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January 11, 2018

Via U.S. Mail and Electronic Mail

Mr. Ed Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenues
San Francisco, CA 94102

Re: Comments on Draft Resolution E-4907

Dear Mr. Randolph:

In accordance with Rule 14.5 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the notice accompanying Draft Resolution E-4907 ("Draft Resolution"), the California Community Choice Association ("CalCCA") hereby submits these comments on the Draft Resolution.

SUMMARY

Among other things, the Draft Resolution holds that, in order to comply with the year-ahead Resource Adequacy ("RA") process, material changes to the certification process for Community Choice Aggregation ("CCA") implementation plans are needed. CalCCA appreciates the various challenges facing the Commission as it seeks to integrate and accommodate the recent expansion of CCA programs. CalCCA looks forward to working together with the Commission and stakeholders to address these issues in a manner that respects due process, harmonizes key principles and is responsive to time-sensitive matters. As currently written, however, the Draft Resolution does not strike this important balance. Instead, actions proposed under the Draft Resolution are based on untested factual assertions regarding cost-shifting derived without the review and input of parties with substantial interests at stake in the outcome of those assertions. In short, the Draft Resolution has numerous due process and procedural flaws that must be corrected.

To avoid the impact of these flaws, the Draft Resolution should be withdrawn and issues considered within the context of a Commission proceeding. CalCCA is interested in bringing alternatives forward. CalCCA members' governing boards are composed of elected officials accountable to constituents who are CCA program customers and bundled utility customers. CalCCA therefore shares the Commission's interest in cost allocation that stays true the indifference principle. This interest will drive any alternative CalCCA brings forward to the appropriate venue. CalCCA is open to expedited treatment for near-term solutions as well, while a more permanent solution is developed. If the Commission elects to move forward with the Draft Resolution, alternatives must be considered.

For example, one alternative that could be considered is neither novel nor without precedent. Previous "temporary" action in the context of the Commission's reopening of direct access ("DA") in 2010 could provide an alternative, interim step that could provide a certain degree of pressure-relief for 2018, addressing the Commission's concerns in the near-term and allowing for the development of a reasonable, long-term solution.[1] This alternative was also envisioned and discussed in one of the Commission's early CCA-related decisions (D.05-12-041). Though far from ideal, since the alternative has not been vetted in any current proceeding, this alternative at least has some procedural foundation, and more precisely addresses the problem at hand. CalCCA is still reviewing this alternative and welcomes input and alternatives from other stakeholders.

The alternative would not displace the need, however, to come up with a durable solution. Rather, it could be part of a two-part process: (1) near-term RA-related matters (*i.e.*, for 2018) could be addressed under temporary action comparable to that which was approved by the Commission in D.10-03-022 (and contemplated in D.05-12-041), and (2) other matters (*i.e.*, beyond 2019) would be addressed in the RA proceeding. Under the first part, CCA programs that plan to launch in 2018 and have not already had their implementation plans certified would be assigned a share of the respective investor-owned utilities' ("IOUs") year-ahead RA at an administratively determined cost ("Cost") from the program's launch date to the end of 2018. Likewise, CCA programs that intend to launch in 2019, but do not provide an implementation plan by March 31, 2018, would be assigned a share of the IOUs' year-ahead Cost through the first year. Thereafter, and also for CCA programs that provide implementation plans by March 31, 2018 for a 2019 launch, CCA programs would integrate with the existing RA forecasting process, including the April load forecast submission and October year-ahead procurement demonstration. Again, this first part is similar to the Commission's temporary treatment for RA obligations during the reopening of DA, as expressed in Appendix 3 of D.10-03-022,[2] which lays out a one-time mechanism for fairly allocating RA costs during compliance year 2010.

Other examples of alternatives should also be considered. Interim alternatives like these could resolve the immediate issues the Energy Division believes exist, while allowing longer-term impacts on CCA implementation and RA program structure to be examined in a fair and transparent manner through a formal proceeding. Though the Draft Resolution identifies issues worthy of attention, and the Energy Division is to be commended for proposing remedial action, the Draft Resolution has numerous procedural defects and is emblematic of other concerns affecting the relationship between the Commission and CCA programs.

