

Community Choice Energy Presentation to the Board and Staff of the Colorado Office of the Utility Consumer Advocate

Larry Miloshevich (Feb. 13, 2023)

Outline:

- my interest in CCE: decarbonizing at the lowest cost requires competition.
- basics of CCE.
- history and current status of CCE at the Colorado legislature and the PUC.
- how CCE would work in Colorado and its regulation by the PUC.
- evidence of lower costs and cleaner energy with CCE.
- exit fee lessons from California and Colorado.
- conclusion: competition provides pressure on monopoly IOUs; competition complements regulation.
- links, speaker bio, notes.

INTRODUCTION / COMPETITON AND CHOICE (25:03)

Thank you for this opportunity to talk about Community Choice Energy. I do believe that implementing CCE in Colorado would be in the interests of both consumer advocates and environmental advocates, and I hope to make that case.

Rather than digging right into how CCE works, I thought I'd first explain why I became interested enough in CCE to work on it since 2018. I wanted to somehow contribute to the energy transition at the state level, and I came to the conclusion that it's important not only to accelerate the transition to renewable energy, but to do so cost effectively, because the cheaper the transition is the faster it will go.

By some measures, we're making good progress, with policies and plans in place for at least 80% renewable energy by 2030, by putting the implementation mainly in the hands of the IOUs and the PUC. This regulation-only approach will get us there, but not as fast as climate scientists say is needed, nor at the lowest cost, so it will likely be painful for ratepayers.

What's lacking in Colorado is any real market competition to impose cost discipline and to drive the innovation and creative thinking that's needed to implement better ways of matching supply and demand as the amount of variable renewable energy increases.

My view is that one of the main benefits of enabling CCE in Colorado is that it would introduce competition and choice into the wholesale electricity sector, which would both benefit consumers and advance state energy policy goals. If communities can choose who supplies their bulk electricity, then this competition would naturally drive utilities to contain costs, accelerate decarbonization, and be more responsive to community priorities. Utilities would have to prove to communities that they don't need CCE in order to reach their energy goals.

I want to be clear that I'm not anti-IOU, but I am opposed to granting a monopoly where one hasn't been warranted for several decades, namely in wholesale power generation, which is a thriving competitive enterprise. Without competition, IOU behavior and choices are governed by the so-called quote "perverse incentive of the cost-of-service utility model", where utilities earn a percentage profit on their capital investment, so the more they spend the more they earn. Furthermore, IOUs are indifferent to the cost of fuel in their decision-making process because it's a pass-through cost, so high fuel prices don't impact company profits and don't drive utilities toward zero-fuel renewable resources. This misaligned utility incentive structure is the opposite of what's needed to drive

innovation and faster decarbonization at the lowest cost. However, this misalignment could be addressed by introducing competition and choice into the wholesale electricity sector in the form of Community Choice Energy. CCE would not replace the cost-of-service regulated utility model, but rather, would complement and enhance it.

THE BASICS OF CCE – WHAT IT IS AND WHAT IT IS NOT

With that background on my interest in competition as a driving force for progress and for cost containment, I'd like to back up a little and explain what Community Choice Energy is, and what it is not. There are 4 basic elements.

- First, CCE would allow cities and counties, or groups of cities and counties that are served by Xcel Energy or Black Hills Energy to choose different wholesale suppliers on behalf of their residents and businesses. CCE would not be available to co-ops and municipal utilities, which already have some control over their wholesale electricity supply.
- Second, electricity would still be delivered by the utility, which would continue to own and operate its distribution system. This differs from a municipal utility, which is responsible for both electricity supply and electricity delivery like an IOU.
- Third, individual customers would be able to opt out of the CCE and purchase their electricity from the utility as traditional "bundled service". The opt-out provision is important because it means that CCEs must also compete in order to keep their customers from opting out. This protects ratepayers, especially low-income ratepayers, because they can go back to the utility if the CCE fails to deliver on competitive rates. [Typical opt-out rates in California are 5-10%](#).
- And fourth, the CCE must pay an exit fee to the IOU to compensate it for stranded costs caused by the departing customer load that the IOU had planned for. The purpose of the exit fee is to prevent cost shifts onto the remaining IOU customers, so that they remain indifferent to the existence of the CCE. The IOU would also be required to take reasonable steps to minimize the exit fee.

And now for two things that CCE is not.

