



September 4, 2018

Via Regular Mail and E-Mail

Mr. Ed Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenue, Room 4004
San Francisco, CA 94102

**Re: California Community Choice Association's Protest of
Pacific Gas and Electric Company Advice Letter 5354-E,
San Diego Gas & Electric Company Advice Letter 3257-E, and
Southern California Edison Company Advice Letter 3840-E
As Related to Tariff Revisions to Implement Decision 18-05-022
(Community Choice Aggregation Financial Security Requirements)**

Dear Mr. Randolph:

The California Community Choice Association ("CalCCA") hereby protests Pacific Gas and Electric Company's ("PG&E") Advice Letter ("AL") 5354-E, San Diego Gas & Electric Company's ("SDG&E") AL 3257-E, and Southern California Edison Company's ("SCE") AL 3840-E.¹ The IOU Advice Letters were filed by the IOUs to implement Decision ("D.")18-05-022 issued by the California Public Utilities Commission ("Commission") on June 7, 2018 for the purpose of establishing reentry fees and financial security requirements ("FSR") for Community Choice Aggregators, as required by Public Utilities Code Section 394.25(e).²

As described below, the scope of the IOU Advice Letters is very broad. In numerous areas, the IOU Advice Letters go beyond the scope of authorized changes to the IOUs' Community Choice Aggregation ("CCA") tariffs, contravene directives in D.18-05-022, statutory provisions and Commission precedent. As such, the IOU Advice Letters are unsuited for approval by the Commission in their current forms. Given the breadth of the IOU Advice Letters and the degree of objectionable provisions, the Commission should employ additional procedural means to ensure that unauthorized requests are properly rejected without prejudice, and that substantive matters are addressed by the Commission only after further opportunity is given to vet the IOUs' proposals and to seek collaboration, consensus and additional input. CalCCA offers suggestions below on how to employ these additional procedural means.

¹ PG&E, SCE and SDG&E are collectively referred to herein as the "IOUs." Further, PG&E AL 5354-E, SDG&E AL 3257-E and SCE AL 3840-E are collectively referred to herein as the "IOU Advice Letters."

² All further statutory references are to the California Public Utilities Code.

As required by General Order (“GO”) 96-B, CalCCA provides comments and arguments below with respect to the primary flaws in the IOU Advice Letters. CalCCA requests that an additional opportunity be provided to offer comments and arguments following collaboration and consensus efforts. CalCCA is interested in working with the IOUs, Energy Division and other stakeholders to collaboratively and efficiently address the IOU Advice Letters. In this regard, the following procedural suggestions are offered:

- The IOUs should voluntarily file substitute tariff sheets to remove unjustified CCA tariff modifications and to address material omissions in the IOU Advice Letters, or the Commission’s Energy Division should require the filing of substitute tariff sheets.
- The Energy Division should issue a preliminary disposition letter under General Rule 5.2 rejecting without prejudice those portions of the IOU Advice Letters that the Energy Division has determined require a formal proceeding.³
- Following the IOUs’ submission of substitute tariff sheets, the Commission should convene a workshop for the purpose of discussing the IOUs’ proposed CCA tariff modifications and facilitating consensus positions on tariff language.
- The Commission should allow for additional comments on any unresolved issues following the workshop process.
- Based on additional comments, the Commission should dispose of any unresolved issues through a Commission resolution.

BACKGROUND

CalCCA represents the interests of California’s Community Choice Aggregators in the Legislature and at the relevant regulatory agencies, including the Commission, California Energy Commission and California Air Resources Board. CalCCA’s voting members are the operating CCA programs in California. CalCCA was an active party in Rulemaking (“R.”)03-10-003 on matters leading to the issuance of D.18-05-022.

Following the issuance of the *Fourth Amended Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge* in R.03-10-003, dated March 1, 2017, the IOUs and CalCCA actively litigated matters within the scope of the proceeding. Among other things, CalCCA sponsored testimony and filed briefs on issues associated with the FSR and reentry fees. After a year of litigation, the *Proposed Decision of ALJ Allen* was issued April 6, 2018

³ References to “General Rules” are to the advice letter rules contained in GO 96-B.

(“Proposed Decision”). Following two rounds of comments, the Proposed Decision was modified, and eventually adopted by the Commission, as modified, on May 31, 2018.

The IOU Advice Letters were filed in order to implement various elements of D.18-05-022. The IOUs also filed other advice letters to calculate the FSR for individual Community Choice Aggregators,⁴ and to describe the cost components associated with each IOU's per-customer reentry fee, which is used under D.18-05-022 as the administrative cost element for the reentry fee.⁵ While the IOUs propose changes to the CCA Rule and CCA tariffs that are necessary to implement D.18-05-022, they also inappropriately propose other changes that are contrary to law and irrelevant to the Commission's decision.⁶ For these reasons, the Commission must take a careful look at the IOUs' proposed changes.

