BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Petition of the Marin Energy Authority, Alliance for Retail Energy Markets, City and County of Santa Cruz, Climate Protection Campaign, Constellation NewEnergy, Inc., Direct Access Customer Coalition, Direct Energy, LLC, Energy Users Forum, IGS Energy, Retail Energy Supply Association, Sam's West, Inc., Shell Energy North America (US), L.P., South San Joaquin Irrigation District, Texas Retail Energy, LLC, and Wal-Mart Stores, Inc. to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5

PETITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUB. UTIL. CODE § 1708.5 OF MARIN ENERGY AUTHORITY, ALLIANCE FOR RETAIL ENERGY MARKETS, CITY AND COUNTY OF SANTA CRUZ, CLIMATE PROTECTION CAMPAIGN, CONSTELLATION NEWENERGY, INC., DIRECT ACCESS CUSTOMER COALITION, DIRECT ENERGY, LLC, ENERGY USERS FORUM, IGS ENERGY, RETAIL ENERGY SUPPLY ASSOCIATION, SAM'S WEST, INC., SHELL ENERGY NORTH AMERICA (US), L.P., SOUTH SAN JOAQUIN IRRIGATION DISTRICT, TEXAS RETAIL ENERGY, LLC, AND WAL-MART STORES, INC.

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And on behalf of:
Petitioners named above and
the Supportive Entities named below

December 18, 2012

List of Supportive Entities

The following entities join with the parties named in this Petition in calling upon the Commission to institute a rulemaking and investigation into the issues of cost allocation, cross - subsidization and non-bypassable charges as set forth in Senate Bill 790 and in this Petition:

1. Applied Solutions
2. California Integrated Renewable Energy Solutions (CA-IRES)
3. California Manufacturers & Technology Association
4. California State Universities
5. California Watershed Research and Training Center
6. City and County of San Francisco
7. City of Arcata
8. City of Cerritos
9. City of Corona
10. City of Palmdale
11. City of Richmond
12. Commerce Energy, Inc.
13. ConEdison *Solutions*
14. Eastside Power Authority
15. GDF SUEZ Energy Resources NA, Inc.
16. Green Cities California
17. Helping Hand Tools
18. JDS Uniphase
19. Kyoto USA
20. Liberty Power Corp., LLC
21. Local Clean Energy Alliance
22. Local Energy Aggregation Network
23. LumenX Consulting
24. Mint Energy, L.L.C.
25. Monterey Regional Waste Management District
26. Noble Americas Energy Solutions LLC
27. Pacific Environment
28. Pilot Power Group, Inc.
29. Renewables 100 Policy Institute
30. San Diego Energy District Foundation
31. San Luis Obispo Clean Energy Economy Coalition
32. Santa Cruz County Planning Department
33. School Project for Utility Rate Reduction (SPURR)
34. Sierra Club California
35. Sonoma County Water Agency
36. Stanford University
37. Sustainable Novato
38. Tesoro Refining and Marketing Company
39. University of California
40. Women's Energy Matters

TABLE OF CONTENTS

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In accordance with the provisions of Rule 6.3 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission"), the Marin Energy Authority ("MEA"),[1] Alliance for Retail Energy Markets, [2] City and County of Santa Cruz, Climate Protection Campaign, Direct Access Customer Coalition,[3] Constellation NewEnergy, Inc., Direct

[1] MEA is the not-for-profit public agency that administers the Marin Clean Energy community choice aggregation ("CCA") program. MEA launched electricity service to customers in May 2010. It is the first operating CCA program in the state of California.

[2] AReM is a California mutual benefit corporation formed by electric service providers that are active in California's direct access market. The positions taken in this filing represent the views of AReM but not necessarily those of individual members or affiliates of its members with respect to the issues addressed herein.

[3] DACC is a regulatory alliance of educational, commercial and industrial customers that utilize direct access for all or a portion of their electrical demand. In the aggregate, DACC member companies represent over 1,900 MW of

Energy, LLC, Energy Users Forum, IGS Energy, Retail Energy Supply Association, [4] Sam's West, Inc., Shell Energy North America (US) L.P., South San Joaquin Irrigation District, Texas Retail Energy, LLC, and Wal-Mart Stores, Inc., together the "Petitioners," submit this Petition for Rulemaking ("Petition") to review and reform existing cost allocation practices, as well as the mechanisms used to determine non-bypassable charges imposed on departing load customers in accordance with the directives contained in Senate Bill ("SB") 790. Because these issues are not being addressed in Rulemaking ("R.") 12-02-009 ("CCA Rulemaking"),[5] Petitioners believe it is appropriate for the Commission to initiate a new Order Instituting Rulemaking ("OIR") in order to focus, in a coordinated proceeding, on modifying cost allocation policies that inhibit – rather than facilitate [6] – the development of community choice aggregation ("CCA") programs, and that more broadly inhibit the development of customer choice.

The risk of continuing to address cost allocation policy issues in a diffuse manner – across many Rulemakings and Applications – is that the Commission will reach inconsistent – and potentially contradictory – outcomes in different cases. Petitioners seek to create an appropriate venue for these cost allocation issues such that the Commission can efficiently and effectively develop clear policy principles on matters directly impacting CCA and customer choice.

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demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

[4] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

[5] The CCA Rulemaking, initiated by the Commission in response to the passage of SB 790 proceeding currently underway addresses only code of conduct and enforcement procedures.

[6] See Public Utilities Code Section 707(a)(4)(A).