- * CCE is not a municipal utility, and it does not involve municipalization as Boulder and Pueblo tried to do. Municipalization involves buying out the IOU's distribution system and taking over all aspects of utility operation, while CCE only involves procuring the wholesale electricity itself. CCE Authorities would put out RFPs for their energy and capacity needs, and then select wholesale power providers based on cost, renewable content, and other factors.
- And second, CCE is not Retail Choice or Deregulation, as in the 14 states where individual customers can shop around among many retail electricity providers. In contrast, CCE is **WHOLESALE** choice, where the choice is at the community level. There are a number of problems with Retail Choice involving shady operators, teaser rates and customer abuses, which primarily arise because individual consumers are not well suited to making informed decisions about energy. On the other hand, communities **ARE** well suited to doing due diligence and making well-informed decisions, including hiring consultants that work in this space. That said, individual customers do have one element of choice, which is whether to get their electricity from the CCE or to opt out and get it from the IOU.

One question that often comes up is whether a formal wholesale electricity market is needed for CCE to function, and whether the consideration of CCE should wait until Colorado has a wholesale market,

which it must have by no later than 2030 by statute. The answer is no. CCE could be implemented today in Colorado's current bilateral market structure. Colorado has 29 municipal electric utilities that already procure their wholesale electricity using bilateral contracts and federally-guaranteed open-access transmission, and CCEs could do the same. In fact, when markets do arrive, they'd likely benefit from the additional competition that CCE would bring.

CCE STATUS AT THE LEGISLATURE AND THE PUC

Before getting into more detail about how CCE would work in Colorado, I'd like to first summarize its history and current status at the legislature and the PUC.

Representative Edie Hooton ran HB-1269 in 2021, which directed the PUC to investigate how CCE might work best if implemented in Colorado, and then to submit a report to the legislature. The bill was broadly supported by communities and groups that were interested in knowing more about an alternative to the status quo. Most notably, unanimous resolutions of support for the bill were passed by the City Councils of Denver, Pueblo, Boulder, Golden, Lafayette, Nederland, and San Miguel County. Supportive environmental organizations included the Sierra Club, the 40+ members of Colorado Communities for Climate Action or CC4CA, and many other organizations and coalitions. The Colorado Municipal League also supported the bill on the grounds that it would give communities options, and options are good.

The resulting PUC proceeding attracted participants with expert knowledge of CCE, many from California where the expertise on the wholesale model of CCE resides. These included LEAN Energy, a national CCE advocacy group that we've worked with since 2019, and MRW and Associates, a firm that litigates on CCE issues at the California PUC and also works with communities on evaluating whether CCE is right for them.

The PUC issued its report on CCE in December, which I've heard aptly described as "cautiously pessimistic". While it does list the "Benefits and Opportunities" of enabling CCE in Colorado, it elaborates at greater length on the "Risks and Drawbacks". This is not particularly surprising, as the report represents the perspective of those who would be charged with implementing CCE, rather than the perspective of those who stand to benefit from CCE, namely communities and customers, environmental advocates, and consumer advocates. Nonetheless, it's a useful report for all parties, and it represents time and effort well spent.

I also filed a "Summary and Response" document that addresses the part of the PUC report that lists "pros" and "cons" of enabling CCE in Colorado. I provided responses to the "cons" mainly to address opposition arguments and to convey that most of the "cons" will be addressed in CCE enabling legislation.

We began drafting enabling legislation even before the PUC report was released, because 4 things were already clear last spring from the comments submitted in the proceeding:

- First, CCE is viable in Colorado today. There are no showstoppers, and no formal wholesale market is needed.
- Second, the potential benefits of CCE are substantial. These include lower electricity rates, faster decarbonization, more innovative and locally-relevant customer programs, choice and local control on energy matters, and more energy dollars remaining within the community.
- Third, there are no significant reasons to continue preventing communities from evaluating alternative electricity suppliers.

- And fourth, CCE is enormously successful and growing quickly in California, despite headwinds from shortcomings in California's enabling legislation. So far, [CCEs in California have procured long-term contracts for 10 GW of new-build renewables](#).

The current status is that Colorado's CCE enabling legislation has been submitted to a legislative Bill Drafter. I like to characterize this legislation as the third generation of the "wholesale, opt-out" model of CCE, following on California's trailblazing model. Oregon's second-generation CCE legislation addressed several shortcomings in the California model, and now, Colorado's legislation improves upon Oregon's by incorporating ideas and lessons learned from the PUC proceeding. My Response document addressing the PUC report was written in part to convey that most of the "cons" that were listed concern shortcomings in the California model that are addressed in Colorado's legislation.