PROTEST

A. The IOU Advice Letters Go Beyond The Scope Of D.18-05-022, And Run Contrary To Statutory Directives And Commission Precedent, In Seeking To Impose Cost-Responsibility On Customers For Unsatisfied Reentry Fee Amounts

Section 394.25(e) states that “[i]f a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator....” Despite this clear directive from the Legislature, the IOUs propose to impose cost-responsibility on customers, including residential and small commercial customers, for reentry fees that exceed a Community Choice Aggregator's FSR and are otherwise not paid by the Community Choice Aggregator. For example, the proposed language in PG&E's AL 5354-E is as follows:

To the extent the CCA fails to discharge its obligation to pay the Re-Entry Fees, any Re-Entry Fees not recovered from the CCA will be recovered from the involuntarily returned CCA customers. Any Re-Entry Fees not recovered from the CCA shall be paid by the involuntarily returned CCA customers over a time period specified by PG&E, but not to exceed the Bundled Service commitment period.⁷

⁴ See PG&E 5350-E (August 6, 2018), SCE AL 3839-E (August 15, 2018) and SDG&E AL 3259-E (August 15, 2018).

⁵ See PG&E 5359-E (August 17, 2018) and SCE AL 3847-E (August 17, 2018).

⁶ References to the “CCA Rule” are to the IOUs' respective rules for CCA service (*i.e.*, PG&E Rule 23, SDG&E Rule 27 and SCE Rule 23).

⁷ PG&E AL 5354-E at 63 (Proposed Section W.3.d.) See also SCE AL 3840-E at 53 and SDG&E AL 3257-E at 44 (Proposed Section W.3.d.).

The IOUs provide no statutory authority for this provision, nor do the IOUs point to anything in D.18-05-022 or other Commission decisions that provides a basis for the IOUs' proposal that customers, including residential and small commercial customers, should be held responsible for cost-recovery associated with an involuntary return to bundled service. This is so because no authority exists for the IOUs' proposal. To the contrary, as applied to CCA customers, Section 394.25(e) categorically forbids reentry fees from being imposed on customers.

With respect to customers of Electric Service Providers, not customers of Community Choice Aggregators, the Legislature provides a limited exception in Section 394.25(e), as follows: "In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers." Even in the context of Electric Service Providers, however, where the Legislature has expressly authorized that reentry fees not covered by an Electric Service Provider may be recovered from returning DA customers, the Commission has interpreted that provision as not applying to residential and small commercial customers. In this regard, the Commission has exercised what it considers permissibly broad discretion in interpreting Section 394.25(e) as only allowing procurement-related costs to be recovered from large direct access ("DA") customers, not residential and small commercial DA customers.⁸

Two conclusions follow from Section 394.25(e), and the Commission's interpretation of Section 394.25(e). Both of these conclusions fully absolve all involuntarily returned customers of Community Choice Aggregators of any cost-responsibility. The first conclusion flows plainly from the statute. The Legislature has categorically excluded customers of Community Choice Aggregators from cost-responsibility for reentry fees. As described above, the Legislature provided a limited exception in Section 394.25(e) to allow for the recovery of reentry fees from returning customers of an Electric Service Provider, but no such exception was provided by the Legislature with respect to returning customers of a Community Choice Aggregator. The rules of statutory interpretation provide that in circumstances like those present here, where the Legislature expressly includes one class of entity but not another, the exclusion is intended to be purposeful, unless a contrary legislative intent is expressed elsewhere in the statute or is

⁸ See D.11-12-018 at 69 ("Consistent with our determination to require the ESP bond to incorporate the risk for incremental procurement costs for involuntarily returned small commercial and residential customers, we exercise our discretion to define reentry fees as including such procurement costs only in reference to such customers. We thus interpret § 394.25(e) as providing broad discretion for the Commission to interpret the scope of reentry fees as covering a different range of costs for small commercial and residential in contrast to large commercial and industrial DA customers, recognizing the different characteristics of each customer group.").

otherwise compelled.⁹ Therefore, in this context, since no contrary legislative intent is expressed, it is proper to conclude that the Legislature meant to exclude **all** involuntarily returned customers of Community Choice Aggregators from cost-responsibility for reentry fees.

Second, in interpreting Section 394.25(e), the Commission has determined that the posting of an FSR that covers **procurement costs** fully covers all reentry fees, and therefore when an FSR is posted customers are “protected” from any additional reentry fees.¹⁰ In the context of DA customers, an FSR covering procurement costs is only required for residential and small commercial customers.¹¹ However, in the context of Community Choice Aggregators, the FSR includes procurement costs for all customers.¹² As such, even if imposition of reentry fees on involuntarily returned customers of Community Choice Aggregators were statutorily permissible (which it is not), the Commission’s determination regarding the effect of posting an FSR that covers procurement costs would lead to the conclusion that all involuntarily returned customers of a Community Choice Aggregator would be protected from any additional reentry fees.

Finally, in addition to being statutorily precluded and contrary to Commission precedent, the IOUs’ proposed language would foster customer confusion and potentially anticompetitive effects, both of which are undesirable. Actual **and prospective** CCA customers should not be exposed to confusion as to whether they might bear cost-responsibility in the event of a Community Choice Aggregator’s involuntary return of customers. Inclusion of the IOUs’ proposed provision in their tariffs could inappropriately sow confusion under a threat of customer cost-responsibility, which, whether acted upon or not, could discourage participation in CCA programs. In this regard, a reminder is appropriate. In the past, the IOUs have used their

⁹ See, e.g., *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391 (describing a rule of statutory interpretation *Expressio unius est exclusio alterius* – the expression of one thing implies the exclusion of others). See also *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 269 (where statutory language is “unambiguous” a court need to look to “extrinsic aids” to determine its meaning).

¹⁰ See, e.g., D.11-12-018 at 58 (“We conclude that mass involuntarily returned DA customers are to be protected by the ESP’s financial security instrument covering re-entry fees imposed on those returned customers.”)