In CalCCA's letter to Commissioner Liane Randolph, dated December 21, 2017, CalCCA expressed its belief that the best way to address the Draft Resolution's procedural flaws is for the Commission to withdraw the Draft Resolution, and instead consider these issues on an expedited basis in the context of the Commission's RA rulemaking proceeding (R.17-09-020). CalCCA still supports this approach. However, if the Commission elects to move forward with the Draft Resolution, the Draft

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1 *See* D.10-03-022 (Appendix 3).

2 Instead of using IOU cost, D.10-03-022 applied an RA price of $24/kW-year, which was adjusted based on monthly values (*i.e.*, summer prices were higher).

Resolution must be significantly modified so that it only addresses exigent matters on an interim basis.

COMMENTS

CalCCA appreciates the issues raised in the Draft Resolution. However, CalCCA has serious concerns about procedural matters. In the following section, CalCCA identifies procedural concerns with the approach currently described in the Draft Resolution, and illustrates why these matters should be addressed in a formal proceeding. In a subsequent section, CalCCA describes an alternative that could be considered by the Commission and stakeholders. Under this alternative, near-term issues associated with 2018 could be addressed using a methodology previously adopted by the Commission. Issues associated with subsequent years would be addressed in the RA proceeding.

PROCEDURAL CONCERNS

I. The Draft Resolution Violates Due Process

The Draft Resolution contains material changes to the CCA framework. These changes are being proposed for expedited adoption in a manner that is at odds with due process. Due process requires that parties affected by the Commission's actions receive adequate notice and an opportunity to be heard before a valid order is made.[3] Stated similarly, a fundamental requirement of due process is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections"[4] For the reasons provided below, if the Commission intends to comprehensively address matters currently in the Draft Resolution, the Draft Resolution has not provided adequate notice and opportunity to be heard. If, on the other hand, a more measured and temporary outcome is envisioned, the Draft Resolution can be modified to apply interim measures, with parties having an opportunity in the RA proceeding to provide input on substantive, long-term changes.

A. The Commission Has Not Provided Parties A Sufficient Opportunity To Be Heard

The Draft Resolution was released on December 8, 2017 and proposes significant changes to the CCA implementation process on the basis that RA-related changes are necessary. While CalCCA appreciates the second (reply) round of comments afforded parties by the Energy Division,[5] parties are nevertheless only permitted a comment period to respond to the Draft Resolution, with no opportunity to examine claims underlying the Draft Resolution's changes. Comments on draft resolutions are circumscribed and generally only allow parties to point out errors, not test underlying

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3 *People v. Western Air Lines Inc.*, 42 Cal. 2d 621, 632 (1954).

4 *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n*, 237 Cal. App. 4th 812, 859 (2015).

5 By email, dated December 27, 2017, the date for comments on the Draft Resolution was extended to January 11, 2018, with reply comments due January 18, 2018.

assumptions or otherwise develop the record to provide a sufficient basis for Commission action.[6] Given these material effects, and past case law, CalCCA believes an opportunity to be heard is particularly necessary.

Certain decisions and cases are instructive in this regard. For example, in D.85585, the Commission altered a past transportation order, cancelling certain minimum transportation rates. The Commission's decision was grounded in a determination from Commission staff that the change was in the public interest.[7] The California Trucking Association protested the decision on due process grounds. The California Supreme Court annulled the Commission's alteration, finding that opportunity to be heard "implies at the very least that a party must be permitted to prove the substance of its protest rather than merely being allowed to submit written objections to a proposal."[8]

Here, the Adopted Timeline in the Draft Resolution states that it "modifies the Prior Timeline" in D.05-12-041.[9] In the Draft Resolution, the Energy Division summarily states that the changes are in the interests of bundled customers.[10] Yet, no party has been given an opportunity to prove otherwise, nor are such comments on the Draft Resolution appropriate.[11] Importantly, there was no invitation to a broader group of stakeholders in the development of the Draft Resolution's supporting facts or for input on the Draft Resolution's proposed changes and solutions. Indeed, CalCCA and other interested parties were not made aware of these matters until the release of the Draft Resolution. Apparently the Energy Division only requested input from one party: Pacific Gas and Electric Company ("PG&E").[12]

As further described below, it is procedurally flawed for the Commission to rely on data requests issued by the Energy Division to only PG&E purportedly "confirming the existence of stranded costs," and then prevent affected parties from testing the veracity of the IOUs' claims and conducting their own discovery. CalCCA and other interested parties should be permitted to provide more substantive discussion and review of the matters addressed in the Draft Resolution.

