

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



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Order Instituting Rulemaking to Review,  
Revise, and Consider Alternatives to the  
Power Charge Indifference Adjustment.

Rulemaking 17-06-026  
(Filed June 29, 2017)

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS  
IN RESPONSE TO STAFF'S ERRA TIMING PROPOSAL**

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*On behalf of*  
California Community Choice Association

June 15, 2021

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Pursuant to Administrative Law Judge Wang’s May 20, 2021 E-mail Ruling (“Ruling”),<sup>1</sup> the California Community Choice Association<sup>2</sup> (“CalCCA”) submits the following opening comments on Energy Division Staff’s proposal to revise the publication date for the Power Cost Indifference Adjustment (“PCIA”) Market Price Benchmarks (“MPBs”) from November 1 to October 1 of each year (“Staff Proposal”).<sup>3</sup>

As discussed at the June 4, 2021 workshop (“Workshop”), the Staff Proposal can address the underlying problems with the ERRA forecast timelines, while improving community choice

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<sup>1</sup> R.17-06-026, *E-Mail Ruling Requesting Comments on ERRA Timing Proposal*, p. 5 (May 20, 2021).

<sup>2</sup> 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, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy Authority, 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 Authority, Solana Energy Alliance, Sonoma Clean Power Authority, Valley Clean Energy, and Western Community Energy.

<sup>3</sup> R.17-06-026, Energy Division Staff, *Revision of the of the Power Cost Indifference Adjustment Market Price Benchmarks calculation date from November 1 to October 1 of each year* (May 20, 2021) (“Staff Proposal”).

aggregators’ (“CCAs”) and other parties’ ability to effectively participate within the proceedings, if the Commission:

- Implements the Staff Proposal next year (*i.e.*, during the IOUs’ 2023 ERRA forecast cases);
- Maintains the current, typical procedural schedules for the ERRA forecast proceedings that occur prior to each year’s update;
- Requires SCE and PG&E to file their ERRA forecast applications on May 1 each year instead of June 1, or, at the very least, on a filing date in the first half of May; and
- Targets Q1 2022 implementation for this year’s ERRA forecast proceedings, similar to SCE’s request in its 2022 ERRA forecast application.

Moreover, adopting the Master Data Request (“MDR”) approach for the SCE and SDG&E ERRA forecast proceedings that is currently utilized for the PG&E proceeding will increase the efficient resolution of these cases. The Commission wisely scoped this phase of this proceeding broadly to include consideration of this *entire* suite of solutions, and no petitions for modification are necessary to adopt them.

## **I. STAFF’S PROPOSAL IS AN IMPORTANT PART OF A SUITE OF PROCEDURAL SOLUTIONS.**

The numerous reasons Staff cited at the Workshop as support for revising the MPB publication dates are irrefutable,<sup>4</sup> with many having been raised by CCA parties in the utilities’ individual ERRA forecast proceedings in recent years.<sup>5</sup> Moving the MPB publication from late October to late September, thereby replacing the “November Update” with an “October Update”,

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<sup>4</sup> R.17-06-026, *Commission Staff Presentation, Energy Division Workshop on the PCIA Market Price Benchmark Release Date*, slides 6, 8 (June 4, 2021).

<sup>5</sup> *See, e.g.*, A.19-06-001, *Protest of the Joint CCAs to the Application of Pacific Gas and Electric Company (U 39 E) for 2020 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast And Greenhouse Gas Forecast Revenue Return And Reconciliation*, pp. 26-29 (July 5, 2019).

will give the Commission and parties sufficient time to reach a reasoned decision, without the need to stipulate to shortened timelines, in time for January 1 implementation.

The substantive implications of this change, losing September balance-of-year transactions for RA and September RPS transactions in the Final MPBs appear to be minimal. The low RA transactional volumes in September for October through December of the same year appear unlikely to have a substantial impact on the final benchmarks. For RPS, September does not appear to be a particularly robust month. During the Workshop, Energy Division suggested it may conduct an analysis to determine the impact of removing September from the Final MPB over the past few years, *i.e.*, studying how the MPBs would have changed if the Staff Proposal had been adopted during those years. Such a Commission-sponsored analysis of these impacts to verify parties' understanding may be prudent, especially if the Commission adopts, but does not implement, the Staff Proposal this year.

