

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



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Order Instituting Rulemaking to Address
Energy Utility Customer Bill Debt
Accumulated During the COVID-19
Pandemic.

R.21-02-014
(February 11, 2021)

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
MOTION TO MODIFY SCOPE TO CONFORM TO GOVERNMENT CODE §16429.5**

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Pursuant to Rule 11.1(b) of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), California Community Choice Association¹ (CalCCA) respectfully makes this *Motion to Modify Scope to Conform to Government Code §16429.5* (Motion).

I. INTRODUCTION

The Commission issued its Order Instituting Rulemaking (OIR) on February 17, 2021, in the midst of the ongoing COVID-19 pandemic.² The Commission aims to address, through the development of relief mechanisms and arrearage relief, the large and growing customer debt of utility and Community Choice Aggregator (CCA) customers.³ Included in the scope of the OIR is an issue critical to the provision of relief to customers under the recently enacted California

¹ California Community Choice Association represents the interests of 22 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, 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, Sonoma Clean Power, and Valley Clean Energy.

² *Order Instituting Rulemaking*, Rulemaking R.21-02-014 (issued Feb. 17, 2021) (OIR).

³ *Id.* at 2 (“This proceeding will examine the need for arrearage relief tied to the COVID-19 period, with consideration of appropriate parameters, cost estimates, and potential funding sources.”).

Arrearage Payment Program (CAPP).⁴ As originally articulated in the OIR, the Commission intends to examine “how might arrearage relief impact utility relationships with...[CCAs] and their customers.”⁵ The March 15, 2021 Assigned Commissioner’s Scoping Memo and Ruling (Scoping Memo) further refines the issue, seeking to address in Issue 7: (1) whether and how to allocate arrearage relief to CCA customers; and (2) whether to maintain a process for allocating partial payments on past due accounts first to satisfy a customer’s past due utility debt before allocating any such payments to a CCA (the “Waterfall”).⁶

The Legislature addressed these two questions directly in enacting Assembly Bill (AB) 135 (Budget Trailer) on July 16, 2021, creating the CAPP program in Government Code section 16429.5.⁷ Section 16429.5(g) requires an investor-owned utility (IOU) to credit CAPP funding against customer charges owing the IOU and a CCA “in proportion to their respective shares of customer arrearages.”⁸ Section 16429.5(f)(4) further requires the IOU “to allocate any partial payments made by customers to the utility and other load serving entities in proportion to their respective shares of the outstanding customer charges.”⁹

AB 135, through Section 16429.5(a), delegates authority to implement these and other provisions of the CAPP to the California Department of Community Services and Development (CSD).¹⁰ Consequently, the Commission does not have the authority to move forward with Issue 7 as it relates to CAPP but must defer to the legislative directive and CSD’s implementation.

⁴ Cal. Gov’t Code §16429.5.

⁵ OIR at 23.

⁶ *Assigned Commissioner’s Scoping Memo and Ruling*, R.21-02-014 (March 15, 2021) (Scoping Memo) at 6-7.

⁷ AB 135, Section 9 (adding Article 12 (the CAPP program) under the American Rescue Plan Act of 2021, to Section 16429.5 of the California Government Code). *See* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=20210220AB135.

⁸ Cal. Govt. Code §16429.5(g).

⁹ *Id.* §16429.5(f)(4).

¹⁰ *Id.* §16429.5(a).

Moreover, continuing to advance Issue 7 in this proceeding could slow the distribution of CAPP funds to customers. The current schedule of this proceeding contemplates a proposed decision sometime in October 2021,¹¹ which would lead to a final decision and implementation in November. While the final date for submission of an IOU application to CSD for relief is December 6, 2021,¹² CSD has indicated it will process applications on a rolling basis prior to the final submission date, leaving an opportunity for disbursement before the January 31, 2022 statutory deadline. A November final decision would therefore leave little, if any, opportunity for an IOU to submit its application prior to December 6.

For these reasons, CalCCA requests removal from the scope of this proceeding the two questions identified as Issue 7, to the extent they pertain to CAPP. To the extent the Issue 7 questions need to be addressed in the context of other state or federal COVID-19 relief programs, the Commission should retain them for consideration. Additionally, any further questions surrounding allocation of past due payments may need to be considered more broadly in the Disconnections rulemaking, R.18-05-003.

