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10/26/20
04:26 PM

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

Order Instituting Rulemaking to Implement
Senate Bill 237 Related to Direct Access.

Rulemaking 19-03-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
REPLY COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING
INVITING COMMENTS ON THE STAFF REPORT PROVIDING
RECOMMENDATIONS ON THE SCHEDULE TO REOPEN DIRECT ACCESS**

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October 26, 2020

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The California Community Choice Association (CalCCA)¹ submits these reply comments in response to the *Ruling Inviting Comments on The Staff Report Providing Recommendations on The Schedule to Reopen Direct Access* (Staff Report) dated September 28, 2020 (Ruling).

I. INTRODUCTION

All parties submitted thoughtful comments on the Staff Report. CalCCA finds common ground with The Utility Reform Network (TURN), the Public Advocates Office (CalPA), Shell Energy North America (US), L.P. (Shell), and the Alliance for Retail Energy Marketing (AREM) on several conclusions:

- “[A]n expansion of Direct Access is likely to exacerbate the challenges with load migration and create additional uncertainty as to the application of long-term resource planning requirements to individual LSEs.”² (TURN)
- Metrics are required to implement the Staff Report recommendations;³ (TURN)

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, CleanPowerSF, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community 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.

² *Opening Comments of The Utility Reform Network* (TURN Comments) at 2.

³ See TURN Comments at 4-5.

- Before reopening DA, the Commission must take additional steps to evaluate “impacts to load migration, procurement, and long-term, planning...”⁴ (CalPA)
- The Commission’s 10 percent annual phase-in is reasonable considering previous proposals offered by customers and ESPs.⁵ (AReM)
- Mandatory central procurement – whether through the local resource adequacy (RA) central procurement entity (CPE) or the Cost Allocation Mechanism (CAM) -- creates challenges and distorts incentives for long-term procurement by individual LSEs.⁶ (Shell)

CalCCA parts company with the Energy Service Providers (ESPs), Large Customers and the Investor Owned Utilities (IOUs), however, on other key issues, including the pace of reopening and the potential need for departing load charges for Community Choice Aggregators (CCAs). These and other differences point to a need for further proceedings to dive below the surface of the Staff’s recommendations.

The range of views presented on CCA departing load charges strongly suggests a need for further debate. ESPs and IOUs appear to oppose even *considering* whether the Commission has a role in oversight of CCA departing load charges,⁷ urging the Commission to remove any reference to these charges in the final report. In contrast, CalCCA⁸ and TURN⁹ urge exploring CCA departing load charges and the Commission’s role in facilitating their recovery to mitigate some of the risks associated with load migration as Direct Access (DA) reopens. While CalCCA agrees with parties that the Commission does not have ratesetting authority over CCAs, CCAs face challenges implementing departing load charges without the Commission’s exercise of authority to include the charges in IOU billing. Assessment of these challenges giving rise to the

⁴ *Comments of the Public Advocates Office (CalPA Comments)* at 1.

⁵ *Comments of the Alliance for Retail Energy Markets (AReM Comments)* at 3-4.

⁶ *Comments of Shell Energy North America (US), L.P. (Shell Comments)* at 6-9.

⁷ Shell Comments at 9, AReM comments at 9, IOU Comments at 4-5.

⁸ CalCCA Comments at 8-9.

⁹ TURN Comments at 5.

need for such charges and the complexities of their implementation is a critical step in expanding the DA program.

The calls by ESPs and Large Customers to accelerate DA expansion¹⁰ similarly merits further consideration. Proposals to accelerate implementation overlook the current state of the Commission’s resource adequacy (RA) program and reliability in general. Even in the best of circumstances, with all Load Serving Entities (LSEs) in compliance with the state’s climate and reliability requirements, load migration resulting from DA expansion creates uncertainty and challenges for long-term planning. Expanding DA in the midst of RA program redesign and implementation would only exacerbate those challenges. For this and other reasons, CalCCA proposed the addition of a reopening condition requiring a finding that market conditions – including both market structure and operation – will foster attainment of state goals and ensure competitive neutrality for all LSEs.¹¹

Finally, AReM seeks to correct the record on the Staff Report’s characterization of ESP performance.¹² While AReM’s observations regarding Renewable Portfolio Standard long-term contracting and RA penalties are correct, as far as they go, they tell only part of the story. CalCCA provides additional information to complete the picture AReM paints. CalCCA also corrects AReM’s mischaracterization of CCAs’ one-time administrative opt-out fees as “departing load charges” akin to the IOUs’ Power Charge Indifference Adjustment.