In terms of the Forecast MPBs, the "missing" September data would be picked up on a going-forward basis in the following year's benchmark. Thus, while the accuracy of the MPBs could be reduced to some extent because market data for September will not be included in the MPB until the following year, or in the case of the Final MPBs will be excluded altogether, such concerns do not override the benefits of moving up the benchmark calculation.

The procedural questions surrounding the Staff Proposal are more concerning, however, and it will be important to avoid trading one set of procedural problems for another set of problems. If it adopts the Staff Proposal, the Commission can and should address these issues comprehensively as part of this case, including moving the filing dates for PG&E and SCE's applications up by one month, or at least a few weeks, and requiring the same MDR approach for all three IOUs.

**A. The Staff Proposal is Helpful But Incomplete.**

The CCAs' underlying issue for the ERRA forecast proceedings has been, and continues to be, the compression of the cases' procedural schedules. While CalCCA proposed moving the November Update timeline up one week as part of its comments in January, the CCAs did not support moving it up a full month. As stated in those comments, in general, the problems with the November Update "have not been a function of MPB timing."<sup>6</sup>

CalCCA is agnostic as to whether relief to schedule compression comes at the beginning of the case or at the back end of the case. As discussed in more detail below, the Staff Proposal makes sense as long as other procedural adjustments are made. In the alternative, CalCCA continues to support a March 1 implementation date,<sup>7</sup> which will give the Commission and parties adequate time to review, analyze workpapers, conduct discovery on, and draft comments addressing the November update.<sup>8</sup> The bottom line is that, presently, there is insufficient time to fully vet each part of the ERRA forecast cases. If the ultimate resolution the Commission reaches is to shift some of the schedule compression from one part of the proceeding to another, such a resolution would fail to address the CCAs' underlying concerns.

**B. Revisions to the MPB Publication Date Should Avoid Trading One Set of Procedural Problems for Another.**

The Staff Proposal should be adopted only if the PG&E and SCE application dates move forward, allowing the existing procedural timelines between the application date and reply briefs

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<sup>6</sup> R.17-06-026, *California Community Choice Association's Comments on Assigned Commissioner's Amended Scoping Memo and Ruling*, p. 24 (Jan. 22, 2021).

<sup>7</sup> R.17-06-026, *Joint Response of Southern California Edison Company (U 338-E), San Diego Gas & Electric Company (U 902 E) and Pacific Gas and Electric Company (U 39 E) to Assigned Commissioner's Amended Scoping Memo and Ruling*, p. 15 (Jan. 22, 2021).

<sup>8</sup> R.17-06-026, *California Community Choice Association's Reply Comments on Assigned Commissioner's Amended Scoping Memo and Ruling*, p. 4 (Feb. 5, 2021).

to be kept. Generally speaking, the process could follow a schedule similar to the following, with the major milestones highlighted in blue:

<b>Date</b>	<b>Procedural Step</b>
April 15	SDG&E files its Application <sup>9</sup>
May 1	PG&E and SCE file their Applications
Early June	Protests to Applications due
Mid-June	Replies to Protests due and Prehearing Conference
Late June/Early July	Scoping Ruling published
Early August	Intervenor testimony due
Mid-August	Rebuttal testimony due
Late August	Hearings
Mid-September	Opening briefs due
Late September	Reply briefs due
End of September	Energy Division publishes the MPBs
Early October	Updates filed
Late October	Comments on updates filed
Mid-November	Proposed Decision issued
Last Commission Business Meeting in December	Decision adopted
January 1	Rates implemented

<sup>9</sup> The SDG&E procedural dates do not need to shift to accommodate Staff’s Proposal. Thus, the dates in this table between May 1 and the “End of September” only apply to PG&E and SCE’s cases.

