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)

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

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

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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") respectfully submits these comments on the April 6, 2018 Proposed Decision of Administrative Law Judge Allen 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").

CalCCA appreciates the time and effort the Commission has invested in determining the appropriate method for establishing CCA reentry fees and FSRs to cover the administrative and procurement costs that the Investor Owned Utilities ("IOUs")[2] could incur in the unlikely event there was a mass involuntary return of CCA customers to IOU service. While CalCCA generally agrees with the Proposed Decision's findings, there are several changes and clarifications the Commission should make to the Proposed Decision to ensure that reentry fees and FSRs are

[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").

appropriately sized to fully protect IOUs while at the same time not impose unnecessary burdens on CCAs.

With respect to reentry fees, CalCCA urges the Commission to adopt CalCCA's proposal to use the CCA Mass Enrollment Fee in combination with the Community Choice Aggregation Service Request ("CCASR") as a proxy for administrative costs, rather than using the IOUs' proposed proxy based on reentry fees for voluntary return in each utilities' Schedule CCA-SF. CalCCA's proposed proxy is more consistent with the costs the IOUs would likely incur in the event of an unlikely involuntary mass return, because such an event—regardless of exactly when or how it occurred—could be managed by the IOUs in an orderly manner to minimize per-customer administrative costs. However, if the Commission chooses the IOUs' proposal as the administrative cost proxy, the Proposed Decision should be modified to establish a state-wide administrative cost of $0.50/customer (i.e. the SCE customer reentry fee) as the reentry fee for every CCA in the state. The Commission could then authorize each IOU to provide evidence in its next General Rate Case to the extent it believes its administrative costs should be set at a higher amount.

The Commission should also make four modifications to the Proposed Decision's findings with respect to the FSR:

1. The FSR should be set at the administrative cost component of the reentry fees and should not include any incremental procurement costs.
2. If the Commission includes incremental procurement costs in the FSR, the Commission should clarify that forecasting shall be performed using the calculation methodology described in the IOUs' testimony, but on a bi-annual rather than monthly basis. The Commission should also continue to reject the IOUs' proposal to use stressed-market-based forecasts to calculate procurement costs.

3. The Commission should authorize surety bonds as an acceptable form of FSR.
4. The Commission should clarify the process for the initial calculation and implementation of the FSR and for the bi-annual recalculation of the FSR.

CalCCA's comments are set forth in greater detail below. Appendix A offers the Commission specific proposed revisions to the Proposed Decision.

II. REENTRY FEE: ADMINISTRATIVE COSTS

A. The Commission Should Modify the Proposed Decision to Use the CCA Mass Enrollment Fee and CCASR Fee as the Appropriate Proxy for Administrative Costs.

The administrative cost component of the reentry fee is intended to cover the administrative costs an IOU could incur as the result of a mass involuntary return of CCA customers to IOU service. The Proposed Decision adopts the IOUs' proposed proxy for determining such costs, which would be based on the per-customer fee for *voluntary* returns set forth in each utility's Schedule CCA-SF.[3] The Proposed Decision's sole justification for use of the IOU proxy is that it "is not possible to determine with certainty or precision how any future mass involuntary return to utility service would occur."[4] The Proposed Decision argues that all reentry fees must be calculated using the IOUs' proxy for administrative costs because there is a greater-than-zero percent chance that an involuntary return could be disorganized (which would lead to higher per customer administrative costs).

The mere possibility that a mass involuntary return could be disorganized is not a proper justification for the Commission to assign artificially-high reentry fees to all CCAs. As CalCCA

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[3] *See* Proposed Decision, at 13 (Ordering Paragraph 2).

[4] Proposed Decision, at 4.

has detailed in its prior briefing and testimony,[5] it is entirely reasonable to assume that any mass involuntary return of CCA customers to the IOUs could be accomplished in an efficient and orderly manner. Regardless of the events that cause any involuntary mass return to IOU service, it is clear that: (a) such a return would involve a large number of customers returning to IOU service at the same time; and (b) the IOUs could process this mass customer transfer methodically and in a way that minimized administrative burdens and costs.[6]

The evidence in the record supports this outcome. CalCCA provided a historical example of mass returns from Alternative Retail Electric Suppliers to the incumbent IOU in Chicago as an illustration of involuntary returns of customers occurring in a methodical and orderly manner over a reasonably short timescale.[7] In contrast, the IOUs did not offer any concrete evidence or examples in which a mass involuntary return to utility service occurred in a disorganized manner.

