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**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

**REPLY COMMENTS OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION  
ON PROPOSED DECISION FOR WORKING GROUP #2 (PREPAYMENT)**



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In accordance with Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, California Community Choice Association<sup>1</sup> (CalCCA) hereby submits these comments on the *Proposed Decision of Administrative Law Judge Atamturk* (PD) in the above-captioned proceeding. In these reply comments, CalCCA responds to the opening comments filed by the Alliance for Retail Energy Markets and Direct Access Consumer Coalition (AReM/DACC), the Joint Utilities (IOUs), The Coalition of Utility Employees (CUE), The Utility Reform Network (TURN), Shell Energy (Shell), and Protect Our Communities Foundation (PCF).

**I. A UNIFORM FORECAST OF PCIA CHARGES IS A NECESSARY FIRST STEP**

Access to uniform data providing a schedule of future PCIA charges is a necessary precursor to successful prepayment negotiations. This is necessary to provide both parties equal

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<sup>1</sup> 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.

information about future IOU charges. As a practical matter, it will quickly inform the viability of transactions and allow parties to focus on those which have a chance of succeeding.

## **II. IOU LABOR COSTS MUST BE ALLOCATED ACCORDING TO BENEFIT, AND RECOGNIZE THE BENEFITS PROVIDED BY PREPAYMENTS THAT ACCRUE TO BUNDLED CUSTOMERS**

AREM/DACC<sup>2</sup>, PCF<sup>3</sup>, and Shell<sup>4</sup> are correct that the PD errs in adopting the premise that bundled customers receive no benefit from prepayments. Such transactions are voluntary, and IOUs would not enter into such agreements unless they perceived a benefit from doing so. CalCCA continues to support the principle of equitable cost allocation: all costs, including labor costs, should be allocated to customer groups that benefit from those costs. IOUs receiving a lump sum payment would no longer be subject to the risk identified by SCE that they may not receive “adequate cost recovery from all customers.”<sup>5</sup> Prepayment reduces annual volatility in PCIA charges for departed customers, and reduces the risk to IOUs that they may not be able to charge adequate rents to fully recover above market costs.

As a practical matter, many parties cite the dangerous incentive created by providing the IOUs a blank check for labor costs. Joint IOU<sup>6</sup> and CUE<sup>7</sup> opening comments provide a glimpse of where this proposal would likely take us: they seek to expand that blank check to apply whether the prepayment negotiations are successful or not. This would arm the IOUs with another tool to thwart prepayments, and a new balancing account to accrue charges on behalf of customers they do not serve.

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<sup>2</sup> AREM/DACC Opening Comments on PD at 3.

<sup>3</sup> PFC Opening Comments on PD at 5.

<sup>4</sup> Shell Opening Comments on PD at 4.

<sup>5</sup> Application A. 19-04-014, Exhibit SCE-01, page 22, lines 4-5.

<sup>6</sup> Joint IOU Opening Comments on PD at 5.

<sup>7</sup> CUE Opening Comments on PD at 2.

This proposal obfuscates what should be a simple concept. When you purchase a car, the dealership does not apply a separate surcharge for the salesman's labor hours spent negotiating. It does not take a lucid imagination to envision the result of such a proposal: more hours spent negotiating, and fewer sales. IOUs need to be encouraged to reduce the size of their PCIA-eligible portfolios, and prepayment transactions provide a venue for that as identified in D. 18-10-019.<sup>8</sup> Paying them to negotiate rewards the opposite - perpetual negotiations - and would create a new category of costs for ratepayers to bear.

### **III. ALLOWING UTILITIES TO PROPOSE AND ENFORCE “VIABILITY SCREENS” AND LOTTERIES UNDERMINES THE SUCCESS OF ANY PREPAYMENT PROGRAM**

IOU-administered viability screens, collateral requirements, and lotteries would provide three more loopholes for utilities to avoid the prepayments provided for in D. 18-10-019. Any one of these alone is a barrier to prepayment, taken in sum they present a potentially insurmountable wall. CCAs and DA providers are offered no such discretion in whom they do business with. If given multiple counterparties to choose from, these LSEs would likely prefer one with a clean criminal record – but those in Northern California are offered no such option. It is inequitable to grant IOUs such discretion.

### **IV. RISK PREMIUMS VIOLATE INDIFFERENCE**

TURN notes that the risk premium proposed in the PD “can only be used to increase the amounts assigned to the prepaying customer” which would result in “the prepaying customer could end up paying more than their assigned share of cumulative PCIA costs.”<sup>9</sup> TURN describes the risk premium proposal as non-symmetrical. That is, it can only benefit one

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<sup>8</sup> D. 18-10-019, at 91.” “prepayments will serve as a longer-term measure to reduce the size of the Joint Utilities’ PCIA portfolios.”

<sup>9</sup> TURN Opening Comments on PD at 2.

customer class to the detriment of another. It is the antithesis of “indifference” and directly contravenes Section 365.2<sup>4</sup> of the Public Utilities Code which states (emphasis added):

The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. 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.