B. There Is No Evidence To Support The Draft Resolution's Conclusions

The Draft Resolution relies on evidence that is not part of any evidentiary record without an opportunity to challenge. This type of evidence is not allowed under the Public Utilities Code. CalCCA is particularly concerned that the Draft Resolution relies on new information not contained in D.05-12-041 in making its determination. Changes proposed in the Draft Resolution appear to be

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6 *See generally*, Rule 14.5. *See also* Notice Accompanying Draft Resolution at 2 ("Comments shall focus on factual, legal or technical errors in the proposed Draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.")

7 *Cal. Trucking Ass'n v. Pub. Utilities Comm'n*, 19 Cal. 3d 240, 244 (1977).

8 *Id.*

9 Draft Resolution at 9.

10 *Id.* at 7.

11 *See People v. Western Air Lines Inc.*, 42 Cal. 2d 621, 632 (1954).

12 *See* Draft Resolution at 7.

based on confidential, untested factual assertions from a single source (PG&E) to conclude there is a "potential" and "unquantifiable" cost-shifting.

Nowhere is this evidence entered into any record, certified under penalty of perjury, or available for other parties to review and rebut. Unless modified as described herein, this is a major violation of parties' due process rights and also violates the requirements of Public Utilities Code Section 1710, which only allows admission of evidence under prescribed conditions.[13] In short, these assertions must be subject to stakeholder review and Commission consideration in a formal proceeding.

The Draft Resolution also would impact rates of the IOUs,[14] which is a function of ratesetting under Rules 1.3(e) and 7.2(e)(2). Under Section 1757, in order to be sustained by a reviewing court, Commission action in ratesetting matters requires that the Commission provide substantial evidence to support the Commission's actions.[15] Not all evidence can meet the substantial evidence standard, and hearsay evidence has been expressly held to not meet the substantial evidence standard.[16] The Draft Resolution does not meet these requirements. Moreover, compounding this problem is that this data, not part of any record, is also treated as confidential, thus precluding any party from reviewing and challenging this data.

Further, Section 366.2(f)(2) states that "*net* unavoidable costs" must be paid by CCA customers. This means that Section 366.2 requires an examination of offsetting benefits related to these costs. As noted above, the Draft Resolution does not find actual costs, and only references potential costs.[17] Moreover, any *actual* costs should be offset by benefits, such as more current and accurate forecasts, rather than previous year's forecasts that the Draft Resolution proposes to use.

In short, specific, critical issues of fact remain unresolved, such as:

- How many of the "millions of dollars" allegedly at issue were avoidable or have a true nexus to CCA formation?
- To what extent do PG&E's analysis and the Energy Division's conclusions include a calculation of the benefits departing customers impart to bundled customers, thus arriving at a "net" cost?
- Did other IOUs have RA shortfalls in the applicable years that required short-term contracting, potentially revealing an underlying cause for procurement that had little to do with departed load?
- Were the applicable IOUs long on RA capacity in the applicable years regardless of departed CCA load?
- Did the California Independent System Operator actually need to procure any back-stop capacity through its capacity procurement mechanism as a result?

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13 Unless otherwise noted, all further statutory references are to the Public Utilities Code.
14 Draft Resolution at 12-13.
15 Section 1757(a)(4); *see also id.* Section 1757.1 (requiring findings supporting the decision).
16 *Util. Reform Network v. Pub. Utilities Comm'n*, 223 Cal. App. 4th 945, 960 (2014).
17 Draft Resolution at 1, 7.

Without relying on its formal processes, it is difficult to see how the Commission can conclude "the existence of stranded costs" that it believes must be addressed. It is telling the Draft Resolution makes no specific determination regarding cost-shifting in either its "Findings and Conclusions" or its "Ordering Paragraphs." In short, more justification is necessary to develop a record upon which the Commission can act.

