

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

Order Instituting Rulemaking to Review,  
Revise, and Consider Alternatives to the  
Power Charge Indifference Adjustment

R.17-06-026  
(Filed June 29, 2017)

**JOINT RESPONSE OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION,  
COMMERCIAL ENERGY, PACIFIC GAS AND ELECTRIC COMPANY (U 39 E),  
SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E), AND SOUTHERN  
CALIFORNIA EDISON COMPANY (U 338 E) TO MOTIONS FOR  
EVIDENTIARY HEARINGS IN WORKING GROUP 3**

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April 17, 2020

**JOINT RESPONSE OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION,  
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**I.**

**INTRODUCTION**

Pursuant to Rule 11.1(e) of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”), the California Community Choice Association (“CalCCA”), Commercial Energy (“Commercial”), Pacific Gas & Electric Company (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), and Southern California Edison Company (“SCE”) respectfully file this Joint Response to the Motions for Evidentiary Hearings (the “Motions” or “Hearings Motions”) of Protect Our Communities (“POC”) and Utility Customer Action Network (“UCAN”), filed April 3, 2020.<sup>12</sup> The Hearings Motions do not justify the need for evidentiary hearings in Working Group (“WG”) 3. The Hearings Motions do not identify any material facts in dispute that require hearings. Rather, the contested material issues in WG 3 are policy and legal in nature, the resolution of which do not require hearings.

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<sup>1</sup> Pursuant to Rule 1.8(d), counsel for SCE confirms that counsel for CalCCA and for Commercial have authorized SCE to file this Joint Response on their behalf.

<sup>2</sup> Of the approximately 74 parties in this proceeding, only POC and UCAN seek evidentiary hearings in WG 3.

The Commission established WG 3 as a consensus-building process led by the Co-Chairs. All parties had adequate notice and fair opportunity to be heard in workshops and through informal and formal comments, which are part of the record. This process has produced a robust record on all matters within scope to enable the Commission to proceed to a final decision based on the submissions of parties to date. To the extent additional work on WG 3 matters is warranted (*e.g.*, implementation details or on Local Resource Adequacy (“RA” in case of a decision on a Local RA Central Procurement Entity), the Commission should order additional workshops and/or further comments or briefing, as appropriate.

Accordingly, the Hearings Motions should be denied.

## II.

### **SUMMARY OF THE HEARINGS MOTIONS**

#### **A. The POC Motion**

POC’s Motion argues that evidentiary hearings are needed for due process reasons, and to resolve material facts purportedly in dispute. POC asserts that the WG 3 process was not transparent and that parties did not have a meaningful opportunity to participate. POC alleges the Co-Chairs spent most of their time on topics other than portfolio optimization and shareholder responsibility and failed “to find facts” or develop “complete proposals” on these issues. POC believes evidentiary hearings are needed to resolve a dozen questions regarding investor-owned utility (“IOU”) shareholder responsibility, Local RA, and ethical walls for IOU bidding in resource attribute auctions. POC’s Motion offers to “illustrate” through “examples” in testimony and hearings POC’s suppositions about IOU management and shareholder responsibility, Local RA markets, and the Commission’s ability to oversee the IOUs.<sup>3</sup>

#### **B. The UCAN Motion**

The UCAN Motion argues that the allocation of PCIA-eligible resources’ costs and benefits across customers is “distorted.” UCAN alleges various discrepancies in the IOUs’ use

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of consumption data purportedly causing cost shifts among customers. UCAN requests evidentiary hearings to introduce “quantitative data” and “explore” various questions on cost allocation. UCAN also asks for evidentiary hearings to “clarify” whether Generation Revenue Ratios from Phase 2 of each IOU’s General Rate Case (GRC) are being trued up to actuals.<sup>4</sup>

### III.

#### **THE HEARINGS MOTIONS SHOULD BE DENIED**

Pursuant to Rule 12.3 of the Commission’s Rules of Practice and Procedure, the Commission may decline to set evidentiary hearings if there are no material contested issues of fact, or if the contested issue is one of law. As moving parties, POC and UCAN have the burden of specifying the material facts in dispute that require hearings.<sup>5</sup> The POC and UCAN Motions fail to meet their burden.

#### **A. The Hearings Motions Do Not Identify Any Material Facts in Dispute**

The Hearings Motions do not identify any material facts in dispute in WG 3. Neither Motion states with sufficient clarity what disputed material facts would be the subject of a hearing. Neither moving party demonstrates what disputed material facts it would test through cross-examination. Rather, each Motion poses various *questions* that POC or UCAN believe the Commission should address in resolving the WG 3 – questions that call for *conclusions* on factual and policy or legal grounds.<sup>6</sup> The Motions do not tender any *evidence* but merely offer to “prove” through hearings the conclusory suppositions of the moving parties.