The Proposed Decision also points to consistency with the Commission's approach to electric service providers ("ESPs") as a reason for adopting the IOUs' administrative cost proxy.[8] CalCCA's testimony explained that, in the decision (D.11-12-018) setting the administrative-related portion of the ESP FSR equal to the number of returned customers multiplied by the IOU's default Schedule CCA-SF per-customer voluntary reentry fee, the Commission noted that there was no specific rationale or evidence to support this value.[9] Accordingly, the Commission

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[5] *See* CalCCA Reply Brief at 13; CalCCA/Waen, Ex. CCCA-02, at 11, lines 11–14.

[6] *See* CalCCA Opening Brief at 14; CalCCA Reply Brief at 12–13.

[7] *See* CalCCA Reply Brief, at 13.

[8] *See* Proposed Decision, at 4.

[9] CalCCA/Fulmer, Ex. CCCA-01 (Opening Testimony), at 37. D.11-12-018, mimeo at 70–71 ("Parties offered no specific dollar estimate of the administrative costs necessary to process involuntarily returned DA customers, and no Commission approved cost figure has previously been adopted. To determine the

should modify the Proposed Decision and adopt the CCA Mass Enrollment Fee in combination with the CCASR fee as the per-customer voluntary reentry fee. This modification will better reflect the actual administrative costs that an IOU would face in the unlikely event of a mass return of CCA customers.

B. If the IOUs' Proxy for Administrative Costs Is Used, the Commission Should Mandate a Statewide Baseline Per-Customer Cost of $0.50/Customer.

The Proposed Decision appropriately acknowledges the large discrepancy between the per-customer administrative costs for the different utilities. The proposed PG&E administrative cost is over 800% higher at $4.24/customer than the proposed SCE administrative cost of $0.50/customer. Accordingly, the Proposed Decision would require the IOUs to file Tier 1 advice letters that "provide[] a detailed description of the specific services that are covered, their corresponding costs, and how those costs were calculated."[10] Each IOU would also be required to explain the calculation of its administrative costs in its next GRC.[11]

The Commission should address this discrepancy between the IOUs' proposed administrative costs now. In particular, the Commission should find that PG&E's estimated costs are far too high and not in line with the other IOUs. CalCCA would anticipate PG&E significantly lowering its per-customer administrative cost estimates, particularly given that PG&E has recently reduced significantly the administrative fees it charges to CCAs in similar contexts. For instance, in Decision 18-01-013, the Commission approved a settlement agreement in which PG&E agreed to significantly reduce the fees it charges CCAs for both meter data management services (from $7.67 to $0.14 per month) and billing services (from $0.44 (bill-

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incremental administrative costs to use for purposes of an ESP security bond, we shall thus adopt use of the re-entry fee approved for a CCA customer, as proposed by SCE").

[10] Proposed Decision, at 5.

[11] *Id*.

ready) or $1.14 (rate-ready) to $0.21 per bill per month).[12] PG&E attributed these fee decreases to automation and process efficiencies.

Given the wide variation between estimated administrative costs among the IOUs and the likelihood that PG&E costs estimates are not accurate, CalCCA is concerned that some CCAs (particularly in Northern California) will be assessed reentry fees that are based on artificially-high administrative cost values. This is not a hypothetical concern. If you assume a CCA with 250,000 customer accounts, there is a **$935,000 difference** between the SCE administrative cost (250,000 * $0.50 = $125,000) and the PG&E administrative cost (250,000 * $4.24 = $1,060,000). It is fundamentally unfair for the CCAs in PG&E's service territory to incur costs to cover reentry fees that include artificially-high administrative costs.

