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

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| Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment. | R.17-06-026 |

# OPENING COMMENTS OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION ON THE PROPOSED DECISION ADOPTING A FRAMEWORK AND EVALUATION CRITERIA FOR THE POWER CHARGE INDIFFERENCE ADJUSTMENT PREPAYMENT AGREEMENTS

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Pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, California Community Choice Association[1] (CalCCA) hereby submits these comments on the *Proposed Decision Adopting A Framework And Evaluation Criteria For The Power Charge Indifference Adjustment Prepayment Agreements* (Proposed Decision or PD) in the above-captioned proceeding. CalCCA appreciates the effort put forth by the co-leads and Commission staff. Unfortunately, that effort will have been largely in vain unless critical modifications to the proposed framework for prepayment are adopted.

## SUBJECT MATTER INDEX

CalCCA supports the Commission's original determination that prepayment of Power Charge Indifference Adjustment (PCIA) obligations is a valuable method to protect customers

[1] California Community Choice Association represents the interests of 20 operational community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, CleanPowerSF, Clean Energy Alliance, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Monterey Bay Community Power, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

from rate shock and provides for a stable market.[2] We concur with the majority of positions taken and rationale offered by the Direct Access Customer Coalition and the Alliance for Retail Energy Markets (DACC/AReM) in developing the Final Report submitted to the Commission on December 10, 2019. However, this Proposed Decision misses an opportunity to advance the process of implementing buyouts and would make successful prepayments difficult. While this meets the aims of the investor owned utilities (IOUs) – who advocated against prepayment being considered as an option – it neglects the specified intent of D.18-10-019. CalCCA makes the following recommendations to provide for a prepayment process that is transparent, equitable, and ultimately yields the benefits called for in D.18-10-019.

## I. TRUE UPS ARE EXPLICITLY DISALLOWED BY D.18-10-019 AND PROPOSALS TO INTRODUCE ONE ARE APPROPRIATELY DENIED BY THE PROPOSED DECISION

The PD correctly upholds the unambiguous directive in D.18-10-019 that "The prepayment shall not be trued-up".[3] Despite this undeniable conclusion, parties introduced a variety of true-up mechanisms throughout Working Group 2. Indeed, SDG&E's Non-Prepayer Protection Reserve "NPPR" and TURN's "Circuit Breaker" are thinly-veiled proposals to re-litigate Track 1 of this proceeding by introducing a true-up – albeit under a different name. As noted in CalCCA's comments on the Co-Chairs Final Report, there are additional flaws in each of these proposals. SDG&E's proposal would artificially inflate the required prepayment amount to offer an additional benefit to bundled customers, violating the statutory principle of customer indifference. TURN's proposal, though symmetrical in its application of a true-up, would neuter the effectiveness of prepayments by eroding their principle benefit: certainty. As

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[2] D.18-10-019, Conclusion of Law #25 "An option to prepay would provide simplicity and predictability for departing load customers."

[3] D.18-10-019, Ordering Paragraph 11.c. Available online at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M232/K687/232687030.PDF

the PD itself states, any buyout option involves a tradeoff between accuracy and certainty. TURN's version of a true-up would only apply if the forecasted PCIA deviated significantly from the annually-calculated one (e.g. prepayment retro-actively appears 10% too low or too high), which in practice would only protect customers from minor price volatility while leaving them exposed to any larger swings. Load serving entities (LSEs) seeking rate stability for their customers opposed the concept of a true-up in Track 1 and continue to do so now. However, parties' opinions on this topic are largely irrelevant at this point as the matter has been decided in D.18-10-019.

Protect our Communities provides a clear definition, "SDG&E's proposal contains the signature elements of a true-up mechanism. A true-up is the periodic accounting of the difference between a forecasted amount and a realized amount. SDG&E's proposal would include an accounting of the difference between the forecasted PCIA rate (the prepayment amount) and the realized PCIA rate."[4]

Shakespeare may have asked if a true-up, by any other name, would undermine the certainty of a prepayment. The undeniable answer is "yes." CalCCA appreciates the PD's adherence to the Ordering Paragraph of the Track 1 PCIA Decision.

