



August 13, 2020

**VIA ELECTRONIC MAIL**

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

**Re: California Community Choice Association  
Opening Comments on Draft Resolution E-5059**

Dear Director 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-5059 (Draft Resolution), the California Community Choice Association (CalCCA) provides these opening comments on the Draft Resolution.

**SUMMARY**

Draft Resolution E-5059 (Draft Resolution) addresses implementation of changes to the Investor Own Utilities (IOUs) tariffs for Reentry Fees and Financial Security Requirements (FSRs) required by California Public Utilities Code Section<sup>1</sup> 394.25(e) for Community Choice Aggregators (CCAs). The Draft Resolution would approve with modifications Pacific Gas and Electric (PG&E) Advice Letter 5354-E and 5354-E-A, Southern California Edison (SCE) Advice Letter 3840-E, and San Diego Gas and Electric (SDG&E) Advice Letter 3257-E implementing the requirements of Section 394.25(e) and the revised reentry fee rules adopted by the Commission in Decision (D.) 18-05-022.<sup>2</sup>

In so doing, the Draft Resolution would establish important limitations on the IOUs' proposed advice letters to better align them with state law and the Commission's requirements. CCAs are preparing to negotiate and submit their first FSRs under the new rules and tariff provisions. It is critical that the Draft Resolution articulates a process that affords sufficient time and clarity on key details so it can be feasibly implemented. CalCCA offers these recommendations:

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<sup>1</sup> All subsequent Article or Section references are to the California Public Utilities Code.

<sup>2</sup> Draft Resolution at 1.

- Adopt the limitations on IOU proposals.
- Afford sufficient time to negotiate and approve the terms of FSRs including: (1) the same timeframe as Energy Service Providers (ESPs) to update the FSR every six months; (2) 90 days following approval of directed changes to IOU tariffs for initial FSRs; and (3) 90 days following underperformance by an issuer to replace the issuer.
- Establish a process that would allow a CCA to comply with its FSR obligation when a utility is refusing to consent to reasonable FSR terms.
- Clarify an order of the Commission is required to activate an FSR.
- Eliminate the reference to Rule 10 of the IOU tariffs (Customer Billing Dispute Resolution).
- Confirm that FSRs using an escrow account instrument do not require credit support provisions for the third-party financial institution.
- Clarify that utilities may track, but may not request administrative costs or a reentry fee that departs from D.18-05-022.
- Direct each IOU to file their tariff changes in a single Tier 2 Advice Letter.
- Clarify the use of the term “beneficiary” to eliminate any ambiguity around the creation of trusts or fiduciary duties.
- Find that reentry fees may not be collected from involuntarily returned CCA customers subject to public Section 394.25(e).
- Direct the utilities to avoid communicating with customers about speculative reentry fee liability as a result of participation in a CCA program.

Appendix A proposes textual modifications to the Draft Resolution. CalCCA supports a timely implementation Section 394.25(e) for CCAs and looks forward to continuing to address related issues in the anticipated proceeding on the Provider of Last Resort (“POLR”).

## COMMENTS

### 1. The Commission Should Adopt the Draft Resolution’s Limitations on the IOU Proposals

CalCCA supports the Draft Resolution’s direction for utilities to file advice letters to revise their respective CCA tariffs within 30 days of this resolution.<sup>3</sup> CalCCA is hopeful that subsequent utility advice letters will not require additional protests and encourages the utilities to coordinate

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<sup>3</sup> Draft Resolution at 25, Ordering Paragraph (OP) 8.

with CalCCA in advance of filing. CalCCA’s original protest suggested a collaborative process to work through issues with the utilities. CalCCA remains committed and open to discussions on the issues.

CalCCA strongly supports the Draft Resolution’s intent to establish balanced rules that do not prejudice CCAs by: (1) prohibiting the IOUs from terminating CCA service;<sup>4</sup> (2) rejecting the IOUs’ proposed definitions of involuntary return;<sup>5</sup> and (3) requiring that FSR terms be subject to mutual agreement of the parties.<sup>6</sup>

CalCCA also appreciates the Draft Resolution’s clarifications that: (1) as the beneficiary of the FSR IOU should not hold the funds;<sup>7</sup> (2) the changes to Direct Access (DA) customer rules are outside the scope of D.18-05-022 and should be rejected; and (3) that the procurement component of the FSRs will only include six months of incremental procurement costs.