CalCCA recommends that the Commission establish an initial baseline administrative cost for the entire state to set each CCA's initial reentry fees. This baseline administrative cost should be set at $0.50/customer (i.e. SCE's proposed cost). Going forward, to the extent the IOUs wish to raise administrative costs above this baseline, the Commission should require each IOU to provide evidence in its GRC that such an increase is required.

III. FINANCIAL SECURITY REQUIREMENT (FSR)

A. The Commission Should Not Adopt the Proposed Decision's Inclusion of Incremental Procurement Costs in the FSR Even if the Reentry Fee Includes Such Costs.

CalCCA agrees with the Proposed Decision that procurement costs are a necessary component of the reentry fees and that reentry fees should be based on six months of incremental procurement. However, as CalCCA explained in opening and reply briefs, the Commission has discretion to set the FSR in an amount that is *different* from the forecasted reentry fees. In light

[12] *See* D.18-01-013, mimeo at 11–12.

of the Commission's recent decision with respect to Core Transport Agents ("CTAs"), CalCCA requests that the Commission remove procurement costs from the calculation of FSR.

Section 394.25(e) does not state that the "bond or insurance" amount (i.e. the FSR) must be equal to or even include the same components as the reentry fee. Instead, the statute mandates that the amount be "sufficient to cover" the reentry fee. By using the phrase "sufficient to cover," rather than "equal to," "shall be," or another phrase that would eliminate any Commission discretion, the Legislature gave the Commission discretion to determine what FSR amount is "sufficient to cover" the very unlikely event that a CCA suddenly dissolves in a way that requires mass involuntary return to IOU service.[13] As a result, the Commission can and should set the FSR in the amount the Commission deems sufficient to ensure against the low risk of CCA dissolution and the subsequent mass involuntary return of CCA customers to the IOU.

In an analogous setting concerning third-party natural gas service providers known as "CTAs," the Commission determined the level of bond or insurance that is "sufficient to cover" the reentry fee for CTA customers involuntarily returned to service provided by the incumbent gas utility.[14] In the CTA Decision, the Commission determined that the financial resources showing a CTA must make to prove its financial viability in connection with CTA registration is "sufficient to cover" the reentry fee.[15] In essence, the Commission determined that any CTA that

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[13] An administrative agency cannot ignore the common meaning of the words used in a statute. *See* CalCCA Opening Brief, at 4–5; *see, e.g.*, D.16-11-022, mimeo at 189 ("In construing a statute, we must first recognize the plain meaning of the statute and show fidelity to the words the legislature has chosen."); D.14-06-029, mimeo at 18 ("When construing a statute, the Commission must first look to the words and give them their usual and ordinary meaning."); D.95-08-056, 1995 Cal. PUC LEXIS 661, at *7 (rejecting party contention that "would mean ignoring the plain language of the statute, and reading language into the statute that is not there" which "[t]he rules of statutory construction do not permit.").

[14] D.18-02-002 ("CTA Decision").

[15] *See* D.18-02-002, mimeo at 170 (Ordering Paragraph 1c). The CTA Decision set the amount to provide proof of financial viability at the same levels in the financial resources schedule that was previously adopted for ESPs to provide proof of financial viability under Section 981(a)(9).

has financial resources sufficient to operate as a CTA also has resources to cover the unlikely costs associated with mass involuntary returns to incumbent utility service.

Section 394.25(e) provides that the FSR serves as a form of "insurance" in the unlikely event that a CCA dissolves. The Commission-imposed planning reserve margin and other insurance requirements demonstrate that the Commission commonly establishes insurance requirements that balance the risk of the insured-against event against the costs/burdens of maintaining such insurance.[16] The Commission generally does not set the insurance amount as a forecast of the worst-case scenario.[17] The recent CTA Decision provides yet another example of the Commission's balancing approach with respect to insurance issues, because, in setting the bond amount, the Commission balanced the "risks" related to CTA failure against the "cost of registering as a CTA and operating in a competitive market."[18]

Consistent with the Commission's recent interpretation of the exact same "sufficient to cover" language in the CTA Decision, CalCCA requests that the Commission use its broad authority to take into account the very low risk of CCA dissolution when determining a "sufficient" FSR amount for CCAs. In making this determination, the Commission should be

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[16] *See* CalCCA Opening Brief, at 5–6.