Representative Andrew Boesenecker of Fort Collins will sponsor the CCE legislation in the House. He was Representative Hooton's co-prime sponsor of HB1269. As a representative of Fort Collins, which operates a municipal electric utility, Representative Boesenecker is well positioned to convey the advantages of being served by a non-profit utility that's responsive to local priorities and circumstances, and that can access the wholesale electricity market. Representative Boesenecker has requested late bill status, so there's still the possibility of a late bill in the 2023 session.

SOME DETAIL ABOUT HOW CCE WOULD WORK IN COLORADO

Next I'd like to add some detail about how CCE would work in Colorado. For a single local jurisdiction like a large city or county, the CCE Authority would be governed by the City Council or County Board. For a coalition of jurisdictions, which is the norm, the CCE Authority would be governed by a Board comprised of representatives from each jurisdiction. I'd like to point out that this is transparent governance that is subject to sunshine laws and community involvement, which is distinctly different from the opaque decision-making process in an IOU Board room.

Communities that decide to pursue CCE would create a CCE Authority and draft an implementation plan and submit it to the PUC for approval. Among other things, the implementation plan would address the following: the operations and funding of the CCE program, the process for setting rates and allocating costs, how they will address customer noticing and public hearing requirements for initiating a CCE program, the program's rates and opt-out process, how the authority will enter into and terminate agreements, how they will comply with state renewable energy and greenhouse gas emissions reduction requirements, the rights and responsibilities of customers including consumer protections, how they will provide adequate and safe service with just and reasonable rates, how community solar programs and net metering will work, and the general provisions of energy programs including demand-side management, beneficial electrification, electric vehicles, and energy assistance programs.

CCEs will have some flexibility to innovate in how they conduct customer programs. They may either adopt existing utility programs if CCE customers pay the same charges to fund the programs as IOU customers do, or they may offer their own programs if they're funded by CCE revenues and if they meet any statutory requirements. CCEs would also be able to access any available state funding to use in their own programs if the programs are approved by the Commission and don't duplicate IOU programs.

The PUC would either approve the implementation plan, or specify how it does not meet statutory requirements and the CCE Authority could revise it. Then the PUC would determine the exit fee that the CCE must pay to compensate the IOU for stranded costs and keep the remaining IOU customers whole. The general methodology and formula for calculating the exit fee would occur in a PUC

rulemaking proceeding, then the established methodology would be used to determine the specific stranded cost obligation and exit fee for each CCE Authority.

REGULATION OF CCEs

It's important to point out that CCEs are not largely unregulated like municipal utilities. They are self-governing, non-profit entities that would be moderately regulated, meaning more regulated than co-ops but less than IOUs. The PUC would ensure compliance with state energy policies and with customer programs, and the Commission would need to approve CCE power supply plans to ensure resource adequacy, including a reserve margin.

The main difference between CCE and IOU regulation is that CCEs are not rate-regulated like the IOUs. This is because CCEs are non-profits and because their interests are aligned with consumer interests in keeping rates low, unlike IOUs which must be rate-regulated to protect consumers from potential abuses of monopoly pricing power.

CCE AND RATES

Next I'd like to say a few words about CCE and rates. First, CCEs have an inherent cost advantage over IOUs in that they are nonprofits and have no fiduciary responsibility to serve shareholder interests. There is also plenty of evidence that CCEs have good potential to procure wholesale power that is both cheaper and cleaner than the IOUs.

- First, in 2018 when the City of Boulder was pursuing municipalization, they put out a Request for Indicative Pricing for their wholesale electricity supply. About a dozen wholesale suppliers responded, with the result that Boulder could have 89% renewable energy by 2024 at 2/3 the cost of wholesale power from Xcel. This demonstrates what's possible if a community can access the competitive wholesale electricity market.

- * Second, two electric co-ops, Kit Carson and Delta-Montrose, left Tri-State after coming to agreement on an exit fee, and then they signed new supply contracts with Guzman Energy. The new contract reduced their costs, gave them flexibility to supply more of their own power from local generation, and folded the financing of their exit fee into the agreement in order to keep rates low even while paying off the exit fee. This type of arrangement should also be possible for communities that adopt CCE. Kit Carson left Tri-State in 2016 and recently paid off its exit fee, which allowed it to [reduce its rates by an impressive 34%](#). They've since extended their contract with Guzman and now have fixed wholesale power prices through 2041, which gives them long-term rate stability and [savings estimated at over \\$150 million](#). This too is made possible by having access to a competitive wholesale market.

