Date: April, 27, 2017
To: Western Riverside Council of Governments Executive Committee
From: Patrice Lynes, Temecula Citizens Action Committee: patrice.lynes@gmail.com
Subject: **Inland Choice Power CCA – Fatal Flaws; Potential Liability**

Recommended Action: Agenda Item 5.B - *Vote No* on Staff Recommendation to Direct the Executive Director to move forward with the development of a Community Choice Aggregation Program focused on the Western Riverside Subregion.

As per WROG staff's comments on Agenda item 5.B for WROG's executive committee meeting, May 1, 2017, "*... on April 5, 2017, SBCOG staff provided an update to its Board of Directors on the CCA along with a recommendation to continue working with WRCOG and CVAG on a potential Tri-COG or Two County CCA. A motion to move forward with the staff recommendation failed to receive a second, thus it does not appear that SBCOG will continue to work on coordinating CCA examination for its members."* Since the final feasibility for Community Choice Aggregation failed, the recommendations by SBCOG cannot move forward. Specifically:

- SBCOG and staff *cannot* continue collaborative efforts with Western Riverside Council of Governments and Coachella Valley Association of Governments to develop a Joint Powers Authority document and governance structure, separate from SBCOG, based on a subset of cities from San Bernardino and Riverside counties; and,
- SBCOG staff *cannot* continue with efforts to get a formal cost proposal from a third party provider of turnkey Community Choice Aggregation (CCA) services to allow for a more complete analysis; and,
- SBCOG and staff *cannot* begin outreach to individual cities to determine interest in participating in a CCAs.

In a press release dated April 6, 2017 by the Foothill Tax Payers Association (FTPA):

"A six page critique of the feasibility study titled, Inland Choice Power: Community Choice Aggregation Business Plan - Final Draft*, prepared by EES Consulting for SBCOG, was found to be *fatally flawed*. Claims in the report were unsubstantiated," said Linnie Drolet, president of FTPA. Dan Titus, an affiliate of the American Coalition for Sustainable Communities (ACSC) concurred. "We found problems with the recommendation to move forward because the benefit of saving people less than 5% on their electric bill did not merit the millions of dollars of startup costs associated with the plan. We also fundamentally disagreed that people would automatically enrolled in a new government CCA without advance permission."

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*Press Release: http://www.marketwired.com/press-release/new-tax-payers-association-foothill-tax-payers-association-wins-based-on-facts-2208462.htm

Why did the SBGOG staff recommendations fail?

Because Inland Choice Power: Community Choice Aggregation Business Plan: Final Draft, Dated December 8, 2016 is a *flawed* report. Here are just a few of the salient points:

ICP assumes $1.25 billion of debt
The Business Plan's proforma tables identify that ICP CCA assumes $1.25 billion of non-bypassable charges (Exit Fees, Cost Responsibility Surcharges, and Bond Costs) through 2036 that are levied by Southern California Edison. Even one-tenth of this sum is a huge debt burden for any upstart.

There is no consumer guarantee by ICP to pay all consumer costs that it triggers
ICP makes no warranty that it will pay exit fee costs that it triggers when automatically switching consumers into its program. It should be noted that Marin Clean Energy (MCE) did commit to pay all of its own consumer costs in 2010 before reneging on its pledge 9-months after business launch. MCE offloaded its exit fee liability onto consumers in exchange for a temporary rate reduction that vanished when MCE subsequently raised its prices.[1]

ICP's success based upon inaccurate Opt Out claim
ICP's financial model is based upon customer participation projections that are wrong. Page 24 of the Business Plan states that Phase 2 (largest enrollment phase) assumes a 25% Opt Out, and that "These opt-out assumptions are *conservative estimates* [emphasis added] when compared to participation rates in other CCAs." However, MCE's Opt Out numbers were 30%, a sizable amount considering that MCE had previously experienced a 20% Opt Out rate.[2] This is all the more troubling when considering that ICP's *conservative* "Domestic" ratepayer class *assumption* represents 50% of ICP's total revenue.

WRCOG staff recommendation: *"the CCA Ad Hoc and the Administration & Finance Committee are recommending to the Executive Committee at its May 2017 meeting to direct the WRCOG Executive Director to continue moving forward with developing a CCA for the Western Riverside County subregion, with the opportunity for jurisdictions outside of the subregion to join."*

Why is WRCOG staff recommending moving ahead based on a flawed report that was defeated at SBCOG on April 5, 2017?