¹⁰ See, e.g., AReM Comments at 5; *Opening Comments of the California Large Energy Consumers Association, the Energy Producers and Users Coalition, the California Manufacturers and Technology Association and the Energy Users Forum* (Large Customer Comments) at 5; *Comments of the Direct Access Customer Coalition* at 6-9.

¹¹ CalCCA Comments at 6.

¹² AReM Comments at 10-16.

II. THE DIVERSITY OF COMMENTS ON CCA DEPARTING LOAD CHARGES SUPPORTS THE STAFF'S PROPOSAL FOR THE LEGISLATURE TO CONSIDER THE ISSUE

The Staff Report correctly observes that “there [are] also the potential cost shifting impacts to CCA customers (*sic*)”¹³ as a result of DA reopening. The Staff Report thus “recommends that the Legislature consider the CPUC’s authority in allowing CCAs to recover the costs of investments that are stranded because of unforeseen load departure to address these potential impacts.” CalCCA supports consideration of voluntary CCA departing load charges in any reopening determination, whether through legislation or the exercise of the Commission’s existing authority. Not surprisingly, ESPs and IOUs oppose including this recommendation in the final report, suggesting that the issue does not merit consideration.¹⁴ The strongly contrasting views point to a need for further discussion regarding the Commission’s role in implementing CCA departing load charges, whether by the California State Legislature (Legislature) or the Commission itself.

The Joint Utilities present a number of arguments against CCA departing load charges. First, the Joint Utilities suggest that it is not clear that legislative action is required for potential CCA departing load charges. CalCCA agrees that the Commission may have sufficient authority to facilitate CCA departing load charges today; the lack of certainty, however, supports the Staff’s call for legislative consideration of the issue. Second, the Joint Utilities contend that such charges “would not be appropriate because the IOU billing services for CCAs extend to customers receiving CCA service, not former CCA customers.”¹⁵ The IOUs’ conclusion is simply an observation of today’s practices, which would need to be changed to accommodate

¹³ Staff Report at 26.

¹⁴ Shell Comments at 9, AReM comments at 9, IOU Comments at 4-5.

¹⁵ IOU Comments at 4.

cost recovery of CCA departing load charges, again reinforcing the need for further consideration by the Legislature or the Commission. Third, the Joint Utilities correctly note that the Commission does not have ratesetting authority over CCA service, calling into question the Commission’s ability to deal with customer complaints under these circumstances.¹⁶ Again, consumer protection could be a part of any broader discussion of the issues in a new phase, recognizing the primacy of local elected CCA boards in assuring the quality of service CCAs provide and the reasonableness of their rates. Fourth, the IOUs suggest that CCAs that return customers *en masse* to the provider of last resort should not be entitled to on-going cost recovery,¹⁷ again an issue to be considered in the broader discussion.

AReM takes another tack.¹⁸ AReM claims CCAs have authority to establish their own exit fees, including fees that would compensate the CCA for “the costs of the investments that are stranded because of unforeseen load departure.” It contends: “[a] review of the CCAs’ web sites and tariffs indicates that most, if not all, have ‘exit fees’ applicable to customers that opt out of CCA service, if so authorized by their governing boards.” AReM confuses CCAs’ administrative opt-out charges, typically \$5 for residential customers and \$25 for commercial customers, with procurement-related departing load charges akin to the Power Charge Indifference Adjustment (PCIA). Nearly all CCAs today have administrative opt-out charges.¹⁹ Indeed, PG&E’s tariff shows an analogous administrative fee in its E-CCA tariff.²⁰ It is not a standard practice today, however, for a CCA to charge a departing load charge to cover the costs of stranded procurement. While AReM correctly concludes that governing boards have the

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 6.