These clarifications and findings simplify the remaining issues to be addressed in order for the CCAs to timely implement Section 394.25(e) and should be approved by the Commission.

## **2. The Draft Resolution Appropriately Recognizes But Does Not Provide Sufficient Time for CCAs to Negotiate and Approve the Terms of the Financial Security Requirement Instruments**

The Draft Resolution appropriately finds that “[t]he formation process of an FSR instrument should provide all parties the opportunity to reach mutually agreeable terms, including those related to the specific condition under which the FSR is activated.”<sup>8</sup> CCAs are local government entities that have their own public approval processes. CCAs may be required to undertake competitive solicitations for the financial services that will be needed to comply with the reentry fee program. Depending on the governance of the specific CCA, and the size of the FSR, approval may require a vote of a CCA’s Commission, Board of Directors, or a Committee thereof, in a public meeting under the Brown Act. These approval processes are required by law and can add 30-60 days to the negotiation process as compared to an ESP. CalCCA provides specific timeline recommendations below for three instances that need to be addressed in the Draft Resolution.

- a. CCAs Should Have No Less Time to Provide the Semiannual Updated FSRs Than Under the Existing ESP Rules

CCAs should have the same timeframe for the semiannual updates to FSRs as do ESPs. This is consistent with D.18-05-022 in which the Commission adopted the “same approach”<sup>9</sup> for CCA updates to the FSR as for ESPs, including that the “security amount [] be recalculated twice each year, in November and May, by the tenth day of each month, and with any adjustments to the

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<sup>4</sup> Draft Resolution at 25, OP 6.b.

<sup>5</sup> Draft Resolution at 24, OP 3.

<sup>6</sup> Draft Resolution at 23, Findings 5, 13; *Id.* at 24, OP 4.a.

<sup>7</sup> Draft Resolution at 19.

<sup>8</sup> Draft Resolution at 23, Finding 5.

<sup>9</sup> D.18-05-022 at 11.

security amount implemented on the following January 1 or July 1, respectively.”<sup>10</sup> This proposed timeline would allow a CCA more than 50 days for its semiannual update to the FSR. The Commission should clarify that CCAs should have no less time to post the regularly updated FSR than ESPs under existing rules.

b. The Commission Should Allow CCAs at Least 90 Days from Tariffs Being Finalized to Post Their First FSRs with Third Parties

The Commission should not require CCAs to post their first FSR until the IOUs have finalized their tariffs revisions. The Draft Resolution provides “all parties the opportunity to reach mutually agreeable terms...”<sup>11</sup> However, it directs the CCAs to post their FSR instruments within 30 days of this resolution<sup>12</sup> while also directing the IOUs to revise their applicable tariffs through advice letters within 30 days from the resolution.<sup>13</sup> The requirement for CCAs to post their FSRs before the relevant IOUs’ tariffs are finalized is not feasible as those tariffs will dictate some of the terms. The Draft Resolution should be modified to reflect that the conditional event starting the clock for a CCA’s FSR deadline is the approval of the relevant IOU advice letter.

The Commission should provide the CCAs 90 days to negotiate and post their first FSRs. While CCAs will comply with the ESP timeline for updating the semiannual FSR as discussed above and directed in D.18-05-022 (*i.e.* over 50 days), the Draft Resolution provides even less time to post the initial FSR (*i.e.* within 30 days). The initial postings will require more extensive negotiations to define their terms, which were a significant source of dispute in the underlying proceeding,<sup>14</sup> and some of which remain in dispute today.<sup>15</sup>

The Commission should not lose sight of the fact the FSRs have three parties: the CCA, the IOU, and the issuer. It will take more than 30 days for these three parties to the FSR to work through the FSR’s terms. CCAs may need an additional 30-60 days to administer a competitive solicitation and bring the FSR terms to their Board of Directors for a vote. CalCCA expects these issues to be timely resolved in good faith among the parties to the FSR without further Commission intervention. However, this will only be possible if those parties have sufficient time to work through the issues to define the initial terms. The Draft Resolution should be modified to provide CCAs 90 days to post the first FSR after the IOU tariffs are finalized.

