



November 30, 2020

VIA ELECTRONIC MAIL

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

Re: California Community Choice Association’s Limited Protest of Southern California Edison Company Advice Letter 3840-E-A, Pacific Gas and Electric Company Advice Letter 5354-E-B, and San Diego Gas & Electric Company Advice Letter 3257-E-A – Community Choice Aggregation Financial Security Requirements

Dear Mr. Randolph:

Pursuant to the California Public Utilities Commission’s (“Commission”) General Order (“GO”) 96-B, the California Community Choice Association (“CalCCA”) submits this limited protest of Southern California Edison Company’s (“SCE”) Advice Letter (“AL”) 3840-E-A, Pacific Gas and Electric Company’s (“PG&E”) AL 5354-E-B, and San Diego Gas & Electric Company’s (“SDG&E”) AL 3257-E-A.¹ The aforementioned advice letters (“IOU Advice Letters”) were respectively submitted by SCE, PG&E and SDG&E (collectively, the “IOUs”) on November 6, 2020 and propose tariff revisions to implement Community Choice Aggregation (“CCA”) financial security requirements (“FSR”) established in Commission Decision (“D.”)18-05-022 and Resolution E-5059.

For reasons set forth below, CalCCA requests clarifications regarding certain tariff revisions to avoid disputes regarding the treatment of FSR amounts for protested reentry fees, and regarding the circumstances in which CCA customer payment remittances may be withheld.

BACKGROUND

The IOU Advice Letters were submitted in response to Ordering Paragraph 4 of Resolution E-5059, which directs the IOUs to resubmit their respective tariff sheets to correct and clarify matters addressed in Resolution E-5059. Among other things, Resolution E-5059 directs the IOUs to clarify the sequence and timing associated with the involuntary return process. Resolution E-5059 also directs Community Choice Aggregators to post their respective FSR instruments via a Tier 2 advice letter due within 60 days of the issuance of Resolution E-5059.

¹ References below to “General Rules” are to the general rules identified in GO 96-B.

While Community Choice Aggregators have responsibility for and control over the form of the FSR instrument, Resolution E-5059 states that the FSR instrument should be based on commercially reasonable and accepted terms and conditions, and should be consistent with D.18-05-022 and the IOUs' tariffs.² CalCCA understands that Community Choice Aggregators have been working diligently to reach agreement with their respective IOU on terms and conditions for the FSR instruments. However, certain terms currently remain open, and the due date for posting the FSR instruments (December 8) is quickly approaching. As such, CalCCA is submitting this limited protest to address certain tariff revisions and to seek clarification in order to ensure that such tariff revisions are not used to prejudice open issues associated with the FSR instruments.

For convenience and ease of readability, citations below to the IOU Advice Letters are to SCE's AL 3840-E-A and SCE's tariff revisions. However, the IOUs use identical language on matters related to the protest issues, so the points made below apply to all IOUs.

LIMITED PROTEST

1. The IOUs Should Conform To Resolution E-5059's Timing For Their Respective Involuntary Return Advice Letters Or Clarification Should Be Provided As To How The Extended Time Period Affects The IOU's Ability To Draw On The FSR Instrument.

Resolution E-5059 states, without qualification, that an IOU must submit a Tier 1 advice letter *within 30 days* of the occurrence of an involuntary return of CCA customers.³ Resolution E-5059 also makes clear that the IOU's advice letter must include the "reentry fee calculation."⁴ The purpose of this advice letter is also clearly set forth in Resolution E-5059: the advice letter "serves notice to the CCA that [it] must pay the calculated reentry fees."⁵

A timely and complete reentry fee calculation allows for the fulfillment of two key steps in the involuntary return process. First, once the Community Choice Aggregator knows the calculated reentry fees, it can decide whether, in lieu of allowing the IOU to draw on the FSR instrument, the Community Choice Aggregator will pay the calculated reentry fees directly to the IOU or whether it will consent to having the IOU withhold customer payment remittances.⁶ Second, a timely and complete reentry fee calculation provides a Community Choice Aggregator an opportunity to examine the calculation and determine if the Community Choice Aggregator will protest the calculation. A protested calculation is important because the protest sets the

² See Resolution E-5059; Ordering Paragraph 4.a.

³ See Resolution E-5059; Ordering Paragraph 7 (emphasis added). See also Resolution E-5059; Appendix A, Point 2.

⁴ See Resolution E-5059; Ordering Paragraph 7.

