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

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Forward
Resource Adequacy Procurement Obligations.

R.19-11-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
TRACK 3.A COMMENTS ON THE INVESTOR-OWNED UTILITIES' PROPOSED
COMPETITIVE NEUTRALITY RULES**

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Pursuant to the Amended Scoping Memo and Ruling,¹ the California Community Choice Association (CalCCA)² submits these comments on the proposed competitive neutrality rules submitted by Pacific Gas and Electric Company (PG&E)³ and Southern California Edison Company (SCE)⁴ (collectively, IOUs) on September 1, 2020, pursuant to the Amended Scoping Memo and Ruling.⁵ The IOUs submitted the proposals in compliance with Ordering Paragraph 24 of Decision (D.) 20-06-002.

¹ R.19-11-009, *Assigned Commissioner's Amended Track 3.A and 3.B Scoping Memo and Ruling*, July 7, 2020, at 6.

² California Community Choice Association represents the interests of 20 operational community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, CleanPowerSF, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pioneer Community Energy, Pico Rivera Innovative Municipal Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Solana Energy Alliance, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

³ Proposed Competitive Neutrality Rule of Pacific Gas and Electric Company (U 39E) Filed Pursuant to Ordering Paragraph 24 of Decision, Sept. 1, 2020 (PG&E Proposal).

⁴ Southern California Edison Company's (U 338-E) Proposed Competitive Neutrality Rules, Sept. 1, 2020 (SCE Proposal).

⁵ R.19-11-009, *Assigned Commissioner's Amended Track 3.A and 3.B Scoping Memo and Ruling*, July 7, 2020, at 6.

I. INTRODUCTION

The competitive neutrality rules proposed by SCE and PG&E respond directly to Ordering Paragraph 24 of D.20-06-002. The Commission determined that such rules are necessary to mitigate “anti-competitive and conflict of interest concerns” related to the solicitation process administered by the IOUs as Central Procurement Entity in procuring local resource adequacy (RA) resources.⁶ The Commission intends for these rules to “govern how confidential, market-sensitive information received from third-party market participants during the solicitation process will be protected and what firewall safeguards will be implemented to prevent the sharing of information beyond those employees involved in the solicitation and procurement process.”⁷

In general, SCE’s Proposal provides a clear and reasonable approach to competitive neutrality. CalCCA finds only one area of concern: the exclusion from the competitive neutrality rules for new generation procurement. CalCCA requests that, absent a plan from SCE as to how these concerns will be addressed, SCE’s exclusion of new generation procurement from the competitive neutrality rules should be denied.

PG&E’s Proposal lacks the level of detail provided by SCE and requires further development before it can be fully evaluated and adopted by the Commission. CalCCA discusses several modifications in Section III and proposes that PG&E be required to amend the proposed rules to provide greater specificity. CalCCA also recommends that PG&E look to D.12-12-026 and SCE’s Proposal for guidance.

⁶ D.20-06-002 at 35.

⁷ *Id.*, Ordering Paragraph 24.

II. SCE’S PROPOSED EXCLUSION FOR NEW GENERATION PROCUREMENT SHOULD BE REJECTED

SCE’s rules, while generally sound, include an unjustifiable exemption from the rules for bids received for new generation procurement. SCE explains that these bids “shall not be subject to this competitive neutrality rule because such bids are not considered confidential, market sensitive information that can provide an unfair advantage to SCE’s bundled service customers.”⁸ Beyond concluding that this information would not unfairly advantage SCE bundled customers and that evaluating new generation bids is resource intensive, SCE did not sufficiently explain why information contained in new bids would not be considered confidential.

CalCCA does not believe the proposed exclusion is warranted. All bids, to varying degrees, will contain market sensitive information that is confidential. Moreover, even if all bids were fully made public, the “black box” bid evaluation by the CPE will be opaque to other stakeholders, and determining why the CPE chose one project over another may be difficult. Finally, if the staff of the IOU/LSE, in working with the staff of the IOU/CPE staff, can potentially gain knowledge of CPE solicitations or indirectly influence CPE staff’s decision-making, such blurring of the lines between the two sets of staff can unfairly advantage bundled customers in bidding the new resources.

CalCCA requests that, absent a plan from SCE as to how these concerns will be addressed, SCE’s exclusion of new generation procurement from the competitive neutrality rules should be denied.

⁸ SCE Proposal at 6.

III. PG&E’S PROPOSAL REQUIRES GREATER SPECIFICITY TO ENABLE A FULL EVALUATION

CalCCA appreciates PG&E’s efforts to create a structure for ensuring market sensitive information it receives from CPE solicitations does not create a competitive advantage for PG&E’s bundled customers. However, CalCCA requests PG&E’s proposed competitive neutrality rules provide greater detail than the current high-level proposal. CalCCA believes the Code of Conduct rules created for Independent Marketing Divisions contemplated in D.12-12-036 could provide an example of more detail on how the CPE Procurement Group could be set up.

As a guiding rule, CPE staff should be completely separated from the general PG&E staff, although CalCCA recognizes there will be instances where that is infeasible and impractical (*e.g.*, HR, Payroll). CalCCA requests PG&E provide greater detail on what “other procurement-related capacities within PG&E” functions its CPE Procurement Group staff would perform. Further, CalCCA requests PG&E provide greater detail on which “individuals within PG&E that provide shared administrative services...may obtain information through the CPE solicitation process that is market sensitive.”

Lastly, CalCCA requests the “Tools for Effectuating the CPE Neutrality Rule” include an enforcement procedure to ensure on-going compliance in addition to what is already included. The enforcement procedure should include mandated reporting for internal incidents of sharing confidential information as well as an enforcement proceeding process. Again, CalCCA believes the Code of Conduct and Expedited Complaint Procedure in D.12-12-036, and specifically Sec. 8.2 could be used as an example in creating an “enforcement” proceeding process.

The Commission should direct PG&E to amend its proposed competitive neutrality rules. In general, CalCCA requests that PG&E look to SCE's Proposal for guidance in further developing its proposal to enable a full evaluation.

IV. CONCLUSION

CalCCA appreciates the opportunity to comment on the IOUs' competitive neutrality rules and requests that the Commission: (1) absent a plan from SCE to address the concerns raised by CalCCA, reject SCE's exclusion of new generation procurement from the competitive neutrality rules; and (2) direct PG&E to amend its proposed rules to provide greater clarity and specificity, relying on D.12-12-026 and SCE's Proposal for guidance.

Respectfully submitted,

CALIFORNIA COMMUNITY CHOICE
ASSOCIATION



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September 11, 2020