

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

Order Instituting Rulemaking to Implement
Portions of AB117 Concerning Community
Choice Aggregation

Rulemaking 03-10-003
(October 2, 2003)

**LOCAL POWER
COMMENTS ON CREDIT, DELIVERY OR ASSIGNMENT OF
DWR AND UTILITY POWER CONTRACTS TO A
COMMUNITY CHOICE AGGREGATOR
CUSTOMER RESPONSIBILITY SURCHARGE**

March 11, 2005

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OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
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**LOCAL POWER
COMMENTS ON TAKE OR PAY CONTRACTS**

Local Power submits its comments on allocation of utility and DWR power contract risk to Community Choice Aggregators (CCA) relative to the Customer Responsibility Surcharge (CRS). Local Power has a number of ideas of how this could be done, but will limit its Comments to a basic categorization of Department of Water Resources (DWR) and utility contract assignment or allocation to a CCA, either through simple assignment, contract splitting, CCA bundling, or through a basic take-or-pay offering to CCAs. As a proponent of developing a way for CCAs to receive credit or deliveries for DWR or utility power that is among the liabilities calculated in the CRS, Local Power hereby submits its proposals according to the March 11 deadline.

The varieties of contracting situations facing an effort to allocate DWR or utility and utility contracts to a CCA may be reduced to three.

A. Easy Scenario

CCAs would take charge of DWR and utility contracts that “fit” some part of the CCA’s portfolio requirement, or that fit the requirements of several CCAs combined. In this event, the transaction would require only a creditworthiness requirement from the CCA, which would not be difficult considering the volume of revenue in a CCA ESP contract.

If the contracts could be so easily assumed by a CCA or CCAs, the question is, how far above market is the power? The Commission would look at the average above market net

cost associated with the contract, to determine a CRS surcharge to accompany the contract. If their contract is the same as the average utility or DWR contract, then there would be no CRS for that contract assignment. If it is above average over market, then the CCA would want to be compensated in a CRS Credit, the basic idea of which has been raised by several parties in R.03-10-003.

There could be a true-up of this CRS factor with the assumption of a contract by a CCA, based on the principle adopted by the Commission in D.04-12-046:

-Conclusion of Law #21: “AB 117 does not permit cost-shifting of CCA CRS liabilities between utility bundled customers and CCA customers” (p.66).

CCAs should be free to dispose of the contracts they assume in whatever manner they wish, in order to facilitate CCA and as a benefit to the marketplace.

B. Hard Scenario with a Split

If there were no such match between a CCA or several CCAs' resource requirements and DWR or utility power contracts, and some other method were needed to facilitate an allocation that protects against cost-shifting between utility bundled customers and CCA customers, then the utility or DWR could divide its responsibilities into 2 contracts. DWR or the utility could assign the power but not the contract to a CCA.

It is conceivable that the utility or DWR could split a contract into two pieces and assign a part of a contract to a CCA according to its loads. It is also possible that the could negotiate with the seller and split the contracts.

C. Worst Case Scenario: No Fit, No Split - Take or Pay

If you cannot split the contract, then a take-or-pay approach could be employed under which the DWR or utility would make available the power to the CCA and charge the CCA for costs associated with the power. Under this scenario, the CCA would have to commit to take the power on a multi-year basis.

This approach is common in natural gas, in order to ensure a supply, a customer must commit to purchase volume over time; if over time the CCA for any reason did not need the power, the CCA would either have to take it (and dispense with it freely) or pay for it.

Thus, under this approach, if a DWR or utility contract could not be assigned to a CCA or CCAs for the above reasons, the Commission could shift a *pro rata* share of risk for the contracts (on a voluntary basis) to the CCA, because the CCA would commit to take or pay for the power over the duration of the contract. Thus a CCA would accept responsibility for its part of a contract, and with compliance ensured, cost-shifting from CCA customers to bundled service customers would not take place.

D. Conclusion

We introduce these comments to illustrate the range of options available to the Commission, and look forward to a fuller discussion of these ideas on this matter with parties to R.03-10-003 and the Commission.

DATE: March 11, 2005

Respectfully submitted,

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CERTIFICATION OF SERVICE

R.03-10-003

I, Paul Fenn, certify that on this day March 11, 2005, I caused copies of the attached COMMENTS ON CREDIT, DELIVERY OR ASSIGNMENT OF DWR AND UTILITY POWER CONTRACTS TO A COMMUNITY CHOICE AGGREGATOR CUSTOMER RESPONSIBILITY SURCHARGE to be served on all parties by emailing a copy to all parties identified on the service list provided by the California Public Utilities Commission for this proceeding.

Dated: March 11, 2005 at Oakland, California.

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R.03-10-003

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