⁵ Resolution E-5059; Appendix A, Point 2.

⁶ See Resolution E-5059; Appendix A, Point 3.

amount that will be examined in the Provider of Last Resort (“POLR”) proceeding.⁷ In short, various steps in the orderly involuntary return process hinge on a timely and complete reentry fee calculation.

The IOUs do not strictly adhere to the 30-day timetable for producing a complete reentry fee calculation. Instead, the IOUs state that they will produce a complete reentry fee calculation within 30 days “if feasible.”⁸ If not feasible, the IOUs propose that they be given an additional 30 days to provide the actual reentry fee calculation, through a supplemental submittal.⁹ Importantly, the IOUs do not propose to stay or reopen the applicable protest period during this additional 30-day period, since supplemental submittals do not automatically reopen a protest period.¹⁰

In addition to being contrary to Resolution E-5059’s unqualified directive, the IOUs’ proposed additional 30-day period for submitting their reentry fee calculation confounds key matters related to potential protests and an IOU’s draw on the FSR instrument. As noted above, key steps in the involuntary return process hinge on whether the reentry fee calculation is protested. It is unclear under the IOUs’ proposed two-step advice letter process how the operative protest period will be derived. Specifically, it is unclear whether the operative protest period will include the second, 30-day period associated with the supplemental submittal. Additionally, in light of the IOUs’ proposal to extend the deadline for submitting an IOU’s reentry fee calculation, it is unclear whether an IOU will have a right under its proposed tariff revisions to draw on the FSR instrument ahead of the end of the protest period. This is so because an IOU’s right to “draw” on the FSR instrument is tied to dates independent of the supplemental protest period.¹¹

CalCCA requests clarification that an IOU’s submittal of a supplemental reentry fee calculation will automatically reopen the 20-day protest period, and that this reopened protest period will be determinative of whether or not a Community Choice Aggregator has protested the calculation under Resolution E-5059. Moreover, CalCCA requests clarification that in no event will an IOU draw on the FSR instrument ahead of the end of the protest period for the supplemental reentry fee calculation, if one is submitted. These are minor, but important, clarifications.

2. Clarification Should Be Provided As To How FSR Amounts Associated With Disputed Reentry Fees Are Handled.

⁷ See Resolution E-5059; Ordering Paragraphs 8 and 10.

⁸ See Proposed Rule 23/27, Section W.4.a.

⁹ Proposed Rule 23/27, Section W.4.a.

¹⁰ See GO 96-B; General Rule 7.5.1.

¹¹ See, e.g., SCE Proposed Rule 23, Section W.4.d. (which allows SCE to draw on the FSR instrument within 15 days, not the normal 20-day protest period, of SCE’s demand for reentry fees, which must be made no later than 60 days after the involuntary return per Proposed Rule 23, Section W.4.c.).

Resolution E-5059 makes clear that, while the IOU's reentry fee calculation in its advice letter should largely be mathematical and therefore not normally subject to dispute, a Community Choice Aggregator nevertheless has the right to protest the reentry fee calculation.¹² If the calculation is protested, the disputed reentry fee amount will be evaluated in the POLR or its successor proceeding.¹³

An issue has arisen with respect to whether an IOU may draw on the FSR instrument to satisfy the *entirety* of the IOU's reentry fee calculation, *including the disputed amount*, or whether the draw is *initially limited* to the undisputed amount, with a subsequent draw occurring after the disputed amount has been resolved by the Commission. CalCCA understands that the IOUs believe that they may draw on the entirety of its reentry fee calculation, even the disputed amount. This is reflected, for example, in SCE's proposed Rule 23, Section W.4.a, where SCE does not make any distinction between whether SCE is drawing on the disputed amount or the undisputed amount.

CalCCA acknowledges that an IOU may draw on the FSR amount even if a party protests the reentry fee calculation.¹⁴ However, CalCCA believes that the Commission has resolved this issue in favor of a staged draw process, with only an initial draw for the undisputed amount. The Commission's reasoning can be seen in two key discussion areas.

First, if the IOU were to draw on the entire amount, even the disputed amount, the IOU would be holding cash as security for this disputed amount, something the Commission clearly rejected. In D.18-05-022, the Commission said that the FSR amount should "be held in escrow by a third party, *rather than* by the CCA, *the utility*, or the Commission."¹⁵ Resolution E-5059 put a finer point on this statement by finding, in response to the IOUs' offer to hold cash as security for CCAs, that "D.18-05-022 did not authorize the option for a CCA to post cash directly with the IOU."¹⁶ Finding 16 in Resolution E-5059 is even more emphatic: "D.18-05-022 *rejected* the posting of cash by the CCA with the IOU as another form of FSR."