Attached is a review of the Inland Choice Power: Community Choice Aggregation Business Plan: Final Draft, Dated December 8, 2016. Be sure you read and understand the potential implications and liabilities for all parties involved including but not limited to, CCA member cities, WRCOG, residents and ratepayers.

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[1] Marin County utility rate analyst Jim Phelps letter to MCE Chair Chas. McGlashan, dated February 18, 2011, Subject: MEA's (MCE's) Illusory 14% Rate Reduction / Elimination of Energy Credit.

[2] MCE Integrated Resource Plan, November 2012, page 7 and 8. Phase 2B.

Subject: Review of Inland Choice Power Community Choice Aggregation Business Plan; Final Draft, Dated December 8, 2016

The American Coalition for Sustainable Communities (ACSC) has assisted the Foothill Tax Payers Association with a review of the Inland Choice Power Community Choice Aggregation's (ICP CCA) Business Plan and has identified several issues of question about the document and ICP CCA's purported value. Consequently, we respectfully submit, that there is not enough information to make for an informed decision about implementing ICP CCA.

Our review may be categorized into four general areas: (1) Prices, (2) Greenhouse Gas Reduction, (3) Start-up Costs, (4) Insider: Conflict of Interest.

1 - PRICES

- The Business Plan (document) notes that ICP CCA prices could be greater than SCE prices "*if exit fees* (The Power Charge Indifference Adjustment - PCIA) *become much larger*." [1] If exit fees increase, it is likely that cost-conscious consumers will opt out of ICP CCA, putting ICP CCA into a potential death spiral where total costs are now spread over a shrinking customer base; thereby, triggering more exits. The document states that exit fees should be "fairly stable" because "the CCA community has become very vigilant in this area."

  While the author's bias toward aligning himself with CCA is understandable, PCIA is not a "stable" issue and remains contentious among investor owned utilities at the California Public Utilities Commission (PUC) despite vigilance of the CCA community. Exit fee component costs are dynamic. Indeed, three years after PG&E's exit fees peaked in 2012 and subsequently declined, PG&E proposed *doubling* exit fees.[2]

  It is not unreasonable to expect SCE's exit fees will not be "fairly stable" as it experiences losses of energy consumers who are automatically switched into ICP CCA, much as PG&E did when Marin Clean Energy (MCE, aka MEA) began automatically switching large blocks of consumers into its program, beginning in May 2010.

- SCE's *temporary* price advantage: The document states that if wholesale energy prices drop, after ICP CCA executes power contract, SCE will experience a "temporary" price advantage.[3] The author implies that ICP CCA will always have a price advantage over SCE unless wholesale energy prices drop. This gives rise to several questions. How can the author possibly divine this? Does the author know SCE's yet-to-be-executed forward and bilateral contract prices (that not even SCE knows today)? What about future tolling contracts?

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[1] ICP CCA Business Plan – Final Draft (December 8, 2016), page 5, fifth bullet.

[2] http://www.marinij.com/article/NO/20151217/NEWS/151219833

[3] "This sensitivity analysis shows that the ICP rates could be greater than SCE rates if: Wholesale market prices drop much lower than current rates after ICP enters power contracts, allowing SCE a *temporary* advantage on generation rates."

To claim that ICP CCA is only subject to *temporary* price disadvantages is limited in perspective, truncated in scope, and undersells financial risk to taxpayers, residents, and municipal decision-makers by placing ICP CCA in an optimistic and unrealistic light.

- CCA Prices – An Actual Record: Although not discussed in the ICP CCA Business Plan, it is worth noting that, after 7 years in business, MCE–compared to PG&E–is not able to bring energy price relief to consumers who were told the opposite by MCE proponents when that CCA launched. In its most recent price review, MCE prices (including exit fees) were merely six-hundredths of 1% lower than PG&E prices.[4] (It is worth noting that MCE's *actual* GHG emission rate (not advertised by MCE) averages at nearly 80% higher than PG&E's when unbundled RECs and associated green-washing are properly accounted – see discussion in GHG section, below).[5]

- The Business Plan document relies upon the Jobs and Economic Development Impact (JEDI) tool models offered by the National Renewable Energy Laboratory (NREL), for determining economic merits of ICP CCA.[6] The author claims that ICP CCA will result in millions of dollars of benefit to the economy, but does not include any footnotes or empiric data to support his claim. However, the author asserts that JEDI has "default but modifiable" inputs that help the user attain desired results. This introduces unchecked bias that undermines the objectivity of purported benefits, inasmuch as the author is tasked with presenting ICP CCA in optimistic terms for public consumption, while downplaying financial risk to taxpayers, residents, and municipalities.

