



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

FILED

04/18/22

04:50 PM

R2005003

Order Instituting Rulemaking to Continue
Electric Integrated Resource Planning and
Related Procurement Processes.

R.20-05-003

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS
ON THE PROPOSED DECISION ON MODIFIED COST ALLOCATION MECHANISM
FOR OPT-OUT AND BACKSTOP PROCUREMENT OBLIGATIONS**

Evelyn Kahl,
General Counsel and Director of Policy
Leanne Bober,
Senior Counsel
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
(415) 254-5454
regulatory@cal-cca.org

April 18, 2022

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE COMMISSION SHOULD MODIFY THE PROPOSED DECISION TO REQUIRE DIRECT BILLING OF OPT-OUT AND BACKSTOP PROCUREMENT COSTS TO THE LSES RESPONSIBLE FOR SUCH COSTS	3
A.	Billing LSEs Rather Than Customers Avoids Further Distortions in Customer Billing and the Resulting Disincentives for Self-Procuring LSEs.....	4
B.	Billing LSEs Rather Than Customers Simplifies Administration	6
C.	Billing LSEs Rather Than Customers Removes the Complexity Resulting from Load Migration and Mitigates the Risk of Cost Shifts	6
D.	The Proposed Decision’s Reliance on Public Utilities Code Sections 365.1(c)(2) and 454.51(c) in Requiring Billing of MCAM Through a Non-Bypassable Charge on Customers Rests on Legal Error	8
1.	Neither Public Utilities Code Section 365.1(c)(2) nor Section 454.51(c) Precludes Direct Billing of LSEs for MCAM Costs	8
2.	Directly Billing LSEs for Above-Market Procurement Costs for Opt-Out and Backstop LSE Procurement Will Not Increase Costs for Bundled Service Customers	9
III.	IF THE COMMISSION ADOPTS THE MCAM NON-BYPASSABLE CUSTOMER CHARGE, THE PD SHOULD FIX THE BILL DISTORTION, HOLD MIGRATING CUSTOMERS RESPONSIBLE FOR COSTS, AND CLARIFY HOW MCAM CAN BE USED AS PRECEDENT	10
A.	The Commission Should Require the IOUs to Include all MCAM Costs in the Generation Portion of the Bill.....	11
B.	The Commission Should Require the Tagging and Tracking of Migrating Customers	11
C.	The Commission Should Clarify the Rules for the Limited Use of the MCAM as Precedent.....	11
IV.	CONCLUSION.....	12

TABLE OF AUTHORITIES

	Page
California Public Utilities Code	
365.1(c)(2)	passim
365.1(c)(2)(A).....	8, 9, 10
454.51(c).....	passim

California Public Utilities Commission Decisions

D.19-11-016	passim
D.21-06-035	1, 4, 9

California Public Utilities Commission Proceedings

R.16-02-007	1
R.20-05-003	1, 2

California Public Utilities Commission Rules of Practice and Procedure

Rule 14.3	1
-----------------	---

SUMMARY OF RECOMMENDATIONS

SPECIFICATION OF ERROR

1. The proposed Decision on Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations (PD or Proposed Decision) erroneously relies on Public Utilities Code sections 365.1(c)(2) and 454.51(c) to conclude that the modified cost adjustment mechanism (MCAM) must include a non-bypassable customer charge;
2. The Proposed Decision worsens billing distortions and places self-procuring load-serving entities (LSEs) at a competitive disadvantage by embedding the above-market costs for bundled and opt-out and backstop LSEs in the distribution rate component of a customer's bill;
3. The Proposed Decision unjustifiably increases complexity and costs of investor-owned utility (IOU) billing by incorporating the MCAM into investor-owned utility (IOU) rates rather than directly billing responsible LSEs; and
4. The Proposed Decision fails to address the significant costs that can accrue to remaining customers when customers migrate from a bundled or opt-out/backstop LSE to another LSE.

