BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Joint Application to Establish Non-Bypassable Charge ("NBC") for Above-Market Costs Associated with Tree Mortality Power Purchase Agreements ("Tree Mortality") in Compliance with Senate Bill 859 and Resolution E-4805.	)	Application No. 16-11-005 (Filed November 14, 2016)

REPLY BRIEF OF THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION

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Pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission ("Commission") and in accordance with the *Scoping Memo and Ruling of Assigned Commissioner,* dated May 30, 2018 ("Scoping Memo"), as clarified in an email from assigned Administrative Law Judge ("ALJ") Doherty, dated July 23, 2018, the California Community Choice Association ("CalCCA") hereby submits this reply brief. References to exhibits are to exhibits served by CalCCA and the joint investor-owned utilities ("Joint IOUs").

I. REPLY

A. The Joint IOUs' Claim That They Have Proposed And That The Commission Has Already Approved A Resource Adequacy Value Is False

As summarized by CalCCA in its closing brief, this proceeding has been established "to establish a non-bypassable charge [("NBC")] for above-market costs associated with tree mortality power purchase agreements [("Tree Mortality NBC")] in compliance with Senate Bill [("SB")] 859 (Committee on Budget and Fiscal Review, 2016) and Commission Resolution E-4805."[1] In proposing a Tree Mortality NBC, the Joint IOUs have proffered an incomplete construct with respect to valuing resource adequacy ("RA") from the tree mortality power

purchase agreements ("Tree Mortality PPAs"). The Joint IOUs propose that, ***after*** the Commission approves the Tree Mortality NBC, "each retail seller would receive its proportional share of the RA credit arising from each of the [Tree Mortality PPAs]."[2] However, with respect to the time period ***prior to*** Commission approval of the Tree Mortality NBC, the Joint IOUs have been silent in this proceeding, aside from the Joint IOUs' unavailing late-attempt in their closing brief to rectify the evidentiary void.

CalCCA identified the incomplete nature of and problem with the Joint IOUs' evidentiary showing in CalCCA's rebuttal testimony and in CalCCA's closing brief.[3] Based on CalCCA's rebuttal testimony, the Office of Ratepayer Advocates ("ORA") agreed that a problem exists with respect to the Joint IOUs' evidentiary showing:

> The Joint IOUs' proposal to allocate RA capacity credit produced by the Tree Mortality PPAs among load serving entities by share of coincident peak is problematic because certain BioRAM contracts have already been deployed. CalCCA raises an important concern that for the period from February 1, 2017 through the first RA compliance month in which the RA credits can be used by CCAs, RA credits from Tree Mortality PPAs have no value since RA credits are applied on a month-ahead and year-ahead basis. Further, "it is unlikely that the IOUs would be able to transfer RA credits for year-ahead purposes until compliance-year 2020." Given RA accounting rules, the Joint IOUs' proposal to allocate RA credit to CCAs and ESPs is not workable for contract years 2017 through 2019. The Commission should not adopt the Joint IOUs' proposal to allocate RA credit for years in which such credit would not be useful.[4]

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1 CalCCA Closing Brief at 2 (citing Scoping Memo at 1-2).

2 Exhibit ("Ex.") Joint IOU-02 at 8.

3 *See* [citation to rebuttal testimony and closing brief].

4 ORA Closing Brief at 5 (internal citations omitted). CalCCA understands that, pursuant to Senate Bill ("SB") 854 (2018), ORA has been renamed the Public Advocates Office of the California Public Utilities Commission. However, for purposes of this reply brief, CalCCA will use ORA as the name that was used on ORA's closing brief.