II. PROCEDURAL BACKGROUND

The Issue 7 questions – allocation of past due payments between IOUs and CCAs and the allocation of relief funds – have been contemplated, but not resolved in this rulemaking as the COVID pandemic drags on and the source and amount of relief for the substantial customer debt is considered in various venues. The Waterfall has been suspended temporarily multiple times by the Commission, with the latest ruling extending the suspension of the Waterfall through

¹¹ See *Assigned Commissioner's and Administrative Law Judge's Ruling Amending Scope*, R.21-02-014 (July 29, 2021) (Amended Scoping Ruling) at 9; see also *E-Mail Ruling Correcting Schedule and Due Dates of Comments in Administrative Law Judge Rulings Dated July 29, 2021*, R.21-02-014 (Aug.3, 2021) (E-Mail Ruling) at 4.

¹² *CAPP Program Notice No. 2021-01* (July 19, 2021) (CAPP Program Notice) at 3 (CAPP Applications due 60 days after release of Utility Survey).

September 30, 2021. With the passage of the CAPP legislation, the Waterfall and CAPP customer bill relief are being addressed by CSD.

A. The Commission Suspended the Past Due Payment Waterfall at the Outset of the COVID-19 Pandemic and Has Extended it to September 30, 2021

The Waterfall is embedded in the IOU tariffs. As a part of the Commission's COVID-19 disconnection moratorium, the suspension of the Waterfall has been extended three times, most recently to September 30, 2021.

PG&E Rule 23.R.2. establishes a general rule for proportional allocation of partial payments by residential customers.

Except as provided below in Section 3, if a customer makes only a partial payment for a service account, the payment shall be allocated proportionally between PG&E's charges and the CCA's charges.

PG&E Rule 23.R.3 includes the Waterfall language for past due payments to be allocated first to PG&E. SCE's Rule 23.R.2, also allocates to the IOU first:

Partial payments by customers shall be allocated on a pro rata basis *to SCE* charges for which delinquency may result in disconnection, and then any balance shall be prorated between the CCA and other SCE charges.

SDG&E's Rule 27.R.2 articulation is virtually identical to SCE's articulation in Rule 23.

The Waterfall suspensions were implemented through IOU advice letter. The Commission issued Resolution M-4842 on April 16, 2020, ordering all utilities to suspend customer disconnections and requiring each IOU to file an implementation advice letter. Among earlier versions of its advice letters, PG&E filed Advice 4244-G/5816-E, on May 1, 2020. The advice letter responded to CalCCA's protest, which sought suspension of the Waterfall. PG&E explained:

PG&E and CalCCA agree on a proposal for PG&E to suspend the allocation method for partial payments relating to past due accounts under Electric Rule 23.R.3 for a limited period due to COVID-19.

According to this proposal, PG&E will allocate partial payments received from residential CCA customers on a pro rata basis with CCAs for up to one year, through April 16, 2021, and track any associated uncollectibles through the CPPMA for future recovery as described in Section D of this advice letter. PG&E will resume allocation of payments from residential CCA customers in accordance with Electric Rule 23.R.3 starting April 17, 2021. PG&E and CalCCA will monitor and meet to discuss any potential impacts this proposal may have on customers, and PG&E reserves the right to request modifications due to the uncertainty associated with the COVID-19 pandemic.

Advice 4244-G/5816-E was approved by the Energy Division.

As the pandemic continued, the Commission issued Resolution M-4849 on February 11, 2021, extending the protections directed in Resolution M-4842:

Therefore, due to the continued economic harm from the COVID-19 pandemic, the Commission extends to California customers the Emergency Customer Protections from D.19-07-015 and D.19-08-025, as ordered by Resolution M-4842, through June 30, 2021, and the Commission reserves an option to extend.