While the judges for each ERRA forecast proceeding will ultimately decide the specific schedule for each case, providing broad guidance targeting the schedule above will accomplish the goals in the Staff Proposal without causing collateral procedural problems.

Failing to undertake this type of comprehensive revision to the ERRA forecast process, while still adopting the Staff Proposal, will cause problems in October of each year and beyond. For example, the typical procedural schedules for SCE and PG&E's ERRA forecasts utilize October for some combination of testimony, hearings, and briefing.<sup>10</sup> Simply moving the update forward one month will result in witnesses responsible for testimony and hearings concurrently working on (a) testimony and hearings and (b) either "October Update" testimony or comments responding to that testimony. Facts on which those witnesses may be testifying will be changing simultaneously with the publication of the updates. Discovery on the updates will coincide with discovery in preparation for hearing. Briefs will need to be written concurrently with comments or somehow incorporate those comments. Judges and staff will need to analyze these various components of the record at the same time rather than in the type of sequential order that might allow for drafting of Proposed Decisions on some issues while issues related to the updates are still pending. The intense administrative burdens on Staff, judges, witnesses, and attorneys currently felt in November and December will simply switch to intensive burdens in October and November.

To avoid this result, it will be important to move the rest of the procedural schedule forward in addition to the publication of the MPBs. Implicit in the timelines between procedural steps in the table above, this approach allows parties and the Commission to complete the record

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<sup>10</sup> See, e.g., A.20-07-004, *Assigned Commissioner's Scoping Memo and Ruling*, p. 4 (Sept. 10, 2020); A.19-06-002, *Assigned Commissioner's Scoping Memo and Ruling*, p. 4 (Aug. 22, 2019); and A.20-07-002, *Assigned Commissioner's Scoping Memo and Ruling*, pp. 4-5 (Sept. 10, 2020).

on any issues unrelated to the update prior to the update being published. This staggering of issues has allowed for efficient resolution of certain issues in these proceedings over the past few years, and that efficiency is one successful part of the current process that should not be altered.

Concurrently, it is critical the Commission maintain the current amount of time that exists in each proceeding prior to the update being filed. Shifting each aspect of the proceeding up by one month, while maintaining the current filing dates, will squeeze the beginning of the proceeding in untenable ways. The key problems here are two-fold: (1) the effect on the timing of protests, responses, prehearing conferences, scoping rulings and direct testimony and (2) the corresponding ability for intervenors to effectively prosecute these cases.

PG&E and SCE both file June 1, with protests due the first week in July. For example, protests for this year's proceedings are due July 6 and July 12, respectively, with the IOUs' replies due July 16 and July 22. If the rest of the schedule shifts forward by a month, there would be only 2-4 weeks between the due date for replies and intervenor testimony, leaving a short amount of time for the Commission to hold a prehearing conference and issue a Scoping Ruling. Despite it occurring the past few years, it is deeply unfair to expect parties to draft testimony within a week or two of the issuance of a Scoping Ruling, especially in cases where disputes over scope are not uncommon,<sup>11</sup> and parties may not know if certain issues can be raised in testimony.

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<sup>11</sup> See, e.g., A.13-05-015, *Scoping Memo and Ruling of Assigned Commissioner*, p. 4 (Sept. 12, 2013) (rejecting the inclusion of certain issues in scope and finding that policy issues and other industry-wide practices such as changes to the PCIA methodology are properly addressed in rulemaking dockets, such as R.17-06-026); A.17-06-005, *Scoping Memo and Ruling of Assigned Commissioner*, pp. 3-4 (Aug. 24, 2017) (finding certain issues raised in protests would constitute changes to existing methods of calculation and not allegations of non-compliance with Commission rules, decisions, and resolutions on the part of PG&E); A.18-06-001, *PG&E Reply to Protests and Responses*, pp. 2-3 (July 16, 2018) (arguing issues the Joint CCAs raised in their Protest issue are out of scope, including that "challenges to the Commission's existing policy and/or rules are beyond the scope of this proceeding and must be raised via a petition for modification of the decision that established the policy and/or rule in question.").

