

## Attachment 2

Detailed results of process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2

## Attachment 2

**Detailed results of process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2**

**Issues Raised by Marin Clean Energy and the CPUC Staff's Analysis and Follow up on these Issues**

Issue	Subject - formally raised prior to January 31, 2011	Status
1.0	Phone banking impacts verification	open
1.1	No differentiation between generation & non-generation charges on bill	partially resolved
1.2	Bundled rate factors showing up on MCE bills	resolved
1.3	Need for third-party viewing of customer bills	Draft Resolution E-4420
1.4	PG&E call center providing mis-information to customers	resolved
1.5	CARE data not being provided to MCE	Draft Resolution E-4420
1.6	Balanced Payment Plan customers being double billed for generation	resolved
1.7	"Return to Bundled Service" form directs customer to PG&E for opt out	pending tariff approval
1.8	PG&E not providing usage to MCE	resolved
1.9	Net energy metering: bill presentment	open
1.10	New customers being opted out by PG&E	partially resolved
1.11	Invoice cancellation transaction support	open
1.12	Conservation Incentive Adjustment	Commission Decision <sup>25</sup>

Issue	Subject - formally raised between January 31 and April 30, 2011	Status
2.1	Billing arrangements not disclosed	Draft Resolution E-4420
2.2	CARE discount not fully covered	resolved
2.3	Usage data submitted late: CAISO compliance issue	open
2.4	Code of Conduct	open

Issue	Subject - formally raised after April 30, 2011	Status
3.1	Automated Clearing House transfers	partially resolved
3.2	MEA's proposed fee schedule payable by PG&E	open

Issue	Subject - formally raised after July 31, 2011 <sup>26</sup>	Status
4.1	Outstanding MEA payment Invoice to PG&E	open
4.2	Conservation Incentive Adjustment billing capability concerns	open
4.3	New MEA customer notification is untimely	open

<sup>25</sup> Issue 1.12 is a ratemaking issue that is outside the scope of this legislative reporting process.

<sup>26</sup> On October 26, 2011, MCE submitted two additional fourth quarter issues labeled 4.4 and 4.5. We do not include these two new issues herein since PG&E did not have adequate time to respond to them; we will, however, work with MCE and PG&E in order to resolve these issues.

In this fourth quarter report, we do not expand on the issues that have been resolved (i.e. issues 1.2, 1.4, 1.6, 1.8, or 2.2) or which are in the formal tariff approval process (issues 1.3, 1.5, 1.7, 2.1) for resolution.<sup>27</sup>

Attachment 2 of this fourth quarter report includes a verbatim description of the outstanding issues from the first three quarterly reports and of the three new, timely-filed, issues that MCE sought to address via the fourth quarter reporting process.

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<sup>27</sup> Issue 1.12, dealing with the Conservation Incentive Adjustment, is a ratemaking issue that was deemed to be outside the scope of this legislative reporting process.

**1.0 Phone banking impacts verification**

**MCE’s description of the issue**

“Phone banking by PG&E to MEA customers caused many opt outs under false pretenses and MEA has never received verifiable data on which customers were contacted and which method customers used to opt out. MEA is currently seeking:

- How many customers were contacted by phone?
- How many customers opted out by a Utility initiated phone call?
- What method of opt out was selected by the remaining customers opting out?

MEA would like actual account numbers, and would like the data provided to match up to third party vendor data. ED would like to know if the NDA will allow PG&E to provide this information.”

**MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“We are still concerned about issue 1.0 but because PG&E has not been willing to provide this information and nothing new has happened [so] we did not have any additional constructive comments to make.

However, we receive frequent customer complaints related to this issue. Just last week we actually received a formal customer complaint from the Marin District Attorney that stems from this issue. I would be happy to share the complaint with you if that would be helpful as it demonstrates why this issue is still very relevant. If we could receive a full list of customers that were opted out by PG&E along with the method they used to opt out we would be better equipped to respond to customer complaints of this nature. Currently, we do not have the customer information needed.”

**PG&E’s updated response / updated proposed solution**

“PG&E’s response from the August 2010 Legislative Report is not changed and has been provided again below. For clarification purposes, PG&E notes that the customer specific information has been provided to Energy Division; that PG&E no longer opts customers out or contacts customers for purposes of opting them out of CCA service unless directed to do so by MCE; and that PG&E believes the revised tariffs on sharing customer information would not apply to this circumstance as this opting out was part of a mass enrollment.

PG&E’s August 2010 response: PG&E engaged a telemarketing firm in early 2010 to contact PG&E customers in Marin County and offer them options for opting out of MEA service. The telemarketing firm contacted a broad section of residents, many more than were part of Marin’s Phase 1 enrollment. These customers were offered the option to learn more about CCA services or to be transferred to PG&E Customer Service to be

opted out. The telemarketing firm was not able to perform opt-outs; they could only transfer a customer to PG&E to complete the opting out process. Some customers agreed to be transferred, and of that group, some of the customers transferred to PG&E agreed to opt out. The total number of customers who opted out after being transferred to PG&E has been provided to MCE and Energy Division and has been included in prior Legislative Reports (117 customers). In addition, as noted above, all information that PG&E can provide under tariffs and without violating customer privacy issues has already been provided.

PG&E has been unable to provide MEA with any additional customer specific information due to customer privacy restrictions. Since PG&E no longer handles opt out requests, and since the events of the summer of 2010 are now more than a year in the past, this issue now appears to be moot.”

### **CPUC Staff Analysis**

On October 19, 2011, the Energy Division was notified by MEA/MCE that it had received a letter from the Consumer Protection Unit of the Marin county District Attorney’s office regarding a complaint filed against MCE by a customer who had been cut-over to MCE service during its “phase 2A” customer enrollment.

The complainant had apparently submitted an opt-out notice to PG&E in order to opt-out of MCE service prior to April 8, 2010 – when PG&E had solicited, and allowed, customers to opt-out of CCA service throughout Marin County. Due to the fact that this PG&E-sponsored opt-out solicitation occurred outside the statutorily mandated opt-out period, Commission Resolution E-4250<sup>28</sup> ordered PG&E to rescind all the opt outs that had been processed by PG&E as of April 8, 2010 (except for those customers who were part of MCE’s phase 1). Customers that had attempted to opt-out of MCE during this period were mailed a letter by PG&E indicating that, pursuant to CPUC rules, their opt-out request could not be processed “at this time”.

The complainant evidently believed the PG&E-issued opt-out notice that he responded to in 2010 had permanently opted him out of MCE. It seems that the complainant either did not receive, or simply did not read, the later PG&E-issued letter explaining that his opt-out request had been rescinded. As such, when the complainant received the official, statutory mandated, opt-out notice for MCE’s phase 2A, he apparently did not deem it necessary to return the notice to MCE (indicating his wish to opt-out of MCE service), believing that he had already opted out in 2010. By not requesting to opt-out during MCE’s phase 2A enrollment, this customer was defaulted over to MCE service, as required by AB117.

In order to limit the chances of this situation occurring again, Energy Division management has requested to PG&E’s Vice President of Regulatory Relations, Brian

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<sup>28</sup> See Resolution E-4250, Ordering Paragraph 2.f.  
[http://docs.cpuc.ca.gov/word\\_pdf/AGENDA\\_RESOLUTION/115960.pdf](http://docs.cpuc.ca.gov/word_pdf/AGENDA_RESOLUTION/115960.pdf)

Cherry, that PG&E share with MEA/MCE the account numbers and addresses of the 117 customers requested by MEA/MCE via issue 1.0. By knowing who these 117 customers are, MEA/MCE should be in a better position to more carefully notify these customers that they must fill out and return an opt-out form again – this time to MCE – if they wish to opt-out of MCE service.

**1.1 No differentiation between generation & non-generation charges on bill**

**MCE's description of the issue**

“There is no differentiation on the customer bill between generation and non-generation electric charges by PG&E and MCE. Instead, on the summary page (first page) and in other locations in the bill the PG&E electric charges (primarily for transmission and distribution) and the MCE electric charges (for generation only) are both shown as “electric” charges with no differentiation. The bill appears, therefore, to be showing electric PG&E charges and then duplicate or additional electric MCE charges. Many customers opt out because they believe they are being double-charged for electricity and paying both PG&E and MCE for the same usage.

The request to differentiate between generation and non-generation charges was first made to PG&E representatives in April, 2010, before service began to customers. At that time a sample bill was also requested from PG&E so that MCE could verify if the generation and non-generation charges would be differentiated. PG&E representative stated that they would provide a sample bill, but they were unable to provide MCE with a sample bill despite multiple requests over a two month period. During this time period PG&E representatives stated that the differentiation would occur and MCE had no reason to believe otherwise.

Unfortunately, MCE was never provided with a sample bill from PG&E representatives and therefore did not see how charges would appear until a local municipal customer provided MCE with a copy of their bill. This bill, and no subsequent customer bills have ever differentiated between generation and non-generation charges.

The majority of the calls that MCE received after billing began in June and July were from customers who believed they were being double charged for electricity usage because there were two ‘electric’ charges on the bill with no differentiation. Many of these customers opted out of MCE for this reason.

PG&E representatives have been looking into this issue for many months and currently state that MCE must wait until the ‘bill redesign’ process that will occur sometime in 2011 or 2012. When the ‘bill redesign’ process is brought to the CPUC for consideration PG&E representatives have stated that MCE will need to advocate for this differentiation to be on the bill as PG&E is not willing to make the change part of its overall ‘bill redesign’ recommendations. Customers continue to call the MCE call center and ask to opt out of MCE because they believe they are being double charged for their electricity usage.”

**MEA's updated 4<sup>th</sup> Quarter response on this issue**



“Issue 1.1 is still open because of the presentment of charges on the summary page of the bill. There is not enough differentiation of electric charges between MEA & PG&E so customers still believe that they are double billed for electricity. MEA had requested that PG&E charge [sic] the summary page wording so that the first electric charge (for PG&E) would say ‘PG&E Electric Non-Generation Charges’. The MCE charge has been changed to say ‘Marin Clean Energy Electric Generation Charges’ from ‘Marin Energy Authority Electric Charges’. This is an improvement but is still not clear enough. Our other suggestion was to roll the electric charges (from MCE and PG&E) into the same line item on the summary page.”

“MEA is a party to this proceeding and is hopeful that PG&E will continue to advocate for allocation of resources from the bill redesign process to resolve the billing issues we have detailed to mutually benefit our shared customers.”

### **PG&E’s updated response / updated proposed solution**

“PG&E’s response from the August 2010 Legislative Report remains essentially the same; it has been modified to indicate dates that have changed and to update procedural status.

MEA and Energy Division have requested an update on PG&E’s GRC Phase 3, dealing with the development of a new energy statement, as well as a description of how MEA can participate in this proceeding.

In the GRC Phase 3 proceeding (A.10-03-014), PG&E has requested costs to develop and implement the Revised Customer Energy Statement (RCES). PG&E encourages MEA to become a party to this proceeding and provide feedback on PG&E RCES cost proposal. In this proceeding, intervenor testimony has been filed, and an All Party Settlement Conference is Scheduled for September 27, 2011.

In this proceeding, after the CPUC resolves the funding available for bill redesign, PG&E separately plans to file an advice letter with the Commission seeking approval for any proposed bill format changes, and ensuring consistency with General Order 96. This second part, relating to bill design, is the one that will be used to address the changes MEA is requesting. Regardless of whether MEA becomes a party to the proceeding, PG&E will include MEA in a meeting of interested parties to discuss design aspects of PG&E new bill. PG&E intends on holding these meetings after a final decision is issued by the Commission on its RCES cost proposal, for which PG&E has requested a final decision by the end of 2011. Some meetings are expected to occur in late 2011, and additional meetings on bill design are likely to take place in the early part of 2012.”

### **CPUC Staff Analysis**

This issue is being dealt with formally in Application 10-03-014; as such, the Energy Division staff will follow the developments in this proceeding.

**1.9 Net energy metering: bill presentation**

**MCE’s description of the issue**

“Customers who are enrolled in Marin Clean Energy’s Net Energy Metering (NEM) program receive inaccurate bills leading the customers to believe that credits produced are applied to incorrect portions of the bill. This is a bill presentment issue. Credits generated by MCE NEM customers should only apply to the electric generation portion of their account. Unfortunately, PG&E’s billing system is unable to present the bill properly and these credits appear to be applied to other unrelated charges on the customer’s bill.

For example, a NEM customer may have generated a \$10 credit by producing more energy than they consumed. That credit should be applied against the electric bill in a month when the customer consumes more than they produce. However, PG&E applies that credit to another portion of the customer’s bill, such as gas. According to the bill, that customer does not owe PG&E for a portion of their gas charges because the NEM credit has been applied. In actuality, the customer still owes the full amount of the gas bill and the credit has not been used. Customers on summary bills have even had their NEM credits applied towards other accounts. This presentment of NEM credits has resulted in considerable customer confusion.

Because PG&E is not accounting for MEA credits customers could potentially have their power shut off for ‘lack of payment.’ PG&E has stated that they monitor NEM accounts manually to try to prevent NEM customers from having service stopped or going into collection status because the customer shows in their system as not paying in full. This issue was originally brought to PG&E’s attention by MCE staff on July 20, 2010. PG&E has stated that they do not have a method to keep the MCE and PG&E balances separate.

PG&E has not proposed a solution to resolve this problem and has not provided MCE with billing information for NEM customers to ensure that staff, customer representatives and the MCE call center can appropriately respond to questions.”

**MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“MEA continues to recommend that the PG&E staff addressing this issue meet with MEA to ensure that the issues we have identified are resolved through the restructuring process described above [immediately below in this report]”

**PG&E’s updated response / updated proposed solution**

“PG&E’s response from the August 2010 Legislative Report is remains the same; it has not been modified. PG&E is targeting implementation in 2011.

Current bill presentment functionality takes the sum (credits and charges) of all SAs on the account (ESP or PG&E) and reflects this total in the “total amount due” section of the Blue Bill, making it appear as though the NEM credits have been applied to other service agreements. A technology based solution was developed to address the current bill presentment and allocation of NEM credits. This solution is designed to change the bill print calculation of the “total amount due” that is displayed on the Account Summary page to be as follows: Do not include credits (negative totals) in the calculation of the “total amount due”. If the total amount owed for an ESP is a credit, do not allow the credit to offset charges owed to PG&E and vice versa. Similarly do not allow credits for one ESP to offset charges owed to a different ESP. There will be no additions/changes to the bill and Account Summary page other than a different calculation of the 'Total Amount Due' on the Account Summary page and the 'Amount Due' on the stub. PG&E continues to target implementation in 2011.”

**CPUC Staff Analysis**

We encourage PG&E and MEA to meet in order to address this NEM bill presentation issue. PG&E has committed to resolve this issue within the next two months.

## **1.10 New customers being opted out by PG&E**

### **MCE's description of the issue**

“It is our understanding that PG&E is no longer initiating opt outs for new customers due to a system-fix that was implemented by PG&E as of September 1, 2011. The issue of new customers being opted out by PG&E appears to have been resolved. However, there has been at least one incident (that MEA is currently aware of) of PG&E processing customer opt outs retroactively without the direction or authorization by MEA. This retroactive opt out resulted in a loss of payment to MEA for electricity procured for the customer in the amount of \$382.21.”<sup>29</sup>

### **PG&E's updated response / updated proposed solution**

“In August 2010, PG&E implemented a system-fix that would eliminate the inadvertent opt out of new customers, with the intent being to enroll all new or relocated customers in MCE service automatically. PG&E has been running weekly reports and has been reporting inadvertent opt outs to MEA immediately.

In a September 12, 2011 email from MCE representative Jamie Tuckey to Energy Division as well as PG&E, MCE acknowledged the fix and requested a final report to ensure the fix is working. PG&E has been running the reports on a weekly basis and will notify MCE of any inadvertent opt-outs.”

Further PG&E clarification via a 10/27/11 email: “PG&E received a customer complaint in which the customer had a valid opt from 2010, a time when PG&E was processing opt-outs. This customer was originally enrolled with MCE as part of the Phase 1 enrollment. It's our understanding that the customer contacted MCE in 2011 to return to PG&E bundled service. Concurrently, the customer requested from PG&E that all MCE charges be removed from their bill, as the customer believed PG&E had honored the request to opt out...PG&E has not been able to share opt-out information due to confidentiality requirements in the past; however, going forward, PG&E would like to find a way to permit customer information regarding opt-outs to be shared between PG&E and MCE, to make sure customer wishes are honored.”

### **CPUC Staff Analysis**

Given MCE's current description of this issue, it seems that the initial problem of new customers in MCE's service territory being opted out without first receiving the terms and conditions of MCE service – and deciding to opt-out themselves – has ceased as of September 1, 2011.

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<sup>29</sup> On October 26, 2011, MCE described a second instance involving another customer that MCE alleges was opted out retroactively by PG&E that, according to MCE, has resulted in a loss of payment totaling: \$8,010.20.

This appears to be a new issue (retroactive opt-outs without MCE's direction/authorization). Staff has begun looking into this issue and hopes to report to MCE of its findings as soon as possible.

## **1.11 Invoice cancellation transaction support**

### **MCE's description of the issue**

"When PG&E provides usage to MCE via an EDI usage transaction, MCE rates the usage and returns the invoice to PG&E via an EDI invoice. Approx 5 business days later, after PG&E presents these charges on an invoice, they return a Microsoft Excel file to MCE with their internal Sub SA ID and Bill Segment ID related to that specific invoice.

MCE commonly has a need to cancel that invoice, for reasons such as:

1. PG&E estimated the meter and received actual usage prior to the bill being sent out
2. The usage is found to be outside of Hi/Low tolerances (this is commonly a result with meter rollovers)
3. The invoice was calculated using an incorrect rate or rate factors
4. Some other billing attribute on the account has changed (Baseline territory, Medical Baseline Allowance, etc.)

In situations such as these, MCE must send an EDI transaction to PG&E referencing the Sub SA ID and Bill Segment ID for the invoice to be cancelled. If MCE has not received this information because the charges have not been presented on an invoice, then they cannot cancel the invoice, and the erroneous charges must be presented to the customer, before they can be cancelled. The only way around this would be to contact PG&E and have them manually cancel the charges, a process that is not scalable for a production CCA implementation.

The Utility Industry Group (UIG) guideline for Invoice transactions between Energy Providers and Local Distribution Companies specifies that the CCA be allowed to send an Invoice cancellation record with a reference number to their original invoice number. The sender of the invoice establishes the invoice ID, and that invoice can immediately be cancelled by a transaction referencing this ID. This methodology is very important, because in an automated solution, PG&E can send a cancel of the usage transaction immediately, and MCE must be able to automatically cancel their charges related to this now cancelled usage. Furthermore, this allows MCE to cancel an invoice prior to PG&E billing the invoice, and also negates the need for an email based interface between the two parties.