c. The Commission Must Provide CCAs Sufficient Time to Replace an Underperforming Issuer of the FSRs

The Draft Resolution appropriately provides that the terms of the FSRs must be mutually agreed upon by the CCA and the IOU.<sup>16</sup> The IOUs have proposed 10 business days in their advice

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<sup>10</sup> D.18-05-022 at 10-11 (citing to D.13-01-021 at 25).

<sup>11</sup> Draft Resolution at 23, Finding 5.

<sup>12</sup> Draft Resolution at 25, OP 9.

<sup>13</sup> Draft Resolution at 25, OP 8.

<sup>14</sup> R.03-10-003.

<sup>15</sup> Draft Resolution at 12-14, 16.

<sup>16</sup> Draft Resolution at 23, Finding 5.

letters for a CCA to replace an issuer that has fallen below the IOUs' standards after the FSR was issued.<sup>17</sup> This timeframe is simply infeasible. Replacing an issuer may require a competitive solicitation and a vote of the CCA's Board of Directors, which could take 30-60 days.

For these reasons, the Commission should allow CCAs at least 90 days to replace underperforming FSR issuers. The replacement timelines will vary by the instrument with escrow accounts likely being the simplest, followed by letters of credit, and surety bonds being the most complex. The Commission should establish a timeframe that will work regardless of the instrument.

d. **The Commission Must Provide CCAs the Opportunity to Comply if the IOU Withholds Its Assent to the Terms of an FSR**

CCAs should have the option to file their FSR advice letter directly with the Commission to ensure compliance if the IOU unreasonably withholds its assent to the proposed FSR terms and conditions. CalCCA understands its members will enter into negotiations with the utilities in good faith to reach mutually acceptable FSR terms as directed in the Draft Resolution. The Draft Resolution, however, provides no process to address an impasse in FSR negotiations.

A utility withholding agreement to reasonable FSR terms and conditions should not be permitted to force CCA non-compliance, which is exactly what the Draft Resolution would permit. This unilateral action by the utility could inappropriately impair the interests of the CCA, including reputational and financial interests.

The Commission, therefore, should revise the Draft Resolution to allow a CCA to file its FSR advice letter without the IOU's agreement, if needed to avoid non-compliance. The Commission has directed CCAs to submit their FSR instruments through an advice letter.<sup>18</sup> The advice letter process would provide the IOUs with an opportunity to file a protest to raise their concerns with the Commission. This process would likely incentivize the IOUs and CCAs to negotiate in good faith and keep the FSR postings from getting mired in unnecessary negotiations.

**3. The Commission Should Revise the Draft Resolution to Clarify Several Provisions in Order to Better Effectuate their Purpose**

a. **An Order of the Commission Should be Required to Activate an FSR**

The Commission should clarify that an order of the Commission is required to activate an FSR. The Draft Resolution provides "that activation of the FSR should not be unilateral action by the IOU..."<sup>19</sup> Indeed, calling on an FSR instrument is a significant action that is only likely to occur if a CCA service is being voluntarily or involuntarily terminated, both of which require an order of the Commission.<sup>20</sup> However, the Draft Resolution only uses the term "CPUC approval" as required to activate an FSR. Technically, Commission "approval" could be provided through no

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<sup>17</sup> Draft Resolution at 7.

<sup>18</sup> D.18-05-022 at 16, OP 16.

<sup>19</sup> Draft Resolution at 13.

<sup>20</sup> Draft Resolution at 23, Finding 14.