Exacerbating these procedural questions is the fact that a substantial amount of work is done in these proceedings prior to the updates, including ratemaking, policy and implementation work the Commission has punted to these cases from other cases, including prior ERRA forecast cases. Examples of these issues in just the past few years include:

For PG&E:

- The methodology to refund a Cost Allocation Mechanism (“CAM”) misallocation;<sup>12</sup>
- The methodology to return ERRA overcollections in an equitable manner;<sup>13</sup> and
- The methodology to calculate the RA component of GTSR rates.<sup>14</sup>

For SDG&E:

- The right billing determinants to reflect departing load when setting 2021 rates;<sup>15</sup> and
- Questions regarding the correct rate to form the basis for the PCIA rate cap.<sup>16</sup>

All three IOUs:

- Implementation of changes to the methodology used to calculate the PCIA from D.18-10-019 and D.19-10-001;<sup>17</sup>
- Questions surrounding funding for the Solar on Multi-family Affordable Housing program;<sup>18</sup> and
- Issues related to transparency and data access.<sup>19</sup>

It is unlikely the need to resolve ratemaking, policy and implementation issues will diminish. This year, the parties to PG&E’s ERRA forecast case will need to address the accounting treatment for PG&E’s “emergency” Green Tariff Shared Renewables (“GTSR”) Petition for Modification (“PFM”), if is granted,<sup>20</sup> the utility’s inclusion of unapproved

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<sup>12</sup> D.20-02-047 at 10.

<sup>13</sup> *Id.* at 11-12.

<sup>14</sup> D.20-12-038 at 28-29.

<sup>15</sup> D.21-01-017 at 42-44.

<sup>16</sup> *Id.* at 34-38.

<sup>17</sup> *See, e.g.*, D.18-10-019 at Ordering Paragraphs (“OPs”) 8 and 10; D.19-10-001 at OPs 2-4.

<sup>18</sup> *See* D.17-12-022 at OP 4.

<sup>19</sup> D.20-12-035 at OP 8; D.20-12-038 at OP 4; D.21-01-017 at OP 6.

<sup>20</sup> *See* A.12-04-020, PG&E Response to City and County of San Francisco Data Request 9.2(a)

Catastrophic Event Memorandum Account and Wildfire Expense Memorandum Account costs in the PCIA revenue requirement,<sup>21</sup> and the utility’s proposal to shift certain Public Purpose Program (“PPP”)-related costs out of the un-vintaged PCIA and into the PPP.<sup>22</sup>

This proceeding will continue to modify the PCIA methodology, and other Commission decisions will continue to impact the forecast cases. For example, since no two parties read a Commission decision the same way, implementation of the Voluntary Allocation and Market Offer component of the Commission’s Working Group 3 decision, D.21-05-030, is likely to introduce new implementation issues for the 2023 ERRA forecast case. In addition, recent RA decisions are almost certain to introduce new accounting issues to both the 2022 and 2023 ERRA forecast proceedings, *e.g.*, ensuring that if existing resources are procured by the Central Procurement Entity (D.20-06-002), to meet 2021 summer reliability targets (D.21-02-028), or to meet the incremental procurement targets 2021-2023 (D.19-11-016), they are accounted for correctly in the CAM balancing accounts, mod-CAM balancing accounts and the Portfolio Allocation Balancing Account. In sum, significant policy and implementation issues are

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(stating “PG&E will be filing its 2022 PCIA Forecast on June 1. Given the request to reinstate the interim pool resources is pending approval by the Commission, the use of existing RPS resources to serve Solar Choice customer has not yet been reflected in the 2022 PCIA forecast that will be filed on June 1 as a carve out or as an offsetting credit. If the Commission approves PG&E’s request in its Petition to Modify (PFM) to reinstate the use of the interim pool resources to support PG&E’s Solar Choice Program, PG&E’s November Update will reflect that a portion of the PCIA-eligible resource costs and volumes will be assigned to the GTSR program. This use of the interim pool resources can be accounted for either as a direct assignment of these resources to the GTSR program or can be accounted for in forecast and in recorded actuals by showing an offsetting GTSR credit to the PCIA-eligible contracts’ vintage cost and volumes. In both cases, if the resources are dedicated to serve the GTSR Program exclusively, the market revenue for the resources would be credited to ERRA rather than PABA, along with a credit of the contract costs and volumes.”). The Joint CCAs currently plan to address this suggested accounting treatment prior to the November Update.

