

PUC REPORT ON COMMUNITY CHOICE ENERGY: SUMMARY AND RESPONSE

This document summarizes the "pros" and "cons" of allowing Community Choice Energy in Colorado, as presented in the Public Utilities Commission investigative report on CCE. This document also provides clarifications and possible solutions for the "cons", for the purposes of informing CCE enabling legislation and addressing opposition arguments.

PUC report on CCE:

https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=985405

PUC Proceeding No. 22I-0027E ("Study of Community Choice for Wholesale Electric Supply"):

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=22I-0027E

PUC Decision No. C22-0776 (summarizes the proceeding and releases the report):

https://www.dora.state.co.us/pls/efi/efi_p2_v2_demo.show_document?p_dms_document_id=985406

Definition of Community Choice Energy: CCE is an electricity supply model in which local governments may negotiate with wholesale suppliers to purchase bulk power for all residents and businesses in a community (or group of communities). The residents and businesses are automatically signed up to receive power from the provider selected by the local government entity, but individual customers may choose to opt-out and receive their power from the incumbent utility. The utility continues to own and operate its transmission and distribution system to deliver electricity to both CCE customers and its own customers.

The section of the PUC report that is summarized here presents the "*opportunities and benefits*" of enabling CCE in Colorado followed by the "*risks and drawbacks*", organized by topic. A response is given for each risk/drawback.

The report is clear that the PUC investigation specifically considered the "wholesale, opt-out" model of CCE, and that CCE would only be allowed for customers of investor-owned utilities (IOUs), meaning Xcel Energy and Black Hills Energy.

1. RESOURCE ADEQUACY AND RELIABILITY - p13

Opportunities and benefits:

i. Complementary demand-side programs could be tailored to communities, which could enhance reliability and resilience and reduce Resource Adequacy (RA) needs. Demand side management programs can help decarbonize the electricity system by shaping loads to better accommodate variable and intermittent renewable generation.

ii. Some of the RA risks described below may be mitigated by wholesale markets that are expected to happen by 2030.

Risks and drawbacks:

i. RA planning requires sophisticated modeling. Enabling CCE would increase the complexity of RA planning by requiring more coordination and regulation of more actors, and may require more Commission resources and higher costs. Inadequate resources could result if some actors can't successfully negotiate the complexity.

Response: Enabling legislation and subsequent PUC Rules will require CCEs to periodically submit a power supply plan that includes an adequate Reserve Margin to the PUC for approval. Most CCEs will contract with sophisticated third-party wholesale suppliers and sign contracts that have RA/reliability provisions.

ii. The opt out model could make RA planning more challenging due to uncertainty if large numbers of customers switch between the CCE and IOU, and leave the provider without adequate resources. Costs may increase if both the CCE and IOU maintain a reserve as a hedge. This risk depends on the rules for how and when customers can switch.

Response: This risk will be mitigated in enabling legislation by limiting customer switching to certain times, including during CCE startup and then periodically thereafter (perhaps annually). Rules could also incorporate a delay between when switching is requested and when it occurs (for example, 1-2 months), to allow for any needed adjustment to CCE and IOU plans.

iii. To compete on price, CCEs may minimize generation procured and lean on the reserves of IOUs, leading to inadequate resources during peak demand.

Response: This risk is unlikely to occur because CCEs will be required to submit power supply plans to the PUC that meet RA requirements (including a Reserve Margin), similar to IOUs. Furthermore, CCEs have other cost advantages that allow them to compete with IOUs on price, including being nonprofits that have no fiduciary responsibility to serve shareholder interests.

iv. If CCE is enabled before Colorado joins a wholesale market, this may increase the difficulty of ensuring Resource Adequacy, although this may be only temporary as Colorado utilities must join a market by 2030.

Response: While wholesale markets may simplify the procurement process and assurance of Resource Adequacy, and will likely lower wholesale prices, markets are not required for either CCE viability or for assurance of RA, as shown by the 29 municipal utilities in Colorado that successfully procure electricity and assure RA today using bilateral contracts and federally-guaranteed open-access transmission. Also, Colorado utilities will likely join a wholesale market before CCE is up and running, as progress toward markets is proceeding faster than the 2030 deadline.

v. The PUC has approved new generation and transmission to meet future needs, and enabling CCE would likely impact or delay those investments if utility load projections change. Those decisions may need to be revisited and revised.