PG&E not supporting this standard invoice cancellation process results in PG&E issuing a bill that may not contain the most up to date information on the MCE portion of the bill. When the PG&E and MCE portion of the bills contain usage information that is different, this causes customer confusion, and increased calls to the PG&E and MCE call centers. In addition, this causes the customer to see additional cancellations and rebills because many of these errors could have been corrected before being presented on an invoice.

In conference calls with PG&E, MCE has requested the ability to cancel transactions prior to invoicing, and for the ability to cancel without the usage of the Bill Segment ID which is being provided to MCE via a manual process. PG&E has not proposed any way to automate this process, or any schedule for being able to implement such a change.”

**MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“Since MCE inception, MEA has sent 2697 cancellations to PG&E. In addition, MEA currently has 206 usage periods for which we are waiting on a bill segment ID from PG&E so that we can cancel the original charges and bill the customer for the correct usage. That is 206 invoices, as of September 15, 2011, that are billed incorrectly for customers because of a process that PG&E is unable to support. In addition, that represents 206 records that MEA must review daily to determine whether they can be canceled or whether we must continue waiting for a bill segment from PG&E. Extrapolating that out to full volume, there would likely be over 1000 accounts that are typically waiting for a bill segment ID so MEA can cancel them, and over 25,000 [‘810’]<sup>30</sup> cancellations sent per year.

While the UIG document indicates that the field is not required, actual experience in markets that support this bill method successfully shows that it is a requirement. This is not a process that MEA can continue with for full volume.”

**PG&E’s updated response / updated proposed solution**

“As an overview, PG&E’s Bill Ready Billing Process allows for billable charges and cancellations to be submitted within a small window. Once the bill window closes the steps begin for generating a bill for the customer in a timely manner. Today’s Bill Ready cancellations are associated with actual charges presented to the utility; therefore, canceling charges that may be sent in error or after the window closes would delay the customer’s bill. Furthermore, delaying the close of the Bill Window may also impact other Service Agreements (SAs) on the customer’s account which are not related to MCE charges (e.g., Bundled or other Direct Access charges).

PG&E extensively reviewed MCE’s request. Based on that assessment the biggest limiting factor is the narrow billing window (3 days) that exists for third-parties to submit charges. Automating the cancellation as requested by MCE would not be very effective unless the billing window was extended, which as described above would impact the entire bill cycle. At the same time, the number of cancellations are limited; therefore, they are best handled through manual cancellations and/or the bill/rebill mechanism.

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<sup>30</sup> MCE explained that an ‘810’ transaction is a type of file that is exchanged between Nobel and PG&E. The 25,000 is projected based on an expected increase in our customer base by 10 times (2,697 X 10 = 26,970) at full roll out.

As part of our research we looked at what other IOUs in California are offering as well as the Utility Industry Guidelines (UIG). Based on our preliminary assessment, it's our understanding that the two other IOUs do not offer this feature. Moreover, we believe the UIG guidelines [810 Version 004 Release 010, Position 20, Ref Des. BIG07, Data Element 640, Transaction Type Code 13] do not *require* the use of an invoice number. As for an automated bill cancellation feature, we don't believe this is mandated by the UIG.

In conclusion, MCE's request at this point in time is not warranted based on the volume of cancellations from a cost-benefit standpoint. With that said, we do believe that other projects (e.g., the CCASR Enhancements) that PG&E is scoping out would have significantly greater benefits to both MCE and PG&E."

### **CPUC Staff Analysis**

We understand PG&E's reasoning as to how a manual invoice cancellation process seems to be the most efficient way to deal with the limited number of current cancellations in MEA's service territory. However, we think that a beyond a certain threshold number of invoice cancellations, PG&E's current manual cancellation process may no longer be efficient.

There is additional membership that MEA has gained which is scheduled to start receiving service in 2012. CleanPowerSF is planning its CCA roll-out in 2012. There are apparently additional communities within PG&E's service territory that are also currently exploring their CCA implementation options. In short, a manual work-around on this invoice cancellation issue that may be efficient today – when only 15% of MCE's potential customers have been offered CCA service – may not be efficient in the future.

Staff is planning to follow up with PG&E to find out about the number of times this work-around happens per month in MCE's service territory and get a sense of the volume of cancellations that could occur once MCE is at full implementation.



**2.3 Usage data submitted late: CAISO compliance issue**

**MCE’s description of the issue**

“The California Independent System Operator (CAISO) requires that meter data be accurate and must be submitted within 43 days after the meter is read. PG&E is responsible for reading meters for MEA customers and submitting usage to MEA; according to the currently effective service agreement between PG&E and MEA, applicable CPUC decisions and related utility tariffs, PG&E is obligated to provide this service to MEA, a service which MEA is paying for according to applicable fee schedules provided to MEA by PG&E. After receiving usage data from PG&E MEA then submits the customer usage to CAISO for settlement purposes. Since MEA began serving customers PG&E has been providing corrected meter data as late as 76 days after the customer meter is read. This T+76C usage data is submitted to CAISO to comply with the CAISO requirements for accurate meter data. However, at this time CAISO is now imposing sanctions for data submitted after 43 days.

MEA has requested that PG&E provide all usage in accordance with CAISO requirements. PG&E has been exploring the issue at the request of MEA since February 14, 2011 but has been unable to provide any information regarding how or when the data will be provided.”

**MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“MEA has not seen any change positive or negative on this issue. We continue to have missing usage for a small percentage of accounts. We continue to have issues with PG&E reporting incorrect usage that should be identified in a MDMA validation routine.”

**PG&E’s updated response / updated proposed solution**

“In prior legislative reports, PG&E has committed to evaluating its processes for handling customer usage data to better conform to the T+43C requirement by the CAISO. As a result of the evaluation, PG&E is implementing system improvements. PG&E is adding system controls for unbilled usage to accommodate the CAISO meter submittal process. Some of these system controls will be in place by the end of September and will begin to automate the usage validation for unbilled data performed prior to CAISO submittal. The need for additional system controls will be evaluated by the end of the year. On cancel / rebill issue, when accounts are rebilled through PG&E's billing system, the timing of when “cancelled” usage and “rebilled” usage is captured by the billing systems does not always fit within the CAISO T+43C submittal deadline. In the past, Energy Procurement manually tracked these accounts so the CAISO submittals accurately reflected the proper usage. PG&E is in the process of automating these reports, which will streamline the process eliminate the risk of missing any cancel/ rebill instances. These reports will be automated by the end of October 2011.”

**CPUC Staff Analysis**

We are pleased that PG&E is implementing system improvements in order to accommodate CAISO's 43-day meter-read submittal requirement.

The Energy Division has followed-up with PG&E staff on whether the system controls that were supposed to be automated in September 2011 have been put in place and whether the automated/streamlined reporting process conducted by PG&E's Energy Procurement staff has been implemented. Below is PG&E's October 25, 2011 email response to our inquiry:

"Yes, the control[s] are in place, and the reports are now automated. These are internal steps that PG&E has taken to improve our processes for data for all customers. Further work is likely needed to fully address MEA's specific issues."

## **2.4 Code of Conduct**

### **MCE’s description of the issue**

“PG&E has been asked to create a code of conduct/service agreement side letter to address technical, mechanical, marketing and cost allocation issues that are not adequately addressed in the Service Agreement between MEA and PG&E.

Technical and mechanical issues include for example, Net Energy Metering charges, processing of usage information, invoice cancelation support and interface with customers. Marketing issues include customer communications related to PG&E and MEA’s respective rates and program offerings.

Cost allocation issues are currently handled on PG&E’s side by invoicing MEA for services rendered. MEA has incurred many costs, however, due to PG&E actions but does not have an agreement with PG&E to cover these costs. An additional agreement is needed to address these ongoing issues and allow for simple resolution without placing a continued administrative burden on the CPUC energy division.

MEA has requested discussion with PG&E on this issue but it continues to be outstanding.”

### **MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“MEA is looking forward to exploring this further in the coming months.”

### **PG&E’s updated response / updated proposed solution**

“PG&E’s response to this question remains the same as in prior Legislative Reports. In summary, MCE has proposed the idea of having a side agreement to the existing Service Agreement. If MCE would like to propose an amendment or side agreement to the Service Agreement, PG&E is open to considering it for use. Currently the Service Agreement is filed as part of Advice 3266-E, which is a Standard Service Agreement. PG&E believes that the initiation of a proposal is incumbent on MCE and their desired timeline.”

### **CPUC Staff Analysis**

We encourage MEA and PG&E to explore solutions – whether through a “code of conduct”, “side-agreement”, or by means of amending the existing Service Agreement – in order to address MEA/MCE’s concerns.

### 3.1 Automated Clearing House transfers

#### **MCE's description of the issue**

“Because PG&E collects customer revenue on behalf of MEA customers there is a need for the revenue to be accounted for and transferred to MEA in a timely manner. No system exists for PG&E to track and account for missing ACH transfers and as a result, when a transfer is not made on a weekday as expected the burden is on MEA to research the issue with multiple parties to determine the cause of the missing transfer and determine when the collected customer revenue has been or will be transferred to MEA.

#### **Detailed Description:**

MEA currently receives a nightly email from PG&E indicating the amount of revenue that is being transferred that day so that MEA can reconcile that to the file provided to MEA from the bank. On some days there has been no transfer and no email explanation. In some but not all cases the transfer is picked up on the following day. Below is a list of the weekdays where an ACH transfer was not made by PG&E to MEA and where follow up was needed:

<u>ACH Settlement</u>	<u>Date</u>	<u>Weekday</u>	<u>Cause</u>
	10/5/2010	Tues	(Unknown)
	10/11/2010	Mon	(Unknown)
	11/11/2010	Thurs	(Unknown)
	11/29/2010	Mon	(Unknown)
	3/14/2011	Mon	(Unknown)
	3/23/2011	Wed	(Unknown)
	4/27/2011	Wed	(Unknown)

Because missing ACH transfers continue to occur MEA has raised this issue with PG&E. MEA requests that on any business day when the ACH transfer is not received PG&E automatically and consistently provides MEA, by close of business the following day, with an explanation of why the transfer did not occur and an accounting for when the funds due will be transferred.

#### **Level of Cooperation:**

In each case when there has been a missing ACH transfer MEA has requested information from PG&E to resolve the issue after it occurred. In most cases MEA has not been provided with an adequate response after it occurred, and in other cases MEA has received no response.

In one case, there was an outage that caused the ACH transfer to be missing and PG&E proactively notify MEA of this problem. However, in all other cases there has been no information provided proactively. In some cases, including the most recent missing

transfer on April 27<sup>th</sup> 2011, MEA requested information from PG&E and still has not received a response.”

#### **MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“Providing notifications of planned outages is helpful. In addition to the address listed above, going forward notifications should also be directed to:  
[erasmussen@marinenergy.com](mailto:erasmussen@marinenergy.com).”<sup>31</sup>

#### **PG&E’s updated response / updated proposed solution**

“MEA has asked that PG&E commit to providing updates to MEA for delays in ACH transfers. In the August 2010 Legislative Report, PG&E stated that notifications of this kind to MEA as well as other ESPs, are standard practice. PG&E will continue to provide these notifications. The language from the August 2010 Report is included below.

[“It is PG&E’s standard process to provide notification to the ESPs and MEA of planned outages to the customer information system due to upgrades. To date, this notification has been provided to [ccamarin@noblesolutions.com](mailto:camarin@noblesolutions.com). As PG&E has been sending notifications to the email address noted, PG&E will continue to follow that process in the future. If the notification address provided by Noble is incorrect, PG&E will update to a new one once provided by MEA.

PG&E records do not show any significant or planned system outages on October 5 or April 27. Our records do show that the transfers were sent late in the day on those days, which may have resulted in bank settlements being delayed by a day.”

#### **CPUC Staff Analysis**

Energy Division staff initially requested that PG&E determine the typical work-day timeframe needed to make ACH transfers to MEA’s bank account in a timely manner. Our goal was to enable the PG&E staff who is responsible for ACH transfer to understand that if an ACH transfers occurs after a particular hour during the work-day there might be a chance that such transfer will not reach MEA's bank account in a timely fashion. The thought was that, in such cases, PG&E staff could – as a courtesy – inform MEA that that day’s transfer could be deposited late into MEA’s bank account.

PG&E staff, however, explained to us that the ACH transfers occur on a nightly basis, sometime close to midnight. PG&E explained that the ACH transfers for October 5,

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<sup>31</sup> In a follow-up email dated October 28, 2011 MCE stated: *“It sounds like the answer is that PG&E is not able to resolve this issue by providing the notification. Unfortunately, I think the only way to address this is for MEA to continue to monitor it manually and when a problem comes up go through a manual process with Nobel, PG&E and the banks to track down the cause and resolve the issue each time. Fortunately, this does not occur frequently. However, we would have to classify this issue as improved but unresolved.”*

2010 and April 27, 2011 were made timely by PG&E. As such, PG&E believes that the cause for these late ACH transfers must have occurred on the bank's end.

The Energy Division inquired if late ACH transfers sometimes occur in the normal course of business between PG&E and similarly situated entities like Energy Service Providers (ESPs)<sup>32</sup>. PG&E informed us that late ACH transfers sometimes occur for ESPs as well.

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<sup>32</sup> ESPs are non-utility entities that provide electric service to customers in California (i.e. Direct Access service). There are currently 18 registered ESPs in California, some of which provide service in PG&E's service territory.

**3.2 MEA’s proposed fee schedule payable by PG&E**

**MCE’s description of the issue**

“PG&E’s actions have resulted in lost customer revenue and added significantly to MEA’s legal, data management, and customer communications costs. Outstanding and ongoing issues continue to impact MEA from a financial standpoint.

While there are many mechanisms in place to protect bundled rate payers from cost-shifting, and while MEA pays PG&E on a per customer basis for billing and customer service, there is no mechanism in place for MEA to receive reimbursement from PG&E for the costs that result from any lack of cooperation or inability to resolve issues expeditiously. These costs are placed on MEA and ultimately on MEA’s customer base.

While the financial impacts to MEA leading up to this point have not been compensated, MEA is hopeful that a reasonable fee structure can be used on a going forward basis to ensure these un-bundled customers are protected from cost-shifting. A reasonable fee structure would also provide an ongoing incentive for PG&E to interact with MEA in a commercial manner with less of a need for continual intervention from the CPUC.

**Detailed Description:**

The proposed MEA fee structure for billing and customer service issues is as follows:

Late Usage Data

*\$200 per occurrence plus all applicable CAISO fees*

This fee will apply when customer usage is submitted after the CAISO deadline for settlement quality meter data.

Net Energy Metering (NEM) Inaccurate Billing

*\$200 per occurrence*

This fee will apply when charges and/or credits for a CCA net energy metering customer are incorrectly reflected on the IOU portion of the bill.

Missing ACH Transfer

*\$500 per occurrence*

This fee will apply when the transfer is not accounted for by 11:30am PST on the next business day following the missing transfer. The fee will be charged each day the transfer is outstanding and/or not accounted for.

Customer Bill Contains Incorrect Charges

*Time and materials cost for MEA to correct the problem*

This charge will only apply if the incorrect charges are due to an IOU error. The following includes, but is not limited to circumstances that would be classified as incorrect charges:

1. The IOU includes generation charges on the customer bill resulting in double-charges for generation

Customer Bill Contains Misleading Information

*Time and materials cost for MEA to correct the problem*

The following list includes, but is not limited to circumstances that would be classified as misleading information.

1. Bundled rate is displayed on the bill of a CCA customer
2. Bill does not accurately reflect charges provided to the IOU by the CCA for the customer

IOU-Caused Loss of Customer

*Liable for costs to be determined based on the lost margins associated with the customer.*

The following list includes, but is not limited to circumstances that would be classified as ‘IOU-Caused Loss of Customer,’ a loss of a CCA customer caused by inappropriate IOU action. This charge will be assessed per customer.

1. Customer Dropped from CCA service by IOU for any reason other than complete service turn-off
2. New Customer in CCA territory not enrolled in CCA at start of service
3. CCA customer ‘opted out’ of CCA program by IOU
4. CCA customer opted out after being provided with misinformation from IOU representative or employee and stating that as their reason for opting out

This issue was raised verbally in phone meetings with CPUC Energy Division and PG&E representatives on May 20 and June 3, 2011 but was not discussed in detail.”

**MEA’s updated 4<sup>th</sup> Quarter response on this issue**

“PG&E-imposed costs continue to be a concern for MEA. Please see MEA’s response to Issue 1.10 for a description of a recent retroactive opt out processed by PG&E. The retroactive opt out resulted in stranded costs to MEA in the amount of \$381.21 for supplying power to this customer. These charges will be included in a future invoice from MEA and should be paid to account for this PG&E error.”

**PG&E’s updated response / updated proposed solution**



“PG&E’s response to this issue from the August 2010 Legislative Report remains unchanged. The prior response is included below:

‘PG&E shares MEA’s goals of continued improvement in CCA implementation processes, on the advantages of reducing the need for CPUC intervention in such matters, and resolving customer and other issues between the parties. However, PG&E does not agree that the fee schedule proposed by MEA should be adopted. We object to the proposed fee schedule on a variety of grounds, including the fact that a) some of the proposed fees are actually penalties or liquidated damages that bear no relationship to MEA’s actual costs, b) they include a strict liability standard that would impose liability on PG&E whether or not it is at fault, and c) the standard that would trigger the payments and the amounts owed are vague and likely to lead to additional disputes. Nor are the obligations reciprocal: if an issue is not resolved on a timely basis due to MEA’s action, then there is no amount to be paid by MEA. However, while PG&E opposes the fee schedule proposed, it looks forward to working together with MEA to address the issues that gave rise to this request.’”

**CPUC Staff Analysis**

Energy Division staff is striving to resolve several of the issues cited as issue 3.2 throughout the various sections of this legislative reporting process. We are hopeful that we will be able to resolve these issues, making the fees proposed by MEA unnecessary.

While we understand MEA’s reasoning for proposing this fee structure, we continue to question whether the legislative reporting process is the appropriate venue to deal with such a proposal. To effectuate such a proposal would require a formal Commission decision on this matter.

## **4.1 Outstanding MEA payment invoice to PG&E**

### **MCE's description of the issue**

#### **“Summary of Issue:**

On July 14, 2011 MEA submitted an invoice to PG&E in the amount of \$1,297 to cover costs incurred due to PG&E's inadvertent opting out of customers. Payment of the invoice was due on August 14, 2011, however, the invoice has not been paid.