Second, the Commission setup a staged, orderly process for resolving and accounting for the disputed amount. The end stage for this process is a "collection" of the disputed amount, a stage that would not be needed if the Commission intended that the IOU would collect the entire amount upfront. The process is initiated by a protest. Then, the IOU must establish a memorandum account to track "costs."¹⁷ Importantly, the Commission states that "costs" will be tracked and recorded, *not* "payments" or "credits," which would have been the language used by

¹² See Resolution E-5059 at 22.

¹³ See Resolution E-5059 at 27; Ordering Paragraph 10.

¹⁴ See Resolution E-5059; Appendix A, Point 2.

¹⁵ D.18-05-022 at 9-10 (emphasis added).

¹⁶ Resolution E-5059; Finding 11.

¹⁷ See Resolution E-5059; Ordering Paragraph 8.

the Commission if the IOU were allowed to draw on the FSR to cover the disputed amount.¹⁸ Next, the Commission will resolve the dispute in the POLR or successor proceeding.¹⁹ Finally, the Commission states that the resolved amount will be collected.²⁰

CalCCA requests clarification that the IOU may only initially draw on the FSR amount to cover *undisputed* reentry fee amounts, and that the subsequent draw on the FSR amount for the disputed amount will occur after the Commission has resolved the dispute.

3. Clarification Should Be Provided As To The Basis For Retaining Withheld CCA Funds As Additional Security For A Replaced FSR Instrument, Or The IOUs Should Remove This Provision.

In Rule 23/27, Section T.2., the IOUs add an unexplained and unjustified instance in which an IOU may withhold CCA customer payment remittances.²¹ In identical language, the IOUs state that an IOU may withhold and retain CCA customer payment remittances, and that an IOU will refund those funds “at the time that the CCA fully replaces a financial security instrument because it terminated or expired....” This language is unexplained and problematic.

The IOUs' proposed tariff revisions are only supposed to be those that are justified by action taken in Resolution E-5059. Nothing in Resolution E-5059 implies that an IOU may withhold money rightly owed to Community Choice Aggregators during the period when a Community Choice Aggregator is replacing an FSR instrument. Moreover, the only time that an IOU is allowed to withhold money or draw on an FSR instrument is after an involuntary return,²² which is not triggered by the instance cited, but rather by formal action taken by the Commission.²³

CalCCA requests that the IOUs remove the above-cited language. Other provisions in the IOUs' approved tariffs address the rights and responsibilities of an IOU and the Community Choice Aggregator with respect to maintaining the FSR instrument, and nothing in Resolution E-5059 authorizes an IOU to make the requested tariff revisions.

¹⁸ This point is underscored by analogy when the Commission states, with respect to withheld CCA customer payment remittances, that “[t]he IOU may only withhold CCA customer payments if they are *undisputed*.” (Resolution E-5059 at 17; emphasis added.)

¹⁹ See Resolution E-5059; Ordering Paragraph 10.

²⁰ See Resolution E-5059; Appendix A, Point 4 (“Any disputed costs will be deferred to the Provider of Last Resort (POLR) proceeding for review, and will be collected from returning CCA customer upon CPUC approval.”).

²¹ See also proposed SCE Rule 23, Section S.7, which includes identical language. The other IOUs use identical language.

²² See Resolution E-5059; Ordering Paragraph 6.

²³ See Resolution E-5059; Appendix A, Point 1.

CONCLUSION

CalCCA thanks the Energy Division for its review of this protest.

Respectfully,

CALIFORNIA COMMUNITY CHOICE ASSOCIATION



Evelyn Kahl
General Counsel

cc via email:

Energy Division Tariff Unit (edtariffunit@cpuc.ca.gov)
Travis Blecha (travis.blecha@cpuc.ca.gov)
Dina Mackin (dina.mackin@cpuc.ca.gov)
Erik Jacobson (PGETariffs@pge.com)
Gary Stern (AdviceTariffManager@sce.com)
Tara Kaushik, SCE (Karyn.Gansecki@sce.com)
Greg Anderson (ganderson@sdge.com)
SDGETariffs@sdge.com
Service List for R.03-10-003