In their closing brief, the Joint IOUs unreservedly state that CalCCA's and ORA's concerns are moot, since "each of the Joint IOUs has ***proposed***, and received ***Commission approval***, to establish interim mechanisms to monetize and credit the value received for expiring RA credits…."[5] The Joint IOUs underscore this point in a subsequent pleading in this proceeding, as follows: "There is no need for the Commission to take further evidence on the interim RA value because tariff language in each IOU's preliminary statement associated with each IOU's Advice Letter is ***already effective***."[6] The "advice letters" to which the Joint IOUs refer are the advice letters by which the Joint IOUs established ***memorandum accounts*** for the purpose of "track[ing] and record[ing] procurement cost ordered by Resolution E-4770."[7]

In the Joint IOUs' advice letters, the Joint IOUs expressly state that "[d]isposition of the memorandum account balances shall be determined in the final decision issued in the associated Tree Mortality Nonbypassable Charge Application…."[8] However, in their closing brief the Joint IOUs would have the Commission and parties believe that this issue is no longer a live issue in this proceeding, since the Joint IOUs' advice letters were "made effective,"

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5 Joint IOUs Closing Brief at 11 (emphasis added).

6 *See Joint IOUs' Response To Motion Of Office Of Ratepayer Advocates To Set Aside Submission Of The Record*, dated August 24, 2018 ("Joint IOU Response") at 2 (emphasis added).

7 *See, e.g.,* PG&E Advice Letter ("AL") 4954-E; BioRAM Memorandum Account (Sheet 1). *See also* Joint IOUs Closing Brief at 4 ("Resolution E-4805 also required the Joint IOUs to file Tier 2 advice letters within 30 days of its issuance creating memorandum accounts to track the costs of procurement associated with the tree mortality emergency while the application on cost allocation is pending.").

8 *See, e.g.,* PG&E AL 4954-E-A at 2.

having "received Commission approval," and therefore there is "no need for the Commission to take further evidence" on this matter.[9]

The Joint IOUs' statements about the effect to be given the Joint IOUs' advice letters are false. In ***this proceeding***, the Commission can and must determine the RA value from the Tree Mortality PPAs. There is nothing in the Joint IOUs' memorandum account advice letters, or the Energy Division's disposition letter, that precludes consideration of this issue in this proceeding, or predetermines an outcome.

1. This Proceeding, Not An Advice Letter Process, Is The Venue For Determining How RA From The Tree Mortality PPAs Should Be Valued

The Scoping Memo provides clear guidance on what issues will be considered in this proceeding and what evidence is necessary from the Joint IOUs to support the Joint IOUs' proposals. Included as an issue within the scope of this proceeding is an examination of "[t]he valuation and calculation methodologies for the proposed NBC."[10] The Scoping Memo defines what evidence is necessary from the Joint IOUs in this proceeding to support valuation of RA from the Tree Mortality PPAs: "[The Joint IOUs] must also provide information on the actual… capacity… values created by these contracts and how they are being apportioned to their bundled ratepayers."[11] Importantly, nowhere in the Scoping Memo is there an exclusion from this evidentiary standard for RA values for the period of time that the Joint IOUs now

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9 *See* notes 5 and 6, above.

10 Scoping Memo at 2.

11 Scoping Memo at 3 (in reference to RA value). *See also* Scoping Memo at 3-4 ("[T]estimony from the utilities must characterize every element of the asserted costs and benefits of the NBC, why it is a cost, why it is a benefit, to whom it is a cost and benefit, how the allocation methodology for the costs and benefits is derived, and how the NBC nets these costs and benefits.").

define as "interim" (*i.e.*, the period of time prior to Commission approval of the Tree Mortality NBC).[12] Rather, the Scoping Memo makes clear that Joint IOUs must, ***in this proceeding***, provide testimony on RA values created by the Tree Mortality PPAs for the full duration of the contracts.[13]

The Commission's General Order ("GO") 96-B describes the advice letter process. General Rule 5.1 states that "The advice letter process provides a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions." General Rule 5.2 further clarifies that an IOU must file an application where an IOU "seeks Commission approval of a proposed action that the utility has not been authorized, by statute, by this General Order, or by other Commission order, to seek by advice letter." As the Joint IOUs acknowledge in their memorandum account advice letters, recovery of procurement costs under the Tree Mortality PPAs will be a two-step process: First, the Joint IOUs will "track and record" procurement costs associated with the Tree Mortality PPAs ***through memorandum accounts***.[14] Second, the Joint IOUs will seek cost-recovery of the associated memorandum account costs ***in this proceeding***.[15]

This two-step process is consistent with how the Commission has defined memorandum accounts in other contexts:

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12 *See, e.g.,* Joint IOUs Closing Brief at 12 (Referencing PG&E AL 5354-E at 2).