#### **Detailed Description:**

Over the past 24 months PG&E's actions have resulted in lost customer revenue and added significantly to MEA's legal, data management, and customer communications costs. Outstanding and ongoing issues continue to impact MEA from a financial standpoint. While there are mechanisms in place to protect bundled rate payers from cost-shifting, and while MEA pays PG&E on a per customer basis for billing and customer service, there is no existing mechanism, beyond a fee structure, for MEA to recover costs from PG&E that result from any lack of service or inability to resolve issues expeditiously. Historically and currently these costs are placed on MEA and ultimately on MEA's ratepayers.

As a result, MEA submitted to PG&E in June 2011 a reasonable, cost-based fee structure using data from actual costs incurred, and subsequently provided an invoice to PG&E based on the fee structure previously submitted. The primary cause for fees incurred on this invoice is the inadvertent opting out of MEA customers. The MEA fee structure includes the following description that triggers a fee:

#### **IOU-Caused Loss of Customer**

New Customer in CCA territory not enrolled in CCA at start of service.

#### **Level of Cooperation:**

In May, 2011 MEA discussed with PG&E representatives the need to implement a fee structure to avoid cost-shifting to CCA customers. After the invoice was provided to PG&E on July 14 MEA received no response from PG&E. In August and again in September MEA inquired with PG&E about the status of payment on the invoice. MEA was then informed that that PG&E is not inclined to pay the invoice and would prefer to focus efforts on working collaboratively with MCE to resolve issues.”

### **PG&E's updated response / updated proposed solution**

“PG&E and MEA have both spent a significant amount of time to improve the level of service to our combined customers. This has involved significant discussions, meetings and feedback from both utilities. PG&E is not inclined to pay an invoice for labor involved in what should be a collaborative process to fine tune the systems/processes inherently necessary for high levels of customer service.

This response was communicated to MEA discussed on the phone in early September, followed up in an e-mail on September 7, 2011, and again in person at MEA's office on September 14, 2011. On September 15, 2011 PG&E received a second invoice via e-mail for \$977.50."

**CPUC Staff Analysis**

The legislative reporting process is not the appropriate venue to deal with such a fee proposal. To effectuate such a proposal would require a formal Commission decision on this matter.

## 4.2 Conservation Incentive Adjustment Billing capability concerns

### MCE's description of the issue

#### **“Summary of Issue:**

As part of PG&E's General Rate Case, Phase 2 proceeding being heard at the CPUC PG&E was directed to meet with MEA and other parties to verify that PG&E's billing system can accurately bill the Conservation Incentive Adjustment (CIA) and flat generation and transmission rate components. At this time PG&E has not verified, or begun the process of verifying that its billing system can accurately decouple the generation versus non-generation charges billed to CCA customers, and MEA is concerned with the current CIA implementation date of July 2012 being applied in our region without substantial, expeditious modification to its systems and through testing far in advance of the implementation date.

#### **Detailed Description:**

As part of the GRC Phase 2 proceedings, the CPUC directed PG&E to:

*7. Within 30 business days of the issuance of this decision, Pacific Gas and Electric Company (PG&E) shall meet and confer with the Commission's Energy Division staff, together with Marin Energy Authority, City and County of San Francisco representatives, to agree on a process and schedule to verify that PG&E's billing system can accurately bill the Conservation Incentive Adjustment and flat generation and transmission rate components. In particular, PG&E shall verify that its billing system can accurately decouple the generation versus non-generation charges billed to Community Choice Aggregation customers.*

An initial meeting was held on June 29<sup>th</sup> and many concerns and issues were discussed including the following:

1. Inability of PG&E billing system to track generation and non-generation charges separately for Balanced Payment Plan Customers, resulting in double-charging for generation during the initial four months of MCE service to customers. MCE requested evidence that this issue is being resolved mechanically and not through a manual workaround that may not be successful with CIA implementation.
2. PG&E billing system can not specify the difference between generation and non-generation charges on the summary bill for MCE customers. This leads customers to believe they are being double-charged for electricity. Because PG&E is not able to modify key line-items on the summary billing page (because a change for CCA customers would result in a change for all PG&E customers), MEA is concerned that similar limitations could cause billing presentment issues for customers with the CIA implementation.
3. Customers who are enrolled in Marin Clean Energy's Net Energy Metering (NEM) program receive inaccurate bills leading the customers to believe that

credits produced are applied to incorrect portions of the bill. This is a bill presentment issue.

4. PG&E bills going out to many MCE customers are not showing the correct unbundled rate factors so that a customer can recalculate their bill accurately.
5. PG&E is not allowing MCE staff, data manager or call center access to customer bills to allow for effective customer service and customer support for MCE customers who call with confusion and questions about their bills.

**Level of Cooperation:**

Despite the issues raised in this initial meeting, no follow up or update on progress has been provided to MEA. PG&E has responded that they are not aware of what the outstanding issues are apart from notifying MEA of the schedule planned for billing redesign.”

**PG&E’s updated response / updated proposed solution (MEA’s follow-up response)**

“At the meeting discussing GRC Phase 2 issues, the only follow up item that related to GRC Phase 2 issues was providing the schedule planned for billing re-design. That schedule will not be available until October; PG&E will send it to MEA as soon as it becomes available.”

**MEA Response:** “We disagree regarding the meeting follow up item stated above. As discussed in our description of this issue, there were many outstanding billing-related items identified in the meeting that needed to be addressed as soon as possible to demonstrate that the PG&E billing system is capable of applying the CIA correctly to MCE customers. The issues listed below are all closely tied to billing issues and should be resolved expeditiously with follow up to interested parties (MEA and CCSF) to provide testing[.]”

The other issues addressed here are duplications of issues addressed elsewhere in this report. The responses below provide a summary of the response, as well as the issue number in which it is discussed more fully.

1. Inability of PG&E billing system to track generation and non-generation charges separately for Balanced Payment Plan Customers, resulting in double-charging for generation during the initial four months of MCE service to customers. MCE requested evidence that this issue is being resolved mechanically and not through a manual workaround that may not be successful with CIA implementation.

**PG&E Response:** “This is the issue also called Issue 1.6, addressed prior Legislative Report and identified as resolved from the April report onward. The Energy Division determined that PG&E’s calculation of the Balanced Payment Plan (“BPP”) customers’ bills was satisfactory. Although MCE is linking the BPP calculation to the Conservation Incentive Adjustment, in actuality, there is no correlation between the Balanced Payment Plan (“BPP”) and the CIA, as the

BPP for MCE customers only relates to their transmission and distribution charges, and the CIA applies to only generation charges for non CCA or DA customers. Any computation of MCE customers' BPP charges will not be affected by the CIA."

**MEA Response:** "It is unclear if the CIA change will impact BPP customers differently as there has been no testing or demonstration of how a BPP customer bill would be impacted. The CIA will result in tiering being shifted to the transmission and distribution portion of the bill and thus, the new billing structure may or may not be applied correctly for BPP customers. As these customers were inadvertently double-charged by PG&E for generation during the first 4 months of MCE service we believe testing is needed in advance to ensure this issues does not repeat."

2. PG&E billing system can not specify the difference between generation and non-generation charges on the summary bill for MCE customers. This leads customers to believe they are being double-charged for electricity. Because PG&E is not able to modify key line-items on the summary billing page (because a change for CCA customers would result in a change for all PG&E customers), MEA is concerned that similar limitations could cause billing presentment issues for customers with the CIA implementation.

**PG&E's Response:** "This is the issue also called Issue 1.1. PG&E is in the midst of a regulatory process that would enable an update to the format and presentment of customers' bills, called "GRC Phase 3." PG&E has committed to inviting MEA, as well as other interested parties, to participate when the process for re-designing the bills takes place. Some meetings may happen in late 2011, and others are likely to take place in 2012."

**MEA Response:** "The response above concludes that this issue will not be resolved until after the scheduled CIA implementation. MEA continues to be concerned that the inability to make this change to the bill is indicative of a billing system that cannot adapt to the CIA implementation."

3. Customers who are enrolled in Marin Clean Energy's Net Energy Metering (NEM) program receive inaccurate bills leading the customers to believe that credits produced are applied to incorrect portions of the bill. This is a bill presentment issue.

**PG&E's Response:** "This is the issue also called Issue 1.9. PG&E is implementing a system fix for this problem which is expected to occur late 2011. There is no relation between the Net Energy Metering program and the CIA, which again only affects non CCA and DA customer bills."

**MEA Response:** "Because MEA serves approximately 500 net energy metering customers the structure of the billing for these customers under

the CIA is relevant. If the allocation of NEM charges is not being handled correctly under the current structure the implementation of the CIA is likely to complicate the issue as tiering is shifted to the transmission and distribution side of the bill. MEA was told that this issue was scheduled to be resolved by the end of the summer, 2011. As the issue has been outstanding for over 12 months we are hopeful that the system fix described above will be implemented in a timely manner.”

4. PG&E bills going out to many MCE customers are not showing the correct unbundled rate factors so that a customer can recalculate their bill accurately.

**PG&E’s Response:** “This is the issue also called Issue 1.2, and was identified as resolved from the April Legislative Report onward. PG&E implemented system changes in December 2010 that would prevent this error from occurring. At the June 29 meeting, PG&E asked MCE to provide examples of bills where this has occurred as the December 2010 systems fixes should make this impossible. To date, MCE has not provided PG&E with copies of bills that show this error.”

**MEA Response:** “MEA has responded to this issue in the body of the report and further elaboration is not needed here.”

5. PG&E is not allowing MCE staff, data manager or call center access to customer bills to allow for effective customer service and customer support for MCE customers who call with confusion and questions about their bills.

**PG&E’s Response:** “This issue has come up in a number of places in prior legislative reports, including Issues 1.3, 1.5, 1.7 and 2.1. All of those reports indicate that PG&E has filed an Advice Letter to gain CPUC approval to share this information with MCE. MCE participated in reviewing this filing before it was made, and is up to date on its current status. With CPUC approval of its filing, PG&E will be able to share customer-specific information with MCE. PG&E expects to improve the tools available to MEA to access this information over time once this authorization is obtained.”

**MEA Response:** “MEA is hopeful that third party bill viewing and customer information will be available prior to CIA implementation so that MCE’s customer service team will be able to respond to customer inquiries regarding the change in bill presentment and reallocation of charges. It would be beneficial to begin planning now for the technical process of transferring this information to MEA so that there is not further delay after tariff approval.”

### **CPUC Staff Analysis**

Sub-issues #1-5 that have been raised as issue 4.2 are being addressed – or have been addressed – via the legislative reporting process dealing with issues: **1.6** (for sub-issue

#1), **1.2** (for sub-issue #2), **1.9** (for sub-issue #3), **1.2** (for sub-issue #4), and **1.3 / 1.5 / 2.1** (for sub-issue #5) – which should be resolved once draft Resolution E-4420 is voted on during the November 10, 2011 Commission meeting.

Regarding sub-issue #5, the Energy Division agrees with MEA that it would be helpful if PG&E and MEA begin planning how the technical process for enabling third party bill viewing will occur. Comments on draft Resolution E-4420 were filed with the Commission on October 24, 2011 – no party opposes this draft Resolution as written; its proposed changes, in fact, are not controversial.



**4.3 New MEA customer notification is untimely**

**MCE’s description of the issue**

**“Summary of Issue:**

MEA is not being notified by PG&E in a timely manner when a new customer begins service as an MEA customer.

**Detailed Description:**

When a new customer moves into an MEA address and calls PG&E to initiate service, PG&E typically enrolls the customer in MEA service immediately on the day power is turned on. However, the notification that a new customer will be starting service at the address is not provided to MEA in a timely manner. Instead, the notification can occur up to a month after service has been provided on the customer’s meter read date. It is not possible for MEA to provide accurate meter data reporting to the California Independent System Operator for customers being served when we are not notified that service has commenced.

As a result of PG&E’s process MEA has to assign power to that customer load retroactively, which makes reconciliation and accounting for load served difficult, and also makes procurement and planning more difficult. In addition, MEA does not have the ability to opt out a customer upon their request because the customer’s account information is not available to MEA.

**Level of Cooperation:**

MEA has raised this issue with PG&E to ensure that customers can opt out when they submit their request. PG&E has responded with a short-term solution to process opt out requests on a case by case basis at the request of MEA when MEA does not have the necessary account information. However, MEA has also requested a more timely and/or automated notification of new customer move-ins to resolve the data reporting issue as well as the customer opt out issue. PG&E has not yet been able to accommodate this request.”

**PG&E’s updated response / updated proposed solution (MEA’s follow-up response)**

“PG&E is currently assessing system solutions for providing new customer information through the Electronic Data Interchange (EDI) mechanism. Ideally, this type of data could be incorporated in the CCASR process that PG&E uses to communicate with third-party providers. Absent a system solution, PG&E would then evaluate a manual work-around for providing new service information to CCAs.”

**MEA Response:** “MEA is hopeful that an automated solution can be implemented in the near term as the manual process will not be feasible at full roll out.”

**CPUC Staff Analysis**

We will follow-up on this issue with MEA's and PG&E's respective staff. An automated systems solution via the EDI mechanism, or a similar mechanism, seems appropriate. We urge PG&E to deal with such matters while keeping in mind that CCA program implementation in its service territory can occur within a relatively short time-frame (7 to 7.5 months).<sup>33</sup>

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<sup>33</sup> **90-day** Implementation Plan review/certification period; plus **90-day** initial, statutorily mandated, notification period (*assuming a CCA uses the customers' 30-day bill cycle to issue notices; otherwise this period is only 60 days*); plus **30-45 day** "dead period", per CCA Rule 23, before cutting customers over to CCA service.

## Attachment 3

Two letters:

- 1) CPUC's Energy Division Director, Julie Fitch, dated March 22, 2011, to PG&E's Vice President of Regulatory Relations, Brian Cherry  
*(this letter contains two attachments)*
  
- 2) Brian Cherry's reply letter sent to Julie Fitch, dated April 5, 2011, solving issue 1.10.

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



March 22, 2011

Brian Cherry  
Vice President, Regulatory Relations  
Pacific Gas and Electric Company  
77 Beale Street  
San Francisco, CA 94105

Re: Treatment of new CCA customers

Dear Mr. Cherry:

As you know, as part of the 2010-11 Budget Act, the Commission is required to prepare and submit quarterly reports to the Legislature regarding its activities related to implementation of the Community Choice Aggregation (CCA) statute. As part of this reporting requirement, we have compiled a list of issues that MCE, PG&E and the CPUC staff are trying to resolve. PG&E staff have been participating in activities that support this reporting requirement, and I appreciate their assistance.

With this letter, I want to draw your attention to the issue Marin titled as "New customers being opted out by PG&E" (Marin's description of the issue, and PG&E's response, are attached to this letter).

The issue in question was submitted to PG&E and the Commission's Energy Division on December 14, 2010. Marin alleges that "new customers moving into MCE addresses are being opted out by PG&E in violation of the directive from the CPUC Energy Division."

In its December 28, 2010 response, PG&E affirms that "PG&E's new customer start process defaults to CCA unless the customer explicitly chooses to selected full bundled service with PG&E." (emphasis added).

As explained below, CPUC staff believe the approach described by PG&E violates Commission Decision 05-12-041 and the spirit, if not the letter, of Resolution E-4250. In the 2005 decision, the Commission clearly ruled that "New customers must be automatically assigned to CCAs and pay for each CCASR, if it is necessary."

**ATTACHMENT A of D.05-12-041, "SUMMARY OF ADOPTED TARIFF ELEMENTS".**

Section	Utilities' Proposal	CCAs' Proposal	Adopted
<b>X. 1. Treatment of New Customers</b>	The Utility must generate a CCASR for all customers, otherwise these customers will be assigned to the Utility's bundled service.	New customers should automatically be enrolled as CCA customers and not be subject to CCASR costs.	New customers must be automatically assigned to CCAs and pay for each CCASR, if it is necessary.

Brian Cherry  
March 22, 2011  
Page 2

While the language cited by PG&E in Resolution E-4250 does add further ambiguity when it requires that staff host an informal meeting with PG&E and MCE on the exact procedure for new customers, I believe D.05-12-041 cited above addresses how this matter should be handled in the meantime.

Energy Division's interpretation of the existing 2005 Commission decision is that new CCA-eligible customers located within a CCA service area, such as Marin Clean Energy's service area, shall be enrolled into CCA service at the time they initiate distribution utility service with PG&E.

Resolution E-4250 is also quite clear that the ability for a customer to opt out of CCA service must follow provision of information to the customer about CCA service, to be provided by the CCA. PG&E may inform new customers of their right to opt out within 60 days, but I do not believe that PG&E has the unilateral authority to enroll the customer in PG&E bundled service immediately upon commencement of new (or re-located) service.

If you disagree with this interpretation of the Commission's directives in either D.05-12-041 or Resolution E-4250, please let me know and I will have Energy Division staff prepare a resolution for the Commission's consideration to clarify this point. Alternatively, PG&E could a petition to modify or clarify either previous order. In the meantime, PG&E should enroll new customers in CCA service at the time they initiate distribution service from PG&E and transmit the customer's information in a timely manner to the CCA.

In addition, because this matter appears to have been under dispute for some time, within ten (10) business days of this letter, I request that you provide to Energy Division and MCE a list of each and every "new" (including relocations) customer account that has initiated service in Marin Clean Energy territory since May 7, 2010 and indicate which customer accounts were enrolled in full bundled service with PG&E at the time they initiated service.

I appreciate your cooperation in resolving various outstanding issues related to MCE service. If you have any questions or concerns, please contact me or Gurbux Kahlon at (415) 703-1775.

Sincerely,



Julie A. Fitch, Director  
Energy Division

cc: Dawn Weisz  
Erik Jacobson  
Gurbux Kahlon  
Carlos Velasquez

Attachments

Marin’s description of the issue, and PG&E’s response, are attached to this letter

Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

New customers moving into MCE addresses are being opted out by PG&E in violation of the directive from the CPUC Energy Division.

Please provide a detailed description of the issue (add lines or pages as needed):

In May, 2010 the CPUC Energy Division directed PG&E to terminate the processing of opt outs for MCE’s CCA customers and turned the opt out process over to MCE. Despite this clear directive, since MEA began service to customers it has come to MCE’s attention that PG&E has not been enrolling new customers at MCE addresses in the MCE program to allow the MCE noticing process to occur. This protocol is important because it allows for the new customer to receive the terms and conditions of service from MCE and then make an informed decision on the generation provider.

Instead of following the statutory opt out process when a new customer calls to have new service turned on PG&E representatives are asking the customer if they want to opt out of MCE service before even being enrolled or receiving the terms and conditions. This activity is in clear violation of the CPUC directive to not interfere with the opt out process.

The CPUC directive followed months of abuses by the utility which tampered with the integrity of the opt out process. This ranged from a marketing campaign filled with mis-information about MCE, outbound calls aggressively pushing customers to opt out under false pretenses and prior to receiving any terms and conditions from MCE, and encouraging customers to opt out under methods not approved by the statutory process. Given these recent actions by PG&E it is clear that their involvement in the opt out process would interfere with and threaten the integrity of the process.

