

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Portions of AB117 concerning Community
Choice Aggregation.

Rulemaking 03-10-003
(Filed October 2, 2003)

**REPLY COMMENTS OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION ON
PROPOSED DECISION ESTABLISHING REENTRY FEES AND FINANCIAL
SECURITY REQUIREMENTS FOR COMMUNITY CHOICE AGGREGATORS**

Dawn Weisz, President
Beth Vaughan, Executive Director
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
1125 Tamalpais Ave.
San Rafael, CA 94960
Telephone: 415-464-6189
Email: beth@cal-cca.org

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Vidhya Prabhakaran
Patrick Ferguson
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Email: vidhyaprabhakaran@dwt.com
Email: patrickferguson@dwt.com

Attorneys for CalCCA

I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the California Community Choice Association (“CalCCA”) submits the following reply comments on the Proposed Decision establishing reentry fees and financial security requirements (“FSR”) applicable to community choice aggregators (“CCAs”), as required by Public Utilities Code section 394.25(e)¹ (“Proposed Decision”).

II. REPLY COMMENTS

A. **The Proposed Decision Correctly Relies on Commission Precedent to Require Reentry Fees Based on Six Months of Incremental Procurement Costs.**

The Proposed Decision correctly requires that CCA reentry fees be based on the costs that Investor Owned Utilities² would incur to procure six months of incremental resources in the unlikely event there was ever an involuntary mass return of CCA customers to IOU service.³ Currently, a CCA customer who voluntarily returns to IOU bundled service is required to provide the IOU with six months’ advance notice, which allows the IOU to conduct any incremental procurement necessary to accommodate that customer.⁴ While the IOUs have asked the Commission to reject that aspect of the Proposed Decision,⁵ they offer no compelling reason why this same six-month period is insufficient to procure additional resources to cover an involuntary mass reentry.

CalCCA advanced a six-month incremental procurement period in its briefing rather than testimony because the Commission previously established the sufficiency of a six-month

¹ All statutory references in these comments are to the California Public Utilities Code.

² The “IOUs” or “Joint Utilities” are Southern California Edison Company (“SCE”), Pacific Gas and Electric Company (“PG&E”), and San Diego Gas & Electric Company (“SDG&E”).

³ Proposed Decision, at 7.

⁴ See PG&E Electric Rule 23.L.1.a; SCE Rule 23.L.1; SDG&E Rule 27.L.1.a. See also CalCCA Opening Brief, at 12; CalCCA Reply Brief, at 4–5.

⁵ See Joint Utilities Opening Comments, at 6–9.

procurement period in decisions related to Electric Service Providers (“ESPs”).⁶ The IOUs have not explained why it would be inappropriate for the Commission to rely on this established methodology in the context of CCAs.⁷

Alternatively, the IOUs argue that the Commission should adopt an eight-month procurement period for CCA FSRs consistent with the eight-month procurement period most recently established for ESP FSRs.⁸ The IOUs’ proposal is based on a two-month safe harbor provision that applies to ESP customers who are switching service.⁹ In the context of CCAs, however, there is no analogous safe harbor provision, as the Proposed Decision explains.¹⁰ Only Direct Access customers — not CCA customers — have a right to a two-month safe harbor period in which to find a new ESP and submit a Direct Access Service Request.¹¹ Accordingly, the Commission should reject the IOU alternative proposal.

⁶ See D.13-01-021, mimeo at 21–22. (“As originally determined in D.03-05-034 and as reaffirmed in D.11-12-018, we concluded that a six-month notice period would allow sufficient time for the IOU to adjust its procurement portfolio to accommodate the additional bundled load due to returning DA customers.”)

⁷ The IOUs’ assert that there is no support “in this case” for a six-month period. See Joint Utilities Opening Comments at 6-7. However, the Proposed Decision already explains that CalCCA addressed this matter in its opening brief, which relied on the support for a six-month period in D.13-01-021 and associated decisions. See Proposed Decision at 6-7.

⁸ See Joint Utilities Opening Comments, at 4, 9.

⁹ See D.13-01-021, mimeo at 23 (“The eight months [of incremental procurement costs] consists of the initial 60-day safe harbor plus the subsequent six-month notice preceding the return to [bundled service].”)

¹⁰ Proposed Decision, at 7.

¹¹ The fact that *some* CCA customers *may* be “eligible to switch to DA service” is not equivalent to a two-month safe harbor period for CCA customers generally. See Joint Utilities’ Opening Comments, at 4. Moreover, under the ESP decisions, only residential and small commercial DA customers (*i.e.*, those having load of less than 20 kilowatts and not affiliated with a large customer) are included in the reentry fee and FSR calculations. D.13-01-021, mimeo at 16, 18, 37 (Ordering Paragraph 1), Appendix 1 at 3.

B. The Proposed Decision Correctly Relies on Commission Precedent to Determine that a Bi-Annual FSR Calculation Is Sufficient.

The Proposed Decision correctly requires the FSR for CCAs be updated twice per year, consistent with the approach the Commission adopted for ESPs.¹² As the Proposed Decision properly recognizes, more frequent updating would be administratively inefficient and lead to additional unnecessary costs for CCAs (*e.g.*, administrative overhead, legal fees, and collateral posting fees). Requiring monthly or quarterly FSR updates would impose an unreasonable burden and costs “without offsetting benefits in terms of increased accuracy or timeliness.”¹³

Similarly, there is no evidence to support establishment of the IOUs’ proposed “trigger” mechanism, which would allow the IOUs to unilaterally seek Commission approval to raise FSRs whenever an IOU determined (in its sole discretion) that market conditions warranted such an increased FSR amount.¹⁴ The record demonstrates that it is extremely unlikely that an involuntary mass return to IOU service will ever occur.¹⁵ To the extent the IOUs believe that emergency action is required at a later date, the IOUs have sufficient means to address those conditions in a procedurally appropriate manner.