This Petitio n seeks to improve the Commission's policies related to cost allocation, protect against cross -subsidization, and properly structure non -bypassable charges in order to create a level playing field for CCA and all departing load. Competitive providers, suc h as CCAs and electric service providers ("ESPs"), and their customers face a regulatory process that has allowed the investor -owned utilities ("IOUs") to improve their competitive position by shifting costs and burdens to departing lo ad customers and thei r suppliers. This Petition seeks to level the scales through the adoption of policies and procedures that facilitate competition and eliminate cost allocation structures that discourage customer choice.

Specifically, Petitioners request that the Commiss ion initiate an OIR proceeding to pursue the following objectives:

- Develop cost allocation and cross -subsidization principles that align with the requirements of SB 790;
- Phase-out stranded cost recovery by the IOUs;
- Reform the calculation of non -bypassable charges that are imposed on departing load customers;
- Impose new transparency requirements on IOUs to ensure against improper cross -subsidization;
- Adopt a formal requirement that any new OIR that may impact CCA and competitive retail markets must identify potential cost allocation and cross-subsidization issues;
- Impose a burden of proof on the IOUs to demonstrate, in any application proceeding, that a proposed allocation of costs to non -utility generation customers through distribution rates (or other no n-bypassable charges) complies with the Commission's standards pertaining to cost causation; and

- Incorporate rules that are necessary to facilitate the development of CCA and retail choice programs, to foster fair competition, and to protect against cross -subsidization paid by ratepayers, as set forth in SB 790.

The statutory basis for this Petition, and an explanation of the competitive issues this Petition seeks to address, follows. For the convenience of the Commission, a set of draft Proposed Regulations is set forth on Attachment 1.

I. BACKGROUND

In 2002, Assembly Bill ("AB") 117 established a local government's right to implement CCA, a prog ram that allows communities to pool, or aggregate, the electric load of their residents, businesses and other institutions in order to procure and/or generate electricity on their behalf. CCA focuses on the procurement and generation side of the energy bu siness, utilizing services provided by existing IOUs for power transmission and distribution, line maintenance, and customer connection and billing. Local governments pursue CCA in order to (a) more actively manage the energy costs and resources that serv e the energy needs of residents and businesses within their footprints; (b) foster healthy competition in a business dominated by monopolies; (c) achieve specific local environmental goals including increased use of renewable resources and substantial reductions in greenhouse gas emissions; (d) improve energy efficiency; and (e) create new local jobs. These goals cannot be achieved by local governments under monopoly utility service.

After the passage of AB 117, a number of communities evaluated and activ ely pursued CCA. Among these communities, the efforts of the San Joaquin Valley Power Authority ("SJVPA") were thwarted in large part due to the aggressive efforts and tactics of Pacific Gas and Electric Company ("PG&E"). In 2012, SJVPA formally dissolve d. MEA also faced

significant aggressive opposition by PG&E, including the PG&E -funded Proposition 16, [7] yet successfully managed to launch service to customers in May 2010. MEA currently serves customers throughout Marin County and has recently expanded to include the City of Richmond. The City and County of San Francisco are continuing to pursue CCA but have not yet launched service to customers. While the CCA movement has taken years to develop, there is growing and substantial interest among California communities and governmental agencies in exploring and cultivating the benefits associated with local control of energy procurement.

When it enacted SB 790, the Legislature recognized that additional protections are necessary in order to mitigate or eliminate unwarranted and anti-competitive behavior by the incumbent IOUs. SB 790 strengthens existing law by clarifying, amending, and adding key provisions related to cost allocation, to allow local governments to pursue CCA without undue barriers and excessive burdens. SB 790 is a clear message both to the Commission and the IOUs that the Legislature wishes, "to facilitate the development of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers."[8]

The Commission began the important work of implementing SB 790 in February 2012 with the institution of the CCA Rulemaking. In that proceeding, the Commission is addressing specific "Code of Conduct" issues as required by Section 2(c) of SB 790. That requirement reads as follows:

> [The Legislature finds and declares all of the following: …] (h) It is therefore necessary to establish a code of conduct, associated rules, and enforcement procedures, applicable to electrical corporations in order to facilitate the

[7] Despite spending more than $46 million, PG&E failed to convince voters to erect barriers to the establishment of CCA, as Proposition 16 was defeated by a 52.5 percent to 47.5 percent vote margin.

[8] *See*, Public Utilities ("P.U.") Code Section 707(a)(4)(A). All further references to code sections herein are to the P.U. Code unless indicated otherwise.

> consideration, development, and implementation of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization by ratepayers.

Opening and reply comments on the CCA Rulemaking were filed on March 26 and April 16 of this year, respectively. A Scoping Memo was then issued on August 9, 2012 [9], to which opening and reply comments were filed on August 27 and September 10, respectively. The Commission is by statute required to vote out a Code of Conduct decision in the CCA Rulemaking prior to the end of this year. The proposed decision was issued on November 20, 2012.

Notably, despite the efforts by several parties to have specific cost allocation issues discussed in that proceeding, the August 9 Scoping Memo provided that cost allocation was *not* to be considered in the CCA Rulemaking:

> Issues related to costs and rates, and particularly those related to the cost allocation mechanism adopted previously by the Commission, are more appropriately addressed in other Commission proceedings that directly address costs and rates. For these reasons, issues related to costs and cost allocation are outside the scope of this proceeding.[10]

Therefore, the cost allocation, cross-subsidization, and non-bypassable charge issues raised in SB 790 remain unaddressed. These issues must have a venue for their formal consideration.

