



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

FILED

04/10/19
04:59 PM

Order Instituting Rulemaking to Implement Senate
Bill 237 Related to Direct Access.

Rulemaking 19-03-009
(Filed March 14, 2019)

**REPLY COMMENTS OF
CALIFORNIA COMMUNITY CHOICE ASSOCIATION
ON THE ORDER INSTITUTING RULEMAKING**

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April 10, 2019

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Pursuant to the instructions set forth in the *Order Instituting Rulemaking* (“OIR”) issued on March 21, 2019, California Community Choice Association (“CalCCA”) respectfully submits the following reply comments on the OIR. Pursuant to the schedule set forth in the OIR, these comments are timely filed.

Based upon the opening comments of the parties and the comments made at the workshop, CalCCA provides the following reply, each more fully discussed below:

Implement a Multi-year Phase-in. CalCCA supports the recommendation of Southern California Edison Company (“SCE”) that the Commission should consider a multi-year, phased-in approach to help mitigate issues related to the proposed June 2019 implementation date.”¹ Pacific Gas and Electric Company (“PG&E”) also considers a multi-year phase in of the 4,000 GWh direct access (“DA”) departure.²

¹ SCE Opening Comments at 2. PG&E also supports a multi-year approach and states:

² “From a customer perspective, it may make sense to parse the new allocation into multi-year phases.” PG&E Opening Comments at 4.

Implementation of Processes to Prevent Cost-Shifting. CalCCA supports the PG&E proposal to adopt a process mirroring Resolution E-4907 to ensure no cost shifting.³ Any proposal that allows for cost-shifting should be denied.

Provide CCAs with Access to Necessary Planning Information. The Alliance for Retail Energy Markets (“AReM”) recommended that the Commission “incorporate an additional new step that requires the investor-owned utilities (“IOUs”) to provide notice to the Community Choice Aggregator (“CCA”) affected when a customer that is currently being served by that CCA affirms back to the IOU that they have elected to participate in the DA program and have been allocated space under the increased DA cap.”⁴ While CalCCA supports the acknowledgement that CCAs need to have adequate information, the proposal is insufficient. CCAs need additional information including complete access to the waitlist and concurrent information about expected DA load departures when a Notice of Intent is filed.

Increase the Transparency of the Waitlist. The Regents of the University of California (“UC”) request that the DA waitlists be made “public on an anonymous basis (e.g. revealing lottery position and associated MWh only).”⁵ CalCCA supports this additional transparency and notes that the list provided to each individual load-serving entity (“LSE”) should also indicate which accounts that LSE currently serves. The waitlist should be updated and provided as soon as possible after each update to the waitlist.

³ “If the Commission is inclined to continue with the proposed approach to begin the expansion of DA service starting in January 2020, PG&E proposes that the Commission adopt a process, on an interim and transitional basis, that mirrors the Resolution E-4907 transition process.” PG&E Opening Comments at 4.

⁴ AReM Opening Comments at 5.

⁵ UC Opening Comments at 4.

Allow for Reasonable DA-CCA Switching. CalCCA has initiated coordination efforts with DA customer groups to clarify an interim DA-CCA Switching approach. Clarification in Phase 1 should be adopted.

Ensuring Consistent PCIA Vintages for Customers. The Direct Access Customer Coalition (“DACC”) requests clarification to ensure that PCIA Vintages remain in place for customers that move between DA and CCA. CalCCA supports this approach.

I. WITHOUT COMMON SENSE CHANGES TO TIMING AND PROCESS, CCA CUSTOMERS WILL BEAR UNREASONABLE AND UNNECESSARY RISKS

Without modifications to the Staff Proposal, CCA customers would be asked to bear unreasonable and unnecessary risks due to CCAs’ lack of access to relevant information and – as a result – lack of ability to plan for load departures. CalCCA has requested information and procedures to appropriately plan for DA load departures. Appropriate and reasonable planning for load departure will allow CCAs, on behalf of their customers – who now are more than ten million Californians – to minimize any stranded costs from the departure of load to direct access. Such an outcome will benefit all of the remaining CCA customers without any resulting harm to the DA program or existing DA customers. The Commission has repeatedly highlighted that one customer exercising choice should not occur to the detriment of other customers. CalCCA agrees with this foundational policy. Moreover, the opening comments of various parties to this proceeding further highlight this need.⁶