RECOMMENDED CHANGES

1. The Proposed Decision should be modified to require billing of opt-out and backstop procurement costs directly to the LSEs responsible for such costs; and
 2. If the Commission adopts the Proposed Decision's MCAM methodology to bill customers rather than LSEs directly, the Commission should: (a) move the above-market costs to the generation portion of the IOU bill (along with the Market Price Benchmark (MPB) costs) to prevent billing distortions that place self-procuring LSEs at a competitive disadvantage; (b) require the tagging and tracking of migrating customers to ensure such customers continue to be held responsible for the costs of procurement on their behalf; and (c) clarify that the MCAM will only be applied in situations in which IOUs, other LSE types, or other entities are required to procure on behalf of some, but not all, LSEs.
-

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

Order Instituting Rulemaking to Continue
Electric Integrated Resource Planning and
Related Procurement Processes.

R.20-05-003

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S COMMENTS
ON THE PROPOSED DECISION ON MODIFIED COST ALLOCATION MECHANISM
FOR OPT-OUT AND BACKSTOP PROCUREMENT OBLIGATIONS**

The California Community Choice Association (CalCCA)¹ submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure on the proposed *Decision on Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations* (PD or Proposed Decision), issued on March 29, 2022.

I. INTRODUCTION

The procurement ordered by the Commission in Decisions (D.) 19-11-016 and D.21-06-035 fulfills specific system reliability needs over the short and mid-term, and advances the Commission’s “preference” that LSEs, including community choice aggregators (CCAs) and electric service providers (ESPs), self-procure their allocated share.² All but 113 megawatts

¹ California Community Choice Association represents the interests of 23 community choice electricity providers in California: Apple Valley Choice Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Orange County Power Authority, 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, Santa Barbara Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² D.19-11-016, *Decision Requiring Electric System Reliability Procurement for 2021-2023*, R.16-02-007 (Nov. 13, 2019) at 37; D.21-06-035, *Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026)*, R.20-05-003 (Jun. 30, 2021).

(MW) of the 3,300 MW capacity obligations allocated in D.19-11-016 to the IOUs, LSEs, and Electric Service Providers (ESP) was self-procured, with 11 LSEs opting out of self-procurement, including ESPs and two very small CCAs.³ For those that opt out, or who commit to self-procure but then fail and require IOUs to “backstop” their procurement, the PD adopts a cost allocation mechanism, the MCAM, for IOUs to recover their net costs of procurement. Instead of requiring direct billing of the opt-out or backstop costs by the IOU to the responsible LSE, as CalCCA recommended, the PD directs the use of a non-bypassable customer charge for the IOUs’ above-market costs. The PD proposes to have the above-market costs be added as a separate component of the distribution rate for customers of bundled and opt-out LSEs. LSEs that self-procure, however, will not have the option of including such costs in the distribution rate, but rather will include all such costs in their generation rate, resulting in billing distortions that will cause self-procuring LSEs’ generation rates to appear higher. Even if the separate charge carries an explanatory annotation, the Commission cannot reasonably expect customers to understand the issue or correctly compare rates.

The PD admits that from a policy perspective, direct billing of responsible LSEs “would put responsibility for the management decisions of the LSE where it belongs, on the management of the LSE,” and that direct billing would be easier and less costly to implement.⁴ However, the Commission bases its decision that customers must be charged (rather than LSEs) on a flawed reading of Public Utilities Code sections 365.1(c)(2) and 454.51(c). Section 365.1(c)(2) only applies when the IOU procures on behalf of all LSEs, and therefore does not apply in the MCAM situation where the IOU has procured on behalf of only some LSEs. Section 454.51(c) applies to

³ Proposed Decision at 2; *Administrative Law Judge’s Ruling Seeking Comments on Backstop Procurement and Cost Allocation Mechanisms*, R.20-05-003 (Apr. 15, 2020) (April 15, 2020 ALJ Ruling), at 9.

⁴ Proposed Decision at 17.

renewable energy integration resources, when the applicability of the MCAM relates to procurement based on system reliability.

In proposing to establish the MCAM as a nonbypassable customer charge, the PD errs by:

- ✘ Worsening billing distortions and placing self-procuring LSEs at a competitive disadvantage by embedding the above-market costs for bundled and opt-out and backstop LSEs in the distribution rate component of a customer's bill;
- ✘ Unjustifiably increasing complexity and costs of IOU billing by incorporating the MCAM into IOU rates rather than directly billing responsible LSEs;
- ✘ Failing to address the significant costs that can accrue to remaining customers when customers migrate from bundled or opt-out/backstop LSEs to another LSE; and
- ✘ Erroneously relying on Public Utilities Code sections 365.1(c)(2) and 454.51(c) to conclude that the MCAM must include a non-bypassable customer charge.