Importantly, as demonstrated in the following section, SB 790 recognized that the cost allocation issues affecting CCA formation are relevant to retail choice in general. On this basis, the cost allocation, cost shifting, and non-bypassable charge reforms called for in SB 790 are appropriately applicable to all non-IOU load serving entities ("LSEs"), including ESPs. Remedying the cost allocation, cross-subsidization and non-bypassable charge issues as envisioned by SB 790 impacts all non-IOU LSEs and as such, these reforms are of significant

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[9] *See* August 9, 2012, *Assigned Commissioner's and Administrative Law Judge's Scoping Memo and Ruling* ("CCA Rulemaking Scoping Memo").

[10] See CCA Rulemaking Scoping Memo, at p. 5.

import to the whole spectrum of non-utility generation providers and their customers. Therefore, the Commission should consider the reforms discussed herein as being equally applicable both to CCA and direct access ("DA") interests.[11]

II. JUSTIFICATION FOR REQUESTED RELIEF

In the following Sections, Petitioners provide substantive and procedural recommendations that, if adopted by the Commission, will establish unambiguous principles and meaningful reforms to existing cost allocation, cross -subsidization, and non -bypassable charge regulations. This Petition is intended to initiate a forum within which th e Commission can implement the significant legislative changes contained in SB 790.

A. SB 790 requires the Commission to implement measures that provide improved protections for CCAs and better support the formation of CCAs in California

The Legislature intended for SB 790 to improve the competitive environment for CCAs and facilitate the growth of this service option in California. The following excerpts from the statute emphasize the Legislature's concern regarding the barriers faced by CCAs:

> SEC. 2. The Legislature finds and declares all of the following:
>
> (a) It is the policy of the state to provide for the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2 of the Public Utilities Code.
>
> (b) Since community choice aggregation programs were first authorized in 2002, only one community choice aggregation program has been implemented.
>
> (c) Electrical corporations have inherent market power derived from, among other things, name recognition among custo mers, longstanding relationships with customers, joint control over regulated operations and competitive generation services, access to competitive customer information, and the potential to cross - subsidize competitive generation services.

[11] Direct Access was initiated by Assembly Bill 1890 (1996). It was subsequently suspended as a result of the energy crisis in 2001. Senate Bill 695 (2009) allowed for the limited reopening of Direct Access.

(d) The Public U tilities Commission has found that conduct by electrical corporations to oppose community choice aggregation programs has had the effect of causing community choice aggregation programs to be abandoned.

(e) The Public Utilities Commission has made consider able progress in identifying and addressing the conduct that has hindered the creation of community choice aggregation programs, and it is now appropriate to further address these issues in statute.

(f) The exercise of market power by electrical corporatio ns is a deterrent to the consideration, development, and implementation of community choice aggregation programs.

(g) California has a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration , development, and implementation of community choice aggregation programs.

The Commission is charged with fostering and implementing this "substantial governmental interest" in CCA. Granting this Petition and commencing an OIR as discussed herein will ensure that the Commission meets these obligations.

B. SB 790 calls for the Commission to reframe the principles upon which it determines the appropriate cost allocation for IOU procurement and programs.

SB 790 requires the Commission to adopt policies that foster fair competition and protect against cross-subsidization. Historically, the Commission's focus in this regard has been on the protection of the IOUs' bundled customers and ensuring that they are not forced to absorb increased "stranded" costs when s ome customers choose to obtain service from a CCA or an ESP. The Commission's decisions fail to acknowledge that all LSEs (whether ESP, CCA or IOU), manage generation and load on a daily basis as a matter of standard operating practice. Load can vary dramatically due to a wide range of factors (weather, customers moving in or out of the service territory, installation of distri buted generation, etc.). LSEs manage their load and resources to accommodate these load fluctuation s. The departure of customers from IOU bundled service, or the return of customer s to bundled service should not necessarily trigger a stranded cost obligation.

In fact , the Commission's current cost allocation, cost shifting, and non -bypassable charge policies with regard to depart ing load customers extend beyond the ostensible purpose of protecting bundled customers, and instead have led to the extensive shifting of costs to departing load customers that create anticompetitive barriers that shield the IOUs from responsibility for procurement planning or program designs that account for customer choice . The result of these Commission policies – which are designed to protect bundled customers – is to unfairly shift costs to CCA and DA customers and absolve the utilities from responsi bility to adopt and carry out reasonable procurement practices. As such, current Commission policies undermine all departing load retail choice programs, including both CCA and DA, by imposing extensive and unwarranted non -bypassable charges . SB 790 requ ires the Commission to re -evaluate these policies and take a more balanced approach to cost allocation, cross -subsidization and non - bypassable charge issues.

Specifically, SB 790 provides:

1. Section 366.2(a)(5), Section 380 (a)(4) and Section 380(h):

Section 366.2(a)(5): A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute.

Section 380(a)(4): states that in developing resource adequacy requirements, the Commission shall: (4) Maximize the ability of community choice aggregators to determine the generation resources used to serve their customers.

Section 380(h) (bold language was newly introduced in SB 790):

(h) The commission shall determine and authorize the most efficient and equitable means for achieving all of the following:
(1) Meeting the objectives of this section.
(2) Ensuring that investment is made in new generating capacity.
(3) Ensuring that existing generating capacity that is economic is retained.
(4) Ensuring that the cost of generating capacity is allocated equitably.
(5) Ensuring that community choice aggregators can determine the generation resources used to serve their customers.