13 *See* notes 10 and 11, above.

14 *See, e.g.,* PG&E AL 5354-E-A at 1 ("On October 21, 2016, the Commission issued Resolution E-4805… requiring the [IOUs] to track electric procurement costs associated with power purchase agreements executed to comply with Resolution E-4770 and [Resolution E-4805].").

> A memo account is an accounting device that, after approval by the Commission or upon statutory notice, may be used by a utility to record various expenses it incurs. The utility ***may later seek authorization*** from the Commission to recover the recorded amounts by passing them on to consumers in rates. The establishment of a memo account does not guarantee that the utility will recoup the tracked amount, but a utility is precluded from recovering amounts not booked to a memo account. Memo accounts ***allow the Commission to consider*** recovery of utility expenses that have occurred in the past without incurring retroactive ratemaking.[16]

In light of this background, it is incredulous for the Joint IOUs to claim or imply in their closing brief that the Energy Division's approval of memorandum accounts should be viewed as approving how RA capacity from the Tree Mortality PPAs should be valued and apportioned to bundled customers. That is precisely the purpose of this proceeding, not the IOUs' advice letter process.

2. The Joint IOUs' Description In Their Advice Letters Is No Substitute For Evidence In This Proceeding

In their closing brief, the Joint IOUs object to the fact that "CalCCA states that the IOUs have advanced no valuation methodology that would accomplish [interim period RA] monetization."[17] CalCCA stands behind its assertion. ***In this proceeding***, the Joint IOUs have offered no evidence whatsoever for how the Joint IOUs would monetize RA value in the interim period.

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[15] *See, e.g.,* PG&E AL 5354-E-A at 2 ("Disposition of the memorandum account balances shall be determined in the final decision issued in the associated Tree Mortality Nonbypassable Charge Application.").

[16] Division of Water and Audits, *Standard Practice for Processing Rate Offsets and Establishing and Amortizing Memorandum Accounts* (Standard Practice U-27-W), dated April 16, 2014, at 3 (emphasis added). A copy of Standard Practice U-27-W may be found at the following website: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M090/K002/90002198.PDF.

[17] Joint IOUs Closing Brief at 11 (citing Ex. CalCCA-02 at 2).

It is a clear legal precept in Commission proceedings that the IOU applicant carries the burden of proof and must meet this burden of proof with a substantial affirmative showing.[18] Notwithstanding this legal precept and the clear guidance provided in the Scoping Memo on the need for the Joint IOUs to provide "testimony" in this proceeding on monetizing RA value in the interim period, the Joint IOUs have failed to meet their burden of proof. Their closing brief acknowledges this fact. Noticeably absent from the Joint IOUs' closing brief is any reference whatsoever to ***testimony*** describing the Joint IOUs' proposal for monetizing RA value during the interim period. Instead of properly acknowledging this flaw, as ORA does,[19] the Joint IOUs make an unavailing late attempt in their closing brief to bootstrap general, descriptive information in the Joint IOUs' advice letters and imbue this information with qualities and characteristics associated with ***testimony***. The Commission should disregard these attempts to substitute advice letter information for actual testimony in this proceeding.

3. Information Provided In The Joint IOUs' Closing Brief Is Patently Insufficient To Satisfy The Joint IOUs' Burden Under The Scoping Memo And General Standards

As noted above, the Scoping Memo requires the Joint IOUs to provide "specific information" through "testimony" – testimony that is exacting and discrete. In this regard, the Scoping Memo states as follows: "***In testimony***, the utilities must clarify ***each*** element of the NBC so that parties may understand why it is a ***discrete element*** and determine how the various

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[18] *See, e.g.,* D.06-05-016 at 7 (emphasis added) ("As the applicant, [the utility] must meet the burden of proving that it is entitled to the relief it is seeking in this proceeding. [The utility] has the burden of affirmatively establishing the reasonableness of ***all aspects*** of its application. Intervenors."). *See also* D.924964 (CPUC 2d 693, 701) (emphasis added) ("Of course the burden of proof is on the utility applicant to establish the reasonableness of energy expenses sought to be recovered…We expect ***a substantial affirmative showing*** by each utility with percipient witnesses in support of ***all elements*** of its application….").

