

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

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

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

**REPLY COMMENTS OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
ON THE PROPOSED DECISION DIRECTING ALLOCATION OF PAYMENT ON
PAST-DUE BILLS BETWEEN INVESTOR-OWNED UTILITIES
AND COMMUNITY CHOICE AGGREGATORS**

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SUMMARY OF RECOMMENDATIONS

- ✓ The Proposed Decision should be adopted in its entirety;
 - ✓ The California Public Utilities Commission (Commission) should reject as not in the interest of customers as a whole Pacific Gas and Electric Company's (PG&E's) requested modification to strike the Proposed Decision's language regarding community choice aggregator (CCA) financial stability;
 - ✓ The Commission should reject PG&E's requested modification to the Proposed Decision to strike references to a "legislative preference" regarding proportional allocation because PG&E incorrectly characterizes the California Arrearage Payment Program (CAPP) legislation;
 - ✓ The Commission should reject as unnecessary PG&E's request that the Proposed Decision reaffirm the length of the pro-rata allocation and that the final decision would not constitute precedent; and
 - ✓ The Commission should reject as not in customers' interest as a whole Southern California Edison Company's (SCE's) request to modify the Proposed Decision to allow the waterfall method when a customer is in final call status, or in the alternative to prohibit CCA return of customers to the investor-owned utilities (IOUs) through September 2024.
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I. INTRODUCTION

The California Community Choice Association (CalCCA) submits these Reply Comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed Decision Directing Allocation of Payment on Past-Due Bills Between Investor-Owned Utilities and Community Choice Aggregators (Proposed Decision) mailed on October 15, 2021.

The Commission should adopt in its entirety the Proposed Decision, which directs PG&E, San Diego Gas & Electric Company (SDG&E), and SCE to allocate all types of customer payments made on past-due electric utility bills between the IOUs and CCAs in proportion to their respective shares of outstanding past due balances. In their Opening Comments, PG&E and SCE *do not* request that the Commission change the Proposed Decision's adoption of the proportional allocation of payments on utility bill debt. Instead, both PG&E and SCE request specific modifications to the Proposed Decision and/or limitations on its application. CalCCA requests rejection of both PG&E's and SCE's proposals, and recommends the following:

- ✓ The Proposed Decision should be adopted in its entirety;
- ✓ The Commission should reject as not in the interest of customers as a whole PG&E's requested modification to strike the Proposed Decision's language regarding CCA financial stability;
- ✓ The Commission should reject PG&E's requested modification to the Proposed Decision to strike references to a "legislative preference" regarding proportional allocation because PG&E incorrectly characterizes the CAPP legislation;
- ✓ The Commission should reject as unnecessary PG&E's request that the Proposed Decision reaffirm the length of the pro-rata allocation and that the final decision would not constitute precedent; and
- ✓ The Commission should reject as not in customers' interest as a whole SCE's request to modify the Proposed Decision to allow the waterfall method when a

customer is in final call status, or in the alternative to prohibit CCA return of customers to the IOUs through September 2024.

II. THE COMMISSION SHOULD REJECT PG&E’S REQUEST TO MODIFY LANGUAGE IN THE PROPOSED DECISION

In its Opening Comments, PG&E does *not* request that the Commission set aside the Proposed Decision’s order directing the proportional allocation of past due customer payments on utility bill debt between IOUs and CCAs through September 2024. Rather, PG&E requests: (1) the removal of references in the Proposed Decision to how financially stable CCAs benefit customers as a whole; (2) striking of the Proposed Decision’s reference to a “legislative preference” for proportional allocations; and (3) a statement that pro-rata allocations are solely tied to the COVID-19 relief period and do not constitute precedent. For the reasons set forth below, PG&E’s requests should be rejected.