⁶ In its opening comments, CalCCA requested two key elements regarding load departure and planning. First, CalCCA recommended the implementation of the E-4907 process for this 4,000 GWh load Departure. Second, CalCCA requested that “in the absence of the detailed waitlist information and in order to avoid disparate impact on any one CCA, . . . the maximum amount of load able to depart from any one CCA be the lesser of load currently on the existing waitlist, or its fair share of load.” CalCCA Opening Comments at 7 (emphasis added).

A. A Maximum “Fair Share” of Load Departures from Any One CCA Is Reasonable and Consistent with Commission Practices

In opening comments and at the workshop, parties have discussed what levels of load departures are reasonable amounts around which LSEs can plan. Commercial Energy in the workshop and Energy Producers and Users Coalition (“EPUC”) in their comments referred to the Commission’s historical decision to phase in DA in 2% batches.⁷ DACC states that a 2% load shift “should easily be accommodated under existing RA program rules.”⁸ Applying a limit on DA departure from any one CCA equal to 2% under the current 4,000 GWh expansion is reasonable and consistent with this Commission precedent. Without modifications to the Staff Proposal, the impact to any one CCA could be significantly higher. East Bay Community Energy (“EBCE”) will address this matter further in its reply comments.

B. The E-4907 Process for the Current Expansion of DA is Appropriate

The parties to this proceeding broadly commented on the waitlist and how this batch of DA departures would be best implemented. The proposals that result in January 2020 departures do not provide enough planning information to CCAs and will result in cost shifting. DACC goes so far as to assert that this cost shifting is acceptable. It is not.⁹

⁷ “In implementing SB 695, the Commission provided for a four-year phase-in of 35% for the first year, up to 70% in the second year, up to 90% in the third year, and up to 100% in the fourth year.” EPUC Opening Comments at 3, referencing D.10-03-022. These figures are equal to 2% expansions in DA per batch.

⁸ DACC Opening Comments at 6.

⁹ “Using the June 2019 lottery to assign the 4,000 GWh expansion to customers will mean that load-serving entities (“LSEs”) will not have information on DA switching until the 4th Quarter of 2019. Final RA load forecasts for the 2020 RA compliance year are due by mid-August and LSEs must complete any procurement that is needed to meet their year-ahead RA requirements by October 31. However, the 4,000 GWh expansion represents only about 650 MW to 700 MW of load (depending on the capacity factor of the load switched),[FN] which is less than 2% of the total August peak load for the three IOUs. [FN] Thus, this level of DA switching should be easily accommodated under existing RA program rules.” DACC Opening Comments at 6 (emphasis added).

CCA customers – who include low income, medical baseline, small businesses, and nonprofits and community organizations – should not bear any RA costs from the departure of large commercial or industrial customers to DA. Rather, the ESP who is receiving that customer should be responsible for the RA of that customer once the commitment to depart is made.

The DACC proposal highlights CalCCA’s concerns about the timing of the departure of the 4,000 GWh of expected DA load. Specifically, a 4th Quarter notification to CCAs of load departures in the 1st Quarter of the upcoming year will prevent CCAs from being able to reflect appropriate changes to resource adequacy (“RA”) requirements. CCAs would need to bear the costs associated with stranded RA procurement. Not only is this cost-shifting inappropriate, it is avoidable, contrary to Commission policy, and fundamentally fails to “protect against cross-subsidization paid by ratepayers.”¹⁰ Furthermore, CalCCA notes that the “2% of load” will not be allocated evenly across CCAs; it is likely to be concentrated in one or two CCAs’ service areas resulting in a disproportionate impact on those CCAs.