## II. THE PROPOSED DECISION PRUDENTLY IDENTIFIES A FORECAST OF PCIA OBLIGATIONS AS THE FIRST STEP

The Proposed Decision incorporates the first determination on prepayment in D.18-10-019, that "[t]he prepayment shall be based on a mutually acceptable forecast of that customer's future PCIA obligation;"[5] To implement this directive, the PD proposes to first

4 Formal comments of Protect our Communities Foundation on Working Group 2 Final Report. At pp. 2-3.

5 D.18-10-019, Ordering Paragraph 11.a. Available online at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M232/K687/232687030.PDF

establish a “starting point” for calculation of the PCIA prepayment price that would rely on data provided by the IOU, publicly available information and, if relevant, data from the prepayer. CalCCA supports this approach with a clarification: LSEs should be provided with relevant cost information from the IOU as a precursor to pursuing prepayment.

Recognizing IOU concerns about the challenge to forecast future market conditions and labor time required to develop and negotiate a comprehensive prepayment application, CalCCA recommends a streamlined approach. While the PD lists the relevant data and available sources to forecast future values of renewable energy credits (RECs), Resource Adequacy (RA), and brown power, IOUs should not be required to produce that full analysis at the outset. Instead, they should only be required to provide a schedule of their annual total PCIA portfolio costs, and products delivered.

Under this approach, LSEs would submit uniform prepayment data requests to the IOUs which would be limited to the total PCIA eligible costs in their relevant vintage(s) and products delivered. The IOUs would not be required to develop forward price curves or provide other assumptions about the future value of various attributes in their portfolios. The data provided would be limited to the gross forecasted costs of the portfolio, in other words, the PCIA amount *prior* to any financial credits based on the market price benchmark. Generation resources using natural gas fuel would rely on industry accepted forward price curves to impute future fuel costs. This cost data should encompass the full term of PCIA eligible resources, or, at a minimum, 20 years into the future. IOUs would be compelled to provide responses to this uniform prepayment data request in a timely fashion.

This initial data would provide LSEs with insight into whether or not a prepayment is a feasible option to begin with, and would reduce inefficiencies from many LSEs seeking prepayment only to later understand that the amount they would be required to pay is infeasible. To access this initial cost schedule, LSEs would not be expected to pay application fees, jump through "viability screens" or win a "lottery" to have access to this information.

This step will provide a uniform level of information to all LSEs which will ultimately benefit customers. In addition, some LSEs may be dissuaded from further pursuing prepayment after receiving this information. This will naturally reduce the administrative burden cited by utilities.

## III. THE PROPOSED DECISION'S RECOMMENDATION THAT IOU LABOR COSTS SHOULD ONLY BE CHARGED TO THOSE CUSTOMERS WHO BENEFIT HAS MERIT

CalCCA strongly supports the principle that customers should only be charged for services that provide them a benefit. To this end, the PD proposes that community choice aggregator (CCA) customers pay for all labor hours of both IOU and CCA staff to develop, negotiate, and submit prepayment applications. However, the PD fails to recognize the benefits that prepayments provide to bundled customers. As acknowledged in D.18-10-019, "prepayments will serve as a longer-term measure to reduce the size of the Joint Utilities' PCIA portfolios."[6] It appears the utilities need any and all assistance to reduce their above-market costs, with SDG&E's $1.1B portfolio $375M (34%) above-market, SCE's $2.9B portfolio $830M (28%) above market, and PG&E's $5.5B portfolio a full $2.2B (40%) above-market.[7]

The certainty afforded by prepayments cuts both ways: bundled customers and IOU shareholders enjoy absolute certainty regarding the costs they will recover from departed load. IOUs have cited this risk as rationale for requiring a higher return on their investments. In 2020

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6 D.18-10-019, at p. 91. Available online at: https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M232/K687/232687030.PDF

7 *Ibid.* at pp. 43-44.