In response, PG&E filed Advice 4388-G/6092-E extending its COVID-19 protections through June 30, 2021. Among other things, PG&E highlighted a change to Rule 23 as follows:

Revising footnote to Section R.3 of Electric Rule 23 to note that due to the COVID-19 pandemic and pursuant to CPUC Resolutions M-4842 and M-4849, PG&E has suspended Section R.3 of Electric Rule 23 and will allocate partial payments received from residential CCA customers on a pro rata basis with CCAs for up to one year, through June 30, 2021, as described in Advice 4244-G/ 5516-E and Advice 4388-G/6092-E.¹³

¹³ PG&E Rule 23.R. has a footnote which reads:

Due to the COVID-19 pandemic and pursuant to CPUC Resolutions M-4842 and M-4849, PG&E has suspended Section R.3 of Electric Rule 23 and will allocate partial payments received from residential CCA customers on a pro rata basis with CCAs for up to one year, through June 30, 2021, as described in Advice 4244-G-A/5516-E-A and Advice 4388-G/6092-E.

SDG&E's circumstances are similar to PG&E's. Most recently, Advice 3716-E/2961-G confirmed its treatment. SDG&E explained:

D.19-07-015 directs SDG&E to coordinate with community choice aggregators (CCAs) during disasters to share information on affected customers. Consistent with its discussion with the CCAs in SDG&E's service territory, SDG&E suspended the allocation method for partial payments under Rule 27R.2 for CCA customers on payment plans implemented pursuant to the emergency customer protections for a limited period. During this period, SDG&E has allocated partial payments from CCA customers on a pro rata basis between SDG&E charges and CCA charges. Any associated uncollectibles resulting from this temporary adjustment will be tracked through the CPPMA for future recovery.

SCE responded to the Commission's directives by implementing, to the CCAs' satisfaction, a "zig zag" approach whereby past due payments are allocated alternately to SCE and then to the CCA, effectively resulting in a pro rata allocation of the payments.¹⁴

Absent Commission action, the IOUs would have resumed their "utility first" partial payment allocation methodologies on July 1, 2021. In its Phase I Decision, however, the Commission extended the suspension of the Waterfall through September 30, 2021, slating the "permanent determination" of the Waterfall issue for Phase II of the proceeding.¹⁵

B. The Commission Intended to Address Allocation of Relief Funds to, and Past Due Payments from, Customers in this Rulemaking

The Commission first articulated Issue 7 very generally in the OIR:

¹⁴ See SCE Advice Letter 233-G/4205-E (May 1, 2020) (describing SCE's customer protections in response to Resolution M-4842 and noting that SCE had suspended disconnections for nonpayment, and that SCE was "closely coordinat[ing] with CCAs in its service territory about the various consumer protections and discuss issues that will likely have financial and/or operational impacts to the CCAs"); SCE Advice Letter 239-G/4423-E (Feb. 22, 2021) (SCE's extension of emergency customer protections to June 30, 2021, and noting the continued operational and financial coordination with CCAs).

¹⁵ *Decision Addressing Energy Utility Customer Bill Debt Via Automatic Enrollment in Long Term Payment Plans*, D.21-06-036, June 30, 2021 (Phase I Decision) at 32-33.

How might arrearage relief impact utility relationships with Core Transport Agents, Energy Service Providers, and Community Choice Aggregators, and their customers?¹⁶

The Commission refined this issue in pertinent part in its Scoping Memo:

7. Should arrearage relief be applied to . . .CCA customers? If so, how?
. . .
 - b. To the extent that customers are not at risk of disconnection for failure to pay their CCA charges, does this change the need for arrearage relief of CCA charges?
 - c. To what extent does Public Utilities Code Section 779.2 require utilities to allocate partial payments first to disconnectable charges?¹⁷

The Commission issued its Phase I Decision (D.) 21-06-036 on June 24, 2021, requiring utilities to automatically enroll customers in arrears into long-term payment plans. The Commission also extended the moratorium on disconnections for nonpayment through September 30, 2021.¹⁸ Finally, the Commission extended the temporary suspension of the Waterfall through September 30, 2021.¹⁹

In its July 29, 2021 Amended Scoping Ruling, the July 29, 2021 Ruling Setting Joint Status Conference and Ordering Comments (JSC Ruling),²⁰ and the August 3, 2021 E-Mail Ruling (collectively, the Phase II Rulings), the Commission again addressed Issue 7. The Amended Scoping Ruling includes two related questions among the issues to be addressed in Phase II of the proceeding:

¹⁶ OIR at 23.