<sup>21</sup> A.21-06-001, PG&E Prepared Testimony at 9-8:10-16 to 9-9:1-4 and Table 9-2.

<sup>22</sup> A.21-06-001, *Application of Pacific Gas and Electric Company (U 39 E) for 2022 Energy Resource Recovery Account and Generation Non-Bypassable Charges Forecast and Greenhouse Gas Forecast Revenue Return and Reconciliation*, pp. 20-22 (June 1, 2021).

frequently addressed in these proceedings, and the loss of a month of pre-update litigation will undermine parties' ability to address these issues and, in turn, diminish the adequacy of the record upon which the Commission relies to address them.

Further, while they rarely rise to the level of commanding a judge's attention, discovery disputes abound in these proceedings. The utilities frequently object to discovery requests, requiring intervenors to spend the time and resources necessary to navigate such disputes. For example, last year SCE initially refused to provide the RA and RPS-eligible volumes it forecasted would remain unsold in the forecast year, 2021. The parties met and conferred, and resolved the issue, but nearly 1.5 months passed between the SoCal CCAs' July 20, 2020 original data request and the final supplement to SCE's first responses, which were provided on September 1, 2020.<sup>23</sup> Similar disputes have plagued PG&E's proceedings.<sup>24</sup>

While the CCAs have hoped the Commission's recent decisions regarding data access and transparency would ease these tensions,<sup>25</sup> PG&E has thus far refused to provide confidential data to the Joint CCAs' reviewing representatives in its recently filed case, and a dispute currently exists in SDG&E's ERRRA forecast case regarding both the utility's refusal to provide relevant data and SDG&E's treatment of certain data as confidential that neither of the other utilities labels confidential. These frustrating disputes demonstrate the difficulties intervenors continue to face in getting timely access to relevant data.

While it is clear the pre-update timelines of these cases should shift forward, such a shift must also accommodate the timing of load forecast data. SCE's Petition for Modification, filed

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<sup>23</sup> See A.20-07-004, *Joint Opening Brief of the Clean Power Alliance of Southern California and California Choice Energy Authority (The "SoCal CCAs") and the California Community Choice Association*, pp. 14-15 (Oct. 26, 2020).

<sup>24</sup> See, e.g., A.19-06-001, *Motion to Compel of the Joint CCAs*, pp.1-10 (Nov. 11, 2019).

<sup>25</sup> D.20-12-035 at OP 8; D.20-12-038 at OP 4; D.21-01-017 at OP 6.

in R.01-10-024 (“SCE PFM”), resulted in that utility’s current June 1 filing date.<sup>26</sup> The purpose of moving from May 1 to June 1 was to incorporate more accurate departing load forecasts, provided in April as a result of Resolution E-4907, which modified the process and timeline by which CCA load forecasts and RA obligations are determined.<sup>27</sup> Moving the update back a month squeezes the proceeding up against that mid-April load forecasting date.

The IOUs’ filings undoubtedly are better with the most accurate CCA departing load information. However, the vast majority of load departures in major metropolitan areas have already taken place in California, or will take place in the next year. If load forecasts need to be modified, those modifications are likely to be less dramatic than those experienced over the past few years in the State, suggesting the “October Update” filing itself could accommodate changes brought on by newly departing load.

On balance, a May 1 filing date for SCE and PG&E would be the ideal date to accomplish Energy Division’s goals while preserving the current pre-update timelines. If the CCA load forecasts cannot be incorporated by a May 1 filing date, and the Commission determines the update filing is an inappropriate vehicle to incorporate the CCAs’ mid-April load forecasts, then a filing date in the first half of May for SCE and PG&E would also make sense.

