

Subject: A proposal to study Community Choice Energy<sup>1</sup> (CCE) in 2020 as background for possible CCE-enabling legislation in 2021.

This document outlines two legislative actions that are aimed at assessing the feasibility and optimal characteristics of CCE in Colorado. The approach described here calls for a CCE Study Bill to conduct this groundwork in 2020 as preparation for possible CCE-enabling legislation in 2021 if the conclusions are favorable for Colorado.

#### Overview of CCE:

Community Choice Energy (CCE) is a mechanism that allows cities or counties to combine their purchasing power and choose alternative wholesale electricity suppliers on behalf of the residents, businesses, and municipal facilities in the jurisdiction. The electricity is still delivered by the incumbent investor-owned utility (IOU), which continues to own and operate its transmission and distribution system (the "poles and wires"). Individual customers can opt out of the community's choice if they wish, and purchase their electricity as "bundled service" from the IOU.

A well-designed CCE program would introduce an element of competition and consumer choice into our monopoly electricity system, likely driving lower rates and cleaner energy, while maintaining the viability and strength of our utilities as we shift toward the future and the utility business model undergoes needed change. CCE could also provide communities that have ambitious renewable energy goals with a means to reach those goals quickly and cost-effectively. Note that the idea of CCE aligns with the Governor's "[Roadmap to 100% Renewable Energy by 2040](#)," which includes a high-level goal that reads: "*Support the local commitment to 100 percent renewable energy.*"

The Colorado Advantage: By studying the experiences of California, a CCE leader, and other CCE states, we can draw from many best practices and lessons learned.

#### Background resources about CCE:

- CCE slide presentation ([PDF](#)) and CCE Fact Sheet ([PDF](#)) from Shawn Marshall, Executive Director of [LEAN Energy](#) and national expert on CCE.
- Section 3.1 of the white paper, "*A Strategy and Six Ways to Address Community Energy Goals*" ([PDF](#)). California-style CCE is one of the Six Ways.
- Oregon legislative fact sheet ([PDF](#)). Like Colorado, Oregon has vertically-integrated monopoly utilities, and no organized wholesale electricity market.

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#### **Two recommended actions to lay the groundwork for possible CCE legislation:**

- A Financial and Technical Feasibility Study (overseen by the PUC).
- A PUC docket to study the regulatory implications of CCE and make recommendations.

**The remainder of this document elaborates on these recommendations.**

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<sup>1</sup> Also widely known as Community Choice Aggregation (CCA).

## **1. FINANCIAL AND TECHNICAL FEASIBILITY STUDY OF CCE IN COLORADO**

We recommend authorizing a Feasibility Study to be overseen by the Public Utilities Commission (PUC). The draft language below explains the purpose of the study, which in general is to investigate the practicality of CCE in Colorado. The study would also serve to elevate the conversation about the need for change in Colorado's electric utility regulatory system that would allow communities and businesses more choice and control over their energy sources and energy costs, while maintaining the viability and strength of our utilities.

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### **Example draft authorizing language**

The PUC shall oversee, and report to the legislature, the conclusions of a study on the Financial and Technical Feasibility of implementing Community Choice Energy (CCE) in the State of Colorado. The PUC is authorized to select an independent, objectively unbiased and qualified agent to perform the study; to set the specific questions to be addressed by the study subject to the guidelines given herein; and to acquire the electric load data necessary to conduct the study from the investor-owned utilities (IOUs) in a timely way (utilizing confidentiality and non-disclosure agreements only if customer-specific data are needed). The process and conclusions of the study shall be reported to the legislature no later than October 31, 2020.

The purpose of the Financial component of the study is to assess financial feasibility and risk, including the potential for rate competitiveness and an estimate of the expected transition or "exit" fees that customers departing an IOU would pay over a limited period of time that represents their fair share of the costs of utility assets and contracts that were procured on their behalf and previously approved. This should be done, using industry best practices, under a range of scenarios that include the level of CCE participation in Colorado (both the fraction of eligible communities that form or join a CCE, and the assumed opt-out rate), as well as possible vintaging based on the time of service commencement, and the time period over which the exit fee should reasonably apply. The study should also determine the impact on customer rates under a range of scenarios that include projected wholesale power prices from fossil and renewable resources, and replacement generation costs.

The purpose of the Technical component of the study is to provide information on considerations for forming CCEs in a state that does not currently belong to a Regional Transmission Organization (RTO); to recommend legislative language that reaffirms FERC Order 888 Open Access Transmission Tariffs; to recommend language that authorizes the PUC to establish fair transmission rules and pricing for replacement generation; to assess implications for resource adequacy and reliability; and to make recommendations concerning wholesale market access and development in Colorado.

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## **2. A PUC DOCKET TO STUDY CCE AND MAKE RECOMMENDATIONS**

A study docket that might include presentations by stakeholders, independent experts, regulators from CCE states, and PUC Staff should consider the regulatory implications of

CCE legislation, and provide recommendations to the legislature. Conclusions should include best practices and lessons learned from other states.

The remainder of this section focuses on high-level characteristics of the investigative process aimed at maximizing its effectiveness, and also presents a set of topics and questions that the final report should address. Additional work may be needed to further inform the specific authorizing language.