PG&E provides analysis supporting CalCCA’s position, and “PG&E proposes that the Commission adopt a process, on an interim and transitional basis, that mirrors the Resolution E-4907 transition process.”¹¹ Without this common sense modification, the timing of departures will not align with Commission requirements:

Given the timing of this OIR, DA providers seeking newly to serve or to increase their DA load in 2020 as a result of the DA expansion will not be able to meet the Commission’s requirements to participate in all aspects of the year-ahead RA process, including submitting load forecasts and annual year-ahead filings, prior to serving the newly served or expanded load.[FN] As such, without the DA provider’s mandatory participation in all aspects of the year-ahead RA process, and fulfillment of associated system, local, and flexible RA requirements, it will likely be assumed that the departing load will continue to be served by the IOUs or other

¹⁰ Public Utilities Code Section 707(a)(4)(A).

¹¹ PG&E Opening Comments at 4.

incumbent LSEs, who will then have to procure for that load. This potential cost shift and the resulting inequities in RA obligations is exacerbated given the recent adoption of multi-year (three-year forward) local RA requirements beginning with the 2020-2022 RA compliance years in Decision 19-02-022.¹²

Moreover, by implementing the expansion of the 4,000 GWh in January 2020, the Commission does not leave room for error. “SCE notes that the timing of a Commission Order in this proceeding, followed by prompt and accurate load forecast submittals to account for the load migration under this proceeding, ultimately leading to RA compliance requirements for 2020 (as well as 2021 and 2022 for local RA), will be a critical path. Any slip in timing at any step of the process has a significant potential to lead to the allocation of RA requirements and their resulting cost that are inappropriate.”¹³

Similarly, San Diego Gas and Electric Company (“SDG&E”) notes that: “Until appropriate notice of intent is received from customers expressing their intent to depart bundled load, SDG&E will continue to procure on their behalf to ensure continued system reliability.”¹⁴ While procuring on behalf of another entity may work in the case of an IOU which receives cost recovery, this is not an acceptable shifting of costs to CCAs. These outcomes are easily avoidable with modest modifications to the DA program.

Shell Energy North America (“SENA”) asserts that: “The expansion of direct access customer load under SB 237 is very different from the formation of a new CCA as discussed in Resolution E-4907. In that Resolution, the Commission established a timeline and process for CCA program implementation, including load forecasting by a CCA to comply with RA requirements.”¹⁵ CalCCA notes that Resolution E-4907 applies to all CCA departures. This

¹² PG&E Opening Comments at 3-4 (emphasis added).

¹³ SCE at 5 (emphasis added).

¹⁴ SDG&E Opening Comments at 4.

¹⁵ SENA Opening Comments at 8.

includes new CCA formations and CCA expansions of any size, including departures smaller than the 4,000 GWh proposed to depart to DA in this proceeding.

SCE and PG&E recommend multi-year phase-ins. If the Commission does not implement the proposed Resolution E-4907 process and instead proposes to implement any amount of load by January 2020, CalCCA would support this multi-year approach in order to allow for improved planning and accuracy of RA procurement.

C. Increased Waitlist Transparency Is Needed for Good Resource Planning and Mitigating Potential Cost Shifts

Several parties expressed interest in updating the DA waitlist for the SB 237 expansion. Access by the CCAs to the relevant waitlist information of that CCA's customers is essential. While CalCCA supports additional transparency in aggregated information, that aggregation is not a sufficient substitute for the waitlist. The CCAs are not asking for confidential customer information – these customers are already customers of the CCA. The distribution utility should not have access to a CCA's waitlist while the CCA serving that load and planning for that load does not. Over the longer term, it will be important to revisit the overall structure of the DA program to align development and handling of waitlists and other matters to bring them in to the new paradigm where CCAs serve the majority of load in their service territories. Furthermore, the waitlist should be updated and provided as soon as possible after each update to the waitlist.