A. PG&E’s Request to Strike the Proposed Decision’s Language Highlighting CCA Financial Stability as Beneficial to All Customers is Misguided

PG&E requests modifications to the Proposed Decision to strike statements as unsupported by the record regarding the benefits to customers of financially healthy CCAs.¹ PG&E states that the Proposed Decision “prioritizes CCAs’ financial solvency over minimizing a customer’s risk of disconnection” because of the Proposed Decision’s focus on benefitting “customers as a whole” rather than the prioritization of payments toward utility charges benefitting individual customers.²

PG&E mischaracterizes and ignores the analysis of the Proposed Decision in two ways. First, PG&E ignores the Proposed Decision’s findings that “shifting the [financial] risk onto the CCAs is not in the interest of customers as a whole.”³ The Proposed Decision recognizes the public interest of CCAs, which were legislatively allowed as “a publicly-managed alternative to private utility procurement of resources.”⁴ The Proposed Decision also recognizes the overall risk to *all* customers of the failure of CCAs, which “incurs costs of service that will potentially be recovered from all customers.”⁵ PG&E asserts that the record does not “support the potential impact to ratepayers in the insolvency of a CCA,” and that no data exists in the record “that applying payments first to utility charges increases the financial risk to CCAs.”⁶ With these broad

¹ Proposed Decision at 2-3.

² *Id.*

³ *Id.* at 10.

⁴ *Id.* at 11; AB 117 (2002), Cal. Pub. Utils. Code § 366.2 (legislation authorizing CCAs in California).

⁵ Proposed Decision at 11.

⁶ PG&E Opening Comments at 3.

and unsupported statements, however, PG&E fails to recognize that the financial health of legislatively allowed CCAs, as well as the financial health of the IOUs, is axiomatic.⁷

PG&E notes the Proposed Decision’s cite of what PG&E calls the “*hypothetical* example of Western Community Energy.”⁸ The failure of this CCA, however, is not hypothetical and it is widely known that the unpaid customer accounts of Western Community Energy (WCE), which increased from \$500,000 to \$6 million in a matter of months, was a substantial factor in WCE’s collapse during the COVID pandemic.⁹ Unpaid CCA charges currently total nearly \$122 million, and after the CAPP allocation approximately \$67 million of unfunded CCA customer arrearages will remain.¹⁰ Therefore, PG&E’s statements that the record does not support the significant impact of unpaid customer arrearages on the financial health of CCAs is nonsensical.

Second, PG&E fails to recognize the Proposed Decision’s additional rationale that the waterfall payment method does not benefit customers as a whole because the IOU practice of prioritizing payments toward the utility (or disconnectable) charges can only be applied unevenly to customers who have the option in their community of CCA service. In other words, for the areas within an IOU territory not served by a CCA, the customers facing disconnection do not have the ability to only pay the IOU charges (and not the CCA charges) to avoid disconnection. Therefore, the Proposed Decision correctly finds that the waterfall payment methodology fails to benefit customers as whole because of the unequal availability of this extra customer support in areas with CCA service. PG&E’s requests to revise the Proposed Decision should be rejected.

B. PG&E Mischaracterizes the CAPP Legislation in its Request for Removal of References to a “Legislative Preference” for Proportional Allocation of Past Due Payments Between IOUs and CCAs

PG&E requests that the Proposed Decision be modified to strike any reference to the CAPP legislation providing a “legislative preference” for proportional allocation of payments based on

⁷ See Rulemaking (R.) 21-02-014, *Order Instituting Rulemaking* (Feb. 17, 2021) at 2 (in addition to unpaid energy bills and the risk of disconnections, “increases in unpaid customer bills may also impact the financial health of the very utilities that must continue to provide the essential services”).

⁸ PG&E Opening Comments at 3 (emphasis added).

⁹ See *Western Riverside Council of Governments, WCE Board of Directors Minutes* (May 24, 2021) (as support for WCE’s Declaration of Fiscal Emergency, citing the COVID-19 pandemic, forcing people to shelter at home, the Governor prohibiting utilities from turning off customer accounts for non-payment, and “[a]s a result, delinquencies surged higher than they ever have been for other utilities. WCE’s delinquencies have surpassed \$6 [million]”), located at <https://westerncommunityenergy.com/wp-content/uploads/2021/08/wce-052421-minutes.pdf>

¹⁰ CAPP Program Notice No. 2021-06-E2 (Nov. 2, 2021), located at

<https://www.csd.ca.gov/Shared%20Documents/CAPP-PN-2021-06-E2.pdf>

(updated arrearage figures for IOUs and CCAs as of November 2, 2021 (after CalCCA submitted its Opening Comments)).