Response: Utilities must adapt to changing load conditions all the time. Impacts to procurement decisions will be known well in advance due to the lengthy time period between a community's submission of a CCE implementation plan to the PUC and the time that the CCE is up and running. This may be up to a year of advance notice to IOUs for smaller new CCEs, and several years for

large cities (which will be specified in enabling legislation). Utilities will be expected to adjust their portfolios as their load changes (just as they will respond to load changes caused by the electrification of transportation and buildings). Any unused (stranded) utility assets or contracts that result from CCE formation could be sold or transferred at market rates (including to the CCE), and legitimate below-market losses would be compensated by the CCE through the exit fee.

2. AFFORDABILITY - p14

Opportunities and Benefits:

- i. CCEs may be able to provide electricity with the attributes that communities want at lower cost than the utility.
- ii. Competition between CCEs and IOUs could drive down costs for customers of both.
- iii. CCEs may be able to offer more effective bill assistance programs than IOUs, and program outreach by CCEs may be more tailored to the community.

Risks and Drawbacks:

- i. Affordability risks related to exit fees include: 1) calculating and regulating exit fees may be costly for all parties, and 2) costs to CCE customers may be higher if they cannot procure power at a lower cost than IOUs in order to cover the exit fee, which may be acceptable to some customers if the power is cleaner but unacceptable to other customers.

Response: 1) Apart from one-time costs provided through the enabling legislation to conduct a PUC Rulemaking that establishes the rules of CCE including the exit fee, the ongoing operational costs will be modest because the Rulemaking will determine a formula to calculate the exit fee for all CCEs.

2) The California experience shows that lower costs AND cleaner electricity are possible and even likely - see the rate comparison tables for Marin Clean Energy on page 136 of the report and for Peninsula Clean Energy on page 132 of the report. This is partly because new renewable energy is much cheaper than legacy fossil or renewable energy, and also because CCEs are nonprofits, unlike IOUs which must charge higher rates to provide profits for shareholders. CCEs are leaner entities than IOUs, similar to startups. CCEs are inherently incentivized to reduce costs to keep rates low, whereas IOUs are incentivized to maximize costs to the extent they can get away with because that maximizes profits for shareholders. Finally, CCE customers can choose to opt out and stay with or rejoin the IOU if the CCE's rates are higher.

- ii. CCEs may not be able to provide lower costs than the IOU. If this is the case when a community is evaluating CCE then it would likely not adopt CCE, but if conditions change over time then CCE costs could rise and lead to large numbers of customers rejoining the IOU and further raising costs for remaining CCE customers, possibly leading to the failure of the CCE.

Response: This scenario is conceivable in California due to the way they structured their exit fee, although a CCE failure has occurred there only once, and [opt-out rates have remained stable at 5-10%](#). In California, the exit fee can be relitigated frequently and forever, and can change substantially year to year, leading to fluctuating costs that can't be planned for. This flaw has been

learned well and will be avoided in Colorado. CCE enabling legislation will require that: 1) the exit fee is calculated once at the beginning and therefore is known and stable for planning purposes, and 2) the exit fee will sunset after a specified period of time (such as 5-10 years), after which CCE costs could be reduced substantially, as is the case for [Kit Carson co-op's departure from Tri-State](#) and for the [Town of Fountain's departure from Xcel Energy](#).

iii. CCEs could choose to opt all customers into power that is more renewable but more expensive than the IOU, and some customers may need to exercise their opt out option and therefore the opting out process should be made accessible and informative.

Response: Agreed. CCE enabling legislation will require 4 notifications to all customers about the switch to CCE and the program's rates and opt out provision (2 notifications before CCE operations begin and 2 notifications after). After CCE operations begin, the opt out (or opt back in) option remains available forever (perhaps on an annual basis, as with health insurance).

iv. Clear regulations should be established for how bill assistance programs will work, with attention to protecting lower-income customers.