¹⁸ AReM Comments at 9.

¹⁹ *See, e.g.*, [Sonoma Clean Power Terms and Conditions](#); [EBCE Terms of Service](#); and [Marin Clean Energy Terms and Conditions](#)

²⁰ [ELEC_SCHEDS_E-CCA](#)

authority to adopt such charges, it misses the critical point that the authority is meaningless if the CCA has no viable recovery mechanism once the customer ends their relationship. Unlike IOUs, CCAs, by definition, do not control transmission and distribution infrastructure that allows them to attach a *procurement* departing load charge to *delivery* charges and disconnect customers who do not pay. As noted above, either the Legislature or the Commission needs to consider the potential for the Commission to exercise its authority to facilitate a similar recovery mechanism for CCAs to support long-term resource investment aligned with the state’s greenhouse gas goals.

The Staff Report’s recommendation to the Legislature to consider stranded cost recovery for CCAs ignited a vigorous discussion, underscoring a need to further examine the issue. CalCCA supports further examination either by the Legislature, if the Commission believes it does not currently have the requisite authority, or by the Commission in a new phase of this proceeding. The Staff Report should retain this important recommendation.

III. PROPOSALS TO ACCELERATE DA REOPENING IGNORE THE CURRENT UNCERTAINTY IN THE CPUC-JURISDICTIONAL RESOURCE ADEQUACY PROGRAM AND RELIABILITY

The Staff Report presented a timeline for a final determination on DA reopening that reasonably allows the Commission the opportunity to evaluate ESP progress toward climate, reliability, and long-term planning goals. The 2021-2024 Renewable Portfolio Standard compliance period, where long-term contracting comes into focus for the first time due to the requirements of Public Utilities Code §399.13(b)²¹, remains pivotal in that evaluation. Any reopening prior to that time would prevent the Commission from fulfilling its statutory duty under §365.1(f)(2)(A) to ensure reopening is “consistent with the State’s greenhouse gas

²¹ All section references in these comments are references to the California Public Utilities Code unless otherwise specified.

emission reduction goals.” Further, any determination on reopening prior to the fulfillment of procurement mandated in D.19-11-016 and other IRP and RA compliance through 2024 would prevent the Commission from “ensuring” electric system reliability, as required under §365.1(f)(2)(C).

Despite the Staff’s careful construction of a reopening timeline that will enable the Commission to fully meet its statutory obligations under §365.1(f)(2), several parties urge an acceleration of the timeline. AReM seeks “clarification” that reopening would “immediately follow the Senate Bill 237 Phase 1 expansion beginning with customers submitting switching notices in early 2022 for service in 2023.”²² The Direct Access Customer Coalition likewise proposes implementing reopening for 2023.²³ The large customers propose acceleration both by implementing reopening earlier and by shortening the phase-in period to three years. They recommend “that the schedule be no longer than three years, with one third of the expansion occurring each year, and the first third transferring to DA service in 2023.”²⁴

These proposals overlook the need for the Commission to ensure Renewable Portfolio Standard (RPS) compliance, including the important implementation of the long-term RPS procurement, through 2024 to fulfill the reopening conditions for greenhouse gas emissions under §365.1(f)(2)(A). More remarkably, they ignore the importance of this timeline in enabling the Commission to meet the requirements of §365.1(f)(2)(C), which requires ensuring electric system reliability before reopening. The Commission’s RA program continues to evolve, and all signs point toward implementation of a potential overhaul in R.19-11-009 in the next couple of years. Ensuring the newly implemented program is effective will also take time. Reopening DA

²² AReM Comments at 19.

²³ *Comments of the Direct Access Customer Coalition* (DACC Comments) at 9.