the payment allocation process established in that legislation.¹¹ PG&E incorrectly states that CAPP is only a “one-time bill credit used to offset customers’ COVID-related arrearages and is dissimilar to ongoing monthly customer bill credits.”¹² The CAPP legislation, Government Code section 16429.5, actually requires two types of proportional payments: (1) subsection 16429.5(g) requires a one-time proportional bill-credit to offset customer arrearages;¹³ and (2) subsection 16429.5(f) requires IOUs to use the proportional payment processes adopted by the Commission to proportionally allocate partial payments between IOUs and LSEs during the period of the CAPP legislation.¹⁴ Therefore, PG&E incorrectly characterizes the CAPP legislation’s directives concerning proportional allocation of the one-time payment, as well as ongoing payments. PG&E’s request for revisions based on this mischaracterization should be rejected.

C. PG&E’s Request for Revision of the Proposed Decision to Reaffirm That the Pro-Rata Allocation is Solely Tied to the COVID Relief Period and Does Not Constitute Precedent for Subsequent Decisions Is Unnecessary

PG&E requests that the Proposed Decision’s order regarding rejection of the waterfall payment methodology during the COVID relief period (i.e., September 2024) not be considered precedent on this issue. While the Proposed Decision is already exceedingly clear regarding the term of the proportional allocation of past due payments being through September 2024, the Commission as the decision-making body has the authority to later determine whether to consider a Decision precedent, or to render a new decision. Even if the final decision states that it should not be considered precedent, the Commission has the authority under Public Utilities Code section 1708 to “rescind, alter, or amend any order or decision made by it.”¹⁵ Therefore, PG&E’s requests are unnecessary and should be rejected.

III. THE COMMISSION SHOULD REJECT SCE’S REQUEST TO MODIFY THE PROPOSED DECISION TO ALLOW THE WATERFALL METHOD WHEN CUSTOMERS ARE IN FINAL CALL STATUS, OR TO PROHIBIT CCA RETURN OF CUSTOMERS TO IOUS THROUGH 2024

SCE, like PG&E, does not request that the Proposed Decision set aside its order for proportional allocation of past due payments among IOUs and CCAs. Instead, SCE requests a

¹¹ PG&E Opening Comments at 3.

¹² Id.

¹³ Cal. Govt. Code § 16429.5(g) (an IOU “shall credit funding received through CAPP against customer charges owing the utility and other load-serving entities serving the customer in proportion to their respective shares of customer arrearages”).

¹⁴ Id., § 16429.5(f)(4) (an IOU “shall use existing proportional payment processes adopted by the Public Utilities Commission in response to the COVID-19 pandemic 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”).

¹⁵ Cal. Pub. Util. Code § 1708.

revision to the Proposed Decision to reflect that the proportional allocation not be used when an unbundled customer is in “Final Call” (i.e., imminent risk of disconnection) status. If the Commission does not adopt this revision, SCE requests that the ability of a CCA to return customers to an IOU for nonpayment be halted through September 2024.

SCE argues that the Commission should not utilize as its “reason” for proportional allocation the inequities to customers as a whole associated with the fact that customers served by CCAs have extra disconnection protection for nonpayment.¹⁶ SCE fails to provide any support for its dismissal of the Proposed Decision’s focus on ensuring that the public interest as a whole is served. SCE also fails to recognize the significant public interest served by CCAs, whose financial stability depends on the equitable allocation of revenues.

Finally, SCE argues that if the Commission fails to adopt its recommended changes regarding allowing the waterfall while a customer is in “Final Call” status, then the Commission should revise the Proposed Decision to halt the CCAs’ ability to return customers for nonpayment. As a matter of practice during the COVID pandemic, CCAs have generally not returned customers to the IOUs for nonpayment, resulting in the significant arrearages currently held by CCAs. As a result, SCE’s proposal to halt CCAs’ ability to return customers would not address the significant arrearages currently outstanding and should be rejected.

IV. CONCLUSION

CalCCA appreciates the opportunity to submit these Reply Comments and requests adoption of the recommendations proposed herein.

Respectfully submitted,



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November 9, 2021

¹⁶ SCE Opening Comments at 3.