Cost of Capital Application, IOUs pointed to the existence of CCAs as rationale for approving a higher return on equity, with SCE stating "it is not yet clear whether the outcome [of the PCIA Rulemaking] will result in adequate cost recovery from all customers."[8] A prepayment guarantees that outcome, and grants the utility the opportunity to calculate and receive precise cost recovery they deem adequate. In addition, a lump-sum payment to the utility improves IOU financial metrics and provides capital that can be used for the contract re-negotiations and buydowns currently being evaluated in Working Group 3 or any other Commission-approved purpose that benefits the utility.

The IOUs have experienced reduced labor costs due to the existence of CCAs. By performing procurement and compliance functions for a growing population of the State, CCAs alleviate the need for IOU labor to provide those same services. Indeed, CCAs today serve more load in PG&E's distribution territory than the utility itself. The impact of those services is readily apparent. PG&E has not issued an RFO for general RPS in over five years – since January of 2015.[9] Their RPS labor expenses have declined by 33%, from 72 full-time staff in 2015 to 48 in 2019.[10] Taken in sum, the reduction in annual RPS labor hours from 2015 to 2019 amounts to nearly 30,000 person-hours. CalCCA welcomes a thoughtful discussion on how to most equitably allocate those savings amongst CCAs.

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8 Application A.19-04-014, Exhibit SCE-01, at p. 22, lines 4-5.

9 PG&E 2014 RPS Schedule, available online at: https://www.pge.com/en/b2b/energysupply/wholesaleelectricsuppliersolicitation/RFO/RPS2014.page

10 2019 California Renewables Portfolio Standard Annual Report, at p. 41, available online at: https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/2019%20RPS%20Annual%20Report.pdf

## IV. ALLOWING UTILITES TO PROPOSE AND ENFORCE "VIABILITY SCREENS" COULD UNDERMINE THE ABILITY TO IMPLEMENT THE COMMISSION'S PREPAYMENT SOLUTION

The PD must not grant to the IOUs the role of arbiter in the prepayment process. Commission staff must remain cognizant of the fact that the IOUs actively advocated against the consideration of the prepayment tool in Phase 1 of the PCIA proceeding. Having one counterparty opposed to transacting makes coming to terms difficult; granting that party the authority to dictate the terms of a potential transaction renders it nearly impossible. This is especially striking as each IOU already has in its New Municipal Departing Load tariff the option to have the PCIA and other departing load obligations paid as a negotiated lump sum.[11]

Indeed, the for-profit utilities are in an enviable position. If market values decline, they charge a higher PCIA. But, if market values increase sufficiently such that PCIA goes negative (e.g. results in a refund to departed customers) the IOUs' advocate against customer indifference by arguing that no refunds be made to the departed customers.[12] Departed customers serve as a free hedge in this "heads I win, tails you lose" scenario.

Giving the IOUs the authority to propose tailored terms that must be met to enter into prepayment negotiations provides them with another tool to subvert the potential for prepayments. The Phase 1 Decision determined that prepayments offer customers certainty and rate stability. It did not propose to reduce that certainty by first requiring that a customer's load serving entity win an IOU-administered lottery as proposed by PG&E. Yet, the proposal supported in the PD would first require this stroke of luck. Then, the PD would allow for an egregious requirement that LSEs provide collateral up-front, in the amount of *10 years* of PCIA

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[11] Rulemaking (R.) 17-06-026. AReM/DACC Exh. AD-1 at IV.C 27-28

[12] Decision Adopting Settlement Agreement Resolving Negative Indifference Amount. Approved Dec. 13, 2019. Available online at: http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M322/K150/322150633.PDF

obligations.[13] PCIA charges for moderately-sized CCAs can reach $100 M per year; thus the collateral required would be in excess of a billion dollars for a CCA of moderate load. PG&E proposes that "investment grade" credit be a requirement of the counterparty: that is, they propose to only do business with entities whose credit is superior to theirs.