The Commission should modify the PD by requiring direct billing of opt-out and backstop procurement costs to the LSEs responsible for such costs.

If, despite CalCCA's recommendations above, the Commission adopts the PD's MCAM methodology to bill customers rather than LSEs directly, the Commission should:

- ✓ Move the above-market costs of the procurement to the generation portion of the IOU bill (along with the MPB costs for attributes) to prevent billing distortions that make it impossible for customers to understand and place self-procuring LSEs at a competitive disadvantage;
- ✓ Require the tagging and tracking of migrating customers to ensure such customers continue to be held responsible for the costs of procurement on their behalf; and
- ✓ Clarify that the MCAM will only be applied in situations in which IOUs, other LSE types, or other entities are required to procure on behalf of some, but not all, LSEs.

II. THE COMMISSION SHOULD MODIFY THE PROPOSED DECISION TO REQUIRE DIRECT BILLING OF OPT-OUT AND BACKSTOP PROCUREMENT COSTS TO THE LSES RESPONSIBLE FOR SUCH COSTS

The PD should be modified to require direct billing of opt-out and backstop procurement costs to the responsible LSEs, instead of billing customers. Even the PD recognizes the benefits of direct billing:

In some ways it would be preferable, on a policy basis, to have the IOUs bill the appropriate LSEs directly for either opt-out or backstop procurement. This would put responsibility for the management decisions of the LSE where it belongs, on the management of the LSE. LSEs who opted out or failed to procure capacity would be responsible for their own costs and approach to collecting the associated costs. In addition, this would be far easier to implement, because it would involve a direct contractual obligation between LSEs, with no requirement for billing system changes or the complexity of tracking customers over long periods of time by the IOUs.⁵

As set forth below, directly billing opt-out and backstop procurement costs prevents the billing distortions and resulting competitive disadvantage for self-procuring LSEs that fulfilled the Commission's preference for LSE self-procurement. Direct billing also promotes administrative ease to implement the MCAM. Finally, the Commission's basis for requiring customer billing, Public Utilities Code sections 365.1(c)(2) and 454.51(c), are inapplicable to the MCAM and reliance on them rests on legal error.

A. Billing LSEs Rather Than Customers Avoids Further Distortions in Customer Billing and the Resulting Disincentives for Self-Procuring LSEs

Customer billing for purposes of MCAM results in customer confusion and a competitive disadvantage for self-procuring LSEs because of the resulting distortions to bill presentation. The PD attempts to lessen such bill distortions by directing the IOUs to apply the MPB portion of costs to the LSE's generation portion of the bill, and the above-market MCAM costs to the distribution portion (with a notation in the "fast lane" section of the bill listing the MCAM charges embedded in the distribution charge).⁶ However, when customers look at their bill, they will be unlikely to understand that the MCAM costs are actually a generation component. A self-procuring LSE will reflect its procurement of resources to meet the D.19-11-016 and D.21-06-035

⁵ Proposed Decision at 17.

⁶ *Id.* at 50.

requirements in its generation component, where the costs rightly belong. Thus, if a customer were trying to compare generation costs, it could not. In addition, LSEs choosing to self-procure will appear to have higher generation costs than backstopped LSEs, because the latter will mask their costs in distribution charges.

The Commission in D.19-11-016 “implement[ed] a preference that each LSE, regardless of whether it is an IOU or an ESP or CCA, is responsible for its own share of the incremental reliability and renewable integration resources identified herein as needed.”⁷ In addition, the Commission stated that “[t]his is also an appropriate place to test how well the obligated LSEs perform when given a procurement requirement for system reliability and renewable integration resources in the context of IRP.”⁸ As noted above, eleven LSEs opted out of D.19-11-016 requirements, representing approximately 113 megawatts (MW) of the total 3,300 MW of required capacity.⁹ The vast majority of CCAs self-procured, with large ESPs and two very small CCAs opting out of conducting their own resource adequacy (RA) requirements.¹⁰

D.19-11-016 also advanced the principle that the backstop mechanism “should not disincentivize self-procuring LSEs from being successful with their full procurement requirement.”¹¹ Unfortunately, the PD does just that by leaving the LSEs that fulfilled the objectives of the Commission to contend with bill distortions that place them at a competitive disadvantage with customers. The PD therefore errs by embedding within the MCAM cost mechanism the disincentive to self-procure.