¹¹ See D.11-12-018 at 58 (“Consistent with our interpretation of § 394.25(e), we conclude that re-entry fees cover the administrative costs resulting from switching an involuntary return of its customers to IOU bundled procurement, and for residential and small commercial DA customers, re-entry fees also cover procurement costs.”).

¹² See D.18-05-022 at 7 (referencing Exhibit (“Ex.”) Ju-01; Appendix E (identifying both residential and commercial accounts)).

inherent market power in a manner that sowed doubts, fear and confusion among prospective CCA customers.¹³

B. The IOU Advice Letters Go Beyond The Scope Of D.18-05-022 By Making Unjustified Modifications Affecting Direct Access Eligible Customers

The IOUs propose to modify the CCA Rule to delete certain provisions relating to the rights of DA-eligible customers ("DA Provisions"). For example, PG&E proposes to entirely delete sections L.1.b and L.2.a of the CCA Rule. Pursuant to General Rule 7.4.2(3), CalCCA protests the IOU Advice Letters on the grounds that the information provided in the IOU Advice Letters related to the DA Provisions contains material omissions insofar as the IOU Advice Letters fail explain or justify the proposed changes. More substantively, there is nothing in D.18-05-022 that suggests that modifications to the DA Provisions are necessary or authorized. As such, pursuant to General Rule 7.4.2(2), CalCCA also protests this aspect of the IOU Advice Letters on the grounds that modifications to the DA Provisions has not been authorized by Commission order.

As the Commission may be aware, Community Choice Aggregators and the IOUs have had periodic discussions about how DA-eligible customers may participate in CCA programs, while not compromising rights to later participate in DA or bundled service. The DA Provisions appear to unnecessarily implicate these issues, which would raise key policy questions. General Rule 5.1 states that "[t]he 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." For these reasons, CalCCA requests that the IOUs remove the DA Provisions from consideration of the IOU Advice Letters. Failing this, CalCCA protests this aspect of the IOU Advice Letters.

C. Clarity And Specificity Should Be Provided With Respect To The Limited Conditions Under Which FSR Instruments May Be Activated

While the posting of FSR instruments is certainly required by D.18-05-022,¹⁴ the Commission has been rightly focused on ensuring that the FSR instrument is activated only when

¹³ This activity resulted in the passage of Senate Bill ("SB") 790 (2011) and D.12-12-036 implementing a code of conduct for IOU activities related to CCA programs. *See, e.g.*, SB 790; Section 2(f) ("The exercise of market power by electrical corporations is a deterrent to the consideration, development, and implementation of community choice aggregation programs.").

¹⁴ *See, e.g.*, D.18-05-022 at 16; Ordering Paragraph 10 (describing the compliance process for posting the FSR).

needed to address the financial implications of an involuntary return of CCA customers.¹⁵ Activation of an FSR instrument is a major event involving the transfer of significant sums of money to an IOU and would undoubtedly have a negative impact on the financial condition of the CCA program. As such, clarity and specificity are needed with respect to the discrete actions that are required in order to activate the FSR instrument. The IOU Advice Letters are lacking in this regard. For example, when defining an “involuntary return,” SCE’s advice letter merely lists events that “*may*” result in an involuntary return, yet it is unclear whether an involuntary return of customers will actually occur if the events are triggered.¹⁶

CalCCA further addresses this concern below (in Section D.a.). However, in addition to clarifying the actual triggering event, CalCCA also requests that the Commission require the occurrence of at least one of two actions before an IOU is authorized to activate an FSR instrument. An FSR instrument may be activated (1) by mutual written agreement between the IOU and the Community Choice Aggregator or (2) by order of the Commission. Regarding the second action, in the context of other CCA-related issues, the Commission has authorized the issuance of emergency or expedited orders.¹⁷ Since the conditions of an involuntary return are uncertain, such an order would be a reasonable tool to provide flexibility and an opportunity for the Community Choice Aggregator to be heard on the matter if there is a dispute.

D. The IOU Advice Letters Contain Numerous Provisions That Are Unauthorized By Statute Or Commission Order, And Are Otherwise Unjust, Unreasonable or Discriminatory

Pursuant to General Rule 7.4.2(6), CalCCA protests the IOU Advice Letters on the grounds that, as proposed, the IOU Advice Letters contain unauthorized provisions or unjust, unreasonable or discriminatory terms, as further described below.

a. The IOUs’ List of Events That Give Rise To An “Involuntary Return” Has Not Been Authorized By The Commission And Is Unreasonably Discriminatory

The IOUs provide a list of events that are classified as giving rise to an “involuntary return.” Specifically, the IOUs define five events.¹⁸ CalCCA does not dispute the need to define when an involuntary return of customers has occurred, since the occurrence determines, among

¹⁵ See, e.g., D.18-05-022 at 2 (acknowledging the Commission’s role is to implement Section 394.25(e) and the “basic idea” behind the statute is to protect utility customers from potential costs resulting from an “involuntary return” of CCA customers to the IOU).

¹⁶ See, e.g., SCE AL 3840-E at 9 (Proposed Section B.29). See also PG&E AL 5354-E at 12 (Proposed Section B.29).

¹⁷ See, e.g., SCE Rule 23; Section T.3.

¹⁸ See PG&E AL 5354-E at 12 (Proposed Section B.29); SCE AL 3840-E at 9 (Proposed Section B.29); and SDG&E AL 3257-E at 9 (Proposed Section B.29).

other things, the time period for cost-recovery and other key elements associated with establishing reentry fees. However, CalCCA protests the IOUs' proposed expansion of triggering events.