Finally, the LSE would be subject to a utility-administered evaluation of their financial fitness before discussions around prepayment could even begin. The irony of this proposal in PG&E's distribution territory is particularly galling: that an IOU just emerging from bankruptcy will determine whether a local government agency is a worthy and viable counterparty. LSEs in Northern California are afforded no such discretion. If the next decade sees the same trend of the last two – another PG&E bankruptcy filing – the counterparty to all Northern CA prepayments may not be a viable business entity. CCAs and ESPs are subject to acute counterparty risk but have no other entity to transact with. In addition, both CCAs and ESPs are required to post a bond - which is re-assessed based on market prices - to protect bundled customers in the event the CCA or ESP ceases operation. IOUs are not required to post a corresponding bond to protect customers pursuing retail choice, leaving those customers exposed to potential damages from IOUs becoming insolvent.

## V. FLEXIBLE PAYMENT FRAMEWORKS, INCLUDING SLICE-OF-LOAD AND SEGMENTS SHOULD BE SUPPORTED

Flexible prepayment arrangements best facilitate eventual agreement between two counterparties. The co-chairs of Working Group 2 disagreed on many topics, but one area of consensus was to allow – but not *require* – a segment of the PCIA (e.g. 5 years of a 40-year obligation) to be prepaid. The PD's narrow interpretation of the Scoping Memo and subsequent

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[13] Informal comments of PG&E on the PCIA Phase 2 Working Group 2, May 31, 2019 workshop, pp. 2-3.

determination that segments of PCIA payment are out of scope further evidences a deep reluctance to develop a prepayment framework that will actually be used. Segmented prepayment would afford certainty to both counterparties for a limited term.

Sonoma Clean Power developed a proposal for prepaying a fixed percentage of PCIA, a tool that has come to be called "slice of load." For example, an LSE could prepay 60% of their forecasted PCIA obligation and leave the other 40% assessed annually. CalCCA supports including this as an option as it increases the feasibility of prepayments and reduces many of the forecasting risks identified in the PD. Parties opposed to any prepayment based on perceived risk should take solace in this approach as it prevents the need for all-or-nothing prepayment of PCIA. As discussed in earlier comments, CalCCA feels this tool will help mitigate forecast risk for all parties and will not force LSEs to finance 100% of their PCIA obligations – which can be very significant. IOUs oppose this tool also and cite the administrative complexity of updating billing systems to implement it. However, CalCCA notes that utility-sponsored proposals under consideration in Working Group 3 - including allocations of various attributes of their portfolios by year – are equally complex. The PD's finding that this is outside of scope precludes an arrangement that could bring rate stability to millions of Californians.

The Utility Consumer Action Network (UCAN) proposes a "future-proofing" concept to allow LSEs the ability to take on PCIA obligation for their customers. CalCCA agrees that this tool would allow LSEs to offer innovative rate designs that may be very useful in encouraging DER and adoption of other innovative business models. In addition, it would provide for additional flexibility for LSEs seeking to protect their customers from rate volatility. Similar to the bank financing approach and slice of load tool, CalCCA sees no downside in considering these as options. While the PD acknowledges the introduction of this concept, it provides no further guidance.[14] While this may indicate that the Commission finds this option already available to LSEs, clarity is needed.

## VI. THE PROPOSED DECISION VIOLATES THE PRINCIPLE OF INDIFFERENCE BY INTRODUCING A "RISK PREMIUM" TO BENEFIT ONE CUSTOMER CLASS AT THE EXPENSE OF ANOTHER

The PD would order that "Any negotiated prepayment amount must include a risk premium to compensate [bundled customers and IOU shareholders] for the risks identified by Working Group 2."[15] The mere adoption of a risk premium violates the indifference principle: it would require that any agreed-upon prepayment amount be manipulated to favor one group of customers at the expense of another. The premium thus violates Public Utilities Code §366.3, which provides:

> Bundled retail customers of an electrical corporation shall not experience any cost increase as a result of the implementation of a community choice aggregator program. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

The Commission is bound by statute to protect all customers equally, and the risk premium must be rejected.

