



November 2, 2020

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CPUC Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA, 94102

RE: Joint Protest of the Direct Access Customer Coalition, the California Community Choice Association and the Alliance for Retail Energy Marketing to Southern California Edison Advice Letter 4309-E; Pacific Gas and Electric Advice Letter 5973-E and San Diego Gas & Electric Advice Letter 3631-E, Each Pertaining to Protocols to Administer Power Charge Indifference Adjustment Prepayment Requests and Negotiations

The Direct Access Customer Coalition (“DACC”), California Community Choice Association (“CalCCA”), and Alliance for Retail Energy Marketing (“AReM”) (collectively, the Prepayment Parties”) jointly protest the separate proposals that Southern California Edison (“SCE”), Pacific Gas and Electric Company (“PG&E”) and San Diego Gas & Electric have each set forth in their respective October 12, 2020, Advice Letters 4309-E, 5973-E and 3631-E. Each was served pursuant to Ordering Paragraph 6 of D.20-08-004, which directed the utilities to file to file a Tier 2 Advice Letter (“AL”) establishing a Power Charge Indifference Adjustment (“PCIA”) prepayment request processing framework.

Each utility has complied with this directive, albeit inconsistently in several respects, and each has proposed terms and conditions that will deter and discourage direct access (“DA”) customers and community choice aggregators (“CCAs”) from taking advantage of the prepayment opportunity afforded by D.20-08-004. That decision specified that the Advice Letters should address certain issues, which are addressed in the following joint protest:

- 1. How many prepayment requests will be processed annually, and justifications for the limitations?**
- 2. How requests for prepayment will be prioritized by the IOU?**

As these issues are interrelated, they are addressed in common. Each utility has proposed limitations on how many prepayment negotiations it is willing to undertake, as shown in the following table:

Utility	DA/CCA Applications Allowed/Year	Lottery If Over-subscribed?
PG&E	10/2, with annual application window	Yes
SCE	10/1, annual application window	Yes
SDG&E	5/1, annual application window	No

The utilities specify that these limitations will apply for the first annual period and suggest that a reconsideration of the proposed limitations will occur upon a review of the first year’s actual demand for such negotiations.¹ As to prioritization, both PG&E and SCE propose the use of a lottery in the event the demand for such negotiations exceed the limit. The Prepayment recommend that SDG&E should also be required to utilize a lottery in the event of excess requests. Without one, there is no indication as to how successful applicants will be chosen and defaulting to a “first come/first served” approach seems inappropriate, especially since that process was abandoned years ago for DA eligibility determinations in favor of a lottery.

We also question whether an annual application window is needed and suggest the application process be open all year so that if a customer/CCA misses it, they don’t have to wait a year to reapply. As the utilities have indicated their intent to reevaluate their prepayment programs in view of their respective first year experiences, implementation of a window could be considered for later years after the utilities have gained experience with the process. Furthermore, they should be required to report to Energy Division on what transpired and seek approval through a new Tier 2 advice letter for any changes to their programs, including the retention of an annual application window.

3. 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?

Each utility has indicated plans for possibly consolidating multiple prepayment agreements into a single application.² With respect to agreements reached with DA customers, the consolidated approach seems appropriate and will tend to increase administrative efficiency and decrease the costs of participation by interested parties.

SCE has stated, “If SCE’s proposal to limit prepayments by CCAs to 1 per cycle is approved by the Commission, there will not be a need to make the prepayment process for CCAs in SCE’s service area more efficient because it would be limited to one application per cycle...Even if the

¹ SCE at p. 3; PG&E at p. 4 and SDG&E at p. 2.

² SCE at p. 3; PG&E at pp. 6-7; and SDG&E at p. 3.

Commission does not adopt SCE’s proposal to limit CCA prepayments to one per cycle, SCE anticipates that the considerations for CCAs will be unique enough that they will warrant separate applications.”³ Neither PG&E nor SDG&E address whether either plans to consolidate DA and CCA agreements into a single application. We do not oppose SCE’s recommendation to have separate applications for DA and CCA prepayment agreements.

4. How the party seeking to prepay its Power Charge Indifference Adjustment obligation will be allocated the cost responsibility of prepayment negotiations that do not result in an application for prepayment approval and how the associated cost will be calculated.

The utilities use similar but not identical approaches to this highly important issue, as illustrated below:

Utility	Deposit Required	Use of Deposit
PG&E	24 months of uncapped PCIA payments, plus \$3500	IOU negotiation costs subtracted from deposit, with remainder refunded (if unsuccessful) or applied to prepayment (if successful). \$3500 non-refundable.
SCE	24 months of actual PCIA payments	IOU negotiation costs subtracted from deposit, with remainder refunded (if unsuccessful) or applied to prepayment (if successful).
SDG&E	24 months of uncapped PCIA payments	IOU negotiation costs subtracted from deposit, with remainder refunded (if unsuccessful) or applied to prepayment (if successful).

As an initial observation, the Prepayment Parties strongly oppose the excessive size of the requested deposits. For a large commercial or industrial customer using 200,000 kWh/month, the deposit would be in the \$170,000 range which is both exorbitant and would constitute a barrier to negotiations and a significant disincentive for customers to consider prepayment, which may well be what each utility has intended.

For CCAs considering prepayment, the disincentive is markedly greater. For example, a moderate-sized CCA like Sonoma Clean Power’s customers incurred \$103 million in uncapped PCIA charges for the year 2020. PG&E’s proposal to require 24 months of uncapped PCIA to begin negotiations would result in a deposit in excess of \$200,000,000.