MCE has requested that new customer move-ins be submitted to MCE for enrollment and noticing. It is unclear how many customers this has impacted but there are 538 customers shown as 'turned off' where there has not been a re-enrollment at the address. It is not possible for MCE to ascertain how many of these locations are vacant and how many have had a new turn-on and have been proactively opted out by PG&E in violation of the statutory opt out process.

Currently PG&E is acting in violation of the clear directive from the CPUC Energy Division in May, 2010 requiring that they not process opt outs for MCE's CCA customers.

Please describe the lack of full cooperation (add lines or pages as needed):

MCE has raised this issue with PG&E representatives and has not received a clear response. PG&E representatives confirmed that they are offering to opt the customer out of MCE service at the time the customer calls in to have service initiated. PG&E representatives have also stated that they have some confusion about whether or not they have the authority to initiate opt outs at this time.

To MCEs knowledge, PG&E representatives have not agreed to stop processing opt outs.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	<a href="mailto:sscb@pge.com">sscb@pge.com</a>
Eric Jacobson	Regulatory Relations	415-973-4464	EBJ1@pge.com

PART 2 (to be completed by Utility, 5 business days after notification by Energy Division)  
 Submitted by:

Name	<b>Sebastien Csapo</b>
Title	<b>Sr. Account Manager</b>
Phone	<b>(415) 973-7370</b>
e-mail	<a href="mailto:sscb@pge.com">sscb@pge.com</a>

*“The utility shall be required to respond in writing by providing a specific solution to the matter raised by the prospective or existing community choice aggregator, including a date-specific timeline for accomplishing the solution, and the names of personnel responsible for providing the solution.”*

Please describe the specific solution to the matter raised by the prospective or existing Community Choice Aggregator (add lines or pages as needed):

PG&E’s new customer start process defaults to CCA unless the customer explicitly chooses to selected full bundled service with PG&E. MCE’s claim that this activity “is in clear violation of the CPUC directive to not interfere with the opt out process” is incorrect because the CPUC has reserved the issue for mutual resolution. CPUC Resolution E-4250, Ordering Paragraph 6, stated the CPUC’s intent regarding a process for resolving this issue as follows:

“Staff shall convene an informal meeting of interested parties to see if consensus can be reached on the tariff language needed to specify how the opt-out process for new or relocated customers in a CCA service area will work. This tariff language shall ensure that customers who are unaware of the terms and conditions of the CCA service will be informed of those terms and conditions before being given the opportunity to opt out. If consensus cannot be reached, and if the issue is not resolved in the resolution of the CCSF Petition To Modify D.05-12-041 in R.03-10-003, staff should prepare a resolution for our consideration.”

PG&E is open to meeting and addressing this issue with MCE and Energy Division per the guidance provided in E-4250.

Please provide the date-specific timeline that the IOU will follow in order to accomplish the solution (add lines or pages as needed):

Resolution of this issue can be immediate based on mutual informal discussions among PG&E, MCE and the CPUC Energy Division per the CPUC’s direction in Resolution E-4250.

Names of utility personnel responsible for providing [and implementing] the solution

Name	Title	Phone Number	e-mail
Sebastien Csapo	Sr. Account Mngr.	(415) 973-7370	sscb@pge.com





**Pacific Gas and  
Electric Company®**

**Brian K. Cherry**  
Vice President  
Regulatory Relations

Pacific Gas and Electric Company  
77 Beale St., Mail Code B10C  
P.O. Box 770000  
San Francisco, CA 94177

415.973.4977  
Fax: 415.973.7226

April 5, 2011

Ms. Julie Fitch  
Director of the Energy Division  
California Public Utilities Commission  
Room 4004  
505 Van Ness Avenue  
San Francisco, California 94102

**RE: Treatment of New CCA Customers**

Dear Ms. Fitch:

Thank you for your letter of March 22, 2011 in which you requested that PG&E enroll new or relocated customers in Marin Clean Energy's (MCE's) Community Choice Aggregation service at the time they initiate distribution service from PG&E and transmit the customer's information in a timely manner to MCE. We will comply with this directive on a going forward basis effective April 15, 2011. New or relocated customers in MCE's service area who are currently eligible for MCE's service and who want to opt-out of MCE service will be required to submit an opt-out request directly to MCE for processing by MCE.


As requested, PG&E will no longer interpret existing Electric Rule 23.K.3 as requiring PG&E to "abide by the instructions of a customer requesting not to receive CCA Service at the time of service establishment or service relocation." Instead, PG&E will not process a customer's request regarding CCA Service until such time as the customer has directly contacted MCE to opt-out of CCA service.

Also pursuant to your request, attached is a list of all new or relocated customers in MCE's service territory who initiated service since May 7, 2010. This list further identifies which new or relocated customers began service with MCE and PG&E. I understand that PG&E does not need to take any further action with respect to these customers, but that MCE may choose to follow-up with them to encourage them to enroll in CCA service. I also understand that Energy Division is directing that we provide this customer-specific information to MCE without obtaining each customer's prior consent to do so.

Thank you again for your assistance in resolving this issue. PG&E is continuing to work through additional outstanding issues collaboratively with MCE and Energy Division.

We anticipate filing an advice letter in the near future to update our CCA tariff with respect to these and other CCA implementation issues we have mutually identified. If you have any questions or concerns, please contact me or Erik Jacobson at (415) 973-4464.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Cherry", written over a horizontal line.

Brian K. Cherry  
VP, Regulatory Relations

cc: Dawn Weisz, Marin Clean Energy  
Carlos Velasquez, CPUC  
Gurbux Kahlon, CPUC  
Erik Jacobson, PG&E

# Attachment 4

## Resolution E-4250

## Attachment 4: Resolution E-4250

Resolution E-4250/LOS

April 8, 2010

### PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4250

April 8, 2010

### R E S O L U T I O N

**RESOLUTION E-4250:** This Resolution has been initiated by the Commission's Energy Division Staff. It has not been issued in response to an advice letter filing.

#### **PROPOSED OUTCOME:**

This Resolution directs Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) to modify their CCA tariffs and clarifies rules that are intended to:

1. Describe when customers may opt out of Community Choice Aggregation (CCA) service.
2. Prevent utilities from refusing to sell electricity to CCAs simply because they are CCAs.
3. Prevent utilities from offering goods, services, or programs as an inducement for a local government not to participate in a CCA.

**ESTIMATED COST:** No impact on utilities' revenue requirements.

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#### **SUMMARY**

Assembly Bill (AB) 117 enables cities and/or counties to implement a Community Choice Aggregation (CCA) program which allows communities to offer procurement service to electric customers within their political boundaries. The CCA rules include a process that allows customers to opt out of the CCA-provided service in order to remain a utility bundled service customer. This Resolution clarifies that the utilities should not solicit or accept opt-out requests until the necessary information for an informed decision is made available to customers through the initiation of the notification period provided by Public Utilities (P.U.) Code Section 366.2 (c)(13)(A-C). This Resolution also

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promulgates rules preventing utilities from (i) refusing to sell electricity to CCAs and (ii) offering goods, services, or programs as an inducement for a local government not to participate in a CCA.

### **BACKGROUND**

The CCA program rules include a process that allows customers to opt out of CCA-provided service in order to remain a utility bundled service customer. P.U. Code Section 366.2 (c)(13)(A-C) states that CCAs shall provide customers with at least two notices during a 60-day period prior to the commencement of CCA service and at least two additional notices within a 60-day period following the customers' automatic enrollment into the program. These notices must inform customers that they are automatically enrolled into CCA service and that they can opt out of CCA service without penalty beginning on the first day customers receive their initial notices until 30 days after the customers receive their last notice pursuant to P.U. Code Section 366.2 (c)(13)(A-C). Pursuant to this code section, customers must also receive the "terms and conditions of the services offered" by the CCA with each of the (at minimum) four customer notices, which will enable customers to make an informed decision to either opt out of CCA service or to take no action and receive procurement service from the CCA.

P.U. Code Section 366.2 (c)(13)(A) states:

The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

- i. That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.
- ii. The terms and conditions of the services offered.

San Joaquin Valley Power Authority (SJVPA) was the first CCA in California to have its Implementation Plan (IP) certified by the California Public Utilities

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Commission (Commission). SJVPA<sup>1</sup> was established in order to implement a CCA program in the Central Valley and has expressed concerns to the Energy Division regarding PG&E's CCA-dedicated webpage and PG&E's marketing trifold that include a return mailer, which enable potential SJVPA customers to opt out of CCA service at anytime prior to its commencement.

In Marin County the Marin Energy Authority (MEA) is in the process of implementing a CCA program, and has voiced concerns to the Energy Division about PG&E's website which provided PG&E customers with an opportunity to opt out of any future CCA service to be offered in the PG&E service area.<sup>2</sup> MEA is concerned that potential CCA customers will seek to opt out of the CCA program before they are fully informed of the pertinent information concerning the terms and conditions of CCA service to be offered in Marin County. Accordingly, SJVPA and MEA request that PG&E stop this early opt-out process.

PG&E believes that its actions related to the early opt-out process are consistent with Commission rules. PG&E contends that Rule 23 I.3. of PG&E's electric tariffs enables it to process opt-out notices prior to the CCA formal notification period described in P.U. Code Section 366.2 (c)(13)(A-C). Therefore, PG&E believes that it is acting in accordance with the Commission's established rules pertaining to the CCA program.

A first draft of this Resolution (the "First Draft Resolution") was issued on August 7, 2009. A second draft of this Resolution (the "Second Draft Resolution"), which incorporates important changes, was issued on December 22, 2009.

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<sup>1</sup> As of the latest SJVPA Implementation Plan certified by the Commission on April 30, 2007, SJVPA consists of Kings County and the cities Clovis, Corcoran, Dinuba, Reedley, Selma, Kingsburg, Lemoore, Parlier, Hanford, Kerman, and Sanger. On June 25, 2009, SJVPA temporarily suspended its efforts to implement the CCA program, stating that resource constraints, market conditions, and the continued marketing against the CCA program by PG&E led to the temporary suspension.

<sup>2</sup> Municipalities within Marin County have created the Marin Energy Authority (MEA), which includes Belvedere, Fairfax, Mill Valley, San Anselmo, San Rafael, Sausalito, Tiburon, and Marin County. MEA plans to commence the first phase of its CCA program in May of 2010. MEA began its phase one notification process, pursuant to P.U. Code Section 366.2(c)(13)(A-C), on February 5, 2010.

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### **NOTICE**

The Commission is issuing this Resolution on its own motion. Notice of this Resolution has been provided by distributing the Resolution to all persons or entities<sup>3</sup> served with Resolution E-4013 (which approved the current CCA tariffs of the three utilities) and any additional persons or entities listed on the current R.03-10-003 service list for the CCA proceeding. In this manner PG&E, SCE, SDG&E, SJVPA, Novato, and MEA are among those served with this notice.

### **DISCUSSION**

**P.U. Code Section 366.2 (c)(13)(A-C) establishes an orderly process that CCAs must follow when informing customers of their CCA service option.** During the CCA program's formal customer notification periods ordered in P.U. Code Section 366.2 (c)(13)(A-C), potential customers receive at least four notices regarding the CCA service being rendered by their community including information about rates and terms and conditions of service. After receiving this information, individual customers may make a decision to either: 1) take no action and therefore be automatically enrolled in CCA service, or 2) opt out of CCA service and remain a bundled service customer of the utility. Thus, the purpose of this code section is that potential CCA customers be given an opportunity to make an *informed* decision.

**PG&E, SCE and SDG&E (the "utilities") must not solicit or accept opt-out requests until the necessary information is made available to customers through the initiation of the notification periods provided by P.U. Code Section 366.2 (c)(13)(A-C).** CCA-specific information about the terms and conditions of service becomes available to customers when the CCA provides this information in compliance with the P.U. Code Section 366.2 (c)(13)(A-C) notification requirement. Accordingly, to further the statutory purpose of allowing customers to make an informed decision, we direct the utilities not to solicit or accept opt-out requests until the necessary information is made available to customers through the initiation of the notification periods provided by P.U. Code Section 366.2 (c)(13)(A-C). In addition, we direct the utilities to modify their CCA tariffs to be consistent with this limitation to the opt-out

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<sup>3</sup> Both the First Draft Resolution and the Second Draft Resolution have been distributed to these persons or entities.

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period; this will require changes to two subsections of the CCA tariffs.<sup>4</sup> First, the utilities shall revise subsection B.22 to read as follows:

### **B.22. GENERAL TERMS: Opt-Out of Automatic Enrollment**

The term "opt-out" or "opt out" is the customer's election not to be served under CCA Service and to continue to receive its existing service. In order to exercise its right not to participate in CCA Service, a customer must request to "opt out" of CCA Service through the required action as prescribed in the CCA Notification. A customer may exercise its opt-out right at any time during a 60-day notification period prior to Automatic Enrollment through the end of the second 60-day notification period subsequent to the Automatic Enrollment of a customer's account to CCA Service. The terms and conditions of CCA service will be made available by the CCA. This CCA-specific information will be provided to customers pursuant to P.U. Code Section 366.2 (c)(13)(A-C) – either directly by the CCA or by [the utility] pursuant to the provisions set forth in Section H – and will enable customers to make an informed decision whether or not to opt out of CCA service. Customers receiving section 366.2(c)(13)(A-C) notices regarding a CCA with more than one planned CCA phase-in date will be provided the required 60-day notices based around the date their particular phase-in commences.

PG&E, SCE, and SDG&E shall also modify subsection I.3 of the CCA tariffs by deleting the bolded language below:

### **I.3. CCA CUSTOMER OPT-OUT PROCESSES**

A customer opting out of CCA Service **before or** during the Initial Notification Period shall be removed from the Automatic Enrollment process.

So that subsection I.3 shall read:

### **I.3. CCA CUSTOMER OPT-OUT PROCESSES**

A customer opting out of CCA Service during the Initial Notification Period shall be removed from the Automatic Enrollment process.

The electric utilities shall not make available to their customers any mechanism for opting out of CCA service before the initiation of the statutory notification periods provided by P.U. Code Section 366.2 (c)(13)(A-C). However, so long as PG&E does not know which customers are in MEA's phase one, it may make opt-out mechanisms available to customers throughout MEA's service territory, and then once it receives the list of MEA's phase one customers it shall cease providing these opt-out opportunities to MEA customers not in phase one and

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<sup>4</sup> The CCA tariffs are Electric Tariff Rule 23 for PG&E and SCE and Electric Tariff Rule 27 for SDG&E.



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take the further steps described below.<sup>5</sup> Customers receiving section 366.2(c)(13)(A-C) notices from a CCA with more than one planned CCA phase-in date will be provided at least two notices during a 60-day period prior to the date their particular phase-in commences and at least two more notices during the 60-day period immediately following the commencement of their particular phase-in. These customers cannot be opted-out prior to the notification associated with their planned phase-in.

Moreover, PG&E shall post the following language on its CCA dedicated webpage:

“You have the right to opt out of Community Choice Aggregation (CCA) procurement service during the CCA program’s two formal notification periods. If you opt out, PG&E will continue to procure electricity for you. If you do not opt out during these two notification periods (or any intervening time between them), you will be automatically enrolled in CCA procurement service. In either event, PG&E will continue providing transmission and distribution services to you. Regardless of whether or not you opt out of CCA service, you will continue to be eligible for ratepayer-funded programs, such as the California Solar Initiative and energy efficiency programs, that are funded by distribution surcharges.

As part of the CCA notification process, you will receive at least two notices during a 60-day period prior to CCA service commencement and at least two additional notices during a 60-day period after CCA service commencement. These notices will describe the terms and conditions of the CCA service made available to you by the CCA formed in your community and will inform you as to how you may opt out of the program if you choose to do so.

You also have the right to return to PG&E’s bundled service after the two 60-day notification periods end; your options for returning during this later period are:

- 1) You can notify PG&E at least six months before the date you want to return to PG&E bundled service that you wish to return to bundled service. When you return to bundled service six months later, you will pay PG&E’s then-existing bundled electric generation rate, which will be identical to similarly situated PG&E customers in your customer class.
- 2) If you do not provide PG&E with a full six-months notice, you can return to PG&E bundled service at any time, but you will pay

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<sup>5</sup> MEA is implementing its CCA service in phases. It has already sent out the first statutory notification to its phase one customers, but has not yet informed PG&E as to which customers are in phase one.

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the then-existing transitional electric generation rate – which may be higher or lower than PG&E's then existing bundled electric generation rate – until six months after you first gave PG&E notice; thereafter, your bundled electric generation rate will be identical to similarly situated PG&E customers in your customer class.

Whichever option you choose to exercise in order to return to bundled service anytime after the two 60-day notification periods end will require you to make a three-year commitment to PG&E's bundled electric service.

For additional information concerning customer rights, obligations, and updates regarding the CCA program you may visit:  
[http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430\\_ccaggregation.htm](http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm)

If SCE and SDG&E already have information on their websites regarding the CCA program (including a CCA dedicated webpage, but excluding the posting of tariff pages) this content shall be forwarded to Energy Division for review at this time. Whenever the utilities modify their websites to include new or revised language, illustrations, or images regarding the CCA program, they shall notify the Energy Division on the same day they make the modification. This will allow staff to review the utilities' webpages to ensure that the information included is consistent with the orders contained in this Resolution and is not misleading (either by inclusion or omission of content). The Energy Division will direct the utilities to make changes to any information it finds incorrect or misleading.

**PG&E – and SCE and SDG&E to the extent necessary – must take the following actions to address the situation that PG&E's early CCA opt-out option has created.**

- 1) Any customer who has previously chosen to opt out of the CCA program through any means whatsoever, including PG&E's website, any opt-out form, or by telephone (except for any customer included in MEA's phase one who opted-out after February 5<sup>th</sup>, 2010)<sup>6</sup> shall not be removed from the list of potential CCA customers that will be

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<sup>6</sup> Under MEA's Implementation Plan, customers will be phased-in to CCA service in no more than three phases. MEA sent the first opt-out notice to those customers who are in its phase one on February 5, 2010. Consistent with the policy set forth in this Resolution, customers who have received their first opt-out notice from MEA can chose to opt-out of MEA's CCA program.

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provided to a community implementing a CCA program. All customers need to understand the terms and conditions of the CCA service being offered in order to make an informed decision as to whether or not to opt out of CCA service.