**V. ALTERNATIVE DISPUTE RESOLUTION PROCESS SHOULD BE ADOPTED**

AReM/DACC<sup>10</sup> and the Joint IOUs<sup>11</sup> propose the use of an Alternative Dispute Resolution process if negotiations stall or terms cannot be agreed upon. CalCCA supports this recommendation as an equitable and practical method to encourage successful prepayments.

**VI. REJECTING PARTIAL PREPAYMENTS AS AN OPTION PRESENTS A BARRIER TO SUCCESSFUL NEGOTIATIONS**

PCF is correct that the PD, in rejecting both the partial prepayment proposals, further reduces the possibility of a mutually acceptable negotiation<sup>12</sup>. Parties should be afforded flexibility to maximize the benefits both receive from a transaction, to limit options in advance prematurely stymies their chances of success.

**VII. ORGANIC LOAD GROWTH WITHIN AN EXISTING CCA COMMUNITY SHOULD NOT BE SUBJECT TO ADDITIONAL PCIA CHARGES FOLLOWING A PREPAYMENT**

As discussed in CalCCA’s opening comments, it is critical to distinguish between organic load growth within an existing community, and expansion of service to a new community. Today, annual PCIA charges are volumetric and therefore symmetrical: PCIA goes up or down

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<sup>10</sup> AReM/DACC Opening Comments on PD at 5-6.

<sup>11</sup> Joint Utility Opening Comments on PD at 4.

<sup>12</sup> PCF Opening Comments on PD at 4.

corresponding with load. Under a prepayment framework, symmetry must be maintained: prepayment remains fixed despite load going up or down.

TURN conflates load growth scenarios in suggesting that the Commission require “departing load customers to sign an attestation ... affirming that they do not have specific intentions for increasing onsite loads”.<sup>13</sup> CCAs have programs and policies specifically *designed* to increase electrical load, such as fuel switching from natural gas to electric appliances, all-electric homes, and electric vehicles. Increasing electrical load will be required to achieve the State’s climate goals. The Decision should clarify that load growth within an existing community served by a CCA would not be subject to additional PCIA charges following prepayment for that community.

### VIII. CONCLUSION

CalCCA appreciates the opportunity to provide these reply comments with the goal of contributing to an equitable and practical prepayment framework.

July 27, 2020

Respectfully submitted,

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<sup>13</sup> TURN Comments on PD at 3.

## APPENDIX A

### RECOMMENDED REVISIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

CalCCA proposes the following modifications:

#### **At p. 2:**

This decision adopts a framework for prepayment agreements for Power Charge Indifference Adjustment (PCIA) obligations. Upon review of the Working Group Two recommendations, this decision (1) adopts the consensus framework of PCIA prepayment agreements; (2) adopts the consensus guiding principles, ~~except for one principle regarding partial payments~~; (3) adopts evaluation criteria for prepayment agreements; (4) does not adopt any proposed prepayment concepts; and (5) clarifies that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two.

#### **At p. 12:**

The scoping memo issue 1 asks what criteria should be adopted to evaluate and approve prepayment agreements. Upon review of the Working Group Two recommendations and comments, the Commission (1) adopts the consensus framework of prepayment agreements; (2) adopts the consensus guiding principles, ~~with the exception of one principle~~; (3) adopts evaluation criteria for prepayment agreements; (4) does not adopt any proposed prepayment concepts; and (5) clarifies that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate the risks identified by Working Group Two.

#### **At p. 17:**

The Commission finds the proposed guiding principles, ~~except for Market Forecast Guiding Principle #4,~~<sup>20</sup> and the basic framework for the prepayment agreement presented in the Prepayment Report reasonable. The consensus guiding principles and framework described in Section 4.1 and Section 4.2 of this decision, ~~except for Market Forecast Guiding Principle #4,~~ will provide a basic structure for the IOU and the counterparty to be able to start negotiations.

#### **At p. 17:**

The Commission does not ~~require~~ but allows the use of a viability screen, as proposed by SDG&E and PG&E.

#### **At pp 24-25:**

PG&E supports the shadow bill methodology and argues that it is an administratively feasible and reasonable approach to prevent volatility in the PABA balance and customer rates.

TURN proposes to make IOU shareholders responsible for deviations between the prepayment amount and PCIA costs.<sup>20</sup> TURN argues that IOU shareholders should be responsible for PCIA costs above the prepayment amount, and would commensurately benefit when IOUs reduce PCIA costs below the prepayment amount. PCF agrees that it is reasonable to provide shareholders an incentive to negotiate an appropriate prepayment amount and then prudently manage utilities' PCIA portfolios.<sup>21</sup>

**At pp. 26-27:**

In D.18-10-019, the Commission explicitly specified the form that a prepayment must take: (1) a one-time payment; or (2) a series of levelized payments over 2-5 years.<sup>32</sup> ~~Parties did not~~ CalCCA and PCF present any compelling reasons to allow partial prepayment and slice of load prepayments, therefore deviate from this form. Therefore, we will not allow for a segment of a PCIA obligation to be prepaid.