Whether the applicant is a large commercial/industrial sized customer or a CCA, the requested deposits are extremely excessive and should be revised. The Protesting Parties offer five comments regarding the requested deposits.

³ SCE at p. 5.

First, the purpose of the deposit should be to ensure that the utility has sufficient funds on hand to reimburse itself for projected administrative expenses. Asking for exorbitant deposits is inappropriate and will serve to deter prepayment requests. Instead, each utility should be required to have an overall deposit cap equal to the upper limit of what would reasonably be expected that negotiations would cost. This would result in a number closer to perhaps \$50,000. The Protesting Parties recommend that the deposits should be set at the *lower* of 24 months of actual PCIA payments or \$50,000.

Second, if Energy Division is at all inclined to approve a deposit based on the applicant's estimated PCIA payments, it should be based on the capped amount, as proposed by SCE, as opposed to the uncapped amount. The object of a prepayment negotiation is to reach an accurate projection of the amount that the applicant would pay over a period of future years in order to achieve a negotiated amount that is fair to both the contracting parties as well as to uninvolved third parties. Basing the deposit on an inaccurate amount does not achieve that result. Further, there is no need for the deposit to be tied to two full years of projected PCIA payments. A far shorter period would be more than sufficient to reimburse the utilities for their projected expenses.

Third, utilities should be required to provide estimates of staff labor required at the outset of negotiations to inform this deposit amount and be required to substantiate their negotiation costs with appropriate records and data at the time a refund is due. This is in accord with D.20-08-004, which provides in Ordering Paragraph 6(d) that the utility advice letters should address: "How the party seeking to prepay its Power Charge Indifference Adjustment obligation will be allocated the cost responsibility of prepayment negotiations that do not result in an application for prepayment approval and **how the associated cost will be calculated.**"⁴ As is, although each utility cites this decisional requirement, none of their respective advice letters have addressed how they actually plan to calculate the costs to be charged prepayment applicants. Each should be required to amend their advice letters with detailed information on this topic.

Fourth, the Prepayment Parties wish to point out that the utilities each provide that in the event the prepayment negotiation is unsuccessful that the remainder of the deposit will be refunded. This is, of course, appropriate. We also seek to clarify that those refunded deposits will include interest income the utility has earned over the negotiation period. The individual utilities weighted-average cost of capital would be an appropriate interest rate to apply to the CCA or DA funds held.

Finally, PG&E's \$3,500 application fee should be eliminated, and all costs should be part of the deposit like the other utilities propose. There is no justification for this extraneous fee when customers and CCAs will be required to make significant deposits to cover the utility's negotiating expenses.

While a protest to advice letters is not an appropriate vehicle for a collateral attack on a decision, we wish to point out that the directive in D.20-08-004 that applicants must pay utility expenses

⁴ D.20-08-044, at p. 39 (emphasis added).

even if no agreement is reached is a highly significant disincentive to prepayment negotiations as it represents a poison pill, blank check approach that will not motivate utilities to engage in meaningful negotiations while also deterring applicants that would otherwise consider prepayment to be a productive opportunity to pursue. In that regard, it is also recommended that the utilities be required to report annually on both their successful and unsuccessful prepayment negotiations. This will be a means to evaluate whether the utilities are negotiating in good faith or simply going through the motions of compliance while not meeting the spirit of the directives in D.20-08-004.

(e) What are the criteria and metrics by which the party seeking to prepay its Power Charge Indifference Adjustment obligation will be evaluated by the IOU under a viability screen?

The Protesting Parties do not believe that any formal construct for a viability screen is required and the utilities apparently agree. SCE has said it does not intend to institute a viability screen.⁵ Both PG&E and SDG&E have indicated that each will determine viability based on their identical excessive deposit requests of two years' worth of uncapped PCIA.⁶ The Protesting Parties agree with the deposit approach, but as indicated above, strongly oppose the excessive amounts requested by each.

Conclusion and Summary

The Protesting Parties make the following recommendations that apply to each utility's proposed prepayment protocols:

1. The most significant issue with each utility's advice letter approach is the wildly excessive deposits that are required. As indicated above, the deposits should be tied to an amount deemed appropriate to cover each of the utility's' reasonably anticipated administrative expenses. The Protesting Parties recommend that the deposits should be set at the lower of 24 months of actual PCIA payments or \$50,000.
2. Each utility should be required to supplement their advice letter to explain how they intend to calculate the costs to be charged to customers and CCAs that engage in prepayment negotiations, in compliance with Ordering Paragraph 6(d) of D.20-08-004. Furthermore, utilities should be required to provide estimates of staff labor required at the outset of negotiations to inform this deposit amount and be required to substantiate their negotiation costs with appropriate records and data at the time a refund is due.
3. Refunded deposits should be required to include interest at the individual utility's weighted-average cost of capital.

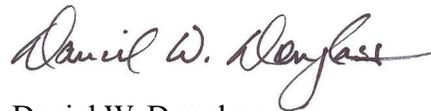
⁵ SCE, at p. 4.

⁶ PG&E, at p. 4 and SDG&E, at p. 5.

4. While the limitations on the number of negotiations proposed by each utility may be appropriate for the first year, they should be removed at its conclusion. The application process should be open all year from the start, so that if a customer/CCA misses it, they don't have to wait a year to reapply.
5. The utilities should be required to report annually on both their successful and unsuccessful prepayment negotiations to facilitate an evaluation of whether they are negotiating in good faith.
6. Finally, PG&E's proposed \$3,500 fee should be rejected.

The Protesting Parties thank Energy Division for its attention to these comments and recommended modifications to the utility prepayment protocols.

Very truly yours,



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