- 2) PG&E shall send a letter, with a copy to the Energy Division, to any customer who prior to the date of this Resolution has opted out of CCA service using any means whatsoever, including PG&E's website, any opt-out form, or telephone service, explaining that the opt-out request will not take effect in light of the changes this Resolution makes to the CCA tariffs. (However, PG&E shall follow the procedure set forth in paragraph 3b, below, for sending letters to customers in MEA's service territory and therefore this letter shall not be sent to anyone in MEA's service territory who opted-out after February 5<sup>th</sup>, 2010.) This letter shall be sent to the Energy Division for review and approval within 10 days of the effective date of this Resolution and shall be mailed to customers within 5 days of Energy Division's approval.

We encourage PG&E to use the following language in this letter:

"Your opt-out request will not take effect because the community your account is located in has not initiated the statutorily-mandated CCA opt-out notification process.

You will receive at least two notices during a 60-day window period before CCA service commencement and at least two additional notices during a 60-day window period after CCA service commencement containing the terms and conditions of CCA service that will be provided to you by the CCA program in your community. If you seek to opt out of CCA service, you will be able to do so during these two separate 60-day notification periods (and any intervening time between them) at no additional cost to you.

If you do not opt out of the CCA program during this designated time, you still have the right to return to PG&E's bundled service after this designated time by providing PG&E with a six-month advance notice requesting to have your account return to PG&E bundled service. If you do not provide PG&E with a full six-month advance notice when returning to PG&E bundled service, you will pay the then-existing transitional electric generation rate – which may be higher or lower than PG&E's then existing bundled electric generation rate – until six months after you first gave PG&E notice. Regardless of when you give notice of your return to PG&E bundled service, you will be required to make a three-year commitment to PG&E's bundled electric service.

For additional information concerning customer rights, obligations, and updates regarding the CCA program you may visit:

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[http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430\\_ccaggregation.htm](http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm)

- 3) a) Any opt-out request that PG&E receives after the date that this Resolution is effective, and before a CCA issues to that customer the first of the statutorily mandated opt-out notifications, shall not become effective. PG&E shall send the same letter discussed in listed item 2), above, to those customers (and also send a copy to the Energy Division), and those customers shall not be removed from the list of potential CCA customers that will be provided to a community implementing a CCA program.
- b) With regard to MEA, because MEA began sending opt-out notices to its phase one customers before the effective date of this resolution and because MEA has not informed PG&E as to which customers are in its phase one, PG&E shall do the following: PG&E shall send a letter as described in paragraph 2, above, modified appropriately to reflect the specific situation of these customers, to all customers in MEA's service territory who elected to opt out but who were not part of MEA's phase one. PG&E shall submit the text of this letter to the Energy Division for review and approval within 10 days of the effective date of this Resolution and send it to the affected customers, with a copy to the Energy Division, within 10 business days after PG&E receives from MEA the list of MEA's phase one customers.

We have not addressed here how to deal with opt-out requests for subsequent phases of MEA's implementation plan or for other CCAs that choose to use a phased implementation plan. We intend to deal with these and other issues in response to the CCSF Petition for Modification of Decision 05-12-041 filed in R.03-10-003.

### **COMMENTS**

P. U. Code Section 311(g) (1) generally requires resolutions to be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this Draft Resolution was placed on the Commission's agenda no earlier than 30 days after it was made available for comment and distributed to the service list in R.03-10-003 and to all persons/entities served with draft resolution E-4013.

### **Comments on the First Draft Resolution**

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In response to the First Draft Resolution, comments were provided by PG&E, SCE, SDG&E, the Local Governments<sup>7</sup>, Marin Energy Authority (MEA), and The Utility Reform Network (TURN), and reply comments were provided by PG&E, SCE, the Local Governments, TURN, and the Division of Ratepayer Advocates (DRA). Some of the changes included in the Second Draft Resolution were made in response to this first round of comments.

### First Amendment Issues

The utilities argue, to varying degrees, that the First Draft Resolution violates or potentially violates the First Amendment of the United States Constitution. The focus of the utilities' concerns seems to be with the First Draft Resolution's requirement for the inclusion of specific content on opt-out procedures in shareholder-funded communications.<sup>8</sup>

In addition to their First Amendment arguments, the utilities maintain that requiring utilities to include specific content in their communications with customers is (a) unnecessary given the First Draft Resolution's changes to the CCA opt-out procedures and (b) impractical to implement (e.g., with respect to certain marketing media) and that (c) it should be sufficient for the Commission to give clear direction to the utilities on when customers may be permitted to opt out of automatic enrollment in a CCA program and allow the utilities reasonable discretion in implementing this requirement in the most efficient and cost effective way possible.

In contrast, TURN, the Local Governments, and MEA not only believe that the First Draft Resolution is consistent with the First Amendment,<sup>9</sup> but some of these

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<sup>7</sup> The Local Governments consist of the City and County of San Francisco and the San Joaquin Valley Power Authority.

<sup>8</sup> Also, SDG&E claims that the First Draft Resolution's requirement that SDG&E place certain information relating to CCAs on its websites also violates the First Amendment and the Fifth Amendment Takings Clause. This requirement has been omitted from the Second Draft Resolution and, therefore, we no longer need to consider SDG&E's concerns.

<sup>9</sup> For example, TURN argues that "if the government can require tobacco companies to include very specific warning labels on their products" the utilities incorrectly maintain that the "Commission cannot direct a regulated utility to provide a certain form of notice to its customers".

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parties seek even greater restrictions on utilities and, in their comments, ask the Commission to restrict utilities from marketing against CCA programs until after the initial notification has been provided. In their reply comments, the utilities object on First Amendment grounds to these proposals.

Having reviewed these comments, we agree that a number of the requirements proposed in the First Draft Resolution are not strictly necessary at this time. These modifications to the Resolution are reflected in the Discussion section above. If First Amendment or other constitutional issues arise in the future, we will address them at that time, as necessary.

### Use Of The Term "Error"

PG&E disagrees with the proposed language included in the First Draft Resolution which would have ordered PG&E to send a letter to customers that have opted-out of CCA service, stating in part that "PG&E solicited your CCA opt-out request in error." PG&E states that it has not committed an error in allowing customers to opt out early, since the current CCA tariffs, to date, have allowed early opt-out requests from the CCA program. We have addressed PG&E's concern by omitting the word "error".

### Issues Involving The Opt-Out Notices

The utilities raise various objections and suggest revisions to the First Draft Resolution's proposed requirement that utilities post CCA program terms and conditions on opt-out forms posted on utility websites. This requirement in the First Draft Resolution has been omitted and therefore we no longer need to consider arguments raised with respect to this matter.

In its reply comments to the First Draft Resolution, the Local Governments point out that no party objected to the revision of the CCA tariffs that prohibit the utilities from soliciting customer opt-out requests of CCA service until after the CCA has provided the formal notification pursuant to P.U. Code Section 366.2 (c)(13)(A-C).

Moreover, The Local Governments and MEA recommend that the Commission, through this Resolution, require that the list of customers that opted-out prior to receiving their first opt-out notice be made available to them. Regarding this request, SCE states that the utilities cannot provide this information without the customers' consent, as customers' names and addresses are confidential. Given that all customers will receive official notification of the CCA services being offered in their communities even if they have attempted to opt out before receiving their first opt-out notice, we need not decide the issue raised by SCE, as

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the Local Governments and MEA should not need a list of customers who have attempted to opt out but whose opt-outs will not be processed.

In its reply comments, SCE agrees with several issues raised by PG&E and SDG&E in their respective comments. Unlike PG&E however, SCE states that it does not intend to market against the CCA program. In its comments, SDG&E acknowledges that “the Commission may have a substantial interest in ensuring that customers receive fair, accurate, and balanced information regarding CCA services.”

### Public Purpose Program Funds

The Local Governments and MEA argue that this Resolution should clarify that it is improper for the utilities to link receipt of ratepayer funded public program funds to a locality’s decision not to pursue a CCA program’s implementation. The Local Governments attached a letter dated June 30, 2009, sent by Joshua Townsend, PG&E Public Affairs Manager, to Michael Frank, City Manager of Novato.

PG&E denies that it has or will link, or make conditional, any local government’s receipt of public goods charge funds on the local government’s decision whether or not to participate in a CCA program. PG&E believes this allegation made by the Local Governments and MEA is outside the scope of the CCA proceeding and that any such complaints or issues should be addressed in the Commission’s 2009-2011 Energy Efficiency Programs proceeding in A.08-07-031.

In its comments on the First Draft Resolution, TURN urges the Commission to adopt the Draft Resolution as written. In its reply comments on the First Draft Resolution, TURN generally supports the recommendations made by the Local Governments and MEA in their opening comments. TURN notes it is disturbed by at least one utility’s (i.e., PG&E’s) apparent use of energy efficiency funds in an attempt to dissuade communities from supporting CCA program implementation. TURN reminds the Commission that when the CCA program rules and tariffs were developed, all the utilities claimed they did not intend to actively market against the formation of CCAs. TURN states that the intent of at least one utility (i.e. PG&E) “to oppose the formation of CCAs in their service territory by any and all available means...suggests that there may be a need for this Commission to reopen R.03-10-003 to consider more specific rules and regulations to control such activity and ensure that fair competition is preserved.”

In DRA’s reply comments on the First Draft Resolution, DRA supports the request made by City and County of San Francisco and MEA to modify the Draft

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Resolution in order to clarify that it is inappropriate for the utilities to link receipt of ratepayer-funded public program funds to a community's decision not to pursue CCA program implementation. DRA recommends that this Resolution should expand the CCA rules in order to ensure that energy efficiency funds cannot be misused by the utilities. DRA also recommends that this Resolution ensure that any category of ratepayer funds may not be withheld from communities investigating CCA program implementation in a manner that could discourage CCA formation.

We address these issues in the section immediately below.

### Prohibition on Providing Goods or Services for the Purpose of Inducing a Local Jurisdiction Not to Participate in a CCA.

The Local Governments attached to their opening comments a letter dated June 30, 2009, addressed to Michael Frank, Novato City Manager, from Joshua Townsend, PG&E Public Affairs Manager. In this letter, PG&E outlines a proposed collaboration between PG&E and the city of Novato.<sup>10</sup> Contained in this proposal are the following commitments made by PG&E:

"We reiterate our commitment to Novato to provide, free of charge, a one-half time equivalent staff to support the City in the implementation of this Collaboration, AB 32, SB 375, AB 811 and other related programs and efforts". (p2)

"PG&E will partner with the City and Novato residents and businesses to expand PG&E's existing Energy Efficiency programs with energy savings achieved through Mass Market, Target Market, and Third-Party channels. Through a PG&E point person, approved by the city, a task force will be created to help navigate through the utilization of existing opportunities and the creation of new programs". (p6)

"If created, this LGP [Local Government Partnership] would provide Novato with additional resources to drive significant energy savings through energy efficiency". (p8)

"We believe that our Collaboration Proposal provides a pathway for Novato to meet its climate change objectives faster, cheaper and with better results without exposing itself, the City, our customers and taxpayers to the uncertainty and risk of a Community Choice Aggregation scheme". (p16)

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<sup>10</sup> The city of Novato was initially mentioned as part of Marin County's CCA efforts in its "Final Report – CCA Business Plan" issued April 2008. The city of Novato has not joined Marin County's CCA program per the December 4, 2009 filing of Marin Energy Authority's CCA Implementation Plan submitted to the CPUC for review.



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This letter raises the appearance that a utility is seeking to link the utility's provision of services to a decision by a local government not to participate in a CCA. We want to promote a level playing field in competition between the investor owned utilities and CCAs. Accordingly, we will take this opportunity to provide direction to the utilities. The utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction would also apply to any plan whereby the utility would pay someone else to provide such goods, services or programs.)

In its comments on the Second Draft Resolution, PG&E contends that the Commission lacks authority to oversee the utility's use of shareholder funds for competitive activities. In support of this contention, PG&E argues that the activities prohibited by Ordering Paragraph 5 of the Second Draft Resolution (now Ordering Paragraph 4 of this Resolution) are not "utility-related." We are not persuaded.

Pursuant to P.U. Code Section 218(a) an "'electrical corporation' includes every corporation . . . owning, controlling, operating, or managing any electric plant for compensation within this state". Accordingly, PG&E is an "electrical corporation." Pursuant to P.U. Code Section 216(a) every "electrical corporation," including PG&E, is a "public utility." Under the Public Utilities Act, public utilities are subject to the general regulatory jurisdiction of this Commission. As provided by P.U. Code Section 701:

The commission may supervise and regulate every public utility in the State and may do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

The Commission does not lose its authority to regulate a public utility's activities, merely because the utility accounts for the expense of conducting those activities "below the line", i.e., as a shareholder expense.<sup>11</sup>

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<sup>11</sup> What is now Ordering Paragraph 4 of this Resolution regulates neither speech nor political activity; it prohibits the provision of goods and services by the utility under specified circumstances.

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Furthermore, we do not understand PG&E's argument that providing goods and services to a local jurisdiction, or the customers within that jurisdiction, for the purpose of keeping those customers as bundled customers of the utility is not "utility-related." Accordingly, we conclude that the Commission has jurisdiction to order utilities to refrain from that activity, in order to promote a level playing field in competition between the investor owned utilities and CCAs, regardless of whether the goods or services are shareholder funded, or, as in the case of certain energy efficiency and other customer programs, are ratepayer funded.

### Intending Not to Sell Electricity to CCAs

Energy Division has also been provided a copy of a letter sent by Joshua Townsend of PG&E to the members of Marin Energy Authority, dated February 3, 2009. In that letter, PG&E makes the following statement:

"...as PG&E has made clear, we intend to continue to provide safe and reliable electric service at reasonable cost to our retail customer in Marin, and we do not intend to respond to requests to supply electricity to Marin Energy Authority or to participate in any way in supplying electricity to a Community Choice Aggregation program in Marin."

This statement appears to conflict with our existing rules that require each utility to dispatch its resources on a least cost basis for the benefit of its bundled customers' electric procurement portfolio. Accordingly, and to promote a level playing field in competition between the utilities and CCAs, we reiterate here that utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity, as there is no way of determining in advance, without analysis of the specific facts, whether such a sale would benefit the utility's remaining bundled electric customers.

In its comments on the Second Draft Resolution, PG&E characterizes its February 3<sup>rd</sup> letter to MEA as responding "to MEA's invitation to PG&E to respond to MEA's request for bidders willing to provide full requirements electricity to supply MEA's load under its CCA program." (Emphasis omitted.) Taken as a whole, it is clear that the purpose of PG&E's February 3<sup>rd</sup> letter was not to respond to a request for bidders, but rather, as stated in the letter, to persuade MEA to "reconsider your decision to enter into the electricity business in Marin County." Thus, PG&E's letter said that PG&E did not intend (i) to respond to requests to supply electricity to MEA or (ii) "to participate in any way in supplying

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electricity to a Community Choice Aggregation program in Marin” (emphasis added). Accordingly, we find the only plausible interpretation of this language from PG&E’s letter is to state PG&E’s intention to never supply energy to MEA, no matter the circumstances. Accordingly, the Second Draft Resolution properly concluded that PG&E’s letter “appears to conflict with our existing rules that require each utility to dispatch its resources on a least cost basis for the benefit of its bundled customers’ electric procurement portfolio.”<sup>12</sup> This rule requires not only that PG&E purchase electricity at least cost, but that it dispose of excess electricity at the best price.

PG&E further objects to the language contained in Ordering Paragraph 6 of the Second Draft Resolution (now Ordering Paragraph 5 of this Resolution) on the grounds that it intrudes on the exclusive jurisdiction of the Federal Energy Regulatory Commission (FERC) over wholesale sales of electricity under the Federal Power Act. We do not intend to dispute the FERC’s jurisdiction over wholesale sales of electricity. Nor does PG&E appear to challenge our jurisdiction to impose a disallowance on a utility that fails to dispatch its resources on a least cost basis for the benefit of its bundled customers’ electric procurement portfolio.

We note that under Section 205(b) the Federal Power Act,

No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the [Federal Energy Regulatory] Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, (16 USC sec. 824d(b)).

It appears to us that any refusal to sell wholesale electricity to a CCA because it is a CCA would violate this provision. We also note that this Commission or a CCA can file a complaint at the FERC if it believes that one of the utilities that we regulate has violated the Federal Power Act.

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<sup>12</sup> For these existing rules, see D.02-10-062, at Section XI, “Standards for Utility Behavior”, numbered paragraph 4, and at Ordering Paragraph 15.

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### **COMMENTS ON THE SECOND DRAFT RESOLUTION**

Comments on the Second Draft Resolution were provided by PG&E, SCE, SDG&E, City and County of San Francisco (CCSF), and DRA; reply comments were submitted by PG&E, SCE, CCSF, MEA and SJVPA.

#### Shareholder funded Marketing Against CCAs

Some of the entities providing comments requested that the Commission review utility marketing materials and not just the materials posted on the utilities' websites. We believe the procedures we have adopted in this Resolution are adequate and will not adopt any additional procedures at this time. However, anyone who believes that any of the utilities' marketing materials are incorrect or misleading may bring their concerns to the attention of Energy Division.

#### IOU soliciting customer opt-out requests

In its comments on the Second Draft Resolution, which PG&E submitted on January 11, 2010, PG&E stated:

“Prior to the issuance of the First Draft Resolution, after consultations with the Energy Division, PG&E ceased providing the opportunity to its customers to opt out of a CCA program before the program's Initial Notification Period.”

However, in its comments CCSF notes the existence of a toll free number under which customers can contact PG&E to opt out. Commission staff called this number and verified that it still provides an opportunity for a customer to opt out of CCA service even though that customer is located in a jurisdiction that has not yet sent any of the statutorily mandated notices. PG&E is required to stop offering an opportunity to opt out via telephone, or other means, to customers who have not yet received the first of the statutorily mandated notices from their CCA, and take the remedial steps specified in Ordering Paragraph 2.D.

In its comments CCSF asks the Commission to bar utilities “from soliciting opt-outs at any time unless expressly invited to do so by the CCA program.” While the four statutory opt-out notices are only to be sent out by the CCA, unless the CCA requests that the utility send them out, we will not now prohibit the utilities from providing truthful information about how customers can opt out. We note that this issue has also been raised by CCSF in a Petition to Modify (PTM) D.05-12-041, filed in R.03-10-003 on January 11, 2010.

MEA and CCSF raise concerns about the opt-out process for new or relocated customers in a CCA service area. We agree that modification of the tariff rule that applies in this situation is desirable. Furthermore, we are of the view that customers who are unaware of the terms and conditions of the CCA service

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should be informed of those terms and conditions before being given the opportunity to opt out. CCSF has also raised this issue in its recently filed PTM.<sup>13</sup> We will direct staff to convene an informal meeting of the interested parties to see if consensus can be reached on the specific tariff language needed. If consensus cannot be reached, and if the issue is not resolved in the resolution of the CCSF PTM, staff should prepare a resolution for our consideration.