All of these points go to support the following three conclusions:

1. If the Staff Proposal is adopted, PG&E and SCE should file one month earlier on May 1 or, at the very least, a filing date in the first half of May.
2. Because PG&E and SCE have already filed their 2022 forecast cases, the Staff Proposal should not be implemented until next year’s ERRA forecast cycle.

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<sup>26</sup> D.18-10-042 at 4 and Ordering Paragraph 2; *see also* R.01-10-024, *Petition for Modification of Southern California Edison Company (U 338-E) of Decision 14-05-006 to Establish New Filing Date For Its Annual ERRA Forecast Application* (Aug. 3, 2018).

<sup>27</sup> D.18-10-042 at Finding of Fact 2.

3. To address the compressed November Update schedule for this year's ERRA forecast cases, CalCCA would respectfully request the Commission decision-makers, Energy Division Staff, and the Administrative Law Judges remain open to a Q1 2022 implementation schedule for this year's ERRA forecast proceedings. SCE itself has already recommended a Q1 implementation date.<sup>28</sup>

**C. Requiring the Same MDR Approach in All Three IOUs' Proceedings Will Increase the Efficiency of These Cases.**

In D.20-12-035, the Commission found that “[c]ertain market participants, including CCAs, require timely access to SCE’s ERRA/PABA/PUBA reporting as well as precise volume of RA, RPS and other metrics in order to meet their evidentiary burden in the ERRA forecast proceeding.”<sup>29</sup> It further determined that delaying access to the “ERRA/PABA/PUBA and other reports concerning the validity of SCE’s ERRA forecast application until the November Update, and requiring extensive discovery requests to obtain this information, creates additional administrative burdens for the parties to the proceeding as well as Commission staff.”<sup>30</sup>

The Commission required SCE to “provide the following information in Energy Resource Recovery Account (ERRA) forecast proceeding workpapers and monthly ERRA compliance reports, starting January 2021:

- (a) Confidential versions of monthly ERRA/PABA/PUBA activity reports;
- (b) Additional detail supporting the monthly PABA reports, including subcategories for summarized line items such as utility-owed generation (UOG) costs and contracts

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<sup>28</sup> A.21-06-003, *SCE Prepared Testimony: Energy Resource and Recovery Account (ERRA) 2020 Forecast of Operations*, 4:3-8 (June 1, 2021) (stating “SCE respectfully informs the Commission that it currently takes SCE approximately four to five weeks to conduct the necessary testing and system updates in order to implement a rate change. Given the number and complexity of SCE’s electric tariffs, SCE requires adequate time to update billing factors and run the necessary tests before it can implement new rates. SCE currently anticipates implementing a final 2022 ERRA Forecast decision in rates in the first quarter of 2022, though a January 1, 2022 rate change is likely infeasible given the five-week implementation requirement.”)

<sup>29</sup> D.20-12-035 at Finding of Fact 38.

<sup>30</sup> *Id.* at 56.

(e.g., provide by resource type, and whether Renewables Portfolio Standard (RPS) or non-RPS eligible);

- (c) Actual or accrued volumetric quantities underlying each relevant dollar figure; such categories include UOG generation, power purchases and sales, California Independent System Operator market sales, and retail customer sales;
- (d) Monthly accrued volumes of Actual Sold, Retained, and Unsold Resource Adequacy capacity; and
- (e) Monthly accrued volumes of Actual Sold, Retained, and Unsold RPS-eligible energy.<sup>31</sup>

The Commission made nearly identical findings and orders in both PG&E and SDG&E's ERRA forecast decisions.<sup>32</sup>

However, in PG&E's case, the Commission required a Master Data Request ("MDR"),<sup>33</sup> specifying: "After PG&E has filed an ERRA forecast application, and so long as such application is pending, PG&E will provide the specified information to reviewing representatives that have signed a nondisclosure agreement within 5 days after it submits each monthly ERRA/PABA/PUBA activity report to the Commission."<sup>34</sup> Requiring this same process to be followed by all IOUs in their respective ERRA filings will ensure uniformity in CCAs' access to data and significantly improve efficiency in these expedited proceedings. Both SDG&E and SCE currently require the CCAs to submit discovery requests to obtain this information, eating into the already limited ability for parties to review this data. Requiring an MDR approach for those two utilities will further streamline the review of these cases.