Parties acknowledge that more data needs to be provided to CCAs. AReM acknowledged an additional step that is needed to ensure that the waitlist information is provided to CCAs:

AReM believes that the lottery process will need to incorporate an additional new step that requires the IOUs to provide notice to the Community Choice Aggregator ("CCA") affected when a customer that is currently being served by that CCA affirms back to the IOU that they have elected to participate in the DA program and have been allocated space under the increased DA cap. This new step is critical in

the RA process so that the impacted CCA is aware of its migrating customers and can adjust its forecasts and its resource procurement accordingly.¹⁶

SENA also notes the importance of evaluating how CCAs can receive relevant information:

“The Commission should consider whether statutory customer privacy requirements restrict whether and how customer-specific and/or aggregated load information can be provided to CCAs.”¹⁷ CalCCA supports the evaluation of this issue as soon as practical so CCAs are not unnecessarily precluded from having necessary information to plan for the loads they serve.

Another solution for waitlist transparency was provided by UC:

However, if the Commission prefers to have the bulk of SB 237 load transfers determined before 2020 Annual Resource Adequacy obligations are evaluated, the process could be expedited by making the IOU’s 2019 DA wait lists public on an anonymous basis (e.g. revealing lottery position and associated MWh only). This would allow Customers with lottery positions that are likely to be accepted under the expanded cap to explore their direct transaction options and the IOUs could begin notifying eligible customers immediately following the Commission’s decision, anticipated on May 30, 2019.¹⁸

CalCCA recommends that each CCA receive information about which loads on the waitlist are in their service territory so that they can plan for departures.

D. DA-CCA Switching Should Be Addressed in This Proceeding

In its opening comments, CalCCA identified an issue that CalCCA proposed be addressed in Phase 1 of this proceeding. The issue relates to switching by DA customers, and restrictions currently imposed by the IOUs on the ability of a DA customer to switch service to its CCA. As described by CalCCA:

The DA customers have been informed by the IOUs that if they switch to unbundled service provided by their CCA, they will no longer be able to later switch to an [Electric Service Provider (“ESP”)] without returning to the waitlist. In contrast,

¹⁶ AReM Opening Comments at 5.

¹⁷ SENA Opening Comments at 7.

¹⁸ UC Opening Comments at 4.

DA customers are able to switch between ESPs without limitations on choice or timing. This creates an artificial barrier for unbundled customers and is contrary to the Commission's stated DA policies.¹⁹

After explaining the legal and policy rationale for eliminating these artificial restrictions, CalCCA urged that this issue be addressed as part of Phase 1 of this proceeding, and noted that additional clarification would be needed regarding how capacity should be addressed or set-aside when a DA customer switches to its CCA so that the DA cap is not inadvertently exceeded. CalCCA has reached out to various DA customer groups, and understands that some of the groups will be filing individual reply comments on the DA-CCA Switching Issue. Attachment A to these comments is a letter of support from one customer on this proposal.

E. The Idea of Ensuring Fairness for Certain Entities Is Not New as Highlighted by the Small Multijurisdictional Utilities

CalCCA neither supports nor opposes the proposals of the California Association of Small and Multi-Jurisdictional Utilities ("CASMU"), rather, CalCCA notes that the Commission has a history of ensuring fair treatment regarding the departure of DA on smaller entities. As stated by CASMU:

The Commission has traditionally recognized the unique characteristics of the CASMU utilities and the significant differences between the CASMU utilities and the Large IOUs, routinely determining that 'the small size of [CASMU members] and the nature of their operations' make it inappropriate and burdensome for the Commission to impose certain requirements on CASMU members or require that the Commission allow CASMU members to take a more limited approach than that required for the Large IOUs.[FN] The Commission has noted that imposing certain planning requirements on CASMU members 'would only impose costs and inefficiencies on these small IOUs.'[FN]²⁰

¹⁹ CalCCA Opening Comments at 11. As further described hereunder, this issue is referred to as the "DA-CCA Switching Issue."

²⁰ CASMU Opening Comments at 6-7.