Commission action after 30 days from the filing of a Tier 1 Advice Letter.<sup>21</sup> While such a process is appropriate for a reporting obligation, it should not be used for the extraordinary step of disturbing a CCA's financial position by finding the CCA out of compliance with the IOU's tariff. The Draft Resolution should be clarified to indicate "CPUC approval" for activation of an FSR requires an order of the Commission.

b. Rule 10 is Neither Needed Nor Appropriate to Resolve Disputed Reentry Fees

The Commission should revise the Draft Resolution to delete footnote 12 or any references to the IOUs' Rule 10. The Draft Resolution only allows an IOU to withhold customer payments without a Commission order if the reentry fees are undisputed.<sup>22</sup> Footnote 12 indicates that "[d]isputed charges are subject to the IOU's Rule 10."<sup>23</sup>

Rule 10 is not needed to resolve disputed reentry fees, which are adequately addressed through existing processes. A reentry fee dispute can arise under two potential scenarios, each of which has an existing resolution process:

(1) The CCA disputes the accuracy of the reentry fee established under the methodology adopted in D.18-05-022. A CCA's opportunity to dispute the accuracy of the reentry fee is in response to the semiannual utility advice letters updating the reentry fees and FSRs.<sup>24</sup> Once those advice letters are effective, the CCA must provide the Commission-approved reentry fee through an FSR. At present, no additional dispute resolution process is required.

(2) The utility demands reentry fees that are not based on the methodology approved in D.18-05-022. Resolving this dispute would either require modifications to or adequate compliance with the existing methodology for calculating the reentry fee adopted in D.18-05-022.<sup>25</sup> Such a demand is not currently authorized under Commission rules. However, the utilities could pursue a new Commission decision to modify the methodology. In fact, the Draft Resolution itself expresses an intent to explore one possible scenario where this may occur and a CCA has also become insolvent.<sup>26</sup>

Rule 10 is intended for billing disputes between the IOU and a retail electricity customer.<sup>27</sup> Rule 10 contains no guidance on disputed amounts owed by one LSE to another. Rule 10 is simply inapplicable to the issue of disputed reentry fee amounts. Any references to Rule 10 should be removed from the Draft Resolution.

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<sup>21</sup> General Order 96-B.

<sup>22</sup> Draft Resolution at 17.

<sup>23</sup> Draft Resolution at 17, FN 12.

<sup>24</sup> D.18-05-022 at 10.

<sup>25</sup> D.18-05-022 at 3-7.

<sup>26</sup> Draft Resolution at 10.

<sup>27</sup> See PG&E Rule 10; SCE Rule 10; and SDG&E Rule 10.

c. The Commission Should Clarify that the FSRs Using an Escrow Account Do Not Require Credit Support Provisions for the Third-Party Financial Institution

The option to post cash in an escrow account to satisfy the FSR is likely to be the primary instrument used to by many CCAs to meet the FSR requirements. CalCCA estimates that, for the foreseeable future, prices for energy and resource adequacy will remain below the IOUs' rates such that the minimum FSR of \$147,000 will be required at the outset and for quite some time thereafter. An FSR of this size is most economically satisfied through cash held in an escrow account. Thus CalCCA believes that most, if not all of its members, will utilize the escrow account instrument to post the required FSRs. The Commission should ensure that this critical option does not have any unnecessary constraints.

The Commission should clarify that the independent financial institution holding cash in an escrow account does not need to meet any credit support requirements. This clarification is intended to avoid protracted negotiations between the CCAs and IOUs following approval of the Draft Resolution.

The Draft Resolution appropriately provides that the terms of the FSRs must be mutually agreed upon by the parties.<sup>28</sup> The cash in the escrow account represents the assets that will be used to satisfy a call on the escrow instrument. Where a CCA has posted cash, there is no need for the IOU to further assure assets will be available through credit support arrangements. This is in contrast to the issuer of a letter of credit or surety bond; which should satisfy a set of credit support requirements because the issuer is making a commitment to use its own assets to satisfy a call on these instruments. In fact, the IOUs suggested a list of such criteria in their advice letters related to Security Deposits for letters of credit and surety bonds<sup>29</sup> but provided no such criteria for an escrow account. The Draft Resolution should be clarified to reflect that no credit be required when a cash escrow account is used as the FSR instrument.

d. The Commission Should Clarify that Utilities May Track, but May Not Request, Administrative Costs or a Reentry Fee that Departs from D.18-05-022