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<sup>31</sup> *Id.* at OP 8.

<sup>32</sup> D.20-12-038 at 31-32 and OP 4; D.21-01-017 at OP 6.

<sup>33</sup> D.20-12-038 at 31-32 and OP 4.

<sup>34</sup> *Id.* at 31-32, Conclusion of Law 11, and OP 4.

## II. THE AMENDED SCOPING RULING AND D.21-05-030 PROVIDE SUFFICIENT NOTICE AND OPPORTUNITY TO BE HEARD.

During the Workshop, Commission staff raised questions about whether the filing dates for the ERRA forecast applications could be modified through a decision in this proceeding. While Staff's caution is appreciated, it would be difficult for an interested party to successfully argue they were not provided sufficient notice the issue would be addressed here. Such an uphill battle would be made even more difficult by the fact the result of this case would be to move a filing deadline for an application *forward* when the targeted decision date remains the same, *i.e.*, improving the procedural positioning of an intervenor.

Due process in California requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”<sup>35</sup> The California Supreme Court has ruled on the application of this standard in the context of the Commission, finding, “[d]ue process as to the commission’s initial action is provided by the requirement of ‘adequate notice to a party affected and an opportunity to be heard before a valid order can be made.’”<sup>36</sup> Further, the California Supreme Court has recognized that, in determining the appropriate due process safeguards of a particular situation, “it must be remembered that ‘due process is flexible and calls for such procedural protections as the particular situation demands.’”<sup>37</sup> The extent to which due process relief is available “depends on a careful and clearly articulated balancing of the interests at stake

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<sup>35</sup> *Pacific Gas & Electric Co. v. Pub. Util. Comm’n*, 237 Cal. App. 4th 812, 859-60 (2015) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

<sup>36</sup> *People v. Western Air Lines, Inc.*, 42 Cal. 2d 621, 632 (1954).

<sup>37</sup> *People v. Ramirez*, 25 Cal. 3d 260, 268 (1979) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)).

in each context.”<sup>38</sup> This analysis should consider the private interest affected by the official action and the “risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards,” as balanced against any countervailing governmental interest.<sup>39</sup>

The Commission has provided ample notice on multiple occasions to interested persons that the ERRA forecast process may change as part of this proceeding. Commissioner Guzman Aceves’ December 16, 2020 Amended Scoping Ruling (“Amended Scoping Ruling”) set forth two broad issues on the question:<sup>40</sup>

2) Should the Commission modify deadlines or requirements of Energy Resource Recovery Account (ERRA) and PCIA related submittals and reports in order to increase time for parties to review PCIA data and to facilitate timely implementation of decisions in the ERRA proceedings?

4) Should the Commission consider any other changes necessary to ensure efficient implementation of PCIA issues within ERRA proceedings?

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<sup>38</sup> *Id.* at 269.

<sup>39</sup> *Id.* The four relevant factors for determining whether a particular procedure comports with due process under the California Constitution, according to the California Supreme Court, are: “(1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, (3) the dignitary interest in informing individuals of the nature, grounds and consequences of the action and in enabling them to present their side of the story before a responsible governmental official, and (4) the governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Id.* The analysis under the federal Constitution is similar, but does not include the analysis of the dignitary interest in factor three. See *Mohilef v. Janovici*, 51 Cal. App. 4th 267, 287 n.18 (1996); *Gilbert v. Homar*, 520 U.S. 924, 931-32 (1997).

<sup>40</sup> R.17-06-026, *Assigned Commissioner’s Amended Scoping Memo and Ruling*, p. 1 (May 16, 2020) (emphasis added) (“Amended Scoping Ruling”). The Commission provided notice of the revised scope of this proceeding via service of the Amended Scoping Ruling. R.17-06-026, *Information Regarding Service*, p. 1 (Dec. 16, 2020) (service list notice accompanying the Amended Scoping Ruling).