- Third, the Town of Fountain, which has a municipal electric utility, will not renew their contract with Xcel in 2027, and will instead get their wholesale power from Guzman Energy. In the meantime, as part of the deal, Fountain has received the first of multiple \$12 million payments that reduce their rates right now, even as they continue to get their power from Xcel, and then beginning in 2027 [Fountain's cost of wholesale power will decline by 25%](#). This too is possible only because Fountain can access a competitive wholesale market.

- And fourth, CCEs in California are able to offer competitive rates for much cleaner energy than the IOUs, despite shortcomings in California's implementation of CCE. The PUC report highlighted a comparison of 2022 rates and total bills, inclusive of the exit fee, between Marin Clean Energy and

their IOU, PG&E. Total bills on MCE's default rate plan are 7% lower than PG&E, for 61% renewable energy, compared to PG&E's 33%. MCE also has an optional 100% renewable plan with total bills that are still 4% lower than PG&E's 33% renewable product, and they can have that TODAY, not in 2030 or 2050. Again, these are total bills inclusive of the exit fee. I have to think that many Colorado communities would love to have 100% renewable energy right now, and at a lower cost.

EXIT FEE LESSONS FROM CALIFORNIA AND COLORADO

Shifting gears now to exit fees, one of the biggest lessons from California is how not to do exit fees. In California, the exit fee is frequently relitigated at the PUC and recalculated, so that exit fees change over time by an unpredictable amount, so CCE costs can't be accurately planned for. The exit fee in California also never sunsets, so CCEs have no light at the end of the tunnel. Many feel that it's unreasonable for exit fees to be indefinite and constantly changing.

Improvements in how the exit fee is addressed in Colorado's enabling legislation come from three sources: the expert comments in the PUC proceeding, the Oregon legislation which sunsets the exit fee after 5 years, and our PUC's prior experience in determining an exit fee calculation methodology for the co-ops that petition to leave Tri-State.

Starting with this last point, the PUC has deep experience with how to calculate a just and reasonable, non-discriminatory exit fee that compensates a utility for stranded costs and prevents cost shifts onto the remaining customers. Two co-ops, United Power and La Plata Electric, wanted to terminate their contracts with Tri-State and procure their wholesale power from other suppliers, but Tri-State gave them such an outrageous exit fee determination that they petitioned the PUC to determine a just and reasonable exit fee, which the PUC did in Proceeding No. 19F-0620E. The PUC's Recommended Decision is impressive reading, and makes it clear that determining an exit fee methodology for CCEs and IOUs is well within the capabilities and expertise of our PUC.

Colorado's CCE enabling legislation will direct the PUC to determine the methodology and formula for calculating exit fees subject to two high-level principles.

- First, the exit fee should be calculated to apply over a fixed time period, such as 5 years or 10 years, after which it would sunset.
- And second, except under very limited circumstances, the stranded cost obligation and exit fee should be calculated once at the beginning and not change, so that the exit fee remains stable over time for planning purposes and financial stability. This would remove many of the exit fee related obstacles to the smooth operation of CCEs in California. And knowing the total exit fee up front would allow the fee to be folded into financing arrangements or wholesale supply contracts.

To be clear, IOUs would not simply be stuck with unused assets that CCEs would have to pay off. IOUs would be expected to adjust their portfolios over time for the loss of load. Excess energy and capacity could be sold into the wholesale market, and excess generation assets or Power Purchase Agreements could be sold or transferred at market prices to any willing off-taker including the CCE. If the market prices don't fully cover the utility's costs, then the difference is a stranded cost obligation that would be paid by the CCE as part of the exit fee.

CONCLUDING COMMENTS

I'll wrap up now with a few concluding remarks. Representative Boesenecker, the bill sponsor, has articulated two high-level messages in support of CCE enabling legislation:

- First, enabling legislation is the next logical step to work through any perceived or identified challenges with CCE. That is, we can't know if the potential benefits of CCE can be realized in Colorado unless CCE is authorized and the specifics are worked out in a PUC rulemaking.
- * And second, the PUC report didn't highlight any reason not to move forward with enabling legislation. There are no compelling reasons why CCE just wouldn't work in Colorado or would be bad for Colorado, so we should move forward and see whether CCE's potential seen in other states can be realized here.