As the Commission explained in D.20-03-019,<sup>7</sup> nothing in the WG 3 process prevented POC from documenting the answers to the questions it raises in its Motion, or “illustrating

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<sup>4</sup> See generally UCAN’s Motion.

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<sup>6</sup> See POC’s Motion, pp. 8-9, 10-11, 12; see also UCAN’s Motion, p. 8.

<sup>7</sup> See D.20-03-019 (*denying POC’s motion for evidentiary hearings in WG 1*) at p. 25; see also D.04-05-033 at p. 11, explaining “[t]he United States Supreme Court has repeatedly held that an applicant who seeks a hearing before an administrative body must ‘meet a threshold burden of tendering evidence’ (citing *Costle v. Pacific Legal Foundation*, 445 U.S. 198, 214 (1980); *Weinberger v. Hynson et al.*, 412 U.S. 609, 620-21 (1973)).

through examples” its theories on incentives and penalties for portfolio optimization, or Local RA markets, or the efficacy or costs of ethical walls. Nothing prevented UCAN from introducing quantitative data to the extent relevant to the issues at hand. If UCAN needed clarity on the IOUs’ Generation Revenue Ratios, it could have sought clarification during workshops or in post-workshop comments or issued data requests. Hearings are not appropriate to “clarify” or “explore” issues.

This Commission has long recognized that due process does not require a hearing that serves no useful purpose or merely sharpens the issues or more fully develops the facts.<sup>8</sup> Rather, there must be disputed issues of material fact to merit a hearing. There are no such facts here. The Motions fail to justify the need for hearings and should be denied.

**B. POC’s Motion Fails to Demonstrate a Lack of Due Process**

POC’s Motion makes several unfounded allegations in its plea for evidentiary hearings. First, POC alleges that the Commission improperly delegated its statutory duties to the WG 3 Co-Chairs. Nothing in D.18-10-019, ordering a Phase 2 of this proceeding,<sup>9</sup> or the Phase 2 Scoping Memo<sup>10</sup> supports the claim that the Commission delegated its statutory duties to the WG 3 Co-Chairs. Appointing the Co-Chairs to lead the process on the WG 3 issues is not tantamount to a delegation of statutory authority. The WG 3 process is the same process used for WG 1, resulting in two Commission decisions,<sup>11</sup> and for WG 2 (proposed decision pending).

POC also alleges that the WG 3 process failed “to protect the viability of community choice aggregation.”<sup>12</sup> It is surprising that POC renews this argument here, given that POC should be well-aware the Commission already considered and rejected this argument.<sup>13</sup>

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<sup>8</sup> See D.04-05-033, *supra* at pp. 10-12.

<sup>9</sup> See D.18-10-019 at Ordering Paragraph 14, ordering a second phase “to establish a ‘working group’ process to enable parties to further develop a number of proposals for future consideration by the Commission.”

<sup>10</sup> See Scoping Memo and Ruling of Assigned Commissioner (issued February 1, 2019 in R.17-06-026) at Sections 2.3, 4.1 and 4.2.

<sup>11</sup> See generally D.19-10-001 and D.20-03-019.

<sup>12</sup> See POC’s Motion at Section III, pp. 3-5.

<sup>13</sup> See D.19-08-014, pp. 11-12 (*rejecting POC’s Application for Rehearing of Resolution E-4981*) explaining “Section 366.2 allows for the formation of CCAs, and entitles utility customers in a local

More broadly, POC claims that WG 3 process did not operate with sufficient transparency to provide due process. POC complains that a majority of work to reach consensus in WG 3 was done amongst the Co-Chairs (who worked with their constituencies); that other parties were not given “timely descriptions” of the Co-Chairs’ meetings, or invited to regularly participate in, or have input into the agendas of, the Co-Chair meetings; and that other parties did not have the same information and opportunity to influence the Co-Chairs’ proposals in the same way each Co-Chair did.<sup>14</sup>

POC raised similar concerns with the WG 1 process, which the Commission recently dismissed, explaining:

As of today, there are 74 parties, excluding information-only parties, on the service list of this proceeding. It will be neither feasible nor efficient to develop proposals with concurrent participation of all parties. That is why the Commission designated co-chairs and provided opportunity for comments attached to the reports; and allowed for additional comments in response to co-chairs’ requests. We find that working group framework is the proper structure to tackle technical issues such as the ones being considered in this proceeding. All participants should use this framework productively.<sup>15</sup>

For similar reasons, POC’s due process arguments regarding WG 3 should be rejected.<sup>16</sup> WG 3 followed a widely accepted practice at the Commission of building a robust record through a documented process, whereby certain parties lead with the objective of building consensus and identifying non-consensus among parties, prepare presentations and conduct

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*(continued from previous page)*

communities to aggregate their electric load with CCAs.[] But nothing in the statute requires the Commission to protect the economic viability of CCAs or ensure they remain viable concerns. And POC fails to identify any statutory provision that imposes such a requirement.” (citations omitted)