²⁴ Large Customer Comments at 5.

at the same time the Commission is testing a new reliability framework introduces unnecessary uncertainty into electric system reliability. In addition to RA program evolution, reliability in general has been called into question with the heat storm events of August 2020. As CalCCA proposed in opening comments, the Commission should also condition reopening on a determination that market conditions facilitate successful achievement the Legislature’s mandates.²⁵

IV. AREM’S “CORRECTIONS” FAIL TO PAINT A COMPLETE PICTURE OF RA COMPLIANCE AND LONG-TERM CONTRACTING

The Staff offer an assessment of ESP progress to date in meeting state GHG goals and reliability in Section 2.1 of the Staff Report.²⁶ AReM proposes corrections and additional data that fail to provide the entire picture.

First, AReM takes issue with the Staff Report’s characterization of ESPs having a “poor compliance record” on RA, observing that CCAs have paid more in RA penalties than ESPs have paid.²⁷ CalCCA acknowledges that, in terms of total dollars, CCAs have paid more in RA penalties than ESPs, but this fact should not obfuscate the Staff Report’s underlying concern that a great number of ESPs have failed to meet their RA planning obligations: 85 percent of all citations issued have been for ESPs. Making RA compliance a precondition for DA expansion provides a strong incentive for ESPs to similarly engage with stakeholders and take the necessary steps to meet their RA obligations as well.

Second, AReM provides data on the four largest ESPs’ long-term contracts to date.²⁸ While these ESPs may be moving in the right direction on long-term RPS contracting, which

²⁵ CalCCA Comments at 6.

²⁶ Staff Report at 14.

²⁷ AReM at 13.

²⁸ *Id.* at 15.

deserves recognition, the same conclusion cannot be drawn about the remainder of ESPs. As noted in Table 1, based on CalCCA’s best understanding of data from the public versions of the ESP RPS Procurement Plans filed on June 29, 2020,²⁹ five of the thirteen ESPs that filed RPS Procurement Plans have not made any progress on the RPS 65% long-term contracting requirement for Compliance Period 4 (2021-2024). Table 2 shows the progress made by CalCCA member CCAs towards the same requirement.

Table 1: ESP Percentage Progress Towards the RPS 65% Long-term Requirement

ESP	Percent of CP4 65% requirement met by the end of 2020
Commercial of MT	0%
American Power Net	0%
Calpine Power America	0%
Just Energy	0%
Pilot Power	0%
Direct Energy	30%
EDF	50%
Calpine Energy Solutions	60%
3 Phases	100%
Tiger	100%
UC Regents	100%
Shell	not specified
Constellation New Energy	entire report redacted

²⁹ Public versions of the RPS Procurement Plans are listed in the R.18-07-003 Docket Card.

Table 2: CCA Percentage Progress Towards the RPS 65% Long-term Requirement

CCA	Percent of CP 4 65% requirement met by the end of 2020
Clean Energy Alliance	N/A (2021 Launch)
San Diego Community Power	N/A (2021 Launch)
Desert Community Energy	N/A (2020 Launch)
Western Community Energy	0% (2020 Launch)
Solana Energy Alliance*	0%
East Bay Community Energy	40%
Clean Power Alliance	60%
Peninsula Clean Energy	64%
Central Coast Community Energy	85%
Silicon Valley Clean Energy	96%
Valley Clean Energy	100%
Redwood Coast Energy	100%
Marin Clean Energy	100%
Sonoma Clean Power	100%
Lancaster Choice Energy	100%
Pioneer Community Energy	100%
San Jose Clean Energy	100%
CalChoice (ex. Lancaster)	N/A at filing time

* Solana Energy Alliance will become a party of Clean Energy Alliance in 2021

Any consideration of DA reopening must be based on a full understanding of ESP performance.

The Staff Report reasonably points out these past compliance issues and expresses concern regarding future compliance in carrying out the Legislature’s requirement that the Commission’s recommendations “are consistent with the state’s greenhouse gas emission reduction goals,” “do not increase criteria air pollutants and toxic air contaminants” and “ensure electric system reliability” under §365.1(f)(2).

V. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the proposals specified in its initial comments.

October 26, 2020

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl". The signature is written in a cursive style.

Evelyn Kahl
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California Community Choice Association