The current 4,000 GWh expansion of DA is occurring for the first time with CCAs now in operation. The procedures for the last expansion were decided in D.10-03-022, several months before the launch of the first CCA program.²¹ Consistent with the Commission’s exclusion of small and multi-jurisdictional utilities (“SMUs”), CalCCA asks that the Commission adopt measures to provide for fair treatment of CCAs at this time.²²

II. TECHNICAL MATTERS

A. CalCCA Supports Clear Data on the Allocation of Load

CalCCA supports the request of AReM that “the Commission specify in its proposed and final decisions in the first phase of this proceeding[FN] the exact quantity by which the current DA participation cap will be increased for each service territory of the investor-owned utilities (“IOUs”).”²³ In addition, as noted in CalCCA’s opening comments, the Commission will need to indicate other loads that are unavailable, such as DA loads in excess of the cap at this time and CalCCA Supports Maintaining Appropriate PCIA Vintages

DACC requests clarification to ensure that PCIA Vintages remain in place for customers that move between DA and CCA.²⁴ CalCCA supports this approach.

²¹ MCE Clean Energy (then Marin Energy Authority) launched service in May 2010.

²² While CASMU did not provide load figures for each SMU, it estimates that “23.96 GWh of the 4,000 GWh authorized by SB 237” would be allocated to them. (CASMU Opening Comments at 7.) If this represents 2% of their load, that would represent approximately 1,200 GWh of load served. Eight of the CCAs listed above are smaller than 1,200 GWh.

²³ AReM Opening Comments at 2.

²⁴ DACC Opening Comments at 8.

B. The Issue of PCIA Prepayment Should be Addressed in the PCIA Proceeding

PG&E raises a complexity regarding PCIA prepayment as a result of this decision. This matter should continue to be addressed in the PCIA Proceeding.²⁵

III. CONCLUSION

CalCCA thanks Assigned Commissioner Picker and Assigned Administrative Law Judge Powell for the opportunity to provide these reply comments on the OIR.

Respectfully submitted,

/s/ Elizabeth Kelly

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April 10, 2019

²⁵ “Additionally, the PCIA Decision 18-10-019 directed that parties develop, through working groups, a proposal to allow departed customers to pre-pay their obligations under the PCIA.[FN] This working group process is currently underway as part of Phase 2 of the PCIA proceeding, Working Group 2. Due to the complexities of DA expansion (e.g., newly expanded customer groups may comprise customers from multiple IOUs and CCAs, all with different “vintages” assigned under the PCIA), the pre-payment option considered in Decision 18-10-019 should be limited to DA and CCA customers at the time Decision 18-10-019 was issued. Requiring IOUs to negotiate with DA providers serving customers from this first phase of DA reopening and potential additional phases of DA expansion to negotiate would add significant complexity and cost.” PG&E Opening Comments at 7.

ATTACHMENT A

Customer Letter of Support for DA-CCA Switching Issue

From: Hans Uslar <uslar@monterey.org>

Sent: Tuesday, April 9, 2019 8:23 AM

To: mp6@cpuc.ca.gov; LR1@cpuc.ca.gov; MGA@cpuc.ca.gov; CR6@cpuc.ca.gov; marcelo.poirier@cpuc.ca.gov; Christine.powell@cpuc.ca.gov; Ehern.seybert@cpuc.ca.gov; Kathleen.blake@cpuc.ca.gov

Cc: Bonnie Gawf <gawf@monterey.org>; Hans Uslar <uslar@monterey.org>; Ted Terrasas <terrasas@monterey.org>; J.R. Killigrew <jkilligrew@mbcommunitypower.org>; Tom Habashi <thabashi@mbcommunitypower.org>; Kimberly COLE <cole@monterey.org>

Subject: Scope of Rulemaking 19-03-009; Support for Clarifying Direct Access Switching Rules

Administrative Law Judge Powell, Commissioners and Energy Division staff,

I write you today to express support for CalCCA's request that the Commission clarify direct access switching rules to enable direct access customers, like the City of Monterey, to take unbundled energy service from their local community choice aggregator without having to return to the direct access wait list if they later choose to switch to a direct access provider. The City of Monterey supports having the widest possible options for procuring energy resources and believes the modest changes requested by CalCCA will remove barriers for us and other DA customers exploring service options with Monterey Bay Community Power.

I also ask that the issue be addressed by the Commission expeditiously within the Commission's first decision in the docket in order to facilitate the City of Monterey's ongoing energy procurement efforts to achieve our climate action goals.

Thank you.

Hans Uslar
City Manager
City of Monterey
(831) 646 - 3884