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<sup>16</sup> See also Phase 2 Scoping Memo and Ruling of Assigned Commissioner (issued February 1, 2019 in R.17-06-026) at p. 14, noting “[i]n short, the best opportunity for parties to materially influence the outcome of this working group process is to provide a consensus proposal in their final reports to the Commission.”

workshops, take informal comments, and file reports. All parties had adequate notice and fair opportunity to be heard in WG 3 workshops and through informal and formal comments, which are part of the record.<sup>17</sup> This process has produced a robust record on all matters within scope to enable the Commission to proceed to a final decision based on the submissions of parties to date.

To the extent additional work on WG 3 matters is warranted (*e.g.*, implementation details or on Local RA in case of a decision on a Local RA Central Procurement Entity<sup>18</sup>), the Commission should order additional workshops and/or further comments or briefing, as appropriate.

**C. UCAN’s Motion Raises Issues Outside the Scope of WG 3**

Insofar as UCAN’s Motion calls into question cost allocations pursuant to the PCIA methodology, it is outside the scope of WG 3 and appears to be an improper collateral attack on D.18-10-019.<sup>19</sup> The IOUs’ use of consumption data from their advanced metering infrastructures (“AMI”) is also outside the WG 3 scope. Moreover, as UCAN’s Motion concedes, Generation Revenue Ratios are set in Phase 2 of each IOU’s GRC. The WG 3 scope is substantial. The Commission should reject UCAN’s attempt to unnecessarily broaden it.

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<sup>17</sup> See D.20-01-030 (*denying rehearing of D.18-10-019*) at p. 6 “[i]t is well established that due process requires ‘adequate notice’ and an opportunity to be heard. ‘Due process as to the commission’s initial action is provided by the requirement of adequate notice to a party affected and an to be heard before a valid order can be made.’” *citing People v. Western Airlines, Inc. (1954) 42 Cal.2d 621, 632; see also D.19-08-014 (denying POC’s application for rehearing of Resolution E-4981)* at p. 9 “[d]ue process requires that parties be given adequate notice and opportunity to be heard. But it does not require the exact same process or procedure in every case. What process or procedures are required is flexible and may vary depending on the circumstances. For example, not every situation requires a formal hearing accompanied by the full rights of confrontation and cross-examination. The key is that parties have an opportunity to participate at a meaningful time and in a meaningful manner.” (citations omitted)

<sup>18</sup> See generally Proposed Decision on Central Procurement of the Resource Adequacy Program (issued March 26, 2020 in R.17-09-020).

<sup>19</sup> See generally D.18-10-019, updating the PCIA methodology and cost allocations thereunder.

Respectfully submitted,

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RUSSELL A. ARCHER

/s/ Janet S. Combs  
By: Janet S. Combs

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SOUTHERN CALIFORNIA EDISON  
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On behalf of California Community Choice  
Association, Commercial Energy, Pacific Gas  
and Electric Company, San Diego Gas &  
Electric Company, and Southern California  
Edison Company

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Insofar as UCAN’s Motion calls into question cost allocations pursuant to the PCIA methodology, it is outside the scope of WG 3 and appears to be an improper collateral attack on D.18-10-019.<sup>19</sup> The IOUs’ use of consumption data from their advanced metering infrastructures (“AMI”) is also outside the WG 3 scope. Moreover, as UCAN’s Motion concedes, Generation Revenue Ratios are set in Phase 2 of each IOU’s GRC. The WG 3 scope is substantial. The Commission should reject UCAN’s attempt to unnecessarily broaden it.

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<sup>17</sup> See D.20-01-030 (*denying rehearing of D.18-10-019*) at p. 6 “[i]t is well established that due process requires ‘adequate notice’ and an opportunity to be heard. ‘Due process as to the commission’s initial action is provided by the requirement of adequate notice to a party affected and an to be heard before a valid order can be made.’” *citing People v. Western Airlines, Inc. (1954) 42 Cal.2d 621, 632; see also D.19-08-014 (denying POC’s application for rehearing of Resolution E-4981)* at p. 9 “[d]ue process requires that parties be given adequate notice and opportunity to be heard. But it does not require the exact same process or procedure in every case. What process or procedures are required is flexible and may vary depending on the circumstances. For example, not every situation requires a formal hearing accompanied by the full rights of confrontation and cross-examination. The key is that parties have an opportunity to participate at a meaningful time and in a meaningful manner.” (citations omitted)

<sup>18</sup> See generally Proposed Decision on Central Procurement of the Resource Adequacy Program (issued March 26, 2020 in R.17-09-020).

<sup>19</sup> See generally D.18-10-019, updating the PCIA methodology and cost allocations thereunder.

Respectfully submitted,

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