The Draft Resolution should be clarified to indicate that the IOUs must adhere to the Commission-approved methodologies for administrative costs. D.18-05-022 established the methodology for calculating the administrative costs of the reentry fee to use a proxy (*i.e.* the established per-customer fee for voluntary returns for each utility). The decision does not allow the IOUs to seek recovery for administrative expenses under any other methodology. It did not adopt the methodology proffered by PG&E and cited in the Draft Resolution.<sup>30</sup> However, Section 4 of the Draft Resolution, appears to indicate the IOU may use an alternative methodology “if the IOU believes the use of the proxy amount is insufficient....” This is also reflected in PG&E’s proposed changes to its tariff:

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<sup>28</sup> Draft Resolution at 23, Finding 5.

<sup>29</sup> See *e.g.* PG&E 5354-E, Attachment 1: Rule 23 Revisions, Section V, W.

<sup>30</sup> Draft Resolution at 15, FN 9 (citing “Exhibit JU-01, July 28, 2017, at 35 (lines 29-34) (R.03-10-003)”).

using the proxy amount..., unless PG&E has tracked the actual incremental administrative costs of the Involuntary Return, in which case PG&E reserves the right to use the actual incremental administrative costs noting that utilities requested the right to seek recovery for administrative costs that differ from the proxy cost....<sup>31</sup>

PG&E's requests that were not adopted by the Commission are not an appropriate legal basis to depart from a Commission-approved methodology. CalCCA supports the Draft Resolution's direction that utilities should be able to track the actual costs associated with an actual involuntary return. This information could be useful to revise the methodology for calculating the FSR in the future and ensure bundled and unbundled customers are not inappropriately shifting costs. The Draft Resolution should be modified to make clear that utilities may only seek cost recovery under a Commission-approved methodology.

e. The IOUs Should File Their Proposed Tariff Changes in Response to the Draft Resolution in a Tier 2 Advice Letter

The Commission should direct the utilities to revise their tariffs in a single Tier 2 advice letter filing. The Draft Resolution appears to direct each of the utilities to make corrections to their Rule 23 or 27 tariffs through two separate advice letters, both filed within 30 days of the resolution. OP 4 directs the utilities to file a Tier 1 advice letter;<sup>32</sup> and OP 8 directs the IOUs to file a separate Tier 2 advice letter.<sup>33</sup> These separate advice letters will be filed at the same time, to make changes to the same tariffs, address the same subject matter, and will likely involve the same parties. The Commission should streamline the process and consolidate these changes by aligning OP 4 and OP 8 to both call for a Tier 2 advice letter. This way, each IOU will only have to file one advice letter to revise their tariffs.

f. The Commission Should Clarify that the Reentry Fee Rules or FSR Instruments Do Not Create a Trust Relationship or Fiduciary Duties

The Draft Resolution rightfully acknowledges that the IOU advice letters mischaracterize the relationship between IOUs and CCA programs in connection with FSRs and properly instructs the IOUs to "refile all relevant tariff sheets to reflect the new IOU rule as *beneficiary* of the CCA FSR and remove reference to the FSR being posted with the IOU."<sup>34</sup> While CalCCA agrees with the analysis and supports the approach contained in the Draft Resolution, the use of the term "beneficiary" is ambiguous.

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<sup>31</sup> PG&E 5354-E Rule 23, Sheet 62, Section W.3.a.1.

<sup>32</sup> At 24, OP 4.

<sup>33</sup> At 25, OP 8.

<sup>34</sup> Draft Resolution at 19 (emphasis added).



The term is used in one sense as the Draft Resolution intends, i.e., a person “who is designated to receive the advantages from an action or change; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument.”<sup>35</sup> However, the term is also used in a different sense to mean a person “to whom another is in a fiduciary relation, whether the relation is one of agency, guardianship, or trust; esp., a person for whose benefit property is held in trust.”<sup>36</sup> While Section 394.25(e) and D.18-05-022 require CCA programs to be responsible for reentry fees in the event of an involuntary return of customers, these authorities do not purport to, and cannot be interpreted to, create a legal trust between IOUs and CCA programs, or establish any fiduciary duties. The Commission should resolve the ambiguity by replacing the term “beneficiary” with the term “recipient”, or otherwise clarifying that the Commission does not interpret the governing legal authorities to create a trust relationship or fiduciary duties.