PG&E requested a change in the wording of Rule 23/27.B.22 to clarify the period during which a customer may opt out. We have modified B.22 to incorporate the thrust, but not the exact wording, of PG&E's request.

PG&E also requested a change to the language we are requiring it to post on its website. Specifically, it requested a change to the paragraph that began: "The terms and conditions provided to you during a CCA's formal notification period..." PG&E sought to emphasize that a CCA may impose a fee for, or limit the ability of a customer to, return to utility bundled service. CCSF objected on the grounds that PG&E was seeking to scare customers with speculative possibilities. Other portions of the material we are requiring PG&E to post on its website already note that the CCA will notify customers of the terms and conditions of CCA service. Accordingly, we delete the paragraph that PG&E sought to modify, rather than try to determine how much detail this website language should provide about terms and conditions that may or may not apply to any particular CCA.

### **FINDINGS AND CONCLUSIONS:**

1. No CCA has commenced CCA service in California, pursuant to AB 117.
2. Until MEA sent out its phase one notices on February 5, 2010, no CCA had provided information about the terms and conditions of its service through the process mandated by P.U. Code Section 366.2 (c)(13)(A-C); such information is necessary in order for customers to make an informed decision as to whether they should opt out of CCA service.
3. PG&E posted an electronic opt-out form on its website, offering PG&E's bundled electric customers an opportunity to opt out of future CCA service that might be offered anywhere in PG&E's service territory.

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<sup>13</sup> See CCSF PTM, footnote 54.

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4. PG&E circulated marketing trifolds to customers within SJVPA's service territory offering them the opportunity to opt out early from CCA service.
5. The purpose of P.U. Code Section 366.2 (c)(13)(A-C) is to provide potential CCA customers with an opportunity to make an informed decision as to whether to opt out of CCA service. Customers cannot make an informed decision at least until they receive the first of the statutorily mandated opt-out notices.
6. PG&E should cease soliciting customers to opt out of CCA service before the statutory notification period provided by P.U. Code Section 366.2 (c)(13)(A-C). However, as long as PG&E does not know which customers are in MEA's phase one, PG&E is not prohibited from soliciting customers throughout MEA's service territory.
7. Any other information that PG&E, or the other utilities, provide describing customers' ability to opt out of CCA service should be consistent with the statutory purpose of P.U. Code Section 366.2 (c)(13)(A-C), the CCA tariffs, the orders contained in this Resolution, and should not be misleading either by inclusion or omission of content.
8. We have not addressed here how to deal with opt-out requests for subsequent phases of MEA's implementation plan or for other CCAs that choose to use a phased implementation plan. We intend to deal with these and other issues in response to the CCSF Petition for Modification of Decision 05-12-041 filed in R.03-10-003.
9. PG&E has sent at least one letter to Novato's City Manager, appearing to link the utility's provision of services to a decision by a local government not to participate in a CCA.
10. The utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction would also apply to any plan whereby the utility would pay someone else to provide such goods, services or programs.)

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11. The Energy Division has also been provided a copy of a letter sent by Joshua Townsend of PG&E to the members of Marin Energy Authority, dated February 3, 2009. In that letter, PG&E makes the following statement:

“...as PG&E has made clear, we intend to continue to provide safe and reliable electric service at reasonable cost to our retail customer in Marin, and we do not intend to respond to requests to supply electricity to Marin Energy Authority or to participate in any way in supplying electricity to a Community Choice Aggregation program in Marin.”

12. The utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity because it is a CCA, as there is no way of determining in advance, without analysis of the specific facts, whether such a sale would benefit the utility's remaining bundled electric customers.
13. In the future, anyone who believes that any of the utilities' marketing materials are incorrect or misleading may bring their concerns to the attention of Energy Division.
14. CCSF notes the existence of a toll free number under which customers can contact PG&E to opt out. This number still provides an opportunity for a customer to opt out of CCA service even though that customer is located in a jurisdiction that has not yet sent any of the statutorily mandated notices.
15. PG&E requested a change in the wording of Rule 23/27.B.22 to clarify the period during which a customer may opt out. We have modified B.22 to incorporate the thrust, but not the exact wording, of PG&E's request.

### **THEREFORE IT IS ORDERED THAT:**

1. PG&E, SCE, and SDG&E shall modify two subsections of their CCA tariffs – Electric Tariff Rule 23 B.22 and I.3 for PG&E and SCE and Electric Tariff Rule 27 B.22 and I.3 for SDG&E – as follows: The modified tariff language pursuant to this Resolution shall be filed within 10 days of the effective date of this Resolution, and shall be effective as of the effective date of this Resolution.

A. Subsection B.22 shall be revised to read:

B.22. GENERAL TERMS: Opt-Out of Automatic Enrollment

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The term “opt-out” or “opt out” is the customer’s election not to be served under CCA Service and to continue to receive its existing service. In order to exercise its right not to participate in CCA Service, a customer must request to “opt out” of CCA Service through the required action as prescribed in the CCA Notification. A customer may exercise its opt-out right at any time during a 60-day notification period prior to Automatic Enrollment through the end of the second 60-day notification period subsequent to the Automatic Enrollment of a customer’s account to CCA Service. The terms and conditions of CCA service will be made available by the CCA. This CCA-specific information will be provided to customers pursuant to P.U. Code Section 366.2 (c)(13)(A-C) – either directly by the CCA or by [the utility] pursuant to the provisions set forth in Section H – and will enable customers to make an informed decision whether or not to opt out of CCA service. Customers receiving section 366.2(c)(13)(A-C) notices regarding a CCA with more than one planned CCA phase-in date will be provided the required 60-day notices based around the date their particular phase-in commences.

B. Subsection I.3 shall be revised to read:

### **I.3. CCA CUSTOMER OPT-OUT PROCESSES**

A customer opting out of CCA Service during the Initial Notification Period shall be removed from the Automatic Enrollment process.

2. PG&E – and SCE and SDG&E to the extent necessary – shall take the following actions to address the misunderstanding that PG&E’s early CCA opt-out option has created:

A. Any customer who has previously chosen to opt out of the CCA program through any means whatsoever, including PG&E’s website, any opt-out form, or by telephone (except for any customer included in MEA’s phase one who opted-out after February 5<sup>th</sup>, 2010) shall not be removed from the list of potential CCA customers that will be provided to a community implementing a CCA program.

B. PG&E shall modify the language currently posted on its CCA dedicated webpage. PG&E shall notify the Energy Division on the same day it makes this modification; the modified language shall state the following:

“You have the right to opt out of Community Choice Aggregation (CCA) procurement service during the CCA program’s two formal notification periods. If you opt out, PG&E will continue to procure electricity for you. If you do not opt out during these two notification periods (or any intervening time between them), you will be automatically enrolled in CCA procurement service. In either event, PG&E will continue providing transmission and distribution services to you. Regardless of whether or not you opt out of CCA service you will continue to be eligible for ratepayer-funded programs, such as the California Solar



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Initiative and energy efficiency programs, that are funded by distribution surcharges.

As part of the CCA notification process, you will receive at least two notices during a 60-day period prior to CCA service commencement and at least two additional notices during a 60-day period after CCA service commencement. These notices will describe the terms and conditions of the CCA service made available to you by the CCA formed in your community and will inform you as to how you may opt out of the program if you choose to do so.

You also have the right to return to PG&E's bundled service after the two 60-day notification periods end; your options for returning during this later period are:

- 1) You can notify PG&E at least six months before the date you want to return to PG&E bundled service that you wish to return to bundled service. When you return to bundled service six months later, you will pay the then-existing bundled electric generation rate, which will be identical to similarly situated PG&E customers in your customer class.
- 2) If you do not provide PG&E with a full six-months notice, you can return to PG&E bundled service at any time, but you will pay the then-existing transitional electric generation rate – which may be higher or lower than the then existing bundled electric generation rate – until six months after you first gave PG&E notice; thereafter, your bundled electric generation rate will be identical to similarly situated PG&E customers in your customer class.

Whichever option you choose to exercise in order to return to bundled service anytime after the two 60-day notification periods end will require you to make a three-year commitment to bundled service.

For additional information concerning customer rights, obligations, and updates regarding the CCA program you may visit:

[http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430\\_ccaggregation.htm](http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm)

C. If SCE and SDG&E already have information on their websites regarding the CCA program (including a CCA dedicated webpage, but excluding the posting of tariff pages) this content shall be forwarded to Energy Division, to allow for staff review at this time. In the future, whenever any of the utilities modify their websites to include new or revised language, illustrations, or images regarding the CCA program they shall notify the Energy Division on the same day they make the modification. The Energy Division will direct the utilities to make changes to any information it finds incorrect or misleading.

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D. PG&E shall send a letter, with a copy to the Energy Division, to any customer who prior to the date of this Resolution has opted-out of CCA service using any means whatsoever, including PG&E's website, any opt-out form, or telephone, explaining that the opt-out request will not take effect in light of the changes this Resolution makes to the CCA tariffs. (However, PG&E shall follow the procedure set forth in paragraph F, below, for sending letters to customers in MEA's service territory and therefore this letter shall not be sent to anyone in MEA's service territory who opted-out after February 5<sup>th</sup>, 2010). This letter shall be sent to the Energy Division for review and approval within 10 days of the effective date of this Resolution and shall be mailed to customers within 5 days of Energy Division's approval.

We encourage PG&E to use the following language in this letter:

"Your opt-out request will not take effect because the community your account is located in has not initiated the statutorily mandated CCA opt-out notification process.

You will receive at least two notices during a 60-day window period before CCA service commencement and at least two additional notices during a 60-day window period after CCA service commencement containing the terms and conditions of CCA service that will be provided to you by the CCA program in your community. If you seek to opt out of CCA service, you will be able to do so during these two separate 60-day notification periods (and any intervening time between them) at no additional cost to you.

If you do not opt out of the CCA program during this designated time, you still have the right to return to PG&E's bundled service after this designated time by providing PG&E with a six-month advance notice requesting to have your account return to PG&E bundled service. If you do not provide PG&E with a full six-month advance notice when returning to PG&E bundled service, you will pay the then-existing transitional electric generation rate – which may be higher or lower than PG&E's then existing bundled electric generation rate – until six months after you first gave PG&E notice. Regardless of when you choose to return to PG&E bundled service, you will be required to make a three-year commitment to PG&E's bundled electric service.

For additional information concerning customer rights, obligations, and updates regarding the CCA program you may visit:

[http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430\\_ccaggregation.htm](http://www.cpuc.ca.gov/PUC/energy/Retail+Electric+Markets+and+Finance/070430_ccaggregation.htm)

E. Any opt-out request that PG&E receives after the date that this Resolution is effective, and before a CCA issues to that customer the first of the statutorily mandated opt-out notifications, shall not become

## Attachment 4: Resolution E-4250

Resolution E-4250/LOS

April 8, 2010

effective. PG&E shall send the same letter discussed in Ordering Paragraph 2.D to those customers (and also send a copy to the Energy Division), and those customers shall not be removed from the list of potential CCA customers that will be provided to a community implementing a CCA program.

F. With regard to MEA, PG&E shall do the following: PG&E shall send a letter as described in Ordering Paragraph 2, as modified appropriately to reflect the specific situation of these customers, to all customers in MEA's service territory who elected to opt out but who were not part of MEA's phase one. PG&E shall submit the text of this letter to the Energy Division for review and approval within 10 days of the effective date of this Resolution and send it to the affected customers, with a copy to the Energy Division, within 10 business days after PG&E receives from MEA the list of MEA's phase one customers.

3. Electric utilities shall not make available to their customers any mechanism for opting out of CCA service before the commencement of the statutorily mandated notification period.
4. Electric utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA. This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction also applies to any plan whereby the utility would pay someone else to provide such goods, services, or programs.)
5. Electric utilities may not refuse to make economic sales of excess electricity to a CCA, nor refuse in advance to deal with any CCA in selling electricity because it is a CCA.
6. Staff shall convene an informal meeting of the interested parties to see if consensus can be reached on the tariff language needed to specify how the opt-out process for new or relocated customers in a CCA service area will work. This tariff language shall ensure that customers who are unaware of the terms and conditions of the CCA service will be informed of those terms and conditions before being given the opportunity to opt out. If consensus cannot be reached, and if the issue is not resolved in the

## Attachment 4: Resolution E-4250

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resolution of the CCSF Petition To Modify D.05-12-041 in R.03-10-003, staff should prepare a resolution for our consideration.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 8, 2010, the following Commissioners voting favorably thereon:

/s/ Paul Clanon  
Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
PRESIDENT  
DIAN M. GRUENEICH  
JOHN A. BOHN  
NANCY E. RYAN  
Commissioners

I will file a dissent.

/s/ Timothy Alan Simon  
Commissioner

I will file a concurrence.

/s/ John A. Bohn  
Commissioner

### **Dissent of Commissioner Timothy Alan Simon April 8, 2010 Commission Meeting**

#### **1. Introduction**

Before the CPUC April 8, 2010 meeting, I asked for the support of Energy Division and Legal Divisions to update the Resolution on one narrow issue.

## Attachment 4: Resolution E-4250

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However, the Resolution was not changed and the majority of the CPUC voted in favor of that proposed Resolution. [*Item 3 on the April 8, 2010 Agenda*].

As a result of that vote in favor of the Resolution, I submit the following Dissent, to that portion of the Resolution which invalidates customer choices to opt out before the date this Resolution is effective.

### 3. Background and Discussion

AB 117 enables cities and/or counties to implement a Community Choice Aggregation or CCA program. I support Community Choice Aggregation and I support the bulk of the Resolution for this item.

However, I do not support one narrow area of the Resolution. To date the law and regulations do not prohibit the utility from accepting a customer's decision to "opt out" of a CCA before the CCA initiates its own Opt Out. This Resolution updates the rules to prohibit a customer from accepting "opt-out" customer choice until the CCA terms and conditions are known. I strongly support this updated rule on a going forward basis. However, this Resolution would also invalidate customer decisions to opt out—that is, it would invalidate the decisions of those customers who have already "opted out" of a CCA. This is the narrow piece that I oppose.

As mentioned above, I did work with Energy and Legal Divisions to try to obtain an alternative process proposal which would prohibit early "opt out" on a going forward basis but which would Grandfather decisions by customers who have opted out early under the Commission's existing Tariff Rule.

I don't make this decision lightly because, as I said, I support Community Choice Aggregation and support strong rules going forward. However, I believe from a freedom of contract basis and from a perspective of customer choice, I would have preferred the process I just outline and cannot support the current Resolution.

### 4. Conclusion

It is for these reasons provided above that I must respectfully dissent on this Resolution.

## Attachment 4: Resolution E-4250

Resolution E-4250/LOS

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/s/ TIMOTHY ALAN SIMON  
Timothy Alan Simon  
Commissioner

### CONCURRENCE OF COMMISSIONER BOHN

In this resolution the Commission places restrictions on utility activities in an effort to ensure that consumers can make well informed decisions in choosing an energy provider, and to ensure that utilities do not unfairly subvert the

## Attachment 4: Resolution E-4250

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Community Choice Aggregation (CCA) process. While I support this decision, I think we must be careful that in our efforts to ensure a fair opportunity for CCAs, we do not inadvertently tip the playing field.

Utilities have the right, and some would argue the duty, to make their case to customers. We should not simply assume that any commentary on their part is misrepresentation, or that every claim by a proponent of a CCA is accurate and balanced. Where a proponent of a CCA is making inaccurate statements, the utility has an affirmative obligation to respond if it sees a problem.

I support this resolution, and believe that the restrictions we adopt at this time are reasonable and should provide CCA proponents with a fair opportunity to compete for customers, without unduly restricting the reasonable activities of utilities. However, I am troubled by one aspect of this resolution. Pacific Gas and Electric Company's (PG&E) past efforts to have customers opt out of CCA services prior to the Initial Notification Period were allowed under the Commission's rules, prior to the changes we adopt in this decision. While some may question the content of PG&E's communications, the resolution does not demonstrate or find that PG&E's activities were inappropriate under the rules then in place. Since these actions were allowed at the time, I do not believe it is necessary nor appropriate that we are retroactively negating the choice of those customers contacted by PG&E to opt out.

/s/ JOHN A. BOHN

John A. Bohn  
Commissioner

San Francisco, CA  
April 8, 2010

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Attachment 5

The un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010



**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

**Report to Legislature, Part A**

<b><u>Document</u></b>	<b><u>Subject</u></b>
Page 1 of form	Phone banking impacts verification
Attachment 1.1	No differentiation between generation & non-generation charges on bill
Attachment 1.2	Bundled rate factors showing up on MCE bills
Attachment 1.3	Need for third-party viewing of customer bills
Attachment 1.4	PG&E call center providing mis-information to customers
Attachment 1.5	CARE data not being provided to MCE
Attachment 1.6	Balanced Payment Plan customers being double billed for generation
Attachment 1.7	“Return to Bundled Service” form directs customer to PG&E for opt out
Attachment 1.8	PG&E not providing usage to MCE
Attachment 1.9	Net energy metering: bill presentment
Attachment 1.10	New customers being opted out by PG&E
Attachment 1.11	Invoice cancellation transaction support
Attachment 1.12	Rate restructuring to impose added costs on CCA

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Report To the Legislature

Providing “Detailed Information On The Formal Procedures Established By The Commission In Order To Monitor And Ensure Compliance By Electrical Corporations With Chapter 838, Statutes Of 2002”

First Quarterly Report  
Submitted January 31, 2011

The Energy Division has developed a standard 3-part reporting form to comply with Part (a) of the reporting requirement. Each part of the form will be completed by the CCA, the IOU, and Commission staff, respectively.

- a. A detailed description of the commission’s process for enabling communities interested in becoming community choice aggregators, communities currently in the process of becoming community choice aggregators, and existing community choice aggregators to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”
  - a. The description shall include the process provided by the commission to allow prospective or existing community choice aggregators to identify specific matters on which the utility is not considered to be cooperating fully.
    - i. For each identified matter, the prospective or existing community choice aggregator shall detail in writing the issue, the lack of full cooperation, and the personnel at the utility with whom the community choice aggregator is working.
    - ii. The utility shall be required to respond in writing by providing a specific solution to the matter raised by the prospective or existing community choice aggregator, including a date-specific timeline for accomplishing the solution, and the names of personnel responsible for providing the solution.
  - b. The commission’s report to the Legislature shall provide a detailed summary of each matter identified and initiated by the community choice aggregator, and a detailed verification of the utility’s actions taken to address and resolve these issues, including verification of the satisfaction of the community choice aggregator. The report shall also itemize any matters that have been improperly raised by the community choice aggregator using this process.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Attachment 1: Reporting form for [Part (a) Process]

Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

Phone banking by PG&E to MEA customers caused many opt outs under false pretenses and MEA has never received verifiable data on which customers were contacted and which method customers used to opt out.