¹⁷ Scoping Memo at 6-7.

¹⁸ Id.at 50.

¹⁹ *Id.* at 52.

²⁰ *Ruling Setting Joint Status Conference and Ordering Comments*, R.21-02-014 (July 29, 2021) (JSC Ruling).

- a. Permanent determination of the allocations of partial payments on COVID-19 related arrearages to [sic];²¹
- b. Implementation issues, if any, relating to the new legislation affecting COVID-19 arrearage relief, including but not limited to the Budget Act, the Trailer Bill, and AB 832 enacted since D.21-06-036 was issued in June....²²

The Amended Scoping Ruling clarifies further the Commission’s intent to prioritize resolution of the question of how to allocate partial payments on arrearages between the IOUs and CCAs.²³

The JSC Ruling, issued the same day, also incorporates the same issues, although it labels the issues as Section 3, rather than Issue 7. The Section 3 issues, however, are substantially identical to Issue 7:

3. Allocation of Payments on Past-Due Utility Bills Between [CCAs] and Utilities (Energy Stakeholders Only)
 1. Should arrearage relief be applied to [CCA] customers? If so, how?
 - a. To the extent that customers are not at risk of disconnection for their failure to pay their CCA charges, does this change the need for arrearage relief of CCA charges?²⁴
 - b. To what extent does Public Utilities Code Section 779.2 require utilities to allocate partial payments first to disconnectable charges?²⁵

The Phase II Rulings set a due date of August 27, 2021 for briefs to be submitted on Issue 7.²⁶ A Proposed Decision on Issue 7 is scheduled for October 2021.²⁷

²¹ This incomplete language likely was intended to address allocations between IOUs and other LSEs, based on the context of prior rulings.

²² Amended Scoping Ruling at 8.

²³ Amended Scoping Ruling at 2 (noting that D.21-06-036 “only temporarily resolved the issue of how to allocate partial payments on debt between energy utilities and CCAs”).

²⁴ JSC Ruling at 6.

²⁵ *Id.* at 6.

²⁶ See JSC Ruling at 3, 10 and E-Mail Ruling at 3.

²⁷ See JSC Ruling at 9 and E-Mail Ruling at 4.

III. THE COMMISSION’S ORIGINAL INTENT TO ADDRESS CCA CUSTOMER RELIEF ISSUES IN THIS RULEMAKING HAS BEEN PARTLY OVERTAKEN BY THE LEGISLATURE IN ENACTING CAPP

When the Commission instituted this rulemaking, the allocation of COVID-19 pandemic relief funds and past due payments remained fully within the scope of its jurisdiction. As the state’s response to the crisis has unfolded, however, the Legislature has stepped in to address these questions for purposes of CAPP.

Prior to the Phase II Rulings, the Legislature passed AB 128 on June 28, 2021 which appropriated nearly \$1 billion for arrearage relief for utility customers.²⁸ The Trailer Bill, AB 135, was signed by Governor Newsom on July 16, 2021, enacting CAPP and delegating oversight to CSD. Section 16429.5 of the Government Code provides a comprehensive scheme for CSD to allocate the \$694,953,250 of the funds to “all distribution customers of investor-owned utilities, including customers served by a CCA.”²⁹ The statute speaks squarely to the questions articulated in Issue 7 in this rulemaking. Government Code section 16429.5(g) addresses original Issue 7.b. – allocation of relief funding – requiring the utilities to:

credit funding received through CAPP against customer charges owing the utility and all other load serving entities serving the customer in proportion to their respective shares of customer arrearages.³⁰

Section 16429.5(f)(4) addresses original Issue 7.c. – the Waterfall – requiring pro rata allocation of past due payments between the IOU and CCA.³¹

²⁸ AB 128, Budget Act of 2021, Section 19.55, signed by Governor Newsom on June 28, 2021. *See* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB128

²⁹ Cal. Gov. Code §16429.5(d)(2) (emphasis added). \$298,546,750 of the funding will be allocated to publicly owned utilities and electric cooperatives. *Id.* §16429.5(d)(1).