[17] The manner in which any entity determines a certain insurance amount provides a helpful analogy to demonstrate the need for a balanced approach. For example, the State does not establish the required level of insurance that a driver must obtain based solely on the potential catastrophic harm any driver could cause in an accident. Instead, the State looks at the likelihood of the potential catastrophic harm occurring if an accident occurs, the likelihood of such catastrophic accidents occurring at all, and balances those risks with the costs and burdens to the drivers associated with maintaining car insurance at certain levels in determining what level of insurance it will require that drivers obtain. *See, e.g.*, the Legislative History for Assembly Bill 1010 assembled by LRI History LLC, at 11–12.

[18] D.18-02-002, mimeo at 28.

mindful that any FSR costs for CCAs will be passed on to that CCA's customers,[19] and the Commission should therefore strive to avoid an unnecessarily high FSR.[20]

B. The Commission Should Clarify that Incremental Procurement Forecasting Must Be Performed Using the Calculation Methodology in the IOUs' Testimony, but on a Bi-Annual Rather than Monthly Basis, and Expressly Reject the Use of a Stressed-Market-Based Forecast.

As detailed above, the FSR should only include administrative costs and not incremental procurement costs. However, if the Commission chooses to include incremental procurement costs in the FSR, the Commission should clarify that incremental procurement forecasting shall be performed using the calculation methodology described in the IOUs' testimony.[21] But, consistent with the Proposed Decision's adoption of a twice-yearly FSR update requirement,[22] this forecasting should occur on a bi-annual basis instead of the monthly basis proposed in the IOUs' testimony.[23]

The IOUs explained in their opening brief that they "elected to propose a simpler FSR calculation that excludes volatilities and stressed scenarios but is run on a more frequent (monthly) basis."[24] Given that the Proposed Decision rejects the IOUs' request for monthly updating of the FSR,[25] the Proposed Decision should make clear that reliance on a stressed-market-based forecast is not appropriate when calculating the FSR, even if the recalculation

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[19] *See* Joint Utilities/Sekhon, Hearing Transcript, Vol. 15, at 1844, line 25 to 1855, line 5.

[20] CalCCA Opening Brief, at 6.

[21] *See* Joint Utilities, Ex. JU-01 (Testimony), Appendix E - Calculation Template of Financial Security Requirement.

[22] *See* Proposed Decision, at 10.

[23] For example, Joint Utilities, Ex. JU-01, Appendix E, at E-2 states that "Bond Calculation Average On/Off Peak Prices (Cells C11-D22) Updated <u>Monthly</u>; All Else Updated Annually" (emphasis added). The Proposed Decision should clarify that the cells the Joint Utilities propose to update monthly would instead be updated every six months.

[24] Joint Utilities Opening Brief, at 13.

[25] Proposed Decision, at 10.

occurs on a less frequent basis.[26] As explained in CalCCA's opening brief, the Commission has repeatedly rejected using the stressed-based forecast with respect to setting the FSR for ESPs,[27] because it did not offer a suitable framework for determining the ESP FSR amount.[28] The Commission should similarly reject such an approach with respect to setting the FSR for CCAs.

C. The Commission Should Modify the Proposed Decision to Authorize Surety Bonds as an Acceptable Form of the FSR.

While the Commission has discretion under Section 394.25(e) to set both the reentry fee and the FSR for CCAs,[29] the Proposed Decision incorrectly assumes that the Commission has such discretion to determine "the suitability of bonds as FSR for CCAs."[30] Bonds are statutorily mandated instruments.[31] The Legislature undeniably intended bonds to be available to satisfy the FSR because the statute explicitly allows CCAs to post "a bond."[32] The Commission cannot ignore such express statutory language.

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[26] In fact, the Joint IOU testimony states that "if the Commission declines to adopt a monthly recalculation of the FSR, the Joint Utilities propose to adjust the forward energy price using a financial model that uses implied volatility as an input (annualized volatility)." Joint Utilities, Ex. JU-01, Appendix C, at C-1, lines 12–14.