elements can be reconstructed to reflect the contract actually signed by the utilities. This means that testimony from the utilities ***must characterize every element*** of the asserted costs and ***benefits*** of the NBC, why it is a cost, why it is a benefit, to whom it is a cost and benefit, how the allocation methodology for the costs and benefits is derived, and how the NBC nets these costs and benefits."[20]

The Joint IOUs have failed to provide testimony that comes anywhere close to meeting the standard set in the Scoping Memo. Instead, recognizing this flaw, the Joint IOUs attempt to rehabilitate their deficient showing by using their closing brief to provide information. The Commission should reject this procedurally improper attempt for several reasons.

First, the information provided in the Joint IOUs' closing brief is not "testimony" for which the Joint IOUs are subject to procedural requirements. It is unfair and prejudicial for the Joint IOUs to introduce facts in their closing brief for which parties have not been given an opportunity to test through discovery, potentially cross-examine or rebut.

Second, the information provided in the Joint IOUs' closing brief is not "specific," as required by the Scoping Memo. The Joint IOUs devote extensive verbiage in their closing brief to describe the ***process and operation*** associated with the Joint IOUs' memorandum accounts, but nowhere do the Joint IOUs provide specific, discrete information about the actual RA value derived in the interim period. For PG&E and SCE, no information is

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19 *See* ORA Closing Brief at 5.

20 Scoping Memo at 3-4 (emphasis added).

provided on what price has been used for RA valuation purposes.[21] Certainly, the confidentiality of such information should not be at issue, since the Joint IOUs could have provided this information under seal. The plain fact is that the Joint IOUs have failed to provide specific information in this proceeding on RA valuation during the interim period. Accordingly, there is no Joint IOU proposal for the Commission to entertain. That said, CalCCA generally agrees with a recent ruling by the ALJ that there is a sufficient evidentiary record for the Commission to make a determination.[22] To reiterate, however, with respect to the interim period, the evidentiary record is devoid of evidence ***from the Joint IOUs***. For its part, CalCCA has provided extensive evidence on RA monetization values, both for the interim period and beyond.[23] Therefore, CalCCA has met its burden; the Joint IOUs have not.[24]

Third, the information provided in the Joint IOUs' closing brief does not reflect a joint or common proposal among the Joint IOUs. Indeed, based on the limited information provided by the Joint IOUs in their closing brief, it appears that the Joint IOUs' respective proposals are ***vastly*** different. For example, as noted above, SDG&E appears to use publicly available data that always produces an ***above-zero*** value, whereas PG&E uses an approach that

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21 For SDG&E, specific information on RA valuation can be derived, since SDG&E uses publicly available data in the Commission's annual RA report. *See* Joint IOUs Closing Brief at 15 ("SDG&E will value RA based on the CPUC's annual RA report for the relevant month while cost allocation is pending (the interim period).").

22 *See ALJ Email Ruling*, dated August 27, 2018.

23 *See* CalCCA Closing Brief at 8-14 (summarizing an extensive record for RA monetization values, including references to Ex. CalCCA-01 at 4, the Joint IOUs' advice letters on RA sales to Community Choice Aggregators and the 2016 and 2017 Annual RA Reports).

24 *See, e.g.,* D.87-12-067 (27 CPUC2d 1, 22) (describing the burden of an intervenor to present evidence explaining its position and raising reasonable doubts about the IOU's countervailing position).

regularly produces a value of ***zero*** for RA from the Tree Mortality PPAs.[25] To be clear, ascribing a value of zero to RA from the Tree Mortality PPAs, as apparently proposed by PG&E, is patently unreasonable.