## VII. THE PROPOSED DECISION SHOULD DISTINGUISH BETWEEN ORGANIC LOAD GROWTH WITHIN A CCA COMMUNITY AND EXPANSION OF SERVICE TO A NEW COMMUNITY

The PD proposes criteria to evaluate prepayments, one of which is: "Does the prepayment calculation incorporate potential load growth at the prepaying customer's meter and identify what portion of this growth will be covered by the prepayment agreement?"[16]

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14 Proposed Decision, at p. 12. Available online at: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M341/K370/341370451.PDF

15 Proposed Decision, Ordering Paragraph 5 at p. 34. Available online at: https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M341/K370/341370451.PDF

16 Proposed Decision at p. 23.

It is important to distinguish between types of "load growth." In the case of a CCA expanding geographic territory to serve *additional communities*, that incremental load would indeed have a discrete PCIA obligation and vintage. As such, the new load would be subject to existing PCIA treatment upon the time of launch. Consequently, there is no need to separately consider these circumstances in calculating a prepayment amount. In the scenario where load within an *existing* community being served by a CCA increases, that additional load should not be subject to additional PCIA. PCIA is not intended to function as an on-going account to which IOUs can charge all above-market costs. It is intended to compensate utilities for unavoidable sunk costs made on behalf of a customer the IOU no longer serves. In the Final Report, the co-chairs note that "[i]t was generally agreed that the prepayer would be fully at risk for any overpayments due to load reductions, such as from energy efficiency or other behind-the-meter actions."[17] Load reductions are the responsibility of the LSE serving that load, as are increases in load. Unlike the annual PCIA we have today, where charges are volumetric and directly correlated with increases or decreases in load, a prepaid PCIA should not be subject to changes given future changes in load.

Today, if a departing load customer increases its load, the total above-market obligation is spread across a larger volume of energy than forecasted – this would reduce all above-market obligations in the next year. Moreover, if we indeed adopt the notion that load changes must be accounted for in the PCIA calculation, then both sides of the equation must be addressed. If increased CCA load results in an additional PCIA obligation, then reduced CCA loads must result in a corresponding reduction in PCIA. Thus, the 5 percent of buildings and load that were destroyed by wildfires caused by PG&E's infrastructure in 2017, would result in a 5 percent

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[17] Final Report for Working Group 2. Issued December 9, 2019 at p. 11.

reduction in Sonoma Clean Power's PCIA. While no CCA has advocated for a reduction in PCIA due to destruction wrought by the incumbent utility's infrastructure, this scenario should be considered if we are going to entertain increases in PCIA due to increases in departed load within a community.

## VIII. THE DISCOUNT RATE FOR ANY PREPAYMENTS SHOULD BE SPECIFIED AS THE RELEVANT UTILITY'S WEIGHTED-AVERAGE COST OF CAPITAL

The framework outlined in the PD captures the three elements of a prepayment calculation: forecast PCIA obligation, volume of departing load, and discount rate. As discussed above, CalCCA strongly supports the PCIA forecast as the starting point to inform LSEs of their customers' obligations. In addition, CalCCA finds the recommendation to use three years of historical load – unless otherwise justified – a reasonable approach to determining the volume of departed load. The PD does not further elaborate on the discount rate. This is an important element that should be clarified. The commission should specify that prepayment amounts will be calculated using the adopted PCIA forecast, historical load, and a discount rate equal to the IOU's weighted average cost of capital, as determined by the Commission.

## IX. CONCLUSION

CalCCA appreciates the opportunity to provide these comments in support of a prepayment methodology that is transparent, binding, consistent, and applied equitably to customers of all LSE types. We remain deeply concerned about the variety of barriers and inequities in the PD as written. Without leadership by the Commission, prepayments and the certainty they can provide to all LSEs and customers will fail to achieve their potential. This will leave California perpetually in limbo, with volatile PCIA charges litigated annually. The Commission should take the opportunity to ensure the success of the prepayment option by adopting the changes proposed herein.

Respectfully submitted,

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