~~In D.18-10-109 the intent of the Commission was to allow for one-time transactions that will provide cost certainty to CCAs and DA customers without having to conduct any periodic calculations. Allowing for fractional prepayments will defeat the purpose of the envisioned~~

**At p. 27:**

The scoping memo asked for input regarding the regulatory approval process and dispute resolution process governing the prepayment option. The process for contract dispute resolution will be addressed in each individual prepayment agreement. Furthermore, in the event of a stalled negotiation, either or both parties may request that the assigned ALJ in this proceeding refer the negotiation to the Commission's ADR Coordinator. Neutral evaluation and mediation of a stalled negotiation could prove to be an effective tool for achieving the goal of having a meaningful prepayment option that benefits all parties.

**At pp. 29-30**

Finally, CUE argues that it is not equitable for bundled ratepayers to pay for the processing and negotiations for prepayment and proposes that the applicant should pay the IOUs costs rather than making bundled ratepayers pay for those costs from which they receive no benefit. We agree disagree. In D.18-10-019, the Commission took many steps to ensure that bundled and departing load customers pay equally for the above-market costs of PCIA-eligible resources. The Commission also took the step toward the simplicity and predictability requested by departing load customers by adopting an option for these customers to prepay their PCIA obligation. However, ~~this step is an option to be taken on a voluntary basis. It is reasonable and equitable that bundled customers do not bear the cost of keeping this option viable. Therefore, the prepayment agreement submitted to the Commission for approval should include proper terms showing that the IOU~~

counterparty has the cost responsibility of prepayment negotiations and agreements. CUE's recommendation ignores the facts that the prepaying customer will bear many downside risks of overpaying which translate into beneficial upside benefits to the bundled customer. Should a prepaying customer move its load to another location, or go out of business, or make investments in efficiency or self-generation, it forfeits all or a portion of the prepayment, which benefits bundled customers. It is presumed that a fairly negotiated agreement should benefit both parties, with the utilities representing the interests of their bundled customers. Therefore, CUE's proposal is rejected.

### **Findings of Fact**

#### **New Finding of Fact to Follow FOF 3:**

Prior to establishing this "starting point", it is reasonable for IOUs to share a 20-year schedule of gross forecasted PCIA costs that customers of an LSE are liable for, and products (MWh, RA, RECs) expected to be delivered.

~~11. A viability screen may be necessary to determine serious interest and viability of parties interested in a prepayment agreement; and going beyond the standard due diligence may be necessary.~~

#### **New Finding of Fact to Follow FOF 15:**

TURN's shareholder responsibility proposal will provide an incentive to negotiate an appropriate prepayment amount and lower above-market resource costs.

### **Conclusions of Law**

1. The guiding principles and framework described in Section 4.1 and Section 4.2, ~~except for Market Forecast Guiding Principle #4 regarding partial prepayment,~~ should be adopted.

#### **New Conclusion of Law to Follow COL 4:**

TURN's shareholder responsibility proposal should be adopted.

7. The Commission should ~~not~~ allow for a segment of PCIA obligation to be prepaid.

10. PG&E, SCE, and SDG&E should file Tier 2 Advice Letters detailing administration of the prepayment requests and negotiations, including justifications for the limitations on the number of requests and template for providing 20-year cost schedule to LSEs that request it.

~~11. Bundled customers should not bear the cost of keeping the prepayment option viable.~~

~~12. The prepayment agreement submitted to the Commission for approval should include proper terms showing that the IOU counterparty has the cost responsibility of prepayment negotiations and agreements.~~

## Ordering Paragraphs

1. The Working Group Two consensus guiding principles, ~~except for the partial payment principle,~~ and the consensus framework of the Power Charge Indifference Adjustment prepayment agreements are adopted.
  
3. The basic regulatory accounting process proposed by the co-chairs of Working Group 2 is adopted, entailing any prepayment amount be placed into an interest-bearing balancing account, as required by Decision 18-10-019, and allowing the investor-owned utility to calculate a “shadow bill” on a monthly basis and transfer that bill amount to the Portfolio Allocation Balancing Account every month. Additional steps may be introduced depending on the final structure of the prepayment agreement. TURN’s shareholder responsibility mechanism is adopted.
  
5. Any negotiated prepayment amount must include a ~~risk premium to compensate for consideration of~~ the risks identified by Working Group Two.
  
6. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each file a Tier 2 Advice Letter within 60 days to establish protocols to administer prepayment requests and negotiations. The advice Letters should address:
  - (a) How many prepayment requests will be processed annually, and justifications for the limitations;
  - (b) How requests for prepayment will be prioritized by the IOU;
  - (c) What steps can parties take to reduce the total number of separate applications to the Commission to make the process more efficient, such as filing multiple requests for prepayment in a single application to the Commission;~~and~~
  - (d) A template for providing 20-year cost schedules and forecasted products (energy, RA, RECs) delivered over that time period  
~~What process parties will use to resolve disputes if they are unable to reach agreement.~~
  
7. ~~The prepayment agreement submitted to the Commission for approval shall include proper terms showing that the investor-owned utility counterparty has the cost responsibility of prepayment application processing and negotiations.~~