B. The Joint IOUs' Late Proposal To Accommodate An "Indefinite" or Open-Ended Duration To Tree Mortality PPAs Under Senate Bill 859 Should Be Denied

In their closing brief, the Joint IOUs propose for the first time that the duration of Tree Mortality PPAs and associated cost-recovery should not be circumscribed by SB 859. Until their closing brief, the Joint IOUs had adhered to a position that limited the duration of Tree Mortality PPAs to their underlying authorizing source. For example, the Joint IOUs rightly observed that SB 859, as reflected in Resolution E-4805, statutorily limited the term of Tree Mortality PPAs to "5-year contractual commitments."[26] The Joint IOUs also rightly observed that Tree Mortality PPAs under Resolution E-4770-reflect "5-year contractual commitments which the Joint IOUs would have the right to extend for one year at a time, up to a cumulative total of 10 years."[27]

In their closing brief, however, the Joint IOUs introduce for the first time the possibility that the Joint IOUs could seek an "extension" of Tree Mortality PPAs ***under SB 859***. The Joint IOUs' language in this regard is subtle, and problematically vague and open-ended. With

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25 *See, e.g.,* Joint IOUs Closing Brief at 15 (citing PG&E AL 5354-E-A; emphasis added) ("PG&E proposes to sell, ***if possible***, a portion of the RA capacity and record (credit) the proceeds of the sale to the BioMASS and BioRAM memorandum accounts as an offset to the costs."). CalCCA understands that much of RA capacity has gone unsold, and therefore has been assigned zero value by PG&E.

26 *See* Ex. Joint IOU-02 at 2:11.

27 Ex. Joint IOU-02 at 3:2-3 (referencing Resolution E-4770 at 1). (The correct page reference is to page 11 of Resolution E-4770.)

respect to Tree Mortality PPAs associated with SB 859, the Joint IOUs state that "[a] sunset date for cost recovery may not coincide with the expiration of the Tree Mortality Procurement…***due to a subsequent extension*** of the contract approved by the Commission."[28] The Joint IOUs provide no description of what event could give rise to an "extension." An extension due to a change of law, on the one hand, is vastly different than an extension proposed by the Joint IOUs and approved by the Commission, on the other hand. In light of the Joint IOUs' subtly vague proposal in their closing brief, the Commission should expressly clarify that cost-recovery through the Tree Mortality NBC for SB 859-related contracts is circumscribed by statute. Stated differently, cost-recovery for an ***extension*** of a Tree Mortality PPA authorized under SB 859 should only be applied to Community Choice Aggregation ("CCA") customers if expressly authorized by the Legislature.

The importance of this clarification should not be overlooked. The Legislature has repeatedly stated that Community Choice Aggregators should handle all generation-related activities for CCA customers, excepting only those unique arrangements whereby the Legislature expressly authorizes procurement by the IOUs.[29] This statutory directive, which envisages meaningful self-procurement options for Community Choice Aggregators, is consistent with other statutory provisions.[30] Self-procurement is central to the mission of

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28 Joint IOUs Closing Brief at 19 (emphasis added).

29 *See, e.g., Protest of the California Community Choice Association*, dated January 6, 2017 ("CalCCA Protest"), at 2 (citing Public Utilities Code Section 366.2(a)(5), as follows: "[Community Choice Aggregators] shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute.").

30 *See* CalCCA Protest at 2 (citing Public Utilities Code Section 380(a)(5) [defining the following as a legislative objective with respect to the resource adequacy program: "[m]aximize the ability of community choice aggregators to determine the generation resources

Community Choice Aggregators. This is perhaps uniquely true with respect to Tree Mortality PPAs, where either the generating resource or the feedstock is located within the service area of Community Choice Aggregators.[31] Accordingly, absent express statutory authority, even in exigent circumstances, the Commission should not authorize the IOUs (directly or implicitly) to extend Tree Mortality PPAs for CCA customers.

C. The Joint IOUs' Views Regarding Rulemaking 17-06-026 Should Be Given Little Weight

After rightly acknowledging that the Scoping Memo identifies the need to coordinate with Rulemaking ("R.")17-06-026 (the Power Charge Indifference Adjustment ("PCIA") proceeding), the Joint IOUs conclude that "the PCIA – in either its existing or future forms – is neither dispositive ***nor relevant*** to the development of the [Tree Mortality NBC]."[32] The Joint IOUs come to this summary conclusion after expressing their view that "[t]he broad allocation of costs and benefits [associated with the Tree Mortality NBC] is more closely analogous to [Cost Allocation Mechanism ("CAM")], which similarly applies to all benefitting customers, than to the PCIA, which is meant to (but does not currently) ensure bundled customer indifference to the decision of current bundled customers to seek future service from a non-IOU retail seller."[33] The Joint IOUs' subjective assertions should be accorded little weight.