Response: Agreed. CCE enabling legislation will establish clear guidelines for how all customer programs including bill assistance programs will work, and CCE implementation plans submitted to the PUC for approval will be required to describe specifically how all customer programs will work. In general, CCEs will have the flexibility to either adopt (and help fund) programs that are offered by the IOU (such as bill assistance, demand-side management, vehicle electrification, etc.), or CCEs can offer (and fund) their own customer programs that meet statutory requirements and are approved by the Commission, which may be superior and more locally relevant than one-size-fits-all utility programs. CCE customers may continue to pay into energy assistance programs as everyone does now, and low-income CCE customers would continue to receive benefits through Energy Outreach Colorado as they do now.

v. If CCEs offer their own bill assistance programs, they may be less effective than those offered by the IOU.

Response: See Response to (iv) above. If CCEs offer their own bill assistance programs rather than participating in IOU programs, then the CCE program must meet statutory requirements and be approved by the PUC. Rather than a "drawback", it is likely that CCE programs will be both more effective and more locally relevant than one-size-fits-all IOU programs run by a for-profit entity that is not connected to the local people and their circumstances.

General Response: The PUC report emphasizes and elaborates at length about the possible "Risks and Drawbacks" under various hypothetical scenarios, while minimizing the possible "Opportunities and Benefits" without such elaboration or hypothetical scenarios. Readers may take away the impression that Benefits are "possible" but Drawbacks are "likely". Reviewing the Affordability section will support this conclusion.

3. CUSTOMER PROGRAMS, SATISFACTION, INNOVATION, AND SERVICE QUALITY - p16

Opportunities and Benefits:

- i. CCEs may be able to offer innovative customer programs and rate designs tailored to the communities they serve, resulting in more effective programs and rate designs and customer satisfaction.
- ii. As nonprofits, CCEs may pursue energy efficiency, demand response, distributed energy resources and other programs and rate designs more aggressively than IOUs because they seek to achieve public policy goals rather than shareholder returns.
- iii. Enabling CCE may foster competition between CCEs and IOUs to develop more effective and innovative customer programs and higher service quality, and competition may lead to more cost-effective customer programs.
- iv. Enabling CCE may lead CCEs and IOUs to collaborate on developing more effective customer programs and rate design.

Risks and Drawbacks:

- i. If CCEs are able to offer their own customer programs and rate designs, they may be less effective or more costly than programs offered by IOUs because CCEs are new entities, they're smaller than IOUs, and they may have fewer resources to put towards development of customer programs and rate designs.

Response: On the other hand, CCE programs may be more innovative, efficient, cost effective, and more locally-relevant than IOU programs. CCE enabling legislation will likely give CCEs the flexibility to either participate in and help fund utility customer programs, or alternatively, to develop and fund their own customer programs that meet statutory requirements and are approved by the Commission. This should minimize any potential risk of inferior programs, and maximize the opportunity for superior programs.

- ii. The Commission may need to determine regulatory rules about how programs are funded between CCEs and IOUs and which entity should offer a particular program, which may be contentious and require significant resources.

Response: The characteristics of programs for CCE customers will likely be more under the control of the CCE than the Commission as long as statutory program requirements are met. See the General Response below.

General Response: Implementing CCE will involve two main steps:

1) Enabling legislation will establish the high-level principles and requirements for how CCE will work in Colorado, including lessons learned from California, Oregon, other states, and from the many thoughtful comments by experts that were filed in the PUC proceeding.

2) A PUC Rulemaking proceeding with broad stakeholder input will determine the detailed rules under which CCE will operate, subject to the principles and requirements of the enabling legislation. All aspects of CCE are not determined by the PUC, only the detailed rules. This Rulemaking is a one-time cost that will be funded as specified in the enabling legislation.

One element of the legislation will establish principles for customer programs (including energy assistance, demand side management, electric vehicles, beneficial electrification, community solar gardens, etc.), which the PUC will implement in its Rulemaking. The legislation

will likely require that CCEs have considerable flexibility to either establish (and fund) their own customer programs OR to participate in (and help fund) utility programs, thereby opening up opportunities for CCE innovation and more locally-relevant programs. CCE programs must meet any statutory requirements and must be approved by the Commission, similar to utility programs.

iii. If CCEs can offer their own customer programs and rate designs in addition to IOU programs, there may be duplication in services and confusion for customers and regulators.