⁷ D.19-11-016 at 37.

⁸ *Id.* at 39.

⁹ Proposed Decision at 2.

¹⁰ April 15, 2020 ALJ Ruling at 9.

¹¹ *Id.* at 4 (summarizing the principles established by D.19-11-016).

B. Billing LSEs Rather Than Customers Simplifies Administration

Billing LSEs rather than their customers is a simple approach. Most, if not all LSEs already have Edison Electric Institute (EEI) Master Power Purchase and Sale Agreements in place with their respective IOUs, and regularly execute confirmations thereunder; RA transactions between IOUs and LSEs are commonplace. Confirmations are largely pro-forma and can be quickly negotiated, as needed. The leaning LSE will recover their costs through the generation rate billed to their customers in the same way a self-procuring LSE will recover its incremental procurement costs. This critical symmetry preserves competitive balance.

In contrast, the customer charge proposed in the PD requires extensive rate design and billing system changes (requiring additional costs). For example, Pacific Gas and Electric Company (PG&E) estimates that it will take 12-24 months to modify its billing system to accommodate the MCAM customer charges, at a cost of three to five million dollars.¹² Billing LSEs directly would avoid these additional costs and billing changes, promoting administrative simplicity and efficiency.

C. Billing LSEs Rather Than Customers Removes the Complexity Resulting from Load Migration and Mitigates the Risk of Cost Shifts

Directly billing LSEs avoids the problems associated with direct customer billing and potential customer migration to another LSE. The Proposed Decision recognizes the difficulties associated with holding customers accountable for the MCAM costs when they migrate, and that the remaining customers of the LSE losing load will pay a higher rate to cover the costs of the migrating customer.¹³ However, the PD chooses not to hold migrating customers accountable for the costs, stating without further explanation or support that “the simplification that this approach

¹² Proposed Decision at 27-28.

¹³ *Ibid.*

allows outweighs the importance and costs of tracking individual customers for a minimum of ten years.”¹⁴ It is imperative that either the benefits and costs match or that LSEs are afforded the opportunity to transact the allocated resources to effectively meet customer needs and offset costs if their load migrates. Fundamentally, customers should pay for the benefits received regardless of which LSE serves their energy needs. The Cost Allocation Mechanism (CAM) meets this objective in that the costs and benefits move with the customers as they migrate. This objective is not met with the MCAM as proposed because the costs and benefits will be paid by any remaining customers of the LSE in the event of load migration. Departing customers will no longer pay for the resources procured on their behalf, which directly conflicts with the cost causation guiding principle for cost allocation.¹⁵

This raises a potential concern that if the MCAM as currently proposed is precedential, in future procurements LSEs may have an incentive to defer procurement to (or allow backstopping by) the IOU. This is because if the Commission directed costs and benefits to move with the customer, the LSE would stay insulated from load migration. The option to bill the LSE and allocate the resource to that LSE is a superior option in that it provides the LSE with a mechanism to address load migration by selling their allocation in the market while avoiding the insulation of customers to load migration. The following diagram depicts how the three options address either costs following customers or the ability of the LSE to transact to address load migration:

In the Event of Load Migration			
	MCAM	CAM	Bill LSE
Does RA Attribute and Cost Match Load?	No	Yes	No
Can the LSE Trade the Attribute?	No	No	Yes

¹⁴ Proposed Decision at 49.

¹⁵ *Id.* at 7.

Billing LSEs directly for the procurement costs would avoid the migration problem created by the PD and the resultant unfair imposition of additional costs on remaining customers. LSEs can manage their portfolio and costs based on their load, and adjust their portfolio, if necessary, upon customer migration.