Finally, the approach taken by the Draft Resolution is significantly different than the approach recently taken in Commission's the Power Charge Indifference Adjustment ("PCIA") proceeding where the guiding principle is that the method and underlying data for that cost allocation should be "transparent and verifiable," such as through an appropriate non-disclosure agreement.[18] The proposals in the Draft Resolution break from this commitment to transparency, citing confidential information from PG&E that is not available for review. To align with the Commission's commitment to transparency, the referenced confidential information should be available for review under a non-disclosure agreement. As described above, the RA proceeding can provide an opportunity to review this confidential information and be heard.

C. The Draft Resolution's Approach Breaks From Past Instances Where The Energy Division Provided A Process For Iterative Feedback

CalCCA notes that the comment process in the Energy Division's Draft Resolution breaks from past consideration of CCA implementation timelines. While the Commission's past practices in this area are not dispositive, such practices are instructive.

Following the release of D.05-12-041, the Energy Division took steps in 2006 and 2007 to consider implementation timelines in a manner that was considerably different and involved a systematic approach aimed at receiving comments and input before a final outcome. On July 12, 2006, the Energy Division circulated a document that contained timelines related to the CCA implementation process, and requested comments by July 26, 2006.[19] This request was circulated to the service list of R.03-10-003, and the document within the request contained a timeline for, among other things, the implementation plan's submittal and certification. On January 25, 2007, the Energy Division circulated a revised draft of the CCA procedural timeline, which included edits suggested by parties on the R.03-10-003 service list. The Energy Division allowed for an additional round of comments on the draft by February 9, 2007, along with a request for thoughts on how CCAs would comply with the Commission's RA requirements in R.05-12-013 (the Commission's RA proceeding at the time).

Though the Energy Division did not ultimately pursue any changes following the revised draft, this procedure is relevant to CalCCA's procedural concerns insofar as it provided a meaningful opportunity to be heard and, at the very least, displayed a greater willingness to involve stakeholders.

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18 *See* PCIA Scoping Memo at 12, 13, 15.

19 Email from Carlos Velasquez, Energy Division to R.03-10-003 Service List (July 12, 2006).

D. There Is Harm To The Parties And California Customers As A Result Of The Lack Of Due Process

The Draft Resolution will pose immediate harm to new and expanding CCA programs and their customers. Under the Draft Resolution, new CCAs programs preparing implementation plans for Commission certification and expanding CCA programs must delay their launch plans, and comply with a rigid January 1 launch timeframe that does not reflect local needs. Local governments considering CCAs have incurred significant costs in preparation of these implementation plans. For example, in its December 20, 2017 comments on the Draft Resolution, the Western Riverside Council of Governments ("WRCOG") states that it has expended over $400,000 in preparing for its program launch.[20] The Draft Resolution's modified implementation timeline will increase WRCOG's implementation costs, affect contracts already in place to implement that program, and result in lost procurement opportunities.[21]

As generally described by WRCOG,[22] thousands of California customers will be delayed in their ability to receive higher renewables content, lower rates, and other services provided by CCA programs.[23] Again, harm to California customers, as a result of delays occasioned by the Draft Resolution, is not discussed or balanced in the Draft Resolution.

II. The Draft Resolution Is At Odds With The Commission's Rules And Processes

The Commission's proposal in Draft Resolution E-4907 should be done through a rulemaking proceeding, consistent with the Commission's statutory obligations and its Rules of Practice and Procedure ("Rules"). CalCCA is surprised by the proposed use of a resolution "on the Commission's own motion" to propose substantive changes and modifications to previously adopted Commission decisions. Commission-issued resolutions are largely ministerial in nature or ordered by a previous Commission decision, neither of which is applicable here. CalCCA is unaware of any similar issue of such magnitude being addressed by resolution, particularly where the resolution modified previous Commission decisions and purports to be based on evidentiary findings. General Order 96-B, which covers the advice letter and resolution process, rightly observes that this process is not suitable for issues requiring evidentiary hearings, modifying previous Commission decisions, or making other substantive changes.[24]

Rule 6.1 (reflective of Sections 1708 and 1708.5) describes the normal process by which substantive changes are brought forward:

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20 WRCOG Comments at 2.

21 *See id.* (describing impact on WRCOG).

22 WRCOG Comments at 1.

23 For example, participation in CCA energy programs such as Net Energy Metering, electric vehicle adoption, and energy efficiency.