Please provide a detailed description of the issue (add lines or pages as needed):

Phone banking was conducted by PG&E between the months of February and April 2010 in Marin County opt customers out of the MCE program before enrollment or service by MCE had occurred. The phone banking established the idea in prospective customers' minds that if they did not choose to opt out of MCE their lights might go out and their electricity supply would fail. (PG&E is required by law to transmit and distribute electricity to MCE customers.) Customers were urged to opt out unlawfully, outside of the statutory opt out process, and before receiving the terms and conditions from the MCE program.

Customers reported being told many things by PG&E's phone banking vendor that were untrue to persuade them to opt out including, for example, that PG&E was buying new green power and to receive it the customer needed to opt out of MCE or that their power supply might not be maintained adequately unless they opted out on the phone at that time.

MCE has requested verifiable data from PG&E showing how many customers were contacted by phone, how many opted out through a utility-initiated phone call, and what method of opt out was selected by the remaining customers opting out so that MCE can

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

insure that accurate information is provided to these customers. This data is also needed to insure transparency around PG&E's actions in Marin County.

Please describe the lack of full cooperation (add lines or pages as needed):

MCE requested that the unlawful phone-banking stop but it continued for several weeks and penetrated the majority of the Marin customer base. After the phone banking was ultimately terminated by the CPUC, MCE requested the data on the number of customers PG&E's vendor called to opt out of MEA and data on how many actually opted out by what method. After requesting this information MCE was told that it could not be provided due to customer confidentiality. MCE believed that the confidentiality concerns were not valid due to the NDA's already executed between PG&E and MCE, the level of customer-specific data already transferred between PG&E and MCE, and the business concern that mis-information provided to the customer needed to be corrected.

This information has still not been provided to MCE or the CPUC for verification.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Bill Chen	PG&E   Energy Solutions & Service	415-973-7233	<a href="mailto:whc9@pge.com">whc9@pge.com</a>
Tom Varghese	PG&E   Energy Solutions & Service	415-973-7233	Trv2@pge.com

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

PART 2 (to be completed by Utility, 5 business days after notification by Energy Division)

Submitted by:

Name	
Title	
Phone	
e-mail	

*“The utility shall be required to respond in writing by providing a specific solution to the matter raised by the prospective or existing community choice aggregator, including a date-specific timeline for accomplishing the solution, and the names of personnel responsible for providing the solution.”*

Please describe the specific solution to the matter raised by the prospective or existing Community Choice Aggregator (add lines or pages as needed):

Please provide the date-specific timeline that the IOU will follow in order to accomplish the solution (add lines or pages as needed):

Names of utility personnel responsible for providing [and implementing] the solution

Name	Title	Phone Number	e-mail

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

PART 3 (to be completed by Commission staff, 10 days following receipt of Part 2 from the IOU)

*“The commission’s report to the Legislature shall provide a detailed summary of each matter identified and initiated by the community choice aggregator, and a detailed verification of the utility’s actions taken to address and resolve these issues, including verification of the satisfaction of the community choice aggregator. The report shall also itemize any matters that have been improperly raised by the community choice aggregator using this process.”*

Summary of each matter identified and initiated by the Community Choice Aggregator (add lines or pages as needed):

Detailed verification of the utility’s actions taken to address and resolve these issues (add lines or pages as needed):

Verification of the satisfaction of the community choice aggregator (add lines or pages as needed):

Name(s) of CPUC personnel responsible for preparing this response

Name	Title	Phone Number	e-mail

Itemize any matters that have been improperly raised by the Community Choice Aggregator using this process (add lines or pages as needed):

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Attachment 1: Reporting form for [Part (a) Process]

Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

There is no differentiation between generation and non-generation electric charges on MCE customer bills, leading customers to believe they are being double charged for electricity.

Please provide a detailed description of the issue (add lines or pages as needed):

There is no differentiation on the customer bill between generation and non-generation electric charges by PG&E and MCE. Instead, on the summary page (first page) and in other locations in the bill the PG&E electric charges (primarily for transmission and distribution) and the MCE electric charges (for generation only) are both shown as “electric” charges with no differentiation. The bill appears, therefore, to be showing electric PG&E charges and then duplicate or additional electric MCE charges. Many customers opt out because they believe they are being double-charged for electricity and paying both PG&E and MCE for the same usage.

Please describe the lack of full cooperation (add lines or pages as needed):

The request to differentiate between generation and non-generation charges was first made to PG&E representatives in April, 2010, before service began to customers. At that time a sample bill was also requested from PG&E so that MCE could verify if the generation and non-generation charges would be differentiated. PG&E representative stated that they would provide a sample bill, but they were unable to provide MCE with a sample bill despite multiple requests over a two month period. During this time period

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

PG&E representatives stated that the differentiation would occur and MCE had no reason to believe otherwise.

Unfortunately, MCE was never provided with a sample bill from PG&E representatives and therefore did not see how charges would appear until a local municipal customer provided MCE with a copy of their bill. This bill, and no subsequent customer bills have ever differentiated between generation and non-generation charges.

The majority of the calls that MCE received after billing began in June and July were from customers who believed they were being double charged for electricity usage because there were two 'electric' charges on the bill with no differentiation. Many of these customers opted out of MCE for this reason.

PG&E representatives have been looking into this issue for many months and currently state that MCE must wait until the 'bill redesign' process that will occur sometime in 2011 or 2012. When the 'bill redesign' process is brought to the CPUC for consideration PG&E representatives have stated that MCE will need to advocate for this differentiation to be on the bill as PG&E is not willing to make the change part of its overall 'bill redesign' recommendations.

Customers continue to call the MCE call center and ask to opt out of MCE because they believe they are being double charged for their electricity usage.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	<a href="mailto:sscb@pge.com">sscb@pge.com</a>
Calvin Yee	Corporate Account Manager- ESP Services	415-973-5683	CMY1@pge.com
Eric Jacobson	Regulatory Relations	415-973-4464	EBJ1@pge.com



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Attachment 1: Reporting form for [Part (a) Process]

Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

All PG&E bills going out to MCE customers are showing the “bundled” rate factors rather than the “unbundled” rate which the customer is actually paying. This leads customers to believe they are being double-charged for electricity.

Please provide a detailed description of the issue (add lines or pages as needed):

Although MCE customers are no longer ‘bundled’ utility customers, the bundled rate factors are continuing to appear for the PG&E electric charges on the PG&E portion of the bill. These bundled rates can be found in the tier break-down of the ‘electric account detail’ section. This inaccurate bill presentation makes it impossible for the customer to recalculate their bill accurately because the bundled rates do not add up to the total charges.

This misleading information causes customers to believe they are being double-charged for electricity as the rate factors are the same as before they were taking service from MCE. When customers call the MCE call center for an explanation of this issue and are told that the rate factors appearing on their PG&E bill are simply wrong, they frequently do not trust that response and do not find that explanation to be satisfactory.

This misleading bill is another trigger for customers to express concerns with their service as an MCE customer and results in customers opting out.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Please describe the lack of full cooperation (add lines or pages as needed):

This issue was brought to PG&E's attention in July, 2010 after customer bills were available for MCE to view. If a sample bill had been provided by PG&E earlier, as requested by MCE in April, the request from MCE for this correction would have come earlier.

MCE requested that the unbundled rate be shown instead of the bundled rate, or that, at a minimum, the unbundled rate be suppressed on the customer bills. For approximately six weeks PG&E representatives stated that this was not a concern that could be resolved.

This issue was then brought to the attention of the CPUC Energy Division in late August, 2010. After Energy Division staff requested that PG&E find a way to resolve this issue PG&E representatives reported that although they could not correctly show the 'unbundled' rate, they may be able to suppress the bundled rate and provide a 'message' on the bill, below the charges, to explain to customers what the unbundled rate is for each tier.

An 'explanation message' to that effect was drafted by MCE and PG&E and agreed to by MCE. In late October MCE was notified that the bundled rate could actually not be suppressed until November, that it would only be suppressed for a portion of customers (Res-E1) and that the remaining customers would not have the bundled rate suppressed until March, 2011 at the earliest. In addition, MCE was notified by PG&E that the message explaining the unbundled rate would only be accurate for Res-E1 customers, and that for non-Res-E1 customers, the 'explanation message' itself would be incorrect.

As of early December, 2010, to the best of MCE's knowledge, none of the proposed changes have been implemented. The bundled rate is still showing up on the customer bill, no suppression of the incorrect rates has occurred for any customer, and no 'explanation message' is appearing on the customer bill. If eventually implemented, the changes proposed by PG&E will still not resolve this issue for several thousand customers.

In discussing this issue PG&E representatives have expressed frustration that their billing system is inflexible and difficult to modify. While this is likely to be a valid issue, it is worth noting that PG&E was well aware of Marin's plans to develop a CCA program dating back to 2005, was aware of MEA's CCA Implementation Plan submitted to the CPUC in December, 2009, and even signed a service agreement with MEA in early 2010. PG&E was thus provided with ample time to devote some resources to 'system set up' to prepare for CCA Service. To have no way of addressing this predictable issue one

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

year after MEA's Implementation Plan was submitted seems to demonstrate significant negligence rather than productive efforts to serve the customer.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	<a href="mailto:sscb@pge.com">sscb@pge.com</a>
Eric Jacobson	Regulatory Relations	415-973-4464	EBJ1@pge.com

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PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

PG&E is not allowing MCE staff, data manager or call center access to customer bills to allow for effective customer service and customer support for MCE customers who call with confusion and questions about their bills.

Please provide a detailed description of the issue (add lines or pages as needed):

There is a need for 3<sup>rd</sup> party viewing of the customer bill (electronically or some other method) for MCE representatives to assist customers who cannot understand their bill and need to be assisted. This is particularly an issue for customers who are seeing the bundled rate on the bill and cannot recalculate it correctly. This is also an issue for net metering customers who want to understand why charges are being applied incorrectly by PG&E. It is also an issue for customers who believe they are being double-charged for electric usage because there is no differentiation between generation and non-generation electric charges. Currently, MCE can only access MCE charges and this limits the ability of our customer service representatives to explain issues that relate to our interface with PG&E as the billing entity. It results in customers having to physically bring in their bill or fax it to MCE to allow for a review of the charges and a response to their questions.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Please describe the lack of full cooperation (add lines or pages as needed):

MCE requested this information in July 2010. PG&E expressed confidentiality concerns and technical capacity concerns in response to this request. MCE believes confidentiality concerns are not valid as NDA's have been executed by all parties and customer-specific data is already available to MEA representatives under protection from the NDA. If confidentiality concerns were, in fact an issue they could also be resolved by requesting consent from the customer.

PG&E representatives stated that they looked into the technical feasibility of providing data but reported that it would be unlikely for any progress to be made on this front until a third-party viewing system is put in place sometime in 2012.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	<a href="mailto:sscb@pge.com">sscb@pge.com</a>

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Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

PG&E telephone representatives provide inaccurate and misleading information to MCE customers causing confusion, frustration and opting out under false pretenses.

Please provide a detailed description of the issue (add lines or pages as needed):

Since MCE’s formation PG&E has provided misinformation to energy customers in Marin in a wide range of areas related to MCE. This began in February, 2010 when PG&E’s outbound call campaign led customers to believe that they needed to opt out to ensure reliable energy delivery.

Although the outbound calls from PG&E are no longer occurring, customers who call into PG&E’s call center continue to receive incorrect and misleading information from call center representatives (CSRs). Most, if not all of this misinformation has a negative impact on MCE’s relationship with the customer. At a minimum, the issue causes customer confusion and frustration, and in many cases it has even caused customers to opt out of MCE service under false pretenses, believing the misinformation to be true.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Within the last three months PG&E's call center has provided misleading or inaccurate information to customer such as:

1. MCE charges are "extra" and opting out will allow them to eliminate these "extra" charges.
2. If a customer is with MCE, they will pay more to PG&E for transmission and distribution charges
3. PG&E will pay more to net-metering customers than MEA
4. There is no '3-year stay' requirement for a customer who returns to PG&E

Below is a sampling of calls logged to MCE on five select days in September, 2010. This sample outlines and illustrates the ongoing misinformation PG&E is providing to MCE customers with significant negative impacts:

9/7/10 at 1:50 pm- Customer had just spoken with a PG&E CSR prior to calling MCE to opt out. CSR told her that there is no transitional rate or 3-year no-switching rule. The customer called MCE to opt out after getting this information from PG&E. *Note: PG&E requires that customers who return to PG&E service must stay with PG&E for at least 3 years before they can switch back to MCE.*

9/7/10 at 2:30 pm- Customer was told by PG&E CSR 'Joyce' at the Stockton call center and PG&E CSR Supervisor 'Brett' at the Fresno call center that he had only been with MCE for 4 billing periods so he would return to PG&E at the standard bundled rate. *Note: This is contrary to PG&E policy as the transitional rate would apply.*

9/8/10 at 10:06 am- Customer had called MCE on 7/23/10 to opt out and the opt out was processed and confirmed by MCE. The customer called the PG&E call center on 9/7/10 to confirm that the opt out had been processed correctly. On the call, which was 1.5 hours in duration, the PG&E CSR told the customer that he is still active in the MCE program, even though he is actually opted out. *Note: This puts the customer in the difficult position of not being able to trust MCE representatives and having to dedicate more time on the telephone to resolve the issue.*

9/8/10 at 11:51 am- Customer called PG&E 9/3/10 to pay her bill. The PG&E CSR told the customer to call MCE to pay her bill. *Note: customers can only pay their bill through PG&E. This is confusing and frustrating for the customer, particularly, given the long wait times on PG&E calls.*

9/8/10 at 11:42 am- Customer was told by PG&E CSR that PG&E was only handling his gas account and that MCE is handling the customer's electric account. *Note: While this would not be the case, even for an MCE customer, this customer was actually opted out of MCE as of 7/16/10.*

9/9/10 at 11:33 am- A PG&E CSR told the customer that the MCE charges are 'additional' and that he is paying more for transmission and distribution because of MCE.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

The customer was told that his bill was much higher because of MCE. The customer opted out because of this information.

9/9/10 at 3:03 pm- A PG&E CSR told the customer at approximately 3pm on 9/9/10 that he would not be able to return to a transitional rate if he opted out after the 'opt out period' and thus, needed to opt out now. The customer opted out because of this information.

9/10/10 at 2:49pm- Customer was told by a PG&E CSR that if she was not with MCE she would not have a generation charge and would only pay for transmission and distribution. MCE representative told her this was incorrect. She did not believe the MCE representative and said she will likely choose to opt out.

9/20/10 at 11:27 am- A PG&E CSR told the customer that the MCE charges were "extra" and that PG&E would no longer charge her the generation costs if she opted out and switched back to PG&E.

9/22/10 at 1:12 pm- The customer called PG&E to request an energy audit. PG&E told him they no longer offer that service and he needs to contact MCE.

Please describe the lack of full cooperation (add lines or pages as needed):

This issue was brought to PG&E's attention in May, 2010 when MCE began serving customers. Various instances of misinformation were the subject of ongoing, weekly operations calls between MCE, MCE's data manager (Sempra Energy Solutions/Nobel Group) and PG&E.

PG&E representatives responded by stating that their call center representatives would not always use scripts provided to them, that call center representative have so many issues to respond to that the CCA-related issues are not possible to stay up-to-date on, and that the call center, in general, could not be expected to always provide accurate information. PG&E representatives also requested that MCE keep track of call center mis-information being provided to MCE customers and give weekly reports to PG&E so that they could follow up internally after-the-fact.

While MCE was not opposed to internal follow-up and complied with PG&E's request to track calls (at our own expense), MCE requested a proactive solution that would prevent the issues from continuing to arise. MCE suggested that a small, 5-person team could be specifically trained to respond to questions from the CCA customer-base, thus addressing PG&E's concerns around training for all CSR's (customer service representatives). PG&E was not willing to establish such a team or provide any other proactive solution. This issue has not been resolved.



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Please list the personnel at the utility with whom the community choice aggregator is working:			
Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	sscb@pge.com
Bill Chen	PG&E   Energy Solutions & Service	415-473-7233	Whc9@pge.com

Attachment 1: Reporting form for [Part (a) Process]

Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

PG&E will not provide data on CARE customers to MEA.

Please provide a detailed description of the issue (add lines or pages as needed):

When MCE was in the process of enrolling customers with PG&E, data on which customers were receiving the CARE rate was provided to MCE. This data was provided so that these customers could be provided with the equivalent MCE rate, to avoid potential hardship for the customer.

After enrollment was complete and service began, new customers began to move into MCE enrolled addresses, and some customers applied for the CARE rate post-enrollment. To accommodate the needs of any new CARE customers MCE requested that PG&E provide data on any new CARE customers being served by MCE.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

PG&E representatives have not provided this data, and as a result MCE is unable to offer the CARE-equivalent rate to customers who qualify for the CARE rate.

Please describe the lack of full cooperation (add lines or pages as needed):

This issue was the subject of ongoing weekly calls between MCE, MCE's data manager and PG&E representatives in August and September, 2010. PG&E representatives initially offered to look into the issue and after several weeks reported that they would not be able to provide the data due to confidentiality concerns.

MCE noted that this data had been provided previously, and furthermore, would fall under MCE's signed non-disclosure agreement (NDA). However, PG&E representatives were still not willing to provide the CARE data.

MCE suggested in October, 2010 that at least to address the issue on a going forward basis, that a 'check box' could be added to the customer's CARE application form explicitly allowing PG&E to share this information with third-party energy providers. PG&E representatives agreed that this might resolve the issue on a going forward basis, but they have not taken any steps, to MCE's knowledge, to make this change to the form.

Since enrollment of MCE customers in April, 2010 no CARE data has been provided to MCE and PG&E has not suggested or followed through with any strategy to resolve this issue.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	sscb@pge.com
Eric Jacobson	Regulatory Relations	415-973-4464	EBJ1@pge.com
Bill Chen	PG&E   Energy Solutions & Service	415-473-7233	Whc9@pge.com

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Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

PG&E double-billing MCE customers by charging them for PG&E generation twice.

Please provide a detailed description of the issue (add lines or pages as needed):

AB117 provides that when a customer switches to CCA service their generation will be supplied by the CCA party and the distribution utility will cease charging the customer for generation. After MCE began service to customers in May, 2010 it came to our attention that some customers, specifically those who were on a Balanced Payment Plan (BPP) with PG&E, were continuing to be charged for generation from PG&E. These PG&E generation charges were being levied on customers in addition to the generation charges from MCE. This resulted in the customer being double-charged for generation.

## **Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

This also resulted in calls from customers concerned about the sharp increase in their bill since MCE service began, and it resulted in many customers opting out of the MCE program.