In D.11-12-018, the Commission provided the following discussion on the definition of an "involuntary return" in the context of DA customers:

Section 394.25(e) does not expressly define an involuntary return. It only partially defines the term by carving out from its protections certain cases of involuntary returns.

We define an involuntary return of a DA customer to service from an IOU as when the IOU has initiated the DASR process to return a customer to IOU bundled service due to any of the following events:

- a. The Commission has revoked the ESP registration.
- b. The ESP-IOU Agreement has been terminated.
- c. The ESP or its authorized CAISO Scheduling Coordinator (SC) has defaulted on its CAISO SC obligations, such that the ESP is no longer has an appropriately authorized CAISO SC.¹⁹

The IOUs carried forward this definition into their respective DA rules.²⁰ It is unclear why the IOUs did not propose in the IOU Advice Letters the same language. Importantly, in the context of the IOUs' proposed CCA Rule, the IOUs omitted a key phrase: "when the IOU has initiated the [CCASR] process to return a customer to IOU bundled service due to any of the following events." Initiation of the CCASR process and the actual return of customers are the operative events. With respect to the IOUs' proposed CCA Rule, the IOUs have substituted the clear language above with the following vague, non-descriptive phrase: "...an involuntary return of CCA customers to Bundled Service may occur due to any of the following..."²¹ In addition, the IOUs have added two additional events that "may" trigger an involuntary return.²²

The IOUs' proposed definition of an involuntary return for CCA customers unjustifiably departs from D.11-12-018 and proposes discriminatory treatment for CCA customers vis-à-vis DA customers. The IOUs should either propose comparable terms for CCA customers as part of the IOUs' anticipated submittal of substitute sheets or engage in discussions with CalCCA and

¹⁹ D.11-12-018 at 90.

²⁰ *See, e.g.*, PG&E Rule 22; Section B.18.

²¹ *See, e.g.*, PG&E AL 5354 (Proposed Rule 23; Section B.29).

²² *See, e.g.*, PG&E AL 5354 (Proposed Rule 23; Section B.29.c. and d.).

other stakeholders to arrive at a mutually acceptable definition. Under Section 394.25(e), the touchstone event associated with an involuntary return of CCA and DA customers is the re-establishment of "service provided by an electrical corporation." As such, the IOUs should submit substitute sheets that center on this event.

b. The Proposed Standards For Financial Security Are Unreasonable

In PG&E's AL 5354-E, PG&E proposes a number of standards associated with the FSR.²³ These include a set of standards that are not included in D.18-05-022, but nevertheless are objective and commercially reasonable, such as standards relating to a state or national bank having a Best Financial Strength Rating, a senior unsecured debt rating, or an issuer credit rating with specified thresholds. PG&E also includes two standards that are not reasonable and should be rejected. First, PG&E proposes that any issuer or bank should meet a subjective requirement that they be "acceptable to PG&E." This standard is wholly subjective, and as such it is at risk of potential manipulation by PG&E. Moreover, the requirement is duplicative of the objective and commercially reasonable standards, referenced above.

Second, PG&E states that each FSR instrument must be "satisfactory" to PG&E.²⁴ PG&E goes on to state that a Community Choice Aggregator "shall" use the form letter of credit and surety bond provided by PG&E.²⁵ This language ignores the fact that such instruments must be mutually acceptable to all parties – including the issuing financial institution that issue the instrument. In addition, the requirement fails to consider the requirements in statute, regulation or policy that govern the financial institutions issuing these instruments. Such limitations may present an unreasonable and unnecessary burden on Community Choice Aggregators and their financial institutions, and could artificially and prejudicially restrict the FSR marketplace, which could significantly increase costs to Community Choice Aggregators. This standard should be rejected or clarified in a substitute filing.

²³ See, e.g., PG&E AL 5354 (Sheet 55 and 57). For unspecified reasons, SDG&E has omitted most of Proposed Section V.2 from AL 3257-E, but the language that is included otherwise tracks Proposed Section V.2 from PG&E AL 5354-E. (See SDG&E AL 3257-E at 39, 41.) SCE does not appear to have proposed similar standards in the CCA Rule, but SCE contains similar discussion in Attachment B relating to FSR instruments and sample forms.

²⁴ See, e.g., PG&E AL 5354-E at 57 (Proposed Rule W(1)-(3)). See also SDG&E AL 3257-E at 41 (Proposed Section W) ("The terms and conditions for these financial security instruments must be acceptable to the Utility."). See also SCE AL 3840-E (Attachment B).

²⁵ PG&E AL 5354-E at 57 (Proposed Rule W(1)-(2)).

c. It Is Unreasonable And Contrary To D.18-05-022 For The IOUs To Dictate Forms Of Instruments

In the IOU Advice Letters, the IOUs propose standard forms of the three instruments authorized in D.18-05-022 for purposes of satisfying the FSR (letter or credit, surety bond or escrow agreement). The IOUs state that the forms must either be the IOUs' respective "standard form" or must be acceptable in the sole determination of the IOU.²⁶ While CalCCA appreciates the IOUs' efforts to advance suggested forms for the purpose of initial discussion, the IOUs' standard forms should not be adopted by the Commission. CalCCA offers a practical and a substantive reason that the IOUs' standard forms should not be adopted by the Commission. As a practical matter, financial institutions issuing any of the FSR instruments have their own set of standard terms and conditions. The Commission should accommodate to the greatest extent reasonably possible these standard terms and conditions. Also, since conditions may need to vary over time or by entity, the Commission should accept forms that are mutually agreeable to the IOU, Community Choice Aggregator and the financial institution, but which may differ from a supposedly standard form.