#### Recommended high-level characteristics of the investigative process:

- **A broadly-inclusive mix of stakeholders and presenters is needed**, which should not be dominated by any one group. Stakeholder groups should include: communities with energy goals; business groups; environmental advocates; consumer advocates; utilities, independent power producers; power marketers; renewable energy developers; energy project finance experts; energy efficiency and distributed energy resource experts; and a role for the general public. A representative of the electric distribution co-ops might also be included, as the co-ops would likely be indirectly, if not directly, affected by CCE.
- **The process should come to conclusions and make recommendations**, which are presented in a final report submitted by a specified date. Recommendations may be split into majority views and dissenting views if necessary. The authorizing legislation should provide guidance on the nature of the report and who writes it.
- **A minimum set of topics and questions should be specified** in the authorizing legislation. A PUC informational docket generally centers around a series of Commissioner Informational Meetings (CIMs), each focusing on one or two topics. Sometimes the topics of later CIMs are not envisioned at the beginning, so some flexibility is advised. However, specifying minimum topics and questions in the beginning will ensure that the process begins on the intended track.
- **Rules and procedures should be specified** that promote a productive and effective evidence-based process.
- **Reference:** A Rocky Mountain Institute report on the design of effective stakeholder processes for utility reform may provide useful considerations when drafting the authorizing legislation.<sup>2</sup> The report describes a dynamic and inclusive process, anchored by a guiding vision for what the process seeks to achieve, and in this case should be clearly defined as a 'decisional' process (as opposed to 'investigatory'), while still including an investigatory stage.

#### A selection of questions and topics to be addressed in the process:

This section summarizes a brainstorming session on questions whose answers would inform the crafting of CCE-enabling legislation. These are preliminary ideas, and it is

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<sup>2</sup> Dan Cross-Call, Cara Goldenberg, and Claire Wang, Process for Purpose: Reimagining Regulatory Approaches for Power Sector Transformation, Rocky Mountain Institute, 2019, <https://rmi.org/insight/process-for-purpose/>.

expected that refinement would occur as the authorizing legislation is drafted and as input from likely participants is sought.

- What new PUC authority, if any, is needed to provide jurisdiction over CCEs?
- Which aspects of IOU regulation by the PUC should apply to CCEs as well – for example: Resource Adequacy; Renewable Energy Standard compliance; demand-side management requirements; and time-of-use rates if mandated for IOUs? Should CCEs be regulated substantially similarly to IOUs, or minimally as with municipal utilities?
- What are the appropriate considerations for establishing the level of the "exit fee" that provides cost recovery for stranded IOU assets and contracts due to the departing load of CCEs, in order to prevent cost-shifts onto remaining IOU customers but without unduly burdening CCE customers? How would the exit fee evolve over time, and over what period of time should it apply before expiring completely? Is it possible to specify a formula to provide accurate estimates of the exit fee for individual jurisdictions that are investigating the financial viability of forming or joining a CCE?
- What are the best practices and lessons learned from California and other CCE states? In addition to the items listed above and below, topics might include:
  - What are the rules for opting out of the CCE to remain with bundled service from the IOU, and the rules for customer switching between the CCE and IOU? [Note: all successful CCEs are opt-out, as opt-in is a recipe for failure.]
  - What consumer protections are needed?
  - What strategies are available to overcome credit challenges by new CCEs?
- What regulatory issues have arisen in other CCE states, especially in California which, like Colorado, is not a full retail choice state like the other CCE states?
- Would the IOU, which remains the provider of distribution, transmission and customer services, also be the "Provider of Last Resort" for those who opt out of the CCE?
- How would CCEs be authorized – by the local governing authority (by ordinance), or would it require a vote of the people?
- What regulatory oversight should there be over resource procurement for CCEs (for example: standards for RFPs; assurance of Reliability)?
- What legislative language is needed to guarantee open access and fair prices for transmission services.
- What minimum requirements should apply to Independent Power Producers and Power Marketers who wish to supply CCEs?
- What data sharing requirements by the IOUs are needed to assure that CCEs, or jurisdictions investigating whether to form or join a CCE, can reasonably evaluate its financial and technical viability?

- Distributed Energy Resources (DER), such as rooftop solar, community solar and battery energy storage, are increasing on distribution systems. Will the advent of CCEs facilitate or impede the advancement of DER? Conversely, will the growth of DER ease or complicate the challenge of standing up a CCE?
- CCE is typically only available to jurisdictions served by an IOU. Could CCEs also be made available to cities served by an electric co-op, or to an entire co-op, and what statutory and regulatory changes would be needed? Will the prevalence of co-ops in Colorado result in unique challenges for the CCE formation process?
- Are there any implications for municipal electric utilities, which already procure their own wholesale electricity supply?

**A final perspective:** Colorado is in the fortunate position of contemplating CCE legislation many years after other states have implemented it. This allows us to study what has worked best and where improvements are possible. While some elements of California's CCE program are currently being modified "while the plane is in flight" (such as the appropriate level of PUC regulation, and how to calculate the exit fee), Colorado is in a position to identify best practices and lessons learned up front, and reduce the inevitable "growing pains."

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