- With respect to local economic benefits, the Business Plan author fails to note that SCE employs many residents and taxpayers whose economic activity also results in economic benefit to the community.

2 – GREENHOUSE GAS (GHG) REDUCTION

- Environmental claims in the document are unsubstantiated. The document says ICP CCA will reduce GHGs between 2.9 billion and 5.2 billion pounds of CO2 in multiple places throughout the text, yet includes no baseline data from SCE, nor does it specifically identify portfolio content category energy in its own resource mix.[7]

  The document's GHG reduction numbers are inconsistent from year to year.[8] This is disconcerting to the extent that errors such as this may also exist in financial projections, calling into question financial and economic benefits.

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[4] MCE February 16, 2017 Board packet, agenda item #07, page 5, Table 3.

[5] Jim Phelps, Marin County resident, and former power engineer and power plant emission consultant.

[6] ICP CCA Business Plan – Final Draft (December 8, 2016), page 62.

[7] ICP CCA Business Plan – Final Draft (December 8, 2016), page 11, 60, 72,

[8] Page 10 – "Assuming ICP achieves a base case 50 percent RPS target at start-up, GHG emissions reductions attributable to ICP operations in 201<u>9</u> will range from 1.33 to 2.34 million metric tons CO2 equivalent

- (Unbundled) RECs: By mandate, energy service providers' portfolios must meet the Renewable Portfolio Standard's (RPS) 33% renewable energy content by 2020. ICP CCA claims it will not use unbundled Renewable Energy Certificates (RECs) in satisfying its RPS mandate.[9] RECs are under scrutiny by environmentalists because they mislead consumers due to their green-washing characteristics; the Sierra Club refers to RECs as "deceptive marketing." [10]

  While ICP CCA's commitment to not use RECs appears commendable, the commitment leaves open the implication that ICP CCA would indeed use RECs to *not satisfy the RPS* by using them after the RPS mandate is satisfied. In other words, ICP CCA would insert RECs into its portfolio beginning at the 34% "clean" energy volume. Similar action was employed by MCE when it loaded RECs into its invented clean energy category – "voluntary" (non-existent RPS category) – and in the process green-washed in excess of 1.1 billion pounds of GHG in brown power that MCE resold to consumers as "clean." [11] RECs constituted the bulk of MCE's advertised "clean" energy. This occurred after MCE's Business Plan committed to limiting RECs to a "potential" use. [12] Because RECs are a financial instrument and are not actual energy, brown power is delivered to customers instead and advertised as "wind" or "solar" or whatever is on the REC. [10]

  - Firm and shape RECs: ICP CCA plans to use this type of REC. While allowed under the RPS, firm and shape RECs also mislead consumers who believe they are paying for clean energy when they are actually receiving coal-fired and gas-fired energy imports into California that are used as substitute energy for what is advertised to consumers. If ICP CCA advertises itself as "reducing GHGs" and has an opportunity to truly clean the atmosphere, it is disingenuous to engage in the use of these financial instruments – firm and shape renewable energy certificates" – that mislead unknowing consumers who believe they are receiving clean energy when the CCA has actually engaged an elaborate arbitrage that conceals the actual delivered brown power.

- REAL GHG REDUCTIONS VERSUS DISPLACED: ICP CCA's greenhouse gas reductions are only an actual decrease when ICP CCA's energy is generated by *new-net* resources that it brings

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(CO2e) per year." Page 11 -- Exhibit ES-6 Baseline Comparison of GHG Reduction by ICP in 2018: CO2 reduction Low = 1.33 (Million Metric tons CO2 e). High = 2.34 (Million Metric tons CO2 e).

[9] "The Plan assumes that ICP will not rely on REC purchases to meet RPS requirements." Page 32.