24 *See, e.g.,* General Rule 5.1 ("[A] matter that requires an evidentiary hearing may be considered only in a formal proceeding."). *See also* General Rule 5.2.

> The Commission may at any time institute rulemaking proceedings on its own motion (a) to adopt, repeal, or amend rules, regulations, and guidelines for a class of public utilities or of other regulated entities; (b) to amend the Commission's Rules of Practice and Procedure; or (c) to modify prior Commission decisions which were adopted by rulemaking.

As written, the Draft Resolution directly "amends rule, regulations, and guidelines for a class of public utilities *or other regulated entities*," in this case Community Choice Aggregators and also specifically" amends" the timelines and requirements of D.05-12-041. Neither of these changes can be done through a resolution. The Draft Resolution's reliance on Ordering Paragraphs 6 and 10 of D.05-12-041 is unavailing. Ordering Paragraph 6 allows the Executive Director to develop an "informal process of review" of the CCA implementation process which "shall implicate no approvals, either formal or informal, from the Commission."[25] The Draft Resolution instead proposes a "formal" and binding process directly requiring Commission "approval." Ordering Paragraph 10 gives the Executive Director the authority to issue instructions for CCA implementation, but any such instructions "shall be consistent with the statute and *this order*."[26] Instead, the Draft Resolution makes significant changes to the timeline, requirements, and other features of the CCA implementation process established in D.12-05-041.

III. The Draft Resolution Unduly Impinges On The Statutory Right Of Local Governments To Implement CCA Programs

A. General Principles

The Draft Resolution impinges on the statutory right of local governments to implement CCA programs. As such, support for these changes must be set forth in a robust, well-developed record. Under the Draft Resolution, CCA programs that did not formally submit their implementation plan as of December 8, 2017 (the date on which the Draft Resolution was released) are now required to adhere to new procedures and timeline that could materially and adversely affect and delay CCA implementation with no advance notice, formal process, or opportunity for input. Such a significant change can only be made through a rulemaking proceeding.

In support of its proposal, the Draft Resolution references Assembly Bill ("AB") 117.[27] AB 117, as codified in the California Public Utilities Code, states explicitly that the Commission must provide the earliest possible effective date for CCA program implementation:

> The commission shall designate the *earliest possible effective date for implementation of a community choice aggregation program*, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.[28]

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25 *See* D.05-12-041; Ordering Paragraph 8.
26 *See* D.05-12-041; Ordering Paragraph 10 (emphasis added).
27 *See id.* at 2.
28 Cal. Pub. Util. Code § 366.2(c)(8) (emphasis added).

The successor to AB 117, Senate Bill ("SB") 790 states a clear intent of the Legislature to honor "the *right* of local governments to aggregate their electricity loads for the purpose of procuring and generating more renewable energy, expanding consumer choice, and greatly accelerating regional efforts to address climate change."[29] This right and the attendant aspect of "local control" was discussed this year by the United States Court of Appeals for the Ninth Circuit, which highlighted "the legitimate legislative purpose" of CCA programs in "reducing greenhouse gas emissions, providing electricity at a competitive cost, reducing energy consumption, and promoting rate stability, energy security, and energy reliability *through local control*."[30]

B. Does Not Comply With D.05-12-041

In D.05-12-041, the Commission found that AB 117 does not provide the Commission with authority to approve or reject a CCA's implementation plan or to decertify a CCA, but rather to assure that the CCA's plans and program elements are consistent with utility tariffs and consistent with Commission rules designed to protect customers.[31] According to the Commission, "Nothing in the statute directs the Commission to regulate the CCA's program except to the extent that its program elements may affect utility operations and the rates and services to other customers."[32] Regardless of the formality of the process, the process directed in D.05-12-041 "would implicate no approvals" from the Commission.[33] Here, the Draft Resolution is setting a uniform date for submission of implementation plan, forecast filings, and launch dates. If the launch date is not met, then presumably the CCA program is not approved to proceed. The rigid approval process of the Draft Resolution entails implementation plan approval and rejection that was explicitly stated by the Commission as not within its scope of authority absent a showing of negative affect on utility operations or rates (something that must be addressed in a formal proceeding).