These statutory provisions make it clear that the Commission must ensure that a CCA is solely responsible for its own procurement activities except in those circumstances where there is express statutory authority for other p rocurement, such as under the Cost Allocation Mechanism ("CAM"). Imposition of IOU generation costs or generation -related program costs , on CCA entities – either through the CAM or by assigning generation -related charges to transmission or distribution ra tes when those same services can be procured directly from the competitive markets – should be prohibited.

2. Section 366.2(k)(1):

> Except for nonbypassable charges imposed by the commission pursuant to subdivisions (d), (e), (f), and (h), and programs autho rized by the commission to provide broader statewide or regional benefits to all customers, electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer.

This provision of SB 790 requires the Commission to re -evaluate the processes by which it imposes non-bypassable charges on CCA customers . Currently, all retail choice customers, including CCA customers, are assessed non -bypassable charges for the IOUs' "stranded costs." The initial concept of recovery of "stranded costs" by the IOUs originated in Assembly Bill 1890, the electricity restructuring bill enacted in 1996. The Legislature intended that most of the stranded costs were to be recovered by December 31, 2001 [12] or foregone by the IOUs. Nevertheless, subsequent Commission decisions, beginning with Decision ("D.") 08-09-012,[13] have vastly expanded t he types of costs that could be considered to be "stranded" and recovered from departing load customers beyond what AB 1890 contemplated. As a consequence, significant stranded cost charges continue to this day and burden the customers (even those who

[12] AB 1890, Section 367.

[13] D.08-09-012 implemented "new generation" (i.e. post-January 1, 2003) non-bypassable charges previously established by D.04-12-048 (regarding exit fees) and D.06-07-029 (regarding the Cost Allocation Mechanism).

departed IOU service since the beginning of DA back in 1998) who do not receive generation service from the IOUs and the CCA and DA providers which serve them. Petitioners are concerned that the same interminable fees will be imposed on their customers for unspecified durations.

With the new SB 790 mandate to eliminate cross-subsidization by CCA customers, it is time to re-evaluate existing stranded cost recovery mechanisms. It is nearly fifteen years since electric industry restructuring commenced in April 1998. The concept that the IOUs continue to need rate recovery for costs allegedly "stranded" due to the implementation of electric industry restructuring has long since passed its "Use By" date. Ongoing and institutionalized policies that allow incumbent utilities to plan and procure to serve load that is being served by the competitive market and impose stranded costs on those departed load customers as result of these poor planning and procurement practices are not conducive to the implementation of efficient procurement. Petitioners are unaware of any other competitive retail markets where the incumbent utilities are allowed to conduct their procurement in this manner.

Moreover, unless and until the IOUs' stranded costs are phased out, there should be an evaluation of how to ensure that customers that are paying the stranded costs actually receive some benefit for doing so.

3. Section 707(a)(4)(A):

> [The Commission shall…] (4)(A) Incorporate rules that the commission finds to be necessary or convenient in order to facilitate the development of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers.

In combination with the specific statutory directives referenced above, this provision provides direction to the Commission to address the issues raised in this Petition in a manner that ensures a level playing field for competition by CCAs and ESPs.

C. While SB 790 primarily addresses cost allocation, cross-subsidization, and non-bypassable charge reforms as they relate to CCAs, these are currently outstanding issues which impact all non-IOU LSEs.

The passage of SB 790 represents landmark legislation that supports and encourages customer choice through CCA. To achieve this end, SB 790 directs the Commission, as noted above, to "foster fair competition." Fair competition with respect to the cost allocation, cross subsidization, and non-bypassable charge issues significantly impacts not only CCAs and their customers, but ESPs and their DA customers as well. As such, the reforms proposed herein will be most effective if such reforms are made applicable to the full spectrum of departing load customers who are required to pay stranded costs. Indeed, SB 790 states as follows:

> Section 365.1(c)(2)(B)
>
> If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, **or an electric service provider** [emphasis added].

Importantly, SB 790 mandates that the Commission ensure that cost allocation is "fair and equitable" for *all customers*, whether they are on bundled, CCA or DA service. This means that the concerns expressed herein with respect to cross subsidization and non-bypassable charges are equally applicable to all customer groups.

III. REQUESTED RELIEF AND PROPOSED REGULATIONS

The Commission should institute an OIR to analyze and reform the cost allocation, cross-subsidization, and non-bypassable charge issues raised by SB 790 as set forth above. Specifically:

A. Petitioners request that the Commission formalize its consideration of cost allocation and cross-subsidization issues in both Commission rulemakings and utility applications

In order to bring cost allocation and cost-shifting regulations into compliance with the requirements of SB 790, Petitioners request that the Commission adopt broad cost allocation principles that will be applied in all Commission proceedings. Adoption of a comprehensive cost allocation approach will replace the inconsistent patchwork of regulations that currently exists. Implementation of a clearly articulated policy on cost-shifting will necessitate more rigorous, transparent, and efficient consideration of cost allocation implications in all Commission proceedings.

The need for these reforms is clear. Of primary concern are the individual applications filed by the IOUs. In IOU-specific applications, the Commission is often faced with adjudicating IOU procurement proposals, including but not limited to cost allocation treatment for the costs of their procurement and related programs. In many instances, the IOUs seek to have the procurement costs recovered from all distribution customers because the IOUs claim that "all customers benefit" from the procurement and related programs that the IOUs are proposing. This means, of course, that the IOUs propose that costs be allocated not only to the IOU's own bundled service customers, but also to customers served by the CCA and ESP competitors of the IOUs. If IOU procurement-related costs are allocated to CCA and DA customers, these customers effectively pay twice for the same services – once to the IOU for programs the customers do not use, and again to the competitive CCA and ESP suppliers from which they actually take service.