Response: CCEs must specify in their implementation plans how they will handle customer programs, either establishing their own programs or adopting existing utility programs. CCEs and IOUs are separate providers that each communicate with their own customers and with regulators so there shouldn't be any confusion.

iv. It may be challenging for the Commission to promote both competition and collaboration between CCEs and IOUs, and they may end up competing when they should collaborate.

Response: CCEs will likely choose the route that is best for their customers, which is a benefit of having a choice. However, during the Rulemaking process the Commission will have a role, along with stakeholders, in determining the balance of competition and collaboration on customer programs.

v. Depending on the rules for customer switching between the CCE and IOU, both may need to plan for large changes in the number of customers in their programs.

Response: There is no reason to expect large changes in opt outs (or opt back ins), as this is not the case in California even despite their challenge of ever-changing CCE costs due to ever-changing exit fees. This factor will be even less of a driver of opt outs in Colorado because exit fees will be designed to be stable over time and have a known expiration date.

4. RENEWABLE ENERGY AND GREENHOUSE GAS EMISSIONS - p17

Opportunities and Benefits:

i. CCE would provide communities with greater control over their energy sources and customer programs and services, which could impact emissions associated with the community's electricity consumption. This may help some governments achieve local energy policy goals.

ii. Like many CCEs in other states that offer 100 percent renewable energy options for customers (some of which have made this the default option), many Colorado CCEs would likely do the same. This may allow communities to access more renewable energy, at potentially lower costs, than is available from the IOU.

iii. Enabling CCE may create competition between IOUs and CCEs to more aggressively pursue renewable energy while keeping costs as low as possible, thereby accelerating reaching emissions reduction targets.

General Response: Competition and choice as drivers for both IOUs and CCEs to improve service – whether by driving cheaper energy, cleaner energy, or more responsive, innovative and

effective customer programs – are core reasons to enable a CCE option in Colorado and end the costly monopoly control of energy.

iv. CCEs may pursue energy efficiency, demand response, distributed energy resources, and other customer programs and rate designs more aggressively than IOUs, which can reduce loads and reduce generation needs resulting in lower cost power, more renewable power, or both.

Response: IOUs are inherently incentivized to address any electricity supply or grid need with centralized and expensive solutions because IOUs are paid a percentage return on the amount of their investments ("the more we spend, the more we make"). On the other hand, CCEs are nonprofits that are inherently incentivized to reduce costs for customers, which naturally leads to using the above less expensive solutions to meeting electricity needs. IOUs only promote energy efficiency, demand response, customer-owned energy resources, etc. to the extent required by law or regulation, because these approaches are less profitable and/or result in lower sales of electricity. This is called the "perverse incentive of the cost-of-service utility model."

Risks and Drawbacks:

i. Enabling CCE would require many changes in Colorado's statutes for regulating emissions from electricity generation, which may cause complications and uncertainty that could slow the state's ability to deploy renewable energy and reduce emissions.

Response: Not that many changes to existing statutes are needed to assure that CCEs do not hinder, and will likely accelerate, attainment of state renewable energy and emissions reduction goals. This is a fundamental goal of advocates seeking to implement CCE in Colorado. Enabling legislation will likely require CCEs to demonstrate, in the power supply plans they submit to the Commission for approval, that all Colorado renewable energy and emissions reduction requirements are met. Many communities supported this CCE study at the PUC because they are unsatisfied with the speed of progress of the clean energy transition, so CCE would likely accelerate the state's progress on decarbonization and should be supported by the state's environmental organizations on those grounds. [California CCEs have signed long-term contracts for over 10,000 MW of new-build renewables](#) (which vastly exceeds Colorado's total installed renewable energy capacity).

ii. It's possible given market conditions, exit fees, etc. that CCEs could struggle to provide higher renewable energy than IOUs at reasonable costs. If this occurs, many parties will have invested significant resources in developing a CCE model that ultimately does not improve on the status quo regarding renewable energy and emissions reduction.