C. Registration Process

There is no basis in law for the Draft Resolution's registration and launch process. Section 366.2(c)(7) requires the Commission to certify registration of CCA programs. Section 366.2 does not direct the Commission to institute a multi-year implementation and launch process. As stated in D.05-12-041, the Commission "does not have broad regulatory authority over CCA program implementation."[34] The Draft Resolution's single, specific date for CCA program launch, and use of new submittal preconditions unrelated to the content of the implementation plan, is a broad exercise

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29 *See* SB 790 Section 2(j) (emphasis added).

30 *Schmid v. Sonoma Clean Power*, 673 F. App'x 785, 786 (9th Cir. 2017) (unpublished, emphasis added).

31 D.05-12-041 at 4.

32 *Id.* at 15. As discussed above, in order to sustain a regulation that is based on a finding that a CCA program will affect a utility's operations or rates, information must be tested in a formal proceeding and parties afforded an opportunity to be heard, something lacking in the Draft Resolution's underlying process.

33 *Id.* at 17.

34 *Id*. at 11.

of discretion that is impermissible under existing law and Commission guidance unless (as repeatedly stated above) there is a factual and legal predicate for such action that has been established in a formal proceeding.

This proposed registration process is also materially different than the registration process for Electric Service Providers ("ESPs"). Under D.03-12-015, ESPs are directed to follow a relatively simple registration process that includes a security deposit and application form.[35] There is no requirement for multi-year forecasting ahead of registration, nor is there a specific launch date for ESPs.[36] As far as RA reporting requirements, ESPs are requested to submit forecasts two months before the month used to serve load.[37] In the RPS context, ESPs provide reporting content by the date of service.[38] Thus, the Draft Resolution is proposing a materially different and more rigid implementation process for CCAs. The Draft Resolution provides no factual support for differences in the two processes.

D. Resource Adequacy

The Draft Resolution's statement that "CCAs must comply with the Resource Adequacy requirements as set forth in Section 380 before beginning service"[39] does not align with the standard for RA program applicability expressed in Section 380. Under Section 380, RA requirements apply to "load serving entities," which serve load within California. Emerging CCAs that are not serving load within California do not fall within the purview of Section 380. Indeed, the existing RA program requirements align with Section 380, only requesting forecasts to cover the months that the CCAs, as load serving entities, will actually be serving customers.[40] Further, Draft Resolution's reliance on D.05-12-041 for RA purposes is concerning. D.05-12-041, a 2005 decision, could not have considered aspects of the RA program that the Commission is now relying on in this Draft Resolution.

E. Timeline and Procedures

CalCCA notes that there are additional timelines and procedures included in the Draft Resolution Appendices that have no basis in law, including the timing for the proposed RA requirements, and the proposed CCA response to the Commission on additional information "within 10 days." The Draft Resolution proposal includes a Meet-and-Confer process on CCA operations with the IOUs. It is unclear what the proposed outcome of the Meet-and-Confer process is. CalCCA notes that this meet-and-confer process is already occurring regularly ahead of program launch. For example, in its December 19, 2017 comments, Desert Community Energy references coordination with Southern California Edison Company ("SCE") on a regular basis to keep SCE informed of CCA progress.[41]

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35 D.03-12-015 at 19.

36 Description of ESP registration process *available at* http://www.cpuc.ca.gov/registerESP/.

37 RA program submittal instructions *available at* http://www.cpuc.ca.gov/General.aspx?id=6130&cmsMode=Preview

38 Attachment B of 2017 RPS Procurement Plan Ruling in R.15-02-020 (May 26, 2017).

39 Draft Resolution at 13.

40 RA program submittal instructions *available at* http://www.cpuc.ca.gov/General.aspx?id=6130&cmsMode=Preview

41 Desert Community Energy Comments at 2 (December 5, 2017).

F. Launch Date

The Draft Resolution sets a blanket launch date of January 1 for all CCA program in violation of Section 366.2(c)(8), which requires an individual assessment of individual implementation plans. The Draft Resolution contains no consideration of specific IOU impact, as required by statute. Concentrating CCA program launches into a single date could create market distortions that adversely impact California customers. Requiring CCA programs to launch on New Year's Day is the worst time for a program's launch, as Community Choice Aggregators would have to communicate with the IOUs and customers leading up to launch during the holiday season, when many IOU employees and customer contacts are out of office and enjoying the holidays. These and other issues associated with a single launch date must be more thoroughly examined in a formal proceeding before such a proposal is adopted.