D. The Proposed Decision’s Reliance on Public Utilities Code Sections 365.1(c)(2) and 454.51(c) in Requiring Billing of MCAM Through a Non-Bypassable Charge on Customers Rests on Legal Error

The PD recognizes the advantages from a policy perspective of direct billing of LSEs for opt-out and direct procurement.¹⁶ However, the PD cites Public Utilities Code sections 365.1(c)(2) and 454.51(c) as requiring direct cost allocation on a fully non-bypassable basis to “customers” and thereby precluding direct LSE billing. As set forth below, however, sections 365.1(c)(2) and 454.51(c) do not require customer billing in the unique event that the IOU procures system reliability resources on behalf of only some (but not all) LSEs, and thus the PD’s insistence that the Commission is required to adopt the customer billing option rests on legal error.

1. Neither Public Utilities Code Section 365.1(c)(2) nor Section 454.51(c) Precludes Direct Billing of LSEs for MCAM Costs

Section 365.1(c)(2) requires the Commission to ensure that in the event it orders an IOU “to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation’s distribution service territory, the net capacity of those generation resources are allocated on a fully non-bypassable basis” to bundled service customers, ESP customers, and CCA customers.¹⁷ The Commission’s obligation set forth in section 365.1(c)(2)(A) therefore applies in situations in

¹⁶ Proposed Decision at 17.

¹⁷ Cal. Pub. Util. Code § 365.1(c)(2)(A) (emphasis added).

which the system (and all customers) will benefit from the procurement, and not the situation in which the IOU is procuring on behalf of only some, but not all LSEs. The unique situation presented by the opt-out and backstop procurement, in which the IOUs procure on behalf a subset of (and therefore not all) LSEs, is therefore not governed by section 365.1(c)(2)(A).

Similarly, section 454.51(c) does not preclude direct LSE billing in the opt-out and backstop procurement situation. Section 454.51(c) requires the Commission to “[e]nsure that the net costs of any incremental renewable energy integration resources procured by [an IOU] to satisfy the need [of ensuring a reliable electricity supply providing optimal integration of renewable energy in a cost-effective manner] are allocated on a fully non-bypassable basis consistent with the treatment of costs identified in [section 365.1(c)(2)(A)].”¹⁸ While the procurement prescribed D.19-11-016 and D.21-06-035 includes renewable resources, the purpose of the procurement orders is to satisfy system reliability requirements rather than promoting the integration of renewable energy resources. Therefore, section 454.51(c) also does not require the Commission to adopt the non-bypassable customer charge in the MCAM situation.

For the reasons set forth above, the Commission’s reliance on sections 365.1(c)(2)(A) and 454.51(c) as requiring it to structure the MCAM as a non-bypassable customer charge rather than direct LSE billing is misplaced and rests on legal error.

2. Directly Billing LSEs for Above-Market Procurement Costs for Opt-Out and Backstop LSE Procurement Will Not Increase Costs for Bundled Service Customers

The PD insists that sections 365.1(c)(2)(A) and 454.51(c) require the Commission to structure the MCAM to allocate costs to customers on a “non-bypassable basis.” As set forth

¹⁸ Cal. Pub. Util. Code § 454.51(c) (emphasis added).

above, however, sections 365.1(c)(2)(A) and 454.41(c) do not govern the procurement covered by the MCAM. In addition, the PD fails to describe how direct billing of LSEs, rather than a non-bypassable charge, could prevent bundled customer indifference and result in cost shifting. Direct billing of LSEs would ensure that all costs incurred by the IOUs would be collected from the opt-out and backstop LSEs. Those LSEs would then incorporate the costs into their generation rates, just as the IOUs and self-procuring LSEs will do. Even the PD acknowledges that “[a]rguably, allocating the costs directly to the LSE could be characterized as allocating costs on a non-bypassable basis to the LSE on behalf of its customers.”¹⁹ Non-IOU LSE customers will not be able to bypass the costs, as the LSEs must recover those costs through their rates. Bundled customers will remain indifferent, as all costs incurred by the IOU will be billed to the opt-out and backstop LSEs. In fact, and as set forth above, allowing IOUs and all LSEs to equally incorporate the costs of the procurement into their generation rates prevents billing distortions and places all LSEs, including IOUs, on a level playing field.

III. IF THE COMMISSION ADOPTS THE MCAM NON-BYPASSABLE CUSTOMER CHARGE, THE PD SHOULD FIX THE BILL DISTORTION, HOLD MIGRATING CUSTOMERS RESPONSIBLE FOR COSTS, AND CLARIFY HOW MCAM CAN BE USED AS PRECEDENT

If, despite CalCCA’s strong opposition, the Commission adopts the PD’s MCAM non-bypassable customer charge, the Commission should: (1) “fix” the bill distortion by placing above-market MCAM costs on the generation portion of the bill, along with the MPB portion of the costs, (2) require IOUs to track customer migration; and (3) clarify the limited use of the MCAM as precedent.