One way of thinking about this is like a CCA or ESP playing tennis against an IOU tennis ball machine. The IOUs continually launch their applications over the net, and it is the responsibility of CCAs and ESPs to "play defense" on these cost allocation issues. It has

become the burden of the CCA and ESPs to evaluate the cost effectiveness issues, pursue discovery to bring these issues to light, and inform the Commission through the regulatory process of the defects of the IOU's cost allocation proposal. This structure is highly inefficient, creating unfair burdens on CCAs and ESPs who (i) have fewer regulatory resources than the IOUs have and (ii) do not have the same regulatory rate recovery for their regulatory expenses as do the IOUs. As such, this Petition is aimed at creating greater regulatory efficiency and improved information for the Commission and parties to help ensure equitable results.

In certain circumstances, Commission-instituted OIRs implicate these issues, such as R.12-03-014 on long-term procurement planning ("LTPP") and related procurement topics; and R.11-10-003, which addressed the impact on public benefits associated with the expiration of ratepayer charges pursuant to Section 399.8 and Commission oversight of the Electric Program Investment Charge ("EPIC") established by D.11-12-035. Petitioners have frequently observed that while cost allocation is sometimes mentioned in the OIRs that commence these proceedings, all too often such issues are ignored by the Commission as the proceedings progress. It then becomes the responsibility of groups that represent non-utility LSEs to point out the cost allocation implications.

As a result, Petitioners request that the Commission develop clear principles that address cost allocation and cross-subsidization issues as they relate to overall IOU procurement policy and individual IOU service applications. Clarification of Commission policy is necessary to fully implement SB 790.

1. The Commission should require that all IOU applications for supply or supply-related programs have a presumption of cost allocation to the generation function, unless they have met a specific burden of proof to functionalize costs in the transmission or distribution rates.

With regard to IOU procurement applications, including applications for conventional generation procurement, demand response programs, smart grid deployment, or renewable procurement, the current regulatory review process is devoid of clear and consistent procedures – and policies – that apply when and if an IOU seeks to allocate costs beyond its own bundled generation customer base. The Commission should adopt regulations that impose a rebuttable presumption that the costs of all IOU supply or supply-related applications will be allocated to the IOU's bundled customer generation rates only, unless the application meets a burden of proof obligation for some other form of cost allocation in accordance with Commission-established principles of cost causation.

The precise parameters of such a burden of proof should be developed in the course of this proceeding, but at a minimum, such a showing must require more than generalized statements that the utility proposal is "for the common good" or that "all customers benefit." A common assertion by the IOUs has been that new generation serves a "reliability" need – this is a red herring as all new generation (whether developed or contracted for by a CCA, an ESP or an IOU) serves a reliability need. Rather, a specific burden of proof must be met that includes a showing as to why an IOU's proposal to allocate generation or generation-related charges to transmission and distribution charges is justified. The IOU should be required to demonstrate that (a) significant benefits (that are different and are in addition to the normal system benefits that all new generation provide to the system) exist that accrue to *all* ratepayers and not just bundled customers; (b) similar benefits cannot be offered by competitive third parties; (c) that competitive third parties are not meeting their share of reliability requirements, and (d) broad

allocation of costs to all customers is consistent with the Commission's established principles of cost causation. Furthermore, with regards to the assertions by the IOUs regarding reliability, the IOUs should be required to meet a higher standard because all new generation provides a "reliability" benefit.

Adopting this burden of proof would ensure that the IOUs apply a consistent and transparent rationale when and if they propose functionalizing costs in a manner that includes cost allocation to retail choice customers. By providing such consistency and transparency, the Commission would fulfill its obligation under SB 790 to ensure fair competition and eliminate the "shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation." [14] Petitioners therefore request that the Commission initiate an OIR to establish the specific parameters of this burden of proof standard.

2. Commission-initiated Rulemakings should also adopt a standard that all generation -related charges will presumptively be allocated to utility generation rates.

The need for consistency and transparency is equally important when the Commission initiates OIR proceedings on its own initiative. In any OIR proceeding in which the Commission is considering the development of IOU generation or gener ation-related programs, there should be a rebuttable presumption that the costs of such programs will be allocated to the IOUs' generation rate component . The costs of such programs should only be allocated on a system - wide basis if there is a specific and persuasive demonstration that such costs more appropriately belong in the transmission and distribution functions.

[14] Section 366.2(a)(4).

B. Determination of non-bypassable charges associated with the IOUs' generation portfolio must be revisited as well.

Current regulations allow the IOUs to calculate vintaged non-bypassable charges (also referred to as "exit fees.") that are assessed on departing load customers. Significant improvements have been made in the calculation of these non-bypassable charges. For instance, D.11-12-018, approved on December 1, 2011, implemented much needed reforms to the calculation of the Power Charge Indifference Adjustment ("PCIA"), particularly with respect to valuing the renewable energy included in the IOUs' portfolio. [15] A much earlier decision, D.08-09-012, also implemented PCIA vintages so that customers departing utility service would know that the elements of the utility supply portfolio for which they would be required to pay a PCIA would be fixed, and therefore reduced over time, as the underlying contracts expired, so long as the customer remained in a retail choice program.

Nevertheless, there is more that needs to be done to ensure that the non-bypassable charge structure does not hamper fair competition as required by Section 366.2(k)(1) (SB 790), which states as follows:

> Except for nonbypassable charges imposed by the commission pursuant to subdivisions (d), (e), (f), and (h), and programs authorized by the commission to provide broader statewide or regional benefits to all customers, electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer.