As a substantive matter, in D.18-05-022 the Commission ordered Community Choice Aggregators to submit compliance advice letters demonstrating compliance with the FSR adopted in D.18-05-022.²⁷ As such, since the Commission placed the compliance obligation on Community Choice Aggregators, it is reasonable to allow Community Choice Aggregators, not the IOUs, to determine the terms and conditions that apply to the FSR instruments, subject to review by the IOUs and the Energy Division as part of the Community Choice Aggregators' respective advice letter process. The Commission's advice letter process affords the IOUs a reasonable opportunity to review and respond to the compliance advice letters, and authorizes the Energy Division to approve the advice letters following input from interested parties.²⁸ In light of this, CalCCA urges the Commission to not prejudge the outcome associated with Community Choice Aggregators' respective advice letters by allowing the IOUs to impose standard terms and conditions associated with these FSR instruments. This determination should be made in response to the compliance advice letters filed by Community Choice Aggregators.

²⁶ See, e.g., PG&E AL 5354 (Proposed Rule 23; Section W(1)-(3)). See also PG&E AL 5354-E; Attachments 3-5 (relating to acceptable forms of financial security requirement instruments). See also SCE AL 3840-E (Attachment B).

²⁷ See D.18-05-022 at 16; Ordering Paragraph 16.

²⁸ See GO 96-B (General Rules 7.4 and 7.6.1).

d. The IOUs' Proposed Use Of CCA Customer Payment Remittance Has Not Been Authorized By The Commission, And Is Unreasonable.

Under the IOUs' current CCA Rules, CCA customer payment remittance to the Community Choice Aggregator may be withheld and used by the IOU for narrowly and specifically defined purposes. Without authorization from the Commission, the IOUs propose to significantly expand the IOUs' discretion with respect to using CCA customer payment remittance to the Community Choice Aggregator. The IOUs' proposal goes well beyond an acceptable scope for an advice letter, and in any event should be rejected (either without prejudice or with prejudice).

The proposal to withhold payments related to reentry fees demanded of Community Choice Aggregators is an unreasonable expansion. Currently, the scope of withholding customer payment remittance is limited to undisputed and overdue charges.²⁹ The IOUs propose to expand this to include "any unpaid costs including Re-Entry fees demanded...."³⁰ This expansion appears to allow the IOUs to start withholding payments as soon as they have made a demand on a Community Choice Aggregator to pay reentry fees. As a practical matter, this does not allow an opportunity for the Community Choice Aggregator to dispute the fees or consider whether those fees are not yet due. This expansion is unreasonable and should be rejected.

The proposal to withhold payments related to reentry fees demanded of the Community Choice Aggregator is also duplicative of the FSR. The purpose of withholding customer payment remittance is to protect the IOU from a risk the Community Choice Aggregator may not pay an outstanding service fee obligation. The FSR is intended for the same purpose as related to the reentry fee obligation, and in this regard the Commission set the FSR to be equivalent to the entire reentry fee obligation.³¹ Allowing the IOUs to withhold customer payment remittances in addition to being able to call on an FSR is duplicative, unauthorized, and unreasonably burdensome to Community Choice Aggregator. This unilateral action by the IOU could place a Community Choice Aggregator in financial jeopardy and should not be authorized. For these reasons, the IOUs' request to withhold customer payments for reentry fees should be rejected either with or without prejudice.

²⁹ See, e.g., PG&E Rule 23; Sections S.7 (relating to undisputed overdue charges to PG&E from a voluntary CCA service termination) and T.2 (relating to utility costs associated with an involuntary service change). See also SDG&E Rule 27 (Sections S.7 and T.2). SCE and SDG&E have similar provisions.

³⁰ See, e.g., PG&E AL 5354 (Proposed Rule 23; Section S.7). SCE and SDG&E propose similar changes to Rule 23, Section S.7.

³¹ See D.18-05-022 at 7-8.

e. The IOUs' Proposal To Modify The Process For Involuntary Service Termination Of A Community Choice Aggregator Has Not Been Authorized By The Commission, And Is Unreasonable

The IOUs propose unreasonable and unauthorized changes related to involuntary termination of a Community Choice Aggregator's service. Specifically, the IOUs propose that a Community Choice Aggregator that fails to timely post its FSR is subject to involuntary service termination.³² While there should be appropriate repercussions for a Community Choice Aggregator failing to post its FSR on time, involuntary service termination is disproportionate and unreasonable. The IOUs' proposal to modify involuntary CCA service termination is not authorized, unreasonable, and should be rejected.

f. The IOUs Have Not Been Authorized To Substitute Actual Incremental Administrative Costs For Purposes Of Determining Reentry Fees, And The IOUs' "Reservation" To Use Such Costs Is Unreasonable And Anticompetitive

In the IOU Advice Letters, the IOUs "reserve the right" to use the "actual incremental administrative costs of the Involuntary Return" for purposes of determining the reentry fee instead of administrative costs authorized in D.18-05-022. In D.18-05-022, the IOUs were authorized to use their respective per customer-fee for voluntary returns under Schedule CCA-SF for determining administrative costs of the involuntary return.³³ Quite simply, the Commission did not authorize the IOUs to reserve the right to use a different method for determining incremental administrative costs, especially a method that would likely produce a higher cost. To the contrary, especially with respect to PG&E, the Commission expected that per-customer administrative fees should be **lower**, but in any event should be justified and confirmed in each IOU's next general rate case.³⁴

The IOUs' proposal to use **actual** incremental administrative costs is problematic and unreasonable on several fronts. First, as noted throughout this protest and the General Rules, advice letters are simply not the place to propose substantive changes. Second, the use of actual

³² See, e.g., PG&E AL 5354-E at 61 (Proposed Section W.2). SCE and SDG&E propose similar language.