We already know for sure that wholesale power can be procured much cheaper in a competitive wholesale market. However, the only way to know whether CCE can actually provide lower rates and faster decarbonization in Colorado is to enable it and conduct the PUC rulemaking that would determine what the exit fees will be.

I began this presentation by claiming that competition and choice at the wholesale level would benefit both consumers and the environment by putting pressure on IOUs to innovate, contain costs, accelerate decarbonization, and address community energy priorities. The most effective pressure on a monopoly utility is the credible threat of competition, such as from CCE.

I'm sure you've all noticed the rate increases lately. Xcel has also posted record profits at the same time, and I have to ask, is that warranted for such a low-risk business with no competition?

I contend that CCE should be enabled in Colorado because even if not one community ultimately adopts it, CCE's mere existence as an option for communities would provide pressure on utilities that would benefit everyone.

CCE would not replace the role of regulation in Colorado's energy sector, but rather, it would supplement the current regulation-only approach with the market-enforced discipline of wholesale competition.

And with that, I'll stop and I'm happy to take any questions. Thank you!

LINKS

- **Colorado Office of the Utility Consumer Advocate (UCA):**

<https://uca.colorado.gov/>

- **Utility Consumers' Board (UCB):**

<https://uca.colorado.gov/utility-consumers-board-ucb>

- **House Bill 21-1269** ("*PUC Study of Community Choice Energy*"):

<https://leg.colorado.gov/bills/hb21-1269>

- **PUC Proceeding No. 221-0027E** ("*Study of Community Choice in Wholesale Electric Supply*"):

https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=221-0027E

- **PUC report on Community Choice Energy:**

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

- **Summary and Response to the PUC report on CCE:**

https://www.dora.state.co.us/pls/efi/efi.show_document?p_dms_document_id=986951&p_session_id
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- **CCE Fact Sheet** - summary and current status of CCE in Colorado, key facts and common misconceptions, and reasons to support enabling CCE in Colorado:

<https://energyfreedomco.org/docs/CCE-one-pager.jan2023.pdf>

SPEAKER BIO

Larry Miloshevich has a technical background in geophysical engineering, astrophysics and atmospheric science. He is a retired research scientist from the National Center for Atmospheric Research (NCAR) in Boulder. He is currently an Independent Advocate at the legislature and the PUC on energy policy and energy regulation issues. Larry has been involved with Community Choice Energy since 2018. He worked closely with Rep. Edie Hooton to pass HB21-1269 ("*PUC Study of Community Choice Energy*"), and he participated in the resulting PUC Proceeding No. 221-0027E ("*Study of Community Choice in Wholesale Electric Supply*"). He resides in Lafayette.

NOTES

1. **Details will be addressed in a PUC rulemaking, not in enabling legislation.**

Enabling legislation will authorize CCE in Colorado and provide high-level requirements, then the details will be worked out in a PUC Rulemaking. For example, CCEs will be required to meet or exceed the same statutory renewable energy and emissions reduction requirements in their power supply plans as IOUs.

Colorado has an active group of knowledgeable stakeholders that will weigh in on the bill, then if it passes, a very competent PUC Staff will draft recommended rules which stakeholders will again weigh in on, then the Commissioners will deliberate, modify and approve them.

2. **CCE timeline.**

A best-case timeline for implementing CCE is that enabling legislation passes in 2023, then a PUC Rulemaking occurs in 2023 and 2024, and the first communities would be able to submit implementation plans to the PUC as early as 2025, for possible CCE startup in 2026.

3. **Regarding the failure of Western Community Energy.**

LEAN Energy believes the WCE failure was caused by:

- inexperienced and poor leadership.
- not enough time after launch to build up sufficient cash reserves to offset higher power costs and a steep rise in delinquent accounts that was caused by the COVID pandemic.

The obvious ways to minimize the risks would be to ensure a strong and experienced leadership team, ensure cash reserves are in place (through bank financing, or other), and financial policies are

in place to maintain robust liquidity, including requirements to keep cash reserves of at least several months on hand, and a well-diversified portfolio of power contracts.

From the Response document:

- A CCE failure is less likely in Colorado because CCE costs and planning will be more predictable because the exit fee will be stable over time, unlike California where the exit fee and hence costs can vary substantially and unpredictably year to year.

- The CCE implementation plan that must be approved by the PUC will address both the CCE's finances and a transition plan in the unlikely event of a failure.