³⁰ *Id.* §16429.5(g) (emphasis added).

³¹ *Id.* §16429.5(f)(4).

The CSD has already begun its administration of the CAPP program, issuing its CAPP Program Notice and working with the IOUs and CCAs to refine the process in accordance with its statutory mandate. CSD has instituted a schedule pursuant to its CAPP Program Notice, with utility applications due on December 6, 2021, funds to be allocated by January 2022, and utility customers to receive credits on their arrearages by March 2022. CSD has indicated in meetings with the IOUs and CCAs, however, that it will process applications on a rolling basis to the extent a utility submits its application before the deadline.

IV. THE COMMISSION MUST RECOGNIZE CSD’S JURISDICTION AND REMOVE FROM THIS PROCEEDING’S SCOPE THE ALLOCATION OF CAPP FUNDING TO CCAS AND THE ALLOCATION OF PAST DUE PAYMENTS FROM CCA CUSTOMERS

The issues contemplated by Issue 7 must be removed from the scope of this proceeding. CSD maintains jurisdiction over these issues in the context of CAPP, and any continued consideration by the Commission on the same issues would infringe on that jurisdiction. While the Commission has jurisdiction “to supervise and regulate every public utility in the state,”³² when that jurisdiction is made concurrent with another California agency by another (especially a later) legislative enactment, the Commission must share its jurisdiction with that agency and defer when the statutory delegation is comprehensive and specific.³³ Here, the Legislature has provided a comprehensive program for the CSD to handle all aspects of the CAPP program. Specifically, the allocation of CAPP arrearage relief funding to CCA customers (7.b.) and the

³² Cal. Pub. Util. Code §701.

³³ *Orange County Air Pollution District v. Public Utilities Commission, et al.*, (1971) 4 Cal.3d 945, 953-54 (finding concurrent jurisdiction between the CPUC and an air pollution control board over a utility whose activities were regulated by both, and annulling a Commission decision overruling the air pollution control board’s denial of approval over construction of a privately owned generator when the Legislature specifically delegated the specific emission control standards allowing the denial of such approval to that control board); *see also San Diego Gas & Elec. Co. v. City of Carlsbad*, (1998) 64 Cal.App.4th (the Commission’s directives are not given controlling effect when jurisdiction conflicts with *other* than a local agency (such as another state agency)).

Waterfall (7.c.) have been statutorily resolved by AB 135 and the adoption of Government Code Section 16429.5. Accordingly, the Commission must remove from the scope of this proceeding any consideration or decision regarding the questions of Issue 7 in the context of CAPP. Failing to remove Issue 7 with respect to CAPP would cause the Commission to unlawfully impede upon the specific jurisdiction provided to the CSD to administer the CAPP program. In addition, such failure could potentially delay or impede the arrearage relief that this Rulemaking was intended to facilitate and that utility/CCA customers so desperately need.

V. ISSUE 7 SHOULD BE RETAINED IN THIS PROCEEDING FOR CONSIDERATION IN THE CONTEXT OF OTHER RELIEF PROGRAMS OR CONSIDERED IN R.18-07-005

The questions raised in Issue 7 – allocation of relief funds and allocation of past due payments – may be relevant in contexts other than CAPP. Specifically, allocation of COVID relief to CCA customers in arrears through state or federal programs other than CAPP may need to be considered by the Commission. In addition, while AB 135 extended the suspension of the Waterfall through the administration of the CAPP program (therefore at least until March of 2022), a more appropriate venue to consider a permanent decision regarding the Waterfall would be in the current Disconnections rulemaking, R.18-07-005. Thus, while removing Issue 7 from this proceeding for purposes of CAPP, the Commission should include the issues in one or both of these related proceedings to address other potential relief programs.

VI. CONCLUSION

CalCCA respectfully requests that the Commission take the following actions:

- 1) Remove from the scope of this proceeding the questions of Issue 7 in the context of CAPP, as a result of the statutory directive in Government Code Section 16429.5; and

- 2) Retain Issue 7 questions outside of the context of CAPP for consideration in this proceeding, or to the extent appropriate, in the Disconnections proceeding, R.18-07-005.

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl".

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August 24, 2021