POSSIBLE ALTERNATIVE FOR CONSIDERATION

1. 2017 And 2018 Submittals

CCA programs that plan to launch in 2018 and have submitted implementation plans after December 8, 2017 ("Affected Programs") could be assigned a share of the respective IOUs' year-ahead RA at Cost from the program's launch date to the end of 2018.[42] Likewise, CCA programs that intend to launch in 2019, but do not provide an implementation plan by March 31, 2018 could be assigned a share of the IOUs' year-ahead Cost through the first year. Under this alternative, CCA programs that provide implementation plans by March 31, 2018 for a launch in 2019 would integrate with the existing 2019 RA forecasting process. These CCA programs would provide RA load forecasts in April and August of 2018, along with an October 2018 demonstration of 2019 year-ahead RA procurement, ahead of the planned 2019 launch.

CCA programs that intend to launch in 2019, but do not provide an implementation plan by March 31, 2018 could be assigned a share of the respective IOUs' year-ahead RA at cost from the program's 2019 launch date to the end of 2019.

This first part addresses the Commission's near-term concerns on an interim basis, and is similar to the Commission's temporary treatment for RA obligations during the reopening of DA, as expressed in Appendix 3 of D.10-03-022.[43]

2. RA Proceeding

Issues concerning CCA implementation timeline and RA cost allocation should be addressed within the Commission's RA proceeding. A formal proceeding provides the proper context within which

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[42] CCA Programs that plan to launch in 2018 and have had their respective implementation plans certified by December 8, 2017 will not be automatically assigned year-ahead RA.

[43] As noted above, this approach was also envisioned in one of the Commission's first CCA-related decisions (D.05-12-041).

substantive proposals can be made, factual assertions examined and rebutted, and arguments advanced, and most importantly due process requirements satisfied.[44]

The RA proceeding's Order Instituting Rulemaking ("OIR") already contemplates this context and structure.[45] In their comments on the OIR, CCA parties to the RA proceeding ("CCA Parties") discuss key RA-related issues associated with load-migration to CCA programs, and request that these issues be considered within the context of the RA proceeding.[46]

In summary, CalCCA acknowledges and appreciates the sensitivity of RA-related issues identified in the Draft Resolution. CalCCA believes the alternative described above could resolve the immediate issues the Energy Division believes exist, while allowing longer-term impacts on CCA implementation and RA program structure to be examined in a fair and transparent manner through a formal proceeding – a proceeding that examines all related issues. CalCCA will be further considering this alternative, and CalCCA urges stakeholders and the Commission to do the same. As a final point in this regard, the Draft Resolution is not exhaustive in its list of RA-related issues associated with load migration. For example, as summarized below, there are important issues related to bundled-customer cost *reductions*, IOU planning, and CAISO involvement that must be addressed concurrently. CalCCA looks forward to participating in further consideration of these matters.

CONCLUSION

An open rulemaking proceeding where all parties can robustly engage, examine the evidence, and make their legal arguments is a more appropriate forum for the issues raised in the Draft Resolution. Addressing these issues in a formal Commission proceeding will remedy due process and other procedural concerns associated with the Draft Resolution. If the Commission elects to move forward with the Draft Resolution, the Draft Resolution must be significantly modified so that it only addresses exigent matters on an interim basis.

Sincerely,

Beth Vaughan
Executive Director, CalCCA

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44 *See People v. Western Air Lines Inc.*, 42 Cal. 2d 621, 632 (1954) (describing Commission due process requirements).

45 *See, e.g.,* OIR at 3 ("Because this proceeding has a broader scope and may include factual issues, it is preliminarily determined that evidentiary hearings will be needed in this proceeding.")

46 *See* CCA Parties Comments on the OIR at 3-4.

Copy (via e-mail): CPUC President Michael Picker
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Suzanne Casazza, CPUC Energy Division
Energy Division Tariff Unit
Service Lists: R.17-09-020
R.03-10-003
R.17-06-026
R.16-02-007