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used to serve their customers."] and Section 454.51(d) [expressly providing a self-procurement option for Community Choice Aggregators with respect to renewable integration requirements]).

[31] For example, one of the six generation resources associated with the Tree Mortality PPAs is located in a Community Choice Aggregator's service area (Pioneer Community Energy), and other Community Choice Aggregators operate in areas designated high-hazard zones.

[32] Joint IOUs Closing Brief at 21 (emphasis added).

[33] Joint IOUs Closing Brief at 21 (internal citations omitted).

The Joint IOUs state that the Tree Mortality NBC issue is more suited for CAM treatment than for PCIA treatment.[34] However, the CAM approach is only supposed to be available to resources needed for grid ***reliability***.[35] This finding has not been made with regard to the resources associated with the Tree Mortality PPAs. As such, the Joint IOUs' proposed use of the CAM methodology is at odds with the CAM methodology's statutorily-specified conditions. This proceeding is not for the purpose of allocating grid-reliability costs and benefits. This is a significantly different focus from the need to address ***above-market*** costs of the Tree Mortality PPAs, for which a PCIA approach is better-suited.

The principal reason to look to, rely on and coordinate with the PCIA proceeding is the significant focus in that proceeding on establishing a proper "market price benchmark." As denoted by title of this proceeding, and as reflected in the Scoping Memo, the purpose of this proceeding is to determine "***above-market*** costs associated with tree mortality power purchase agreements in compliance with Senate Bill (SB) 859…."[36] It is impossible to determine "above-market" costs without relying on a "market price benchmark." As such, a market price benchmark, in one form or another, will be necessary in this proceeding. It is undeniable that the PCIA proceeding has devoted significant attention to the important work of determining a market price benchmark.[37]

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34 *See* note 33, above.

35 *See, e.g.,* D.11-05-005 at 7 (describing CAM "statutorily-specified" conditions relating to generation resources "needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory."). D.11-05-005 implemented that CAM-related provisions set forth in SB 695 (2009).

36 *See* Scoping Memo at 2 (emphasis added).

37 *See generally Proposed Decision of ALJ Roscow* (in R.17-06-026), dated August 1, 2018 ("PCIA Proposed Decision"), at 10-12 (Section 1.1 - Procedural Background).

As CalCCA has repeatedly stated and justified, reliance on the significant efforts being undertaken in the PCIA proceeding with respect to the market price benchmark is both efficient and reasonable.[38] That said, CalCCA reiterates what it said in its opening brief, namely, CalCCA's continuing recommendation to rely on the market price benchmark in the PCIA proceeding should not be taken as an endorsement for the outcomes set forth in the PCIA Proposed Decision (or now also, the *Alternate Proposed Decision of Commissioner Peterman* (August 14, 2018)). CalCCA is continuing to address its concerns with the market price benchmark in the PCIA proceeding. CalCCA nevertheless continues to believe that efficiency, consistency and fairness demand that the PCIA market price benchmark (and its associated valuation methodologies) should be used across all cost allocation processes.

CalCCA offers a final observation. The Joint IOUs' preference for the CAM is undeniably derived from the CAM's allocation of RA credits, not the CAM's establishment of an appropriate above-market cost methodology. This type of outcome-oriented advocacy should be weighed accordingly. If the outcome of this proceeding were to allocate attributes from the Tree Mortality PPAs, then the CAM approach might have merit. However, if, as noted in the title of this proceeding and the Scoping Memo's description, the outcome of this proceeding is to determine above-market costs and allocate those costs on a nonbypassable basis, then the PCIA proceeding is relevant and informative.

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38 *See, e.g.,* CalCCA Closing Brief at 5 (summarizing CalCCA's position).

II. CONCLUSION

CalCCA thanks Commissioner Guzman-Aceves and ALJ Doherty for their thoughtful consideration of this reply brief and the matters addressed herein.

Dated: August 31, 2018

Respectfully submitted,

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