³³ See, e.g., D.18-05-022 at 4 ("[W]e adopt [the IOUs'] proposal and the corresponding per-customer fees of \$4.24 for PG&E, \$1.12 for SDG&E and \$0.50 for SCE.")

³⁴ See, e.g., D18-05-022 at 5 ("In their next GRC, each utility must identify the administrative fee as a separate item, describe its components and how it is calculated, and provide a comparison of its fee with that of the other major California utilities. Prior to the next GRC, each utility may decrease the administrative fee via a Tier 1 Advice Letter, but may not increase the fee via Advice Letter.")

incremental administrative costs leaves the reentry fee open-ended. Vague, open-ended references to unspecified “incremental administrative costs” provide no certainty for attaining an FSR adequate to fully cover reentry fees. The current “oddly wide range of [per-customer administrative cost] re-entry fees” among the IOUs signals a need for thorough review of what costs are included, how reasonable those costs are, and what “incremental” measurement is applied.³⁵ If the IOUs nevertheless wish to propose the use of actual increment administrative costs, the IOUs should propose this approach as part of a petition to modify D.18-05-022, where CalCCA and other stakeholders may formally respond to the proposal and where the Commission may adequately consider the proposal. To be clear, however, CalCCA is not in favor of the open-ended process associated with using actual incremental administrative costs, since an open-ended process creates greater risk and uncertainty.

g. The IOUs Have Inappropriately Established A Eight-Month Incremental Procurement Cost Period Instead Of A Six-Month Incremental Procurement Period, As Expressly Set Forth In D.18-05-022

Under the IOU Advice Letters, as proposed, the IOUs would calculate incremental procurement costs for the reentry fee at or about the sixtieth day following the involuntary return of customers, and such calculation would include an “additional” six-month period.³⁶ All told, under the IOUs’ proposal, the reentry fee would consist of roughly eight months of incremental procurement costs. This is contrary to D.18-05-022.

Under D.18-05-022, the Commission ordered that “the reentry fee for incremental procurement costs is to be based upon six months of incremental procurement, as calculated in Decision 13-01-021.”³⁷ To support this order, the Commission found that “[a] six-month notice period allows sufficient time for a utility to adjust its procurement portfolio to accommodate additional bundled load due to returning CCA customers.”³⁸ Although the Commission adopted the same calculation methodology as the Commission adopted for DA customers in D.13-01-021, the Commission explained why six months was used for CCA customers whereas eight months was used for DA customers.³⁹ In short, since CCA customers do not have the right to

³⁵ See D.18-05-022 at 5.

³⁶ See, e.g., PG&E AL 5354 (Proposed Rule 23; Section W.3.a.(2)).

³⁷ D.18-05-022 at 15 (Ordering Paragraph 5).

³⁸ D.18-05-022 at 13 (Finding of Fact 5).

³⁹ See D.18-05-022 at 7; internal citation omitted (In D.13-01-021, however, the Commission set the time period for calculating incremental procurement costs to cover eight months, rather than six months, in order to account for the additional two-month “safe harbor” period when DA customers could switch to a different service provider.”).

switch to a different service provider, there is no need to maintain the 2-month safe harbor period.

h. The IOUs' Proposal For Open-Ended Reentry Fee Liability Is Unreasonable, And Contrary To Statutory Directive And Commission Findings

In the IOU Advice Letters, the IOUs make conflicting statements about what liability Community Choice Aggregators may be exposed to for an involuntary return of their customers. On the one hand, the IOUs state that “[t]he Re-Entry Fees will be a binding estimate”⁴⁰ and that the “[t]he amount of the Re-Entry Fees will not be subject to true-up.”⁴¹ This language implies that the Community Choice Aggregator’s liability is circumscribed by the reentry fee. On the other hand, the IOUs’ respective CCA rule could be read, as modified by the IOU Advice Letters, as implying that the Community Choice Aggregator’s full payment of reentry fees is insufficient to discharge all liability. This is so because the IOUs have proposed to add the phrase “including any unpaid Re-Entry Fees” to the list of supposedly *other* charges associated with the obligation that “[t]he CCA shall be responsible for all utility costs associated with an Involuntary Service Change occurrence.”⁴²

The Community Choice Aggregator’s payment of the reentry fee (and any outstanding tariff-based service fees) should wholly satisfy its financial obligation to the IOU following an involuntary return of customers. The IOUs’ vague reference to “all utility costs” associated with an involuntary return is antiquated language in light of the Commission’s determinations in D.18-05-022 with respect to reentry fees. Prior to D.18-05-022, the Commission required a \$100,000 interim bond posting until the Commission fully implemented Section 394.25(e).⁴³ In light of D.18-05-022, there should be no question now that a Community Choice Aggregator’s liability in the event of an involuntary return of customers is set at the level of the reentry fee. In its resolution disposing of the IOU Advice Letters, the Commission should clarify the ambiguity raised by the IOU Advice Letters about the scope of potential costs for which a Community Choice Aggregator is obligated under an involuntary return of customers.