Response: The opposite is also possible, that CCEs could provide more renewable energy at lower cost than power from IOUs, but we won't know one way or the other unless CCE is enabled and communities are authorized to explore the wholesale power market for themselves. That said, here are three additional responses:

- 1) This scenario is unlikely to occur. CCE is enormously successful and growing fast in California, and CCEs offer competitive rates, many of which are lower than the IOUs, for higher or much higher renewable energy contents. See the rate and renewable energy content tables for Marin Clean Energy and Peninsula Clean Energy in Appendix C of the PUC report.
- 2) A very likely positive outcome of enabling CCE, even if not a single community ultimately adopts CCE, is that merely the threat of competition will focus IOUs on trying harder to be more

responsive to community interests in cleaner energy, lower rates, more innovative and better programs, etc., in order to prove to communities that they don't need CCE to meet their energy goals. That's the beauty of competition and choice. Customers of IOUs will benefit even if not one community adopts CCE, just because the CCE option is available.

3) In 2018, the City of Boulder explored the wholesale power market by issuing a "Request for Indicative Pricing" that received responses from a dozen wholesale power providers, with the result that in 2024 Boulder could have procured 89% renewable energy at 2/3 the cost of wholesale power from Xcel Energy, if only they were allowed to access the wholesale market.

iii. Depending on the rules for CCE, CCEs may not increase the procurement of renewable energy in Colorado and could end up procuring electricity with a higher fossil content.

Response: This outcome will be prevented by enabling legislation that requires CCEs to meet all state requirements for renewable energy and emissions reduction that IOUs are required to meet. Also, as noted in (i) above, California CCEs are providing their customers with much more renewable energy than their IOUs counterparts, and there's no reason to think that it would be otherwise in Colorado.

iv. In the time it takes to enable CCE, develop regulations, and allow local governments to evaluate CCE and stand up a CCE program, IOUs may be on track for much higher renewable energy percentages, risking that the marginal benefit of enabling CCE to acquire renewable energy and reduce emissions is decreased significantly, making enabling CCE less worthwhile.

Response: First, acquiring cleaner energy faster is only one of several reasons to proceed with CCE. In the midst of ongoing IOU rate increases, it is clear that the goal should NOT be acquiring cleaner energy at any cost, but rather, acquiring cleaner energy at the lowest cost and fastest speed. Allowing competition, enabling a nonprofit option, and having more innovative and nimble players like CCEs in the market, stands the best chance of driving down costs while also accelerating the uptake of renewable energy. Second, while it would indeed be more of a benefit if communities could adopt CCE today rather than in a few years, it will still be very valuable to have the option in a few years. A best-case timeline for implementing CCE is: enabling legislation passes in 2023, a PUC Rulemaking occurs in 2023-2024, and the first communities are able to submit their implementation plans to the PUC as early as 2025, for possible CCE startup in 2026. That's not very long!

v. Enabling CCE could interfere with IOU investments in renewable generation from a financing or regulatory standpoint if CCE is seen to create a situation where such investments become unused or uneconomic due to loss of customer load.

Response: IOUs would not simply be stuck with unused assets. They would be expected to adjust their portfolios for the expected loss of load to any CCE that begins the implementation process with the PUC, which would take 6-12 months for smaller CCEs and at least 3 years for large CCEs. Excess generation assets and Power Purchase Agreements could be sold or transferred at market prices to any willing off-taker including the CCE. If the market prices received for those assets or contracts do not fully cover the utility's sunk costs, then the difference would be paid by the CCE to the utility in the form of an exit fee, to ensure that the remaining utility customers do not experience increased rates and are indifferent to the existence of CCEs. This is the purpose of the exit fee.

vi. According to current statutes, IOUs must reduce emissions from electricity generation 80 percent by 2030 from 2005 levels, and achieve 100 percent clean energy by 2050. If CCE formation increases the costs of IOU compliance, then CCEs may need to pay those excess costs in their exit fees and thereby hurt the CCE value proposition.