The Amended Scoping Ruling also directed parties to answer three broadly-worded questions that mirror the two issues in the Scoping Ruling noted above.<sup>41</sup>

Moreover, the Commission stated in D.21-05-030 that broad reconsideration of the ERRA forecast proceedings' timelines would be addressed in this phase of this proceeding, stating: "We will continue to explore ERRA proceeding timing, ERRA data transparency, and methods for crediting or charging departing customers for ERRA balances."<sup>42</sup>

These statements make clear that the procedures related to ERRA forecast proceedings would be at issue in this phase of this case. The question of the date on which SCE and PG&E must file their ERRA forecast applications clearly falls within the scope of the term "ERRA and PCIA related submittals," "any other changes necessary to ensure efficient implementation of PCIA issues within ERRA proceedings," and "ERRA proceeding timing." Both the Amended Scoping Ruling and D.21-05-030 have apprised all interested parties of the pendency of these issues and afforded them an opportunity to present their objections.

Commission Staff suggested petitions for modification may be required to revise these filings dates, similar to the SCE PFM. However, Petitions for Modification are not required when an issue is within scope in an on-going proceeding to which interested parties could have intervened. Findings, conclusions and orders in subsequent proceedings can modify the findings, conclusions and orders in prior proceedings. The SCE PFM is distinguishable, for example, because it was filed at a time when there was no open docket considering the issue and, therefore, a PFM was necessary to provide notice to interested parties. Here, both the Amended Scoping Ruling and D.21-05-030 make clear the issue is in scope here. It would be an absurd

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<sup>41</sup> Amended Scoping Ruling at Attachment A.

<sup>42</sup> D.21-05-030 at 6 (emphasis added).

result to require a PFM to change Commission findings from a prior proceeding regarding issues duly noticed as being in scope in a new proceeding. For example, the Commission did not require a PFM of D.11-12-018 in order to implement the revisions to the PCIA it adopted in D.18-10-019 earlier in this proceeding because doing so would be wildly inefficient and administratively burdensome.

Further, the balance of the interests at stake with regard to *moving up the start date* of a proceeding weigh in favor of the Commission moving forward expeditiously on a suite of procedural solutions. There is no property or pecuniary interest at stake because the question is merely one of process, and that change in process falls *in favor* of all non-utility interested persons. It is difficult to imagine a scenario where a party would be prejudiced by not having sufficient notice that a proceeding may start one month earlier than it began the prior year when, for example, the Commission does not have an intervention deadline, and the Applications are served on last year's participants. Moving up the start date, while keeping the final decision date the same, only increases interested parties' ability to litigate the proceeding, which would benefit all interested parties. In contrast, the SCE PFM reduced the time allowed for parties to litigate the proceeding, which certainly impacted parties' ability to represent their interests.

The probable value of additional or substitute procedural safeguards—here, requiring further notice or a PFM of prior decisions—would also be low. The parties to the last few years of ERRA forecast proceedings primarily have included the utility applicants, various CCA parties, direct access groups, The Utility Reform Network, agricultural parties, and CalAdvocates. All of these parties are parties to the instant proceeding. While there have been other parties to the ERRA forecast proceedings in the past few years, such as intervenors Sunrun,

Inc., such parties would, as noted above, only benefit from having more time to litigate the proceeding.

The government’s countervailing interests—here, to make sure that rates are accurate, that sufficient time exists to develop a robust record in support of those rates, and that all of the procedural short-comings Staff raised at the Workshop are addressed in a timely manner—include some of the foundational purposes for this Commission’s existence. As a result, the “risk of an erroneous deprivation” is extremely low here where the countervailing governmental interest is high.

The Commission has provided adequate notice that the procedural components of the ERRRA forecast—including the Application filing dates—may change as a result of this docket. There is no reason an order to move such dates up by a month cannot be included in a decision in this proceeding at this time. Delaying consideration of this issue will only delay its much-needed resolution to the procedural problems that have been discussed extensively on the record to date.

### III. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests the Commission adopt the Staff Proposal commensurate with the recommendations herein.

Respectfully submitted,



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*On behalf of*  
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