[27] *See* CalCCA Opening Brief at 22–23 and fn. 92 citing to CalCCA/Fulmer, Ex. CCCA-01, at 7–10 (explaining that the Commission has rejected the IOUs' proposal to use stressed-market based FSR for ESP FSRs calculations); *see also* D.11-12-018, *mimeo* at 82 (finding that "the proposed bond model offered by PG&E/SCE does not offer a suitable framework for determining the applicable ESP bond amount.")

[28] *See* CalCCA Opening Brief, at 22–23.

[29] *See* CalCCA Opening Brief, at 3, 5; CalCCA Reply Brief at 1–3.

[30] Proposed Decision, at 8–9.

[31] *See* CalCCA Opening Brief, at 17–19; CalCCA Reply Brief at 14–15.

[32] Pub. Util. Code § 394.25(e). The Legislature also explicitly authorized CCAs to use insurance to meet this requirement, and so the Commission should not give weight to the IOUs' argument that insurance-like collection is too burdensome.

When a statute does not define a commonly-used word, courts often look to the dictionary definition of the word.[33] The word "bond" is defined as an "an insurance agreement pledging that one will become legally liable for financial loss caused to another by the act or default of a third person or by some contingency over which the third person may have no control."[34] While the Commission may expand on this term, under rules of statutory construction, an administrative agency cannot construe a statute to ignore the common meaning of the words used therein.[35] Notably, the Commission properly construed the same "bond" language when it allowed ESPs to post bonds to comply with their FSR requirements.[36]

To give effect to all the words of Section 394.25(e) and consistent with its prior ruling with respect to ESP FSRs, the Commission should allow CCAs to post a bond to satisfy their FSRs.

D. The Commission Should Clarify the Processes for the Initial Calculation and Implementation of the FSR and for the Bi-Annual Recalculation of the FSR.

The Proposed Decision states that the "interim FSRs for existing CCAs are to be replaced by FSRs consistent with this decision" and that "[t]his change should be made as soon as practicable."[37] The Proposed Decision is silent as to the *process* that should be used to initially calculate the FSR and as to who should perform the initial FSR calculation and bi-annual

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[33] *See, e.g.*, *River Lines, Inc. v. P.U.C.,* 62 Cal.2d 244, 247 (1965) (using dictionary, among other sources, to show "ordinary concept of a carrier" under Public Utilities Code); *see also* CalCCA Opening Brief, at 18.

[34] *See* https://www.merriam-webster.com/dictionary/bond

[35] *See supra* at 7, fn. 13.

[36] D.13-01-021, *mimeo* at 29–30, 35-36 (Conclusions of Law 1).

[37] Proposed Decision, at 10.

recalculations. CalCCA requests that the Commission specify a process that is similar to that adopted for the ESPs, with some minor modifications as proposed in CalCCA's testimony.[38]

The Commission requires the IOUs to calculate the initial bond calculation for an ESP and submit it to the Commission in a Tier 2 advice letter filing.[39] The IOUs then recalculate the FSRs and submit them to the Energy Division via Tier 1 advice letter, which is deemed accepted unless the Energy Division suspends the advice letter during the 30-day review period.[40] The Commission originally required an annual FSR recalculation, but then later revised the FSR recalculation to occur twice per year by May 10 and November 10.[41] The posted FSR amount is only required to be adjusted, however, when the calculated amount is more than 10 percent above or below the current posted amount (i.e. the 10% deadband).[42]

The Proposed Decision would adopt for the CCAs the same bi-annual FSR recalculation and 10% deadband requirement that the Commission approved for the ESPs.[43] CalCCA agrees with this approach. For clarity, the Commission should expressly provide the dates by which the FSR recalculation shall occur (i.e. by November 10 and May 10) and the dates by which a recalculated FSR that exceeds the 10% deadband must be posted (i.e. by January 1 or July 1, respectively.)[44] The Commission should also specify that the CCAs (rather than the IOUs), shall

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[38] *See* CalCCA/Fulmer, Ex. CCCA-01, at 38. *See also* CalCCA Opening Brief, at 2 (describing the proposed mechanics of the FSR).