¹⁹ Proposed Decision at 18.

A. The Commission Should Require the IOUs to Include all MCAM Costs in the Generation Portion of the Bill

If the MCAM is adopted, the Commission should “fix” the resulting bill distortion described above by placing above-market MCAM costs on the generation portion of the bill, along with the MPB portion of the costs. With all generation related costs in the generation component, customers would then be able to fairly compare generation rates of the IOUs, the opt-out/backstop LSEs, and the self-procuring LSEs.

B. The Commission Should Require the Tagging and Tracking of Migrating Customers

Furthermore, in order to address the violation of customer indifference for MCAM charges caused by load migration, the Commission should require IOUs to track and tag customers, as suggested by Southern California Edison Company.²⁰ This would allow migrating customers to be held accountable for costs incurred on their behalf even if they switch generation providers. One of the reasons for CalCCA's opposition to the proposed MCAM is that it would require extensive rate design and billing system changes. If the Commission rejects CalCCA's recommendation to bill LSEs directly and adopts the MCAM, tracking of customers will be necessary for meeting the cost causation principle.

C. The Commission Should Clarify the Rules for the Limited Use of the MCAM as Precedent

The PD declares its adopted methodology for MCAM treatment as precedent. It states:

The MCAM adopted herein sets precedent for any future backstop procurement authorized in the [IRP] process in the future, unless and until the Commission adopts a more comprehensive programmatic approach to IRP procurement authorizations.²¹

²⁰ Proposed Decision at 20-21.

²¹ *Id.* at 3.

If the Commission adopts the MCAM non-bypassable customer charge, the Commission should clarify the rules for limited application to situations in which IOUs, other LSE types, or other entities are required to procure on behalf of some, but not all, LSEs. In the case of a central procurement entity, for example, in which procurement occurs on behalf of all LSEs, the MCAM cost allocation mechanism would be inapplicable.

IV. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the Proposed Decision as provided in Attachment A.

Respectfully submitted,

Evelyn Kahl,
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

April 18, 2022

**ATTACHMENT A
TO
CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS
ON THE PROPOSED DECISION ON MODIFIED COST ALLOCATION MECHANISM
FOR OPT-OUT AND BACKSTOP PROCUREMENT OBLIGATIONS**

**PROPOSED CHANGES TO FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS**

FINDINGS OF FACT

12. ~~Public Utilities Code Sections 454.51(e) and 365.1(e)(2), taken together, require that the above-market costs of any IOU opt-out or backstop procurement required by D.19-11-016, or backstop procurement required by D.21-06-035, be allocated on a non-bypassable basis to the relevant benefitting customers.~~
13. ~~To meet statutory requirements against cost shifting, a non-bypassable customer charge~~ Direct billing of responsible LSEs is required as a billing mechanism for recovering the above-market procurement costs incurred by the IOUs on behalf of other LSEs pursuant to D.19-11-016 and D.21-06-035.
34. ~~The remaining costs shall be recovered from current Opt-Out or Deficient LSE customers via a non-bypassable ch~~

CONCLUSIONS OF LAW

2. ~~Under statutory requirements in Section 454.51(e) and 365.1(e)(2), the above-market costs of any IOU backstop procurement required by D.19-11-016 must be recovered by imposing non-bypassable customer charges billed to benefitting retail customers~~ directly billing the responsible LSEs for such costs.
9. ~~The MCAM adopted in this order meets statutory requirements by allocating above-market costs to bundled service customers, Opt-Out LSE customers, and Deficient LSE customers on a non-bypassable basis and market costs to Opt-Out or Deficient LSEs.~~
10. ~~It is not necessary to track and tag every customer of a non-IOU LSE in order to achieve the principles of bundled customer indifference and compliance with statutory requirements under the MCAM structure adopted herein.~~
11. ~~MCAM charges should be required to appear as a separate billing line item for non-IOU LSE customers, so that customers can more effectively compare costs related to the provision of generation and distribution services.~~