#### **4. The Commission Must Clarify that Reentry Fees May Not Be Collected from Involuntarily Returned CCA Customers Subject to Public Utilities Code Section 394.25(e)**

- a. Section 394.25(e) Prohibits the Commission from Collecting Reentry Fees from Involuntarily Returned Customers

The final resolution should include a finding that recites or otherwise directly references the language contained in Section 394.25(e) that expressly prohibits reentry fees from being collected directly from involuntarily returned CCA customers. The statute provides:<sup>37</sup>

If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation *shall be the obligation of the electric service provider or a community choice aggregator*, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. *In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.*

While CalCCA agrees with the Draft Resolution that under Section 394.25(e) “CCAs bear the cost responsibility regardless of whether the costs of returning customers are in excess of the FSR,”<sup>38</sup> the plain language of the statute establishes a general rule that reentry fees must be recovered directly from a CCA program rather than CCA customers returning to bundled service

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<sup>35</sup> Black’s Law Dictionary (10th ed. 2014) p. 186.

<sup>36</sup> Black’s Law Dictionary (10th ed. 2014) p. 186.

<sup>37</sup> Section 394.25(e) (emphasis added).

<sup>38</sup> Draft Resolution at 10.

on an involuntary basis. Had the Legislature intended reentry fees to be recoverable from CCA customers, it would have said so, and included language in the statute creating an exception to the general rule, as it did for DA customers.

Section 394.25(e) establishes rules for DA customers in the event that an ESP becomes insolvent and is unable to pay reentry fees. In that circumstance, the statute provides that “the fees shall be allocated to the returning customers.” The rules of statutory interpretation dictate that where legislation expressly includes one class of entity but not another, the exclusion is intended to be purposeful unless a contrary legislative intent is expressed elsewhere in the statute or is otherwise compelled.<sup>39</sup> No similar language creating an exception and allowing for the recovery of reentry fees from CCA customers exists in the statute, and the absence of such language must be interpreted to reflect the intent of the Legislature that CCA customers pay no such fees. The Legislature has provided sufficient guidance, and absent new legislation, the Commission must follow the language of the statute. By establishing a general rule that reentry fees be recovered from CCA programs and ESPs, and creating a limited exception for customers of an insolvent ESP, the Legislature has provided its directive that CCA customers not be held responsible—a directive the Commission must follow.

b. The POLR Statute Did Not Change the Commission’s Authority Under Section 394.25(e)

The Draft Resolution rejects the IOUs’ proposal to have involuntarily returned CCA customers bear responsibility for uncollected reentry fees and directs that issue for further consideration to the POLR rulemaking.<sup>40</sup> CalCCA supports this exploration under the new POLR bill (SB 520 (2019)). Indeed, the FSR posted under Section 394.25(e) is relevant to that statute because it provides collateral support to the utility for a function that is analogous to the POLR function (*i.e.* serving involuntarily returned customers). However, SB 520 is distinct from Code Section 394.25(e).

The Legislature passed SB 520 long after D.18-05-022 was adopted and the IOU advice letters implementing it were filed. The issues raised therein were in the public record and could have been expressly addressed by the Legislature, but they were not. The POLR statute amends Section 216 and adds Article 8.5, Section 387 but makes no changes or references to Section 394.25(e). While Sections 216 and 387 may provide the Commission authority to develop new cost recovery mechanisms, Section 394.25(e) still provides the Commission no statutory authority to assign reentry costs directly to involuntarily returned CCA customers. The Commission should modify OP 5 to make this explicit and provide clarity as to the effect of Code Section 394.25(e).

**5. The Commission Should Direct the Utilities to Avoid Communicating with Customers About Speculative Reentry Fee Liabilities**

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<sup>39</sup> See, e.g., *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1391 (describing a rule of statutory interpretation *Expressio unius est exclusio alterius* – the expression of one thing implies the exclusion of others). See also *Esberg v. Union Oil Co.* (2002) 28 Cal.4th 262, 269 (where statutory language is “unambiguous” a court need not consider “extrinsic aids” to determine its meaning).