[39] *See* D.11-12-018, mimeo at 93.

[40] *See* D.11-12-018, mimeo at 93.

[41] D.13-01-021, mimeo at 25.

[42] D.11-12-018, mimeo at 94; D.13-01-021, mimeo at 25.

[43] Proposed Decision, at 10 (quoting D.13-01-021: "We shall modify the directive in D.11-12-018 to call for the ESP security amount to be recalculated twice each year, in November and May, by the tenth day of each month, and with any adjustments to the security amount implemented on the following January 1 or July 1, respectively.")

[44] *Id*.

perform both the initial FSR calculation and bi-annual FSR recalculations, as well as the related advice letter filings.[45]

IV. CONCLUSION

For the reasons set forth above, CalCCA respectfully requests that the Commission make certain modifications to the Proposed Decision as detailed in Appendix A.

Respectfully submitted,

By: /s/ ______________________________

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[45] In its testimony, CalCCA proposed that the CCA should calculate the FSR via an advice letter to Energy Division with notice to the incumbent IOU after submission to the Commission. CalCCA/Fulmer, Ex. CCCA-01, at 38, lines 9-16. *See also* CalCCA Opening Brief, at 2 (describing the proposed mechanics of the FSR).

APPENDIX A

CalCCA's Proposed Revisions to the Proposed Decision

Findings of Fact

The following Findings of Fact should be revised as follows:

> 8. Letters of credit, ~~and~~ cash held by a third party, and surety bonds are acceptable forms of FSR.

Ordering Paragraphs

Assuming the Commission chooses to use the CCA Mass Enrollment Fee as the administrative cost proxy of the reentry fees, Ordering Paragraph 2 should be revised as follows:

> 2. For purposes of calculating the financial security requirement pursuant to Public Utilities Code Section 394.25(e), the per-customer reentry fee for utility administrative costs is to be based upon the CCA Mass Enrollment Fee plus an estimate of the number of customers being switched over to bundled service multiplied by the tariffed Community Choice Aggregation Service Request ("CCASR") fee. ~~reentry fee for voluntary returns in each utility's Schedule CCA–SF, which are currently \$4.24 for Pacific Gas and Electric Company, \$1.12 for San Diego Gas & Electric Company and \$0.50 for Southern California Edison Company.~~

Assuming the Commission chooses to use the Schedule CCA-SF per-customer fee for voluntary returns as the administrative cost proxy of the reentry fees, Ordering Paragraph 2 should be revised as follows:

> 2. For purposes of calculating the financial security requirement pursuant to Public Utilities Code Section 394.25(e), the per-customer reentry fee for utility administrative costs for all Joint Utilities is to be based upon the reentry fee for voluntary returns in ~~each utility's~~ Southern California Edison Company's Schedule CCA–SF, which is ~~are~~ currently ~~\$4.24 for Pacific Gas and Electric Company, \$1.12 for San Diego Gas & Electric Company and~~ \$0.50 ~~for Southern California Edison Company.~~ If a utility wishes to increase this baseline administrative cost amount, it shall make and support such a request in its next General Rate Case.

Assuming the Commission chooses to not include incremental procurement costs in the FSR, Ordering Paragraph 6 should be revised as follows:

> 6. The financial security requirement includes ~~both~~ utility administrative costs ~~and incremental procurement costs~~.

The following Ordering Paragraphs should be revised and/or added:

> 7. Letters of credit, ~~and~~ cash held by a third party, and surety bonds are acceptable forms for satisfying the financial security requirement.
>
> 8. The amount of the financial security requirement should initially be calculated by each separate CCA via a Tier 1 advice letter to the Commission Energy Division with notice to the incumbent utility.
>
> ~~8~~9. The amount of the financial security requirement is to be updated twice per year, by May 10 and November 10, by each CCA via a Tier 1 advice letter to the Commission Energy Division with notice to the incumbent utility, with a 10% deadband, consistent with the method adopted for electric service providers in Decision 13-01-021. Any adjustments to the security amount shall be implemented on the following January 1 or July 1, respectively.