i. It Is Unreasonable For The IOUs To Have A Security Interest On Interest Income Generated By The Cash Deposit Made By Community Choice Aggregators

In the *Deposit Account Agreement* included in PG&E AL 5354-E, PG&E proposes that it be granted a security interest in moneys held in the Community Choice Aggregator’s account, including interest. Although it is not entirely clear, the agreement appears to contemplate that the Community Choice Aggregator would be entitled to the interest. For example, section 4 of

⁴⁰ See, e.g., PG&E AL 5354-E (Proposed Rule 23; Section W.3.a.).

⁴¹ See, e.g., PG&E AL 5354-E (Proposed Rule 23; Section W.3.).

⁴² See, e.g., PG&E AL 5354-E (Proposed Rule 23; Section T.2.).

⁴³ See generally, Commission Resolution E-4133 (2007).

the agreement specifies that the Community Choice Aggregator “shall also pay any taxes on interest income generated by the Deposit Account....” This approach is consistent with PG&E Rule 23, Section V.2.c. where PG&E pays interest to the Community Choice Aggregator on cash deposits. CalCCA believes that the deposit agreement should make clear that interest is earned by the Community Choice Aggregator. Additionally, the IOUs should not hold a security interest in interest earned on the deposit. The IOU's security interest should simply apply to the principal, which reflects the authorized FSR amount.

- j. CalCCA Does Not Object To The IOUs' Addition Of A Deposit With The IOU As Another Acceptable Form Of A Financial Security Requirement, But CalCCA Observes That This Additional Form Has Not Been Expressly Authorized By The Commission*

The IOUs propose that, in order to satisfy financial security requirements, a community choice aggregator may, in addition to the forms authorized in D.18-05-022, provide a cash deposit directly to the IOU.⁴⁴ CalCCA does not object to this form of satisfying the financial security requirements, but observes that this form has not been expressly authorized by the Commission and the conditions under which the deposit may be used by the IOU are lacking in clarity.

E. The IOU Advice Letters Violate The Commission's Advice Letter Rules

For reasons described above, and pursuant to General Rule 7.4.2(5), CalCCA protests the IOU Advice Letters on the grounds that the relief requested in the IOU Advice Letters requires is inappropriate for the advice letter process. General Rule 5.1 states that “[t]he 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.” Likewise, General Rule 5.2(2) states that a utility must file an application when “[t]he utility 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.” For these reasons, in accordance with General Rule 5.3, the Energy Division should, as a preliminary matter, reject without prejudice those portions of the IOU Advice Letter that are not appropriate for an implementing advice letter, and allow the IOUs to file their proposals in a formal proceeding.⁴⁵

⁴⁴ See, e.g., PG&E AL 5354-E (Proposed Rule 23; Section W(4) [Sheet 57]).

⁴⁵ General Rule 5.3 states, in pertinent part as follows: “Whenever the reviewing Industry Division determines that the relief requested or the issues raised by an advice letter require an evidentiary hearing, or otherwise require review in a formal proceeding, the Industry Division will reject the advice letter without prejudice. The utility may resubmit, as an application or other appropriate formal request for relief, the request contained in an advice letter that it has

Submittal of the IOUs' proposal in a formal proceeding will allow CalCCA and other interested parties to properly examine and address factual and legal issues associated with the IOUs' proposal. CalCCA believes that an evidentiary hearing could be required to address the IOUs' proposal – a procedural process that is not available through the advice letter process.⁴⁶ Among other things, an evidentiary hearing will be needed to address and test the factual issues discussed above. The IOUs justify their proposal based on factual assertions that have not been examined through discovery and tested in an evidentiary hearing, and it is therefore inappropriate to address the IOUs' proposal through the advice letter process.

F. The IOU Advice Letters Are Inappropriately Classified As Tier 2 Filings

The IOUs have designated the IOU Advice Letters as “Tier 2.”⁴⁷ Under the Commission's industry rules pertaining to advice letters, “matters appropriate for Tier 2” include, among other things, tariff changes that are expressly in accord with the authority granted to the utility.⁴⁸ The Commission states that Tier 3 categorization, on the other hand, is appropriate where, among other things, “[a] tariff change [is] in compliance with a statute or Commission order where the wording of the change does not follow directly from the statute or Commission order.”⁴⁹ Tier 2 advice letters are normally subject to Energy Division disposition, whereas Tier 3 advice letters are subject to disposition by Commission resolution.⁵⁰ As stated in the General Rules, “[a]n advice letter is subject to disposition by the reviewing Industry Division whenever such disposition would be a ‘ministerial’ act, as that term is used regarding advice letter review and disposition.”⁵¹

CalCCA believes that the IOU Advice Letters should be designated as Tier 3 filings, and the Commission should dispose of the IOU Advice Letters by Commission resolution, after due process and a reasonable opportunity has been provided stakeholders to inform the Commission's ultimate determination. Of particular note in this situation, the Commission has clearly stated that disposition by the Energy Division is not appropriate for matters that raise

withdrawn, pursuant to this General Rule, or that is rejected without prejudice on the grounds that the advice letter must be heard or reviewed in a formal proceeding.”