[10] Sierra Club protest of PG&E's proposed use of RECs in PG&E's proposed (and now abandoned) Green Option. http://docs.cpuc.ca.gov/PublishedDocs/EFILE/P/167460.PDF Page 7: The Green Option program would represent to customers that 100% of "the customer's electricity content" is from renewable energy resources (not RECs). This is deceptive marketing. PG&E would not buy any additional renewable power to meet customer demand for the Green Option. PG&E would only be purchasing unbundled renewable energy credits (RECs) certified by Green-e in "those incremental quantities necessary to green up" a customer's electricity content."

[11] Interview with Jim Phelps, Marin County resident: former power engineer and power plant emission consultant.

[12] Final Report – Marin-California Community Choice Aggregation Business Plan, April 2008, Chapter 3 – Load Forecast and Resource Plan, p. 34.

online into the energy market. Conversely, when ICP CCA's renewable energy is generated by a pre-existing resource, the associated "reduction" in GHGs is false claim since ICP CCA will merely displace the consumer who previously relied upon that pre-existing resource for its clean energy in the first place. Since the displaced consumer must now purchase spot market or brown power (gas-fired and coal-fired energy), there is a commensurate increase in GHG emissions to the atmosphere due to ICP CCA's action. Thus, the GHG reduction that is advertised by ICP CCA is actually net-negative. The only way it would not be net-negative was if the displaced consumer placed into service a renewable generating resource that produced an energy volume equal to what it lost to ICP CCA during ICP CCA's procurement process.

- ICP CCA claims it will achieve its GHG reductions approximately 1-year after business launch. At that time ICP CCA claims its net energy sales will be 14,200,000+ MWh.[13] This volume is 8 times MCE's ~1,700,000 MWh. Further, ICP CCA claims 100 MW of local (*net-new*?) renewable capability will also be available after one year in business.[14] Considering the compounding difficulty of bringing relatively large ICP CCA into operation, it is difficult to believe that this upstart can also bring 100 MW of *local* renewable online when, after 7 years, more experienced MCE has only brought 8.23 MW of local renewables into service. The bulk of MCE's local renewables were placed into service more than 5 years after MCE's business launch.[15]

3—Start-Up Costs and SCE Bond

Page 50 of the Business Plan shows that ICP CCA requires nearly $200 million in start-up costs within a year after launching into business. Who guarantees the loan(s)? What is the risk to general funds and to taxpayers? It should be emphasized that municipal members who join the ICP CCA as a member of the Joint Powers Authority will *not* be insulated from loan liability via the touted JPA "financial firewall." [16]

Alternately to funding this debt service, what about funding long-standing unfunded pension liabilities and infrastructure maintenance that pre-exists the launching of a (fashionable) CCA?

Considering that ICP CCA will likely achieve little, if any, price savings for consumers (citing MCE as a mature-model CCA) and considering that actual reductions in GHGs are questionable (citing MCE as a mature-model CCA), wouldn't $200 million be better spent in the community on immediate needs, the benefits of which are easily quantified?

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[13] Financial Proforma: 50% Renewable portfolio and 100% Renewable portfolio = 14,207,376 MWh in 2018.

[14] ICP CCA Business Plan – Final Draft (December 8, 2016), page 39.

[15] MCE claims its local renewables are comprised of Cooley Quarry solar 1.66 MW + San Rafael Airport solar 0.972 MW + Cottonwood solar 1.0 MW + Freethy solar 1 & 2 1.996 MW+ Cost Plus solar 0.261 MW + Redwood LFGTE 4.0 MW + Solar One 10.5 MW. MCE local renewable advertised as online = 20.4 MW. Cooley Quarry is more than two years behind schedule, and Solar One are <u>not</u> online. MCE actual local renewable online = 8.23 MW

[16] Davis Wright Tremaine LLP risk analysis letter dated May 10, 2010 to City of Mill Valley and October 22, 2014 to City of Benicia. Financial firewall insulates JPA members from energy creditors who agree to waive debts if needed.

4 –INSIDER: CONFLICT OF INTEREST (CONSULTANTS, MUNICIPAL EMPLOYEES)

The Business Plan document does not identify who would be employed by ICP CCA, nor does it include language that addresses employment conflicts of interest. For instance, Marin Clean Energy's (MCE) CEO was originally a County of Marin Planner earning $54,000 per year while acting concurrently as MCE's interim director; today she receives a MCE salary of $248,000 per year.