Petitioners request that this Rulemaking address the following two problems. First, retail choice customers are assessed a non-bypassable charge every year, a charge that can vary depending on market conditions (comparing the value of the utility portfolio versus market

[15] The PCIA was revised to reflect the higher overall costs of Renewables Portfolio Standard-eligible energy, incorporating a "renewable adder" to correct a glaring flaw in the methodology used to calculate stranded costs. Other revisions were also made to revise components of the methodology, such as the accounting of California Independent System Operator charges.

value). This charge represents the customers' share of stranded costs of investments made by the IOU while the customer was served by the IOU. The retail choice customers that pay these charges are not allocated any of the commensurate benefit of these resources, however. SB 790 clearly seeks to remedy this inequity. Petitioners request that this proceeding be the venue for establishing a mechanism that provides retail choice customers and their suppliers with better tools to manage the variability of the PCIA, and to receive a value commensurate with the payment they make.

Second, the Commission should, in this proceeding, investigate ways to reduce the potential for stranded costs in the first place. This should be achieved through fundamental reforms to IOU procurement practices that ensure the IOUs' procurement planning appropriately incorporates consideration of departing load and reflects variation in utility load and load growth over time. Stranded costs associated with departing load should be avoided before the costs are incurred and not charged when good utility practice should ensure that the IOUs accommodate load fluctuations.

IV. RULE 6.3(B) COMPLIANCE: SYNOPSIS OF COST ALLOCATION, CROSS-SUBSIDIZATION AND NON-BYPASSABLE CHARGE ISSUES PENDING BEFORE OR RECENTLY DECIDED BY THE COMMISSION

The purpose of this Petition is to ensure that the Commission undertakes a comprehensive review of cost allocation, cross-subsidization, and non-bypassable charge issues pursuant to SB 790. Pursuant to Rule 6.3(b), Petitioners are required to "state whether the issues raised in the petition have, to the petitioner's knowledge, ever been litigated before the Commission, and if so, when and how the Commission resolved the issues, including the name and case number of the proceeding (if known)." Below the Petitioners provide a list of the ongoing or recently completed proceedings in which cost allocation, cross-subsidization and

non-bypassable charge issues are under discussion, or have already been resolved since the passage of SB 790.

A. Electric Procurement Investment Charge

The Commission has addressed a specific cost allocation issue in D.12-05-037[16] issued in R.11-10-003 (*Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8*) with regard to the framework for Commission oversight of the Electric Procurement Investment Charge ("EPIC").[17] In that proceeding, MEA raised the issue of utility funding of generation-only projects with EPIC funds.[18] After consideration of MEA's arguments and the comments of other parties, the Commission directed as follows:

> After considering parties' comments, we continue to find it appropriate to prohibit IOU investment in generation-only projects using EPIC funds. The EPIC utility funding is intended, as elaborated elsewhere in this decision, to address primarily utility electricity grid-related technology demonstration and deployment. However, there may be instances where utility investments in generation-only projects could be desirable and appropriate. We do not wish to create too many restrictions on the types of projects that the utilities may propose.
>
> Thus, if the IOUs wish to propose generation-related projects, they may propose to do so utilizing other funding sources, not those collected from all distribution customers such as EPIC.[19]

B. PG&E Smart Grid Pilot

In A.11-11-017 (*In the Matter of the Application of Pacific Gas and Electric Company for Adoption of its Smart Grid Pilot Deployment Project (U39E)*), various parties raised the issue of cost allocation pursuant to SB 790. Specifically, MEA, AReM and DACC argued that projects that exclusively benefit bundled sales customers and are generation-related should solely

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[16] See *Phase 2 Decision Establishing Purposes and Governance for Electric Program Investment Charge and Establishing Funding Collections for 2013-2020*, issued May 31, 2012.
[17] The EPIC was established in D.11-12-035.
[18] See generally, the discussion at pp. 41-43 of D.11-12-035.
[19] D.11-12-035, at p. 42

be borne by bundled customers. For example, a key issue in this case is whether PG&E's proposed pilot project for load forecasting, a generation function, should be borne by distribution customers as proposed by PG&E. A determination has not yet been made in this proceeding, and to date no proposed decision has been issued.

C. Demand Response

Parties, including MEA, AReM and DACC, raised cost allocation issues in A.11-03-001, -002 and -003 (*Application of Pacific Gas and Electric Company (U39E) for Approval of Demand Response Programs, Pilots and Budgets, et al.*). In that case, in D.12 -04-045, the Commission committed to a full scale evaluation of how the costs of the IOUs' demand response programs are allocated. Specifically, the Commission has said that the future structure of the demand response market and associated cost allocation and rate design issues (including whether demand response programs should be allocated to the generation funct ion) will be further vetted and ruled upon in an upcoming proceeding.[20]

D. Long-Term Procurement Plans

In the LTPP proceeding, R.12 -03-014 (*Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans*), the Commission has taken up three issues related to cost allocation. Specifically, the Scoping Memo[21] in the LTPP proceeding stated that the following issues will be considered:

> 8. How the costs of any additional local reliability needs should be allocated among LSEs in light of the Commission's adopted cost allocation mechanism (CAM) per Senate Bill (SB) 695.5 SB 790, D.11 -05-005 and any relevant previous decisions;
>
> 9. Whether the CAM should be modified at this time;

[20] D.12-04-045, p. 204.

