January 11, 2019

VIA ELECTRONIC MAIL

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

Re: Opening Comments on Draft Resolution E-4977

Dear Mr. Randolph:

In accordance with Rule 14.5 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the notice accompanying Draft Resolution E-4977 ("Draft Resolution"), the California Community Choice Association ("CalCCA") hereby submits these limited opening comments on the Draft Resolution.

SUMMARY

The Draft Resolution flows largely from Commission Decision ("D.")18-12-003 and Senate Bill ("SB") 901. With respect to D.18-12-003, the Draft Resolution notes that "[o]n December 13, 2018, the Commission issued D.18-12-003 establishing a methodology for calculating a non-bypassable charge to collect revenue to pay for BioRAM procurement by the [investor-owned utilities ("IOUs")] through each utility's public purpose program charge."[1] CalCCA is a trade association representing operational community choice aggregation programs in California. CalCCA was an active party in the proceeding that led to the issuance of D.18-12-003.

With respect to SB 901, the Draft Resolution declares that it "…implements key provisions of SB 901, which [among other things] implements Pub. Util. Code § 8388, which requires the IOUs, [Publicly Owned Utilities], and [Community Choice Aggregators ("CCAs")] to offer contract negotiations and make all reasonable efforts to execute new or amended contracts that extend certain BioRAM and other bioenergy contracts by five years if those facilities agree to the feedstock requirement of BioRAM 2 ["Tree Mortality Contracts"]."[2]

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[1] Draft Resolution at 3-4. *See also* Draft Resolution at 17; Finding Paragraph 10 ("It is reasonable to allow any procurement expenses incurred pursuant to this Resolution to be collected through the BioRAM non-bypassable charge authorized by the Commission in D.18-12-[003].").

[2] Draft Resolution at 5. All further statutory references are to the Public Utilities Code.

While noting that CCAs are expressly included in SB 901 as potential counterparties to amended or extended Tree Mortality Contracts, the Draft Resolution fails to practically implement this statutory provision. By this omission, the Draft Resolution errs, and should be modified. The Draft Resolution should be modified to contemplate and allow for the inclusion of amended or extended Tree Morality Contracts with CCAs under the cost-recovery approach established in D.18-12-003. A failure to do so would run contrary to SB 901.

COMMENTS

Unlike Section 399.20.3 (added by SB 859), which limited Tree Mortality Contract procurement to the IOUs and publicly owned utilities, SB 901 expressly contemplates that CCAs may serve as counterparties under amended or extended Tree Mortality Contracts.[3] SB 901 brings the Tree Mortality Contract legislation in line with overarching principles expressed elsewhere by the Legislature to the effect that the Commission should "[m]aximize the ability of community choice aggregators to determine the generation resources used to serve their customers."[4] SB 901 continues a pattern set by the Legislature of providing self-procurement and other options for CCAs whereby CCAs may choose to implement statewide procurement mandates in a manner that respects local control.[5]

The Draft Resolution states that CCAs and small IOUs do not currently have BioRAM contracts.[6] Presumably based on this fact the Draft Resolution fails to include CCAs as potential counterparties for amended or extended Tree Mortality Contracts. The Draft Resolution nevertheless states that "[CCAs], however, shall integrate biomass facilities that use forest fuels from [High Hazard Zones] into their energy portfolio. The Commission will coordinate with the California Energy Commission and the state's Forest Management Task Force to stay informed of their SB 901 implementation progress."[7]

CalCCA understands that several of the Tree Mortality Contracts are associated with generation resources located within the service area of a CCA. As such, even though the current contract may

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3 *See* Section 8388 (added by SB 901). *See also* Draft Resolution at 10-11 (citing Section 8388).

4 *See, e.g.,* Section 380(a)(5) (defining legislative objectives with respect to the Resource Adequacy program). *See also* Section 366.2(a)(5) ("[CCAs] shall be solely responsible for all generation procurement activities on behalf of the [CCA's] customers, except where other generation procurement arrangements are expressly authorized by statute.")

5 *See, e.g.,* Section 454.51(d) (expressly providing a self-procurement option for CCAs with respect to renewable integration requirements).

6 *See* Draft Resolution at 12.

7 Draft Resolution at 13.

be with an IOU, there may be other factors that would motivate the counterparty to contract with a CCA, all things otherwise equal. Since the nonbypassable charge associated with amended or extended Tree Mortality Contracts will be collected from all customers, including CCAs' customers,[8] it is appropriate for CCAs to be available as potential counterparties under these contracts. This approach is consistent with SB 901, and it also aligns with cost-allocation and equity principles recently applied by the Commission.

In D.18-06-027, the Commission, based on similar concerns expressed by CCAs, revised a proposed decision "[t]o address [] potential inequity between investor-owned utilities and CCAs *** [and] to allow CCAs to create DAC-Green Tariff programs funded by GHG allowance revenues."[9] This is the same approach being requested by CalCCA in this instance. It would be inequitable to disallow CCAs the option of offering amended or extended Tree Mortality Contracts to generation resources, particularly ones located in their service areas, while at the same time mandating cost-recovery for these resources from the CCAs' customers. As rightly observed in D.18-06-027, "both groups of customers pay for the program" and "the potential benefits of the program should not be limited based on the retail energy choice of customers."[10] In D.18-06-027, the Commission also addressed the practical challenges of allowing CCAs the option to offer mandated programs under a universal cost-recovery approach. To ensure comparability and provide Commission oversight with respect to the distribution of funds to CCAs, D.18-06-027 established a formal (Tier 3 advice letter) process whereby program terms and conditions could be applied in a manner that best ensured CCAs would abide by all "rules and requirements adopted by [the] decision."[11]

In light of SB 901, and affirmation by the Legislature that CCAs should be considered as potential counterparties to amended or extended Tree Mortality Contracts, the Draft Resolution should be modified to accommodate the fact that a CCA might be the counterparty to an amended or extended Tree Mortality Contract. The framework used in D.18-06-027 provides a ready model to implement this modification. As such, CalCCA requests that the following Ordering Paragraph be inserted:

3. If the investor-owned utilities are unable to execute a new or amended contract that extends the contract term length for eligible BioRAM and other eligible biomass contracts, as described in Ordering Paragraphs 1 and 2, a community choice aggregator may enter into a contract with the eligible seller, subject to the following:

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8 *See* Draft Resolution at 17; Ordering Paragraph 10.

9 D.18-06-027 at 90.

10 D.18-06-027 at 87.

11 *See* D.18-06-027 at 104; Ordering Paragraph 17.

a. The contract will be subject to review pursuant to a Tier 3 advice letter filed by the community choice aggregator.
b. The contract must contain the feedstock requirements of BioRAM 2, and must otherwise contain terms and conditions that generally conform to the BioRAM contracts used by the investor-owned utilities, including the pricing limitations set forth in this decision.
c. Cost-recovery for the contract will occur via the methodology adopted in D.12-18-003, with a community choice aggregator recovering its costs in accordance with a process described in the advice letter.

CONCLUSION

CalCCA thanks the Commission for its consideration of these comments, and requests that the Ordering Paragraph, described above, be included in final Resolution E-4977.

Sincerely,

Beth Vaughan
Executive Director

Copy (via e-mail): Cheryl Lee, CPUC Energy Division
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