⁴⁶ See General Rule 5.2(1).

⁴⁷ See, e.g., PG&E AL 5354-E at 3.

⁴⁸ See Industry Rule 5.2 (General Order 96-B).

⁴⁹ Industry Rule 5.3 (General Order 96-B).

⁵⁰ See General Rules 7.6.1 and 7.6.2. See also Industry Rule 5.3(1).

⁵¹ General Rule 7.6.1 (citing D.02-02-049).

policy concerns or other substantive issues.⁵² In situations in which a proposed advice letter raises substantive issues that the Commission has not addressed, and where such issues need to be resolved through discretionary decisions, the implementing advice letter must be resolved through a Commission resolution.⁵³ CalCCA notes that the matters it brings forth in this protest raise policy concerns and address substantive issues.

It is also important to note that, with respect to the advice letters implementing the FSR for Electric Service Providers, which involved fewer contested issues than is anticipated in this context, the Commission used a resolution to dispose of issues.⁵⁴

PROCEDURAL COMMENTS AND REQUESTS

A. The Scope of The IOU Advice Letters Warrant Certain Additional Procedural Measures

CalCCA recommends a procedural path to adequately address the scope of the IOU Advice Letters. First, the IOUs should provide substitute sheets as described below. Second, the Commission should then host a workshop to facilitate discussion of the substitute sheets, then allow comments on the workshop. And finally, the Commission should dispose of any remaining issues through a resolution.

B. The IOUs Should Voluntarily Submit Substitute Advice Letter Sheets, Or The Energy Division Should Direct The IOUs to Do So

In this protest, CalCCA has identified certain errors, omissions and unauthorized requests contained in the IOU Advice Letters. CalCCA encourages the IOUs, as part of their reply to protests, to voluntarily agree to submit substitute advice letter sheets modifying the IOUs' request. This approach is consistent with what the IOUs regularly do with respect to advice letters. Of particular note, the IOUs voluntarily filed substitute advice letters responding to concerns expressed by Electric Service Providers about the IOUs' advice letters implementing D.11-12-018 (relating to Electric Service Provider Financial Security Requirements).⁵⁵

⁵² See D.02-02-049 at 17.

⁵³ See, e.g., Resolution E-3999 at 9 (addressing the various substantive issues implicated by the IOUs' municipal departing load advice letters).

⁵⁴ See Resolutions E-4479 and E-4591.

⁵⁵ See, e.g., PG&E AL 3983-E-A (February 3, 2012) at 2 ("On January 25, 2012, PG&E submitted its protest reply concurring with the Joint Protestors' recommendation and agreed to file a Supplemental Advice Letter adopting the modified language proposed by the Joint Protestors.")

If the IOUs fail to do so, CalCCA encourages the Energy Division to exercise its authority under General Rule 7.5.1 to request additional information from the IOUs, and, failing the provision of sufficient additional information from the IOU, its authority to reject the IOU Advice Letters.

C. The Commission Should Convene A Workshop And Implement Related Processes For The Purpose Of Clarifying Matters And Facilitating Consensus Positions

Given the large number of issues that have been discovered with the IOU Advice Letters, and the potentially contentious nature of these issues, CalCCA requests that the Commission hold a workshop in order to provide interested parties with an opportunity to have a full discussion. Holding a workshop would provide CCA programs and the IOUs an opportunity to further clarify and explain their respective interpretations of D.18-05-022 and other applicable law, address discrete issues that may be obstacles or stumbling blocks, and present their ideas about how to satisfy the FSR with the proposed instruments. Included among the discussion points are: (1) whether to develop standard terms for various instruments; (2) whether more specific language for the triggering event ("involuntary return") is needed than what is in the statute; and (3) whether the IOUs' fourth option for the FSR (posting cash directly to the IOU) is a reasonable option, and if so how best to implement it. The proceeding that culminated in D.18-05-022 did not address these issues. The IOUs' introduction of new requirements in the IOU Advice Letters calls for an additional process where parties are afforded an opportunity to address these requirements.

D. The Commission Should Dispose Of Remaining Issues Via A Resolution

As described above, disposition of the IOU Advice Letters via a resolution is appropriate, since disposition through a resolution is required for a Tier 3 advice letter and consistent with past treatment of issues surrounding the reentry fee and the FSR for Electric Service Providers. Many of the issues associated with the IOU Advice Letters were not addressed in D.18-05-022, and Energy Division staff was not delegated authority to resolve these issues. Thus, a vote of the Commission via resolution based on the process described above is an appropriate procedural mechanism to resolve the various implementation details associated with D.18-05-022.

To assist in the development of a comprehensive resolution, CalCCA recommends that the Energy Division allow stakeholders an opportunity to provide comments following the Commission-moderated workshop, described above. These comments could be narrow (*e.g.*, in response to direction from the Energy Division on specific issues/topics) or broad, at the Energy Division's discretion. But, in any event, post-workshop comments would allow stakeholders to summarize their positions and would improve chances that the draft resolution covers all pertinent issues/topics.

CONCLUSION

A copy of this protest is being served concurrently on the IOUs via e-mail. Likewise, to better ensure that affected CCA parties are aware of the substantive CCA-related issues implicated by the IOU Advice Letters, CalCCA is serving a copy of this protest on the service list for R.03-10-003 (the CCA rulemaking proceeding).

CalCCA thanks the Commission for its consideration of this protest.

Respectfully,

/s/ Beth Vaughan

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