[21] See May 17, 2012, *Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* ("LTPP Scoping Memo").

10. Whether LSEs should be able to opt -out of the CAM, and, if so, what the requirements should be to allow such opt-out;[22]

The excerpt above makes it clear that cost allocation in the LTPP proceeding relates solely to "additional local reliability needs" and "modification to the CAM."[23] The CAM was adopted in D.06-07-029 and was modified in D.11-05-005[24] pursuant to SB 695.

E. CHP/QF Settlement

D.10-12-035 in A.08-11-001, et al. (*Application of Southern California Edison Company (U338E) for Applying the Market Index Formula and As -Available Capacity Prices adopted in D.07-09-040 to Calculate Short-Run Avoided Cost for Payments to Qualifying Facilities beginning July 2003 and Associated Relief*), approved a broad settlement regarding the treatment of procurement from combined heat and power ("CHP") facilities. As part of the approved settlement, certain costs are allocated to CCA and DA customers. While D.10 -12-035 was issued prior to the enactment of SB 790, several implementation issues subsequent to this Commission decision have been raised by various parties (through the advice letter process) which directly bear on the cost allocation issues raised herein.

V. ISSUES REQUIRING INVESTIGATION

Petitioners have identified several issues that must be addressed by the Commission in order to comply wit h the Legislature's directive in SB 790. These issues, as summarized briefly below, should be set for consideration in a new OIR:

- Develop cost allocation and cross -subsidization principles that align with the requirements of SB 790;

[22] LTPP Scoping Memo, at p. 6, footnotes omitted.
[23] The CAM adopted by the Commission in D.06 -07-029, in the 2006 Long -Term Procurement Proceeding R. 06 -02-013, fundamentally addressed the same issue. In D.11 -05-005, the Commission acted to "make sure that its administration of the CAM is consistent with the requirements of SB 695." Decision, at p. 4.
[24] Decision Modifying New Generation and Long -Term Contract Cost Allocation Mechanism Pursuant to Senate Bill 695, issued May 10, 2011.

- Phase-out stranded cost recovery by the IOUs;
- Reform the calculation of non-bypassable charges that are imposed on departing load customers;
- Impose new transparency requirements on IOUs to ensure against improper cross-subsidization;
- Adopt a formal requirement that any new OIR that may impact CCA and competitive retail markets must identify potential cost allocation and cross-subsidization issues;
- Impose a burden of proof on the IOUs to demonstrate, in any application proceeding, that a proposed allocation of costs to non-utility generation customers through distribution rates (or other non-bypassable charges) complies with the Commission's standards pertaining to cost causation; and
- Incorporate rules that are necessary to facilitate the development of CCA and retail choice programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers, as set forth in SB 790.

This list presents the issues that will need to be evaluated by the Commission in implementing the cost allocation issues raised by SB 790. This analysis will take time and will engage the interests of many market participants. The Commission should initiate this effort without delay so that these and any other issues that are found to be relevant can be addressed.

VI. CONCLUSION

The Commission is required to take affirmative steps to facilitate the development of CCA programs. Section 707(a)(4)(A) requires the Commission to:

> Incorporate rules that the commission finds to be necessary or convenient in order to facilitate the development of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization paid by ratepayers.

To accomplish this goal, the Commission must recognize that the facilitation and development of CCA will be severely hobbled unless the critical issues of cost allocation and cross-subsidization are addressed head-on in a proceeding devoted to their resolution. There is growing interest in CCA across the State. The success of MEA and the pending introduction of a CCA in the City and County of San Francisco have fostered this interest and enthusiasm. However, the growth of CCA will be frustrated if the IOUs are permitted to continually use cost allocation and improper cost subsidization as a means to layer costs on competitive LSEs and render CCA uneconomical.

In addition, fostering the success of CCAs requires, as noted, that the Commission ensure that there is fair competition in the broader retail choice market. To ensure robustly competitive markets, the cost allocation, cross subsidization, and non-bypassable charge reforms discussed herein should be extended to the DA program as well.

Petitioners thank the Commission for its attention to this Petition, and look forward to addressing the cost allocation and cross-subsidization issues raised herein pursuant to SB 790.

Respectfully submitted,

Elizabeth Kelly
Legal Director

By: /s/ Elizabeth Kelly
ELIZABETH KELLY

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And on behalf of:
Petitioners and the Supportive Entities named above

December 18, 2012

Attachment 1
PROPOSED REGULATIONS

This Attachment sets forth a limited list of proposed regulations whic h would address the cost allocation issues set forth in this Petition. This list is not intended to be comprehensive, but rather is intended to be for the convenience of the Commission to evaluate the issues set forth herein.

1. A CCA is solely responsible for its own procurement activities except in those circumstances where there is express statutory authority for other procurement.

2. IOUs shall not recover generation costs, or generation -related program costs via transmission or distribution rates or non -bypassable charges when those same services can be procured directly from the competitive markets.

3. All IOU procurement applications shall specify that the costs of supply -related procurement and programs will be allocated to the IOU's bundled customer gen eration rates only, unless the application meets a burden of proof obligation for some other form of cost allocation in accordance with Commission -established principles of cost causation.