As described in the section below the CPUC Energy Division staff requested that PG&E correct this issue in late August and PG&E has stated that it is resolved. However, the methodology being used by PG&E to bill BPP customers has not been made available to MCE to verify resolution of the issue. Below is an MCE call center log from mid-October indicating that the issue has actually not been resolved:

10/12/10 8:00 am – Customer spoke with a PG&E CSR supervisor at the Sacramento call center and was told that if they were not with MCE they would have had a BPP of \$600 but since they were with MCE their BPP amount was \$1000. He stated that the PG&E transmission and distribution portions of the bill are still not balanced and that the payment amount varies month to month. Customer was also told that when his BPP is recalculated the past due balances are added in and used towards the calculations. The customer is very upset that this is still not resolved and has been attempting to correct since May, 2010.

This call-center log was sent to PG&E and the response from PG&E was as follows:

*"This customers' BPP is \$582, not \$1000 which is stated in the attachment. The confusion is coming in because the customer is being billed BPP + Sub SA charges. The payoff balance was included in the recalculation to avoid putting this customer in debt. This will be eliminated when the BPP amount can automatically be calculated by the system when there are just 12 months of T&D charges."*

The customer call and the response from PG&E both demonstrate that there is no clarity on how or if the BPP issue has been resolved. PG&E has been asked to provide some evidence of the correct methodology actually being used to bill BPP customers.

Please describe the lack of full cooperation (add lines or pages as needed):

This issue was brought to PG&E's attention after customer billing began in June, 2010. Initially, PG&E representative responded by stating that the double charges were not occurring. MCE and MCE's data manager worked with PG&E representatives by receiving copies of bills directly from customers, and walking PG&E representatives through the issue. After several weeks PG&E representatives acknowledged the issue but did not express a willingness to resolve the issue.

MCE requested that at a minimum, BPP customers could call PG&E and request that their BPP amount be recalculated without the generation charges on a going forward basis. PG&E agreed to do this for customers if they called in and stated that it would be effective on the customers' next bill.

PG&E was not willing to proactively make the fix for all BPP customers, however. Many weeks went by with customers continuing to be double-charged for generation and

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

customers are now being charged correctly. PG&E was not willing to provide this information and sited 'confidentiality' concerns. Although they were willing to provide this information to the CPUC Energy Division, it was unclear if the Energy Division would have the capacity to review the bills and methodology for accuracy.

This verification of correct methodology being used for BPP customers is still outstanding.

Please list the personnel at the utility with whom the community choice aggregator is working:			
Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	<a href="mailto:sscb@pge.com">sscb@pge.com</a>
Bill Chen	PG&E   Energy Solutions & Service	415-473-7233	Whc9@pge.com

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Attachment 1: Reporting form for [Part (a) Process]

Part (a): Process for existing and prospective CCAs to obtain timely utility compliance with paragraph (9) of subdivision (c) of Public Utilities Code Section 366.2, which requires the utility to “cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs.”

PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

PG&E’s “Return to Bundled Service” form does not direct customer to contact MCE to opt out, but instead directs the customer to reply directly to PG&E.

Please provide a detailed description of the issue (add lines or pages as needed):

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In May, 2010 the CPUC Energy Division directed PG&E to terminate the processing of opt outs for MCE's CCA customers and turned the opt out process over to MCE. Despite this clear directive, PG&E has developed a form for customers who wish to return to bundled service and provided instructions on the form for all customers (including MCE customers) to return the form only to PG&E. Furthermore, PG&E has been attempting to process these opt out requests, in violation of the clear CPUC directive.

The CPUC directive followed months of abuses by the utility which tampered with the integrity of the opt out process. This ranged from a marketing campaign filled with misinformation about MCE, outbound calls aggressively pushing customers to opt out under false pretenses and prior to receiving any terms and conditions from MCE, and encouraging customers to opt out under methods not approved by the statutory process. Given these recent actions by PG&E it is clear that their involvement in the opt out process would diminish or completely threaten the integrity of the process.

MCE has requested that the instructions simply include the following statement, "If you are a customer of Marin Clean Energy this Notice to Return to Bundled Service form must be returned to MCE at..."

Without adding this language PG&E is acting in violation of the clear directive from the CPUC Energy Division in May, 2010 requiring that customers contact MCE directly to opt out.

Please describe the lack of full cooperation (add lines or pages as needed):

After PG&E representatives attempted to process customer opt outs using this form MCE notified them that this practice violated the May directive from the CPUC Energy Division and needed to be halted. Initially, there was no response from PG&E representatives but the representative attempted to process several other opt outs the following week.

MCE requested that a change be made to the form to avoid customer confusion and insure that the form was submitted in compliance with CPUC directive. PG&E representatives responded that the form could not be changed without approval of the full Commission. To our knowledge, PG&E has not initiated a process at the CPUC to make the requested change to the form and as a result the form continues to direct customers to submit the form only to PG&E.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
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Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	sscb@pge.com
Eric Jacobson	Regulatory Relations	415-973-4464	EBJ1@pge.com

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PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

PG&E not providing energy usage to MCE to allow for customer billing.

Please provide a detailed description of the issue (add lines or pages as needed):



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PG&E is responsible for sending customer usage to MCEs data manager the day following meter reading for any MCE customer. Usage is typically sent every weekday but it comes at different times during the day or evening and thus, can be a bit unpredictable. In some cases PG&E does not provide usage on some customers. Because PG&E does not track this carefully, MCE must track to determine missing usage on customers and request the usage.

On Saturday, November 20<sup>th</sup>, PG&E held one of two annual “Saturday read days” which meant that usage should have been provided to MCE on Sunday, November 21, 2010. PG&E did not send any usage to MCE on November 21<sup>st</sup>, 2010. MCE requested this usage from PG&E. However, PG&E did not provide the usage to MCE until December 2, 2010, after the billing window had closed for the affected customers.

This left MCE with the option of either having an additional bill sent to customers with only MCE charges, or having the missing additional MCE charges added to the following month’s bill, resulting in a very high MCE generation charge for that month. Both options negatively impact MCE’s relationship with customers and create a new reason, caused by PG&E’s error, for customers to opt out of MCE. This PG&E error impacted approximately 550 MCE customers.

Please describe the lack of full cooperation (add lines or pages as needed):  
MCE has asked if the transmittal of usage data could be automated so that the transmittal can come across at an expected time each day. This would allow for missing usage to be more easily identified by PG&E, or if needed, by MCE. PG&E has been unable to accommodate this request.

PG&E has not proposed any other mechanism to prevent this issue from occurring again.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	sscb@pge.com

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**Submitted by:**

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

**Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):**

Customers who are enrolled in Marin Clean Energy’s Net Energy Metering (NEM) program receive inaccurate bills leading the customers to believe that credits produced are applied to incorrect portions of the bill. This is a bill presentment issue.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

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**Please provide a detailed description of the issue (add lines or pages as needed):**

Credits generated by MCE NEM customers should only apply to the electric generation portion of their account. Unfortunately, PG&E's billing system is unable to present the bill properly and these credits appear to be applied to other unrelated charges on the customer's bill.

For example, a NEM customer may have generated a \$10 credit by producing more energy than they consumed. That credit should be applied against the electric bill in a month when the customer consumes more than they produce. However, PG&E applies that credit to another portion of the customer's bill, such as gas. According to the bill, that customer does not owe PG&E for a portion of their gas charges because the NEM credit has been applied. In actuality, the customer still owes the full amount of the gas bill and the credit has not been used. Customers on summary bills have even had their NEM credits applied towards other accounts.

This presentment of NEM credits has resulted in considerable customer confusion.

Because PG&E is not accounting for MEA credits customers could potentially have their power shut off for 'lack of payment.' PG&E has stated that they monitor NEM accounts manually to try to prevent NEM customers from having service stopped or going into collection status because the customer shows in their system as not paying in full.

**Please describe the lack of full cooperation (add lines or pages as needed):**

This issue was originally brought to PG&E's attention by MCE staff on July 20, 2010. PG&E has stated that they do not have a method to keep the MCE and PG&E balances separate.

PG&E has not proposed a solution to resolve this problem and has not provided MCE with billing information for NEM customers to ensure that staff, customer representatives and the MCE call center can appropriately respond to questions.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy	(415) 973-7370	sscb@pge.com

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	Solutions & Service		
Bill Chen	Manager, Core Gas Aggregation Program	(415) 973-7233	whc9@pge.com

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Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

New customers moving into MCE addresses are being opted out by PG&E in violation of the directive from the CPUC Energy Division.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Please provide a detailed description of the issue (add lines or pages as needed):

In May, 2010 the CPUC Energy Division directed PG&E to terminate the processing of opt outs for MCE's CCA customers and turned the opt out process over to MCE. Despite this clear directive, since MEA began service to customers it has come to MCE's attention that PG&E has not been enrolling new customers at MCE addresses in the MCE program to allow the MCE noticing process to occur. This protocol is important because it allows for the new customer to receive the terms and conditions of service from MCE and then make an informed decision on the generation provider.

Instead of following the statutory opt out process when a new customer calls to have new service turned on PG&E representatives are asking the customer if they want to opt out of MCE service before even being enrolled or receiving the terms and conditions. This activity is in clear violation of the CPUC directive to not interfere with the opt out process.

The CPUC directive followed months of abuses by the utility which tampered with the integrity of the opt out process. This ranged from a marketing campaign filled with misinformation about MCE, outbound calls aggressively pushing customers to opt out under false pretenses and prior to receiving any terms and conditions from MCE, and encouraging customers to opt out under methods not approved by the statutory process. Given these recent actions by PG&E it is clear that their involvement in the opt out process would interfere with and threaten the integrity of the process.

MCE has requested that new customer move-ins be submitted to MCE for enrollment and noticing. It is unclear how many customers this has impacted but there are 538 customers shown as 'turned off' where there has not been a re-enrollment at the address. It is not possible for MCE to ascertain how many of these locations are vacant and how many have had a new turn-on and have been proactively opted out by PG&E in violation of the statutory opt out process.

Currently PG&E is acting in violation of the clear directive from the CPUC Energy Division in May, 2010 requiring that they not process opt outs for MCE's CCA customers.

Please describe the lack of full cooperation (add lines or pages as needed):

MCE has raised this issue with PG&E representatives and has not received a clear response. PG&E representatives confirmed that they are offering to opt the customer out of MCE service at the time the customer calls in to have service initiated. PG&E

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representatives have also stated that they have some confusion about whether or not they have the authority to initiate opt outs at this time.

To MECs knowledge, PG&E representatives have not agreed to stop processing opt outs.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	sscb@pge.com
Eric Jacobson	Regulatory Relations	415-973-4464	EBJ1@pge.com

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Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):

MCE Invoice Cancellation Transaction Support

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Please provide a detailed description of the issue (add lines or pages as needed):

When PG&E provides usage to MCE via an EDI usage transaction, MCE rates the usage and returns the invoice to PG&E via an EDI invoice. Approx 5 business days later, after PG&E presents these charges on an invoice, they return a Microsoft Excel file to MCE with their internal Sub SA ID and Bill Segment ID related to that specific invoice.

MCE commonly has a need to cancel that invoice, for reasons such as:

1. PG&E estimated the meter and received actual usage prior to the bill being sent out
2. The usage is found to be outside of Hi/Low tolerances (this is commonly a result with meter rollovers)
3. The invoice was calculated using an incorrect rate or rate factors
4. Some other billing attribute on the account has changed (Baseline territory, Medical Baseline Allowance, etc.)

In situations such as these, MCE must send an EDI transaction to PG&E referencing the Sub SA ID and Bill Segment ID for the invoice to be cancelled. If MCE has not received this information because the charges have not been presented on an invoice, then they cannot cancel the invoice, and the erroneous charges must be presented to the customer, before they can be cancelled. The only way around this would be to contact PG&E and have them manually cancel the charges, a process that is not scalable for a production CCA implementation.

The Utility Industry Group (UIG) guideline for Invoice transactions between Energy Providers and Local Distribution Companies specifies that the CCA be allowed to send an Invoice cancellation record with a reference number to their original invoice number. The sender of the invoice establishes the invoice ID, and that invoice can immediately be cancelled by a transaction referencing this ID. This methodology is very important, because in an automated solution, PG&E can send a cancel of the usage transaction immediately, and MCE must be able to automatically cancel their charges related to this now cancelled usage. Furthermore, this allows MCE to cancel an invoice prior to PG&E billing the invoice, and also negates the need for an email based interface between the two parties.

PG&E not supporting this standard invoice cancellation process results in PG&E issuing a bill that may not contain the most up to date information on the MCE portion of the bill. When the PG&E and MCE portion of the bills contain usage information that is different, this causes customer confusion, and increased calls to the PG&E and MCE call centers. In addition, this causes the customer to see additional cancellations and rebills because many of these errors could have been corrected before being presented on an invoice.

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

Please describe the lack of full cooperation (add lines or pages as needed):

In conference calls with PG&E, MCE has requested the ability to cancel transactions prior to invoicing, and for the ability to cancel without the usage of the Bill Segment ID which is being provided to MCE via a manual process.

PG&E has not proposed any way to automate this process, or any schedule for being able to implement such a change.

Please list the personnel at the utility with whom the community choice aggregator is working:

Name	Title	Phone Number	e-mail
Sebastien Csapo	PG&E   Energy Solutions & Service	415-973-7370	sscb@pge.com

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PART 1 (to be completed by CCA)

Submitted by:

Name	Jordis Weaver
Title	Administrative Associate
Phone	415.464.6021
e-mail	jweaver@marinenergyauthority.org

Please identify the specific matter on which the utility is not considered to be cooperating fully (add lines or pages as needed):



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PG&E's current rate restructuring proposal to impose a conservation incentive adjustment (CIA) in Phase 2 of its Test Year 2011 General Rate Case has been aggressively pursued by PG&E and would create a rate structure that would impose substantially higher costs on MEA customers while effectively eliminating a key policy tool of MEA: establishing tiered generation rates to encourage energy conservation, promote increased renewable energy deliveries and reduce greenhouse gas (GHG) emissions among other socially and environmentally focused concerns. PG&E's proposal would also disrupt MEA's progress in furthering California's broader-based environmental mandates, including the achievement of RPS and AB 32 objectives.

Please provide a detailed description of the issue (add lines or pages as needed):

PG&E's periodic General Rate Case (GRC) proceedings are intended to provide the utility with scheduled opportunities to address cost allocation and rate structuring issues, as well as other related considerations, for the purpose of setting retail electric rates that accurately reflect utility expenditures for core services and programs while conforming with statutory requirements identified in the Public Utilities Code, Commission decisions and broader-based policy objectives.

In the current GRC proceeding, PG&E has introduced certain elements of its residential rate proposal that forge competitive barriers for alternative generation providers, including CCAs and residential Direct Access programs. Furthermore, PG&E has mischaracterized the motivations for these proposed changes, suggesting that residential rate restructuring is necessary to "level the playing field" between PG&E and prospective competitive service providers and has also suggested that certain elements of its proposal are necessary to promote energy conservation within the residential rate class. The record for this proceeding suggests otherwise and exposes numerous potential effects that are contrary to PG&E's claims. In particular, MEA has observed the following issues, inconsistencies and concerns:

- 1) PG&E's CIA proposal is discriminatory towards MEA's current and future residential customers and would impose disproportionate cost increases on these individuals without any commensurate increases/enhancements in core utility services – PG&E's independent analyses confirm average cost increases of 25 percent for MEA's current customers, which would accrue as a direct result of PG&E's proposed residential rate restructuring;
- 2) PG&E's sweeping proposal is unsupported by any publicly available cost-based analyses, despite requests from MEA and other parties to complete such analyses;
- 3) PG&E's CIA proposal is unnecessary, as it fails to promote conservation relative to the currently effective four-tier residential rate structure and would disrupt MEA's progress in furthering California's broader-based environmental mandates;

**Attachment 5: Un-redacted version of the 13 first quarter issues, as initially described by MCE on December 10, 2010**

4) PG&E's CIA proposal effectively eliminates a critical rate setting tool of CCAs, which would dilute the integrated service offering of these entities, inclusive of conservation signals that are responsive to community-specific goals and objectives (which are certainly dissimilar throughout PG&E's service territory), and inappropriately grant PG&E considerable competitive leverage by practically restricting certain aspects of a CCA's rate making authority; and  
5) Incentives to conserve energy should be directly tied to the use or consumption of the energy commodity itself and, therefore, should be conveyed by the generation service provider, which is procuring, planning for and balancing energy requirements of its customers.

MEA has prepared written testimony in relation to PG&E's proposed residential rate restructuring and considers PG&E's proposal an adversarial approach to residential rate design.

Please describe the lack of full cooperation (add lines or pages as needed):

PG&E's lack of cooperation, in this case, relates to the discriminatory impacts of PG&E's proposal on MEA and its customers as well as the limitations the imposition of a CIA surcharge would set on MEA's policy-making authority, namely, MEA's ability to offer a different rate design from PG&E. PG&E's lack of full cooperation with MEA's CCA implementation, as it relates to the subject residential rate proposal, can be tracked through numerous sequential, documented actions and inactions of the incumbent utility, including:

- 1) PG&E originally introduced its CIA proposal in a proceeding to which MEA was not a party – PG&E was keenly aware of this fact, yet decided to introduce its proposal in such a proceeding, not in the traditional GRC proceeding in which parties would have appropriate opportunity for review and comment;
- 2) PG&E's Petition for Modification was filed nearly two weeks *after* MEA submitted its CCA Implementation Plan to the Commission for certification – PG&E was also well aware of MEA's implementation plans and related schedule, as it had been regularly attending numerous *public* meetings of Marin County, the MEA Board of Directors and its standing committees throughout the organization's multi-year evaluative and formative process;
- 3) As a non-party to this proceeding, MEA did not receive a copy of the original Petition or the original draft proposed decision, which was distributed on a limited basis – PG&E did not provide MEA with a copy of its Petition for Modification, nor did it bring the Petition to MEA's attention, despite formal written communication (in which PG&E's recent, 2010 rate changes were discussed) between PG&E executive David Rubin and MEA Chair Charles McGlashan, which occurred on January 4, 2010, *just 18 days after* the Petition for Modification was filed; and
- 4) Following its filing of the Petition for Modification, PG&E engaged in frequent formal written communication with MEA's Chair regarding numerous matters related to the CCA program – including threats of litigation related to the California Environmental Quality Act, erroneous claims related to adverse

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environmental impacts stemming from CCA implementation, and threats of “double whammy” cost recovery attempts by PG&E in the event of CCA program failure as well as other disruptive distractions.

The timeline of these actions, as a practical matter, suggests that PG&E’s proposal is an intentional effort by the monopoly utility to disrupt MEA’s implementation and place MEA at a competitive disadvantage.

Please list the personnel at the utility with whom the community choice aggregator is working:

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