<sup>40</sup> At 24, OP 5.

As discussed above, the Commission does not have authority under Section 394.25(e) to impose reentry fees on involuntarily returned CCA customers. However, even if the Draft Resolution is not explicit about this point, the final resolution should provide explicit direction to the utilities to avoid communicating to customers about the speculative risk that reentry or similar fees may be imposed directly on customers. If customer liability is not be settled by the Commission's final resolution, there is a real possibility that customer communications on the subject may lead to confusion and may even be prohibited by D.12-12-036. The potential for misleading communications regarding the specter of customer liabilities may deter customers from joining a CCA program or encourage them to voluntarily leave a CCA program. To prevent confusing or misleading communications, the final resolution should direct the utilities to refrain from any customer communications about the possibility that CCA customers may be directly assessed reentry fees from an involuntary return.

## CONCLUSION

CalCCA appreciates the Commission's thoughtful and careful consideration of these comments on the reentry fee obligations and associated FSRs. As described above, CalCCA supports the limitations on the utilities' proposals and offers important clarifications and considerations to establish a successful reentry fee program. CalCCA recommends the Draft Resolution be modified prior to adoption as described above. CalCCA also supports a timely implementation Section 394.25(e) for CCAs and looks forward to continuing to address related issues in the anticipated proceeding on the Provider of Last Resort.

Respectfully,

CALIFORNIA COMMUNITY CHOICE  
ASSOCIATION



Evelyn Kahl  
General Counsel

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Service Lists for R.03-10-003

## APPENDIX A

### **Findings**

16. The posting of the FSR refers to the demonstration of the financial instrument having been formed, and the IOU made its obligee, ~~beneficiary-recipient~~, or equivalent.

18. CCAs may file their FSR advice letters to ensure compliance where the utility is withholding assent to the terms.

19. Reentry fees may not be collected directly from involuntarily returned CCA customers subject to public Section 394.25(e).

### **Ordering Paragraphs**

4. “The IOUs shall refile their tariff sheets via Tier ~~4~~2 advice letter to clarify the following:...”

5. The recovery of reentry fees from involuntarily returned customers in the event that the CCA is unable to recover the fees is prohibited by Section 394.25(e), however this issue shall be deferred to reexamined in the POLR proceeding.

9. ~~All~~ Each CCAs shall post a financial security instrument within ~~30 days of this resolution~~90 days of the disposition of their utility’s advice letter for tariff changes directed in this Resolution. Semiannual FSRs will be updated using the same timeline as the ESP rules as directed in D.18-05-022. CCAs will replace underperforming issuers of FSRs within 90 days of the default.

10. Utilities shall not communicate with customers about direct reentry fee liability as a result of participation in a CCA program.

### **Changes to Discussion**

“D.18-05-~~015~~022 found that accurately predicting the timing and manner of a mass involuntary return of CCA customers to IOU service is not feasible.” Draft Resolution at 12.

“The IOUs should resubmit tariffs to clarify that activation of the FSR requires an order of the CPUC for approval, this change should be made through a Tier ~~4~~2 AL.” Draft Resolution at 13.

“With the exception of issues 1, 9 and, 10, we find that the IOUs’ replies reasonably addressed CalCCA’s protests. We do clarify that for issue 3, no credit support provisions will be required beyond cash posted for escrow accounts.” Draft Resolution at 16.

“~~Disputed charges are subject to the IOU's Rule 10.~~” Draft Resolution at 17, Footnote 12.

“In the event that an involuntary return is triggered, and fees are incurred, the utility shall file a Tier 1 AL to create a memorandum account to track the actual costs of returning customers and launching the involuntary return process. The utilities will continue to request administrative and procurement costs from CCAs consistent with the methodology adopted in D.18-05-022 until the Commission directs otherwise.” Draft Resolution at 17.

“...Tier ~~4~~2...” Draft Resolution at 2, 13, and 17.