The Commission should reject the IOUs’ trigger proposal. A trigger mechanism is unnecessary, and would likely only lead to conflict between the IOU and affected CCA as to whether such a trigger was properly implemented.

C. The Proposed Decision Correctly Relies on Commission Precedent to Allow Negative Procurement Costs to Offset Administrative Costs.

Consistent with the methodology the Commission approved for ESPs, the Proposed Decision appropriately allows negative procurement costs to offset up to 100% of the

¹² See D.13-01-021, mimeo at 25.

¹³ D.13-01-021, mimeo at 25. See also Proposed Decision, at 9–10; CalCCA Opening Brief, at 19–20.

¹⁴ Joint Utilities Opening Comments, at 4–5, 10–11.

¹⁵ See CalCCA/Fulmer, Ex. CCCA-01(Opening Testimony), at 11, line 1 to 32, line 6; see also CalCCA Opening Brief, at 7–11; CalCCA Reply Brief, at 7.

incremental administrative costs.¹⁶ The IOUs' argument that "negative" procurement costs should be treated as zero and not be used to offset incremental administrative costs is premised on their incorrect claim that there is "clear and convincing evidence" that no savings accrue to customers from negative procurement costs.¹⁷ The self-serving arguments the IOUs advance in the Power Charge Indifference Adjustment proceeding,¹⁸ which CalCCA actively opposes and which are still under consideration by the Commission,¹⁹ cannot serve as "evidence" of anything in this proceeding. The Commission should reject the IOUs' attempt to rely on their own arguments/messaging to bolster their claims with respect to the FSR.

Fundamentally, the principle of ratepayer indifference requires that any benefit associated with CCA customers returning to the IOU be used to offset costs.²⁰ The Commission has expressly recognized that there is an "offsetting benefit accruing to bundled customers from ... using more below-market utility resources."²¹ As a result, just as the Commission required with respect to ESP FSRs, it is appropriate to net out forecasts of negative procurement costs when establishing the FSRs for the CCAs.²²

D. The Commission Should Require CCA FSRs and Reentry Fees Be Calculated Bi-Annually Rather Than Monthly as the Proposed Decision Directs.

If the Commission includes incremental procurement costs in the FSR, the Commission should clarify that forecasting be performed using the calculation methodology described in the IOUs' testimony, but on a bi-annual rather than monthly basis.²³ The Commission should also

¹⁶ Proposed Decision, at 11. *Cf.* D.13-01-021, mimeo at 31; *see also* CalCCA Opening Brief, at 23–24.

¹⁷ Joint Utilities Opening Comments, at 5, 11.

¹⁸ *See* Joint Utilities Opening Comments, at 11–12.

¹⁹ *See* R.17-06-026.

²⁰ CalCCA/Fulmer, Ex. CCCA-02 (Rebuttal Testimony), at 27, line 8 to 28, line 15.

²¹ D.11-12-018, mimeo at 40.

²² *See* D.13-01-021, mimeo at 31.

²³ *See* CalCCA Opening Comments, at 9–10.

continue to reject the IOUs’ proposal to use stressed-market-based forecasts to calculate procurement costs.²⁴

The Commission should also reject the IOUs’ proposal to permit the IOUs to recalculate the reentry fee within sixty days of the involuntary return using the methodology described in the IOUs’ testimony.²⁵ Recalculating the reentry fee based on to-be-determined inputs from the IOUs risks disagreement between the IOU and CCA, which would delay the IOU receiving the reentry fee. Such a result runs counter to the IOUs’ arguments about the need for FSR instruments that are not subject to contentious or drawn-out processes upon a demand of payment.²⁶ Each CCA should be able to rely on the adequacy of its posted FSR, and the IOUs should not be given the opportunity to re-litigate customer reentry costs in the unlikely event the FSR is ever needed.

E. CalCCA Does Not Object to the Commission Adding Details Regarding the Posting of FSRs.

CalCCA does not object to the IOUs’ proposed clarifications regarding letter of credit and cash postings of the FSR.²⁷ However, with respect to cash FSRs, the “terms and conditions” of the escrow should be “reasonably acceptable” to the CCA as well as to the IOU.²⁸ As explained in CalCCA’s opening comments, the Commission must also allow bonds to be used for purposes of satisfying the FSR.²⁹

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²⁴ *Id.*

²⁵ *See* Joint Utilities Opening Comments, at 13; Joint Utilities, Ex. JU-01, at 40, line 22 – 41, line 3.

²⁶ *See, e.g.*, Joint Utilities Opening Brief, at 22–23; Joint Utilities Reply Brief, at 15.

²⁷ *See* Joint Utilities Opening Comments, at 14.

²⁸ Joint Utilities Opening Comments, at 6, 14.

²⁹ *See* CalCCA Opening Comments, at 10–11.

Respectfully submitted,

By: /s/

Vidhya Prabhakaran
Patrick Ferguson
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111-6533
Tel. (415) 276-6500
Email: vidhyaprabhakaran@dwt.com
Email: patrickferguson@dwt.com

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Attorneys for CalCCA