4. If an IOU proposes to allocate supply or supply-related charges to transmission and distribution rates or non -bypassable charges, the IOU must demonstrate that the following components of the burden of proof are met:

   (a) significant benefits (that are different and are in addition to the normal system benefits that all new ge neration provide to the system) exist that accrue to *all* ratepayers and not just bundled customers;

   (b) similar services cannot be offered by competitive third parties;

   (c) that competitive third parties are not meeting their share of reliability requirements,

   (d) broad allocation of costs to all customers is consistent with the Commission's established principles of cost causation; and

   (e) if an IOU asserts that the proposed allocation is due to the reliability benefit of the proposed generation, the IOU shall meet a h igher standard of proof since all new generation provides a reliability benefit.

5. In any OIR proceeding in which the Commission is considering the development of IOU supply or supply-related programs, the costs of such programs will be allocated to the IOUs' generation rate component , unless there is specific justification for an alternate allocation approach.

6. It is the policy of the Commission to reduce the potential for stranded costs.

7. IOU procurement practices shall ensure that the IOUs' procurement pla nning appropriately incorporates consideration of departing load and fluctuations in load and load growth.

8. Stranded cost recovery shall not be permitted in such cases where stranded costs can reasonably be avoided.

9. Stranded cost recovery methodologies sh all be constructed to encourage IOUs to avoid stranded costs.

10. Until the IOUs' stranded costs are phased out, the Commission shall ensure that customers paying the stranded costs receive associated benefits.

11. It is the objective of the Commission to develop methodologies which manage the variability of the PCIA, and which deliver a benefit to departed load customers commensurate with the value of the non-bypassable charge payments made.

12. The Commission shall incorporate rules that it finds necessary or conve nient in order to facilitate the development of community choice aggregation programs, to foster fair competition, and to protect against cross -subsidization paid by ratepayers. (Section 707(a)(4)(A).)

Attachment 2
COMPLIANCE WITH RULE 6.3

Pursuant to th e Rules of Practice and Procedure of the Commission ("Rules"), Rule 6.3(a) provides that, "any person may petition the Commission under Public Utilities Code Section 1708.5 to adopt, amend, or repeal a regulation. The proposed regulation must apply to an e ntire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct." The relief sought herein complies with this requirement of the Rules, as it would apply to the entire class of investor owned utilities and how their costs are allocated which impact current and prospective community choice aggregators and their customers, which is a subject over which the Commission has jurisdiction. Furthermore, the Petitioners seek to revise Commission rules to improve regu latory efficiency, another subject over which the Commission has jurisdiction. Moreover, the Petitioners seek Commission action that would be applicable to future conduct and does not seek any retroactive relief.

Rule 6.3(b) provides that "A petition must concisely state the justification for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation. In addition, a petition must state whether the issues raised in th e petition have, to the petitioner's knowledge, ever been litigated before the Commission, and if so, when and how the Commission resolved the issues, including the name and case number of the proceeding (if known)." Section II herein states the justificat ion for the requested relief. This section explains why it is appropriate for the Commission to open a rulemaking and investigation into the issue of cost allocation and cross -subsidization as raised by SB 790. The subject of cost allocation and cross -subsidization have been raised but not addressed certain proceedings as set forth in Section IV.A.; other SB 790 -related issues are being raised and addressed in certain proceedings as set forth in Section IV.B..

Rule 6.3(b) further requires that, "A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of argument. The caption of a petition must contain the following wording: 'Petition to adopt, amend, or repeal a regulation pursuant to Pub. Ut il. Code § 1708.5.'" The factual assertions contained in this petition are veri fied (see Attachment 3) and the petition is named in accordance with Rule 6.3(b).

Finally, Rule 6.3(c) requires that, "Petitions must be served upon the Executive Director, Chi ef Administrative Law Judge, Director of the appropriate industry division, and Public Advisor. Prior to filing, petitioners must consult with the Public Advisor to identify any additional persons upon whom to serve the petition. If a petition would result in the modification of a prior Commission order or decision, then the petition must also be served on all parties to the proceeding or proceedings in which the decision that would be modified was issued. The assigned Administrative Law Judge may direct th e petitioner to serve the petition on additional persons." Petitioners have also complied with these requirements and have served this petition on the service lists in the dockets listed in Attachment 4 hereto. When an ALJ is assigned to this proceeding, Petitioners will comply with any further service directions that are provided.

Therefore, Petitioners have complied with all of the procedural requirements imposed by Rule 6.3.

Attachment 3
VERIFICATION
(Rule 1.11)

I am the attorney for the Marin Energy Authority and have filed this Petition on behalf of the Petitioners named herein; said parties are absent from the County of Marin, California, where Marin Energy Authority is located, and I make this verification for said parties for that reason. The statements in the foregoing Petition are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and executed on December 18, 2012, at San Rafael, California.

Respectfully submitted,

Elizabeth Kelly
Legal Director

By: /s/ Elizabeth Kelly
ELIZABETH KELLY

For:

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Attachment 4
List of Dockets That Have Received Service of this Petition

R.03-10-003 - Order Instituting Rulemaking To Implement Portions of AB 117 Concerning Community Choice Aggregation.

R.07-05-025 - Rulemaking Regarding Whether, or Subject to What Conditions, the Suspension of Direct Access May Be Lifted Consistent with Assembly Bill 1X and Decision 01-09-060.

R.11-10-023 - Order Instituting Rulemaking to Oversee the Res ource Adequacy Program, Consider Program Refinements, and Establish Annual Local Procurement Obligations.

R.12-02-009 - Order Instituting Rulemaking Pursuant to Senate Bill No. 790 to Consider and Adopt a Code of Conduct, Rules and Enforcement Procedures Governing the Conduct of Electrical Corporations Relative to the Consideration, Formation and Implementation of Community Choice Aggregation Programs.

R.12-03-014 - Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.