Response: In contrast, CCE formation may end up making it easier and less costly for IOUs to comply with emissions reduction requirements by accelerating the retirement of their expensive fossil assets. This question can only be answered during the PUC Rulemaking process, and if CCE formation ends up reducing IOU emissions reduction compliance costs then CCEs should receive that credit in the form of a reduced exit fee. Either way, uncertainty over the future value proposition of CCE due to this or any other unknowable factors is not a good reason to prevent CCE from moving forward and finding out what the value proposition actually is.

5. PROCEDURAL CONSIDERATIONS - p19

Opportunities and Benefits:

- i. Enabling CCE would provide communities with greater control over the production of electricity and over electricity programs and services available to community members, and over contract terms negotiated with independent power producers.
- ii. CCEs may have access to funding and investment sources such as grants and debt instruments that aren't typically available to IOUs, which may benefit customers.

Risks and Drawbacks:

- i. Questions have been raised about the financial viability of CCEs and their ability to secure financing, and the impact on customers if a CCE became insolvent.

Response: Only one California CCE has failed, for well understood reasons (see Appendix C in the PUC report: "Western Community Energy: Lessons Learned"). First, in addition to lessons from this case study, financial policies implemented by all the other successful California CCEs will inform Colorado's enabling legislation. Second, a CCE failure in Colorado is less likely than even the single case in California because CCE costs and planning will be more predictable because the exit fee will be stable over time and have a known sunset date (in California, the exit fee and hence costs can vary substantially year to year, and there is no sunset date). And third, the CCE implementation plan that must be submitted to the PUC for approval will address both the CCE's finances and a transition plan in the unlikely event of a failure.

- ii. Determining exit fees will likely be a significant and ongoing challenge requiring significant resources from all parties, and it may be impossible to establish an exit fee that holds non-CCE customers harmless given the complexity of the electric system and previous utility decisions by the Commission, and there is a risk of unintended or unforeseen consequences.

Response: This perspective is misplaced as it is based on the way that California, the CCE trailblazer, handled exit fees in its enabling legislation in 2002. Colorado's CCE legislation would be the third generation of the wholesale model of CCE (after California's and Oregon's approaches), and exit fee considerations are the most important area where many lessons have been learned. It is unreasonable for exit fees to be indefinite and constantly changing. The

Colorado PUC will be charged with determining the specific methodology and formula for calculating the exit fee within the bounds of specified high-level statutory principles, and the calculation will likely be done only once. Furthermore, the Colorado PUC has a great deal of experience determining exit fees, as it previously determined the exit fee methodology and formula for the analogous situation of electric co-ops that withdraw from long-term contracts with their wholesale supplier (Tri-State Generation and Transmission), and the resulting methodology holds harmless the other co-ops that remain with Tri-State. Besides lessons learned from California and Oregon about how to do exit fees right, the Colorado approach could follow the co-op model and determine an appropriate one-time exit fee that is paid off over a known number of years, which, like the exiting co-ops, would allow a CCE to fold the exit fee into a financing arrangement with its new wholesale supplier.

iii. It's not clear how a CCE model could be successfully implemented prior to implementation of wholesale markets in Colorado.

Response: First, this is at most a short-term consideration as Colorado utilities must by law join a wholesale market by 2030, and will likely do so earlier, perhaps even before CCE rules are implemented. However, even now, it's quite clear that CCE could be implemented in our current bilateral market structure. Colorado has 29 municipal electric utilities (that is, communities that serve their own customers with electricity supply just like a CCE, but which also own the "poles and wires" that deliver the electricity like an IOU). Municipal utilities successfully provide their customers with electricity, which is generally lower-cost than electricity from IOUs, using bilateral contracts and Federal open-access transmission guarantees, with no problems including with Resource Adequacy. CCEs could do the same.

COMMISSION FINDINGS - p20

APPENDIX A: SUMMARY OF STAKEHOLDER RESPONSES - p27

APPENDIX B: ADDITIONAL RESPONSES AND PUBLIC HEARING - p121

APPENDIX C: LESSONS LEARNED - p129

Appendix C describes 3 California CCEs – Peninsula Clean Energy, MCE (Marin Clean Energy), and Western Community Energy – and presents lessons learned.