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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	R.18-07-003

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING SEEKING COMMENTS ON VOLUNTARY ALLOCATIONS OF RENEWABLES PORTFOLIO STANDARD RESOURCES AND PORTFOLIO CONTENT CATEGORY ISSUES

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On behalf of
California Community Choice Association

April 28, 2022

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SUMMARY OF RECOMMENDATIONS

- ✓ The California Public Utilities Commission (Commission) should find that the allocation of renewable energy credits (RECs) to non-investor-owned utility (IOU) load-serving entities (LSEs) pursuant to the Voluntary Allocation process are not "resales" that require reclassification of their Portfolio Content Category (PCC).
- ✓ Subsequent resales of the RECs obtained through the Voluntary Allocation process should be reclassified for PCC purposes; and
- ✓ The Commission should adopt the Voluntary Allocation Market Offer (VAMO) schedule proposed by CalCCA.

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The California Community Choice Association[1] (CalCCA) submits these Comments in response to the Administrative Law Judge's Ruling Seeking Comments on Voluntary Allocations of Renewables Portfolio Standard Resources and Portfolio Content Category Issues (Ruling), issued on April 18, 2022.

I. INTRODUCTION

Decision (D.) 21-05-030 (Phase 2 Decision) in the Power Charge Indifference Adjustment (PCIA) proceeding establishes new requirements for IOU portfolio optimization, including the VAMO. The Phase 2 Decision leaves details regarding the implementation of VAMO to this Renewables Portfolio Standard (RPS) proceeding.[2] The Ruling requests party

[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.21-05-030, *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization,* R.17-06-026 (May 20, 2021) (Phase 2 Decision) at 37 (proposing a timeline for the first VAMO, "subject to adjustments in the RPS proceeding").

comments on two of these details: (1) Portfolio Content Category (PCC) classification following the Voluntary Allocation; and (2) the VAMO timeline.[3]

The Phase 2 Decision creates the Voluntary Allocation process in which non-IOU LSEs serving customers previously served by the IOU are allocated a "slice" of the IOU's PCIA-eligible RPS resources, including PCC 0 resources. The compliance "value" of such resources to the non-IOU LSEs depends greatly on the PCC classification such resources receive upon allocation. As noted in the Ruling, the IOUs filed a Joint Motion on December 8, 2021 requesting clarification that the PCC classification of RECs will not be changed when those RECs are directly allocated under the Voluntary Allocation process.[4] CalCCA filed a response to the Joint Motion on December 23, 2021, supporting the Joint IOU's position.[5] CalCCA agrees with the Joint IOUs that the intent of the Phase 2 Decision is to allow the recipient LSEs to "step into the shoes" of the IOUs with respect to the allocated resources. There is no language in statutes or Commission decisions regarding PCC classification that prevents LSEs from receiving in the allocation the classification the resources receive while they are held by the IOU.

With respect to the timeline, the VAMO schedule was originally introduced in Table 2 of the Phase 2 Decision,[6] which anticipates possible changes to the timeline: "[w]e expect to implement the initial RPS VAMO . . . as follows, *subject to adjustments in the RPS*

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[3] As noted in the Ruling, PCC 0 RECs (*i.e.,* RECs generated pursuant to contracts executed before June 1, 2010) count in full for RPS compliance without regard to the quantitative requirements for the use of each PCC established by Public Utilities Code § 399.16(c). Ruling at 3.

[4] Ruling at 2; *Joint Motion of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-E) and San Diego Gas & Electric Company (U 902-E) to Amend Scoping Memorandum to Accommodate Voluntary Allocation Structure*, R.18-07-003 (Dec. 8, 2021) (Joint Motion) at 6.

[5] *California Community Choice Association's Response to Joint Motion of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-E) and San Diego Gas & Electric Company (U 902-E) to Amend Scoping Memorandum to Accommodate Voluntary Allocation Structure,* R.18-07-003 (Dec. 23, 2021) (CalCCA Response to Joint Motion).

[6] Phase 2 Decision, Table 2 at 37.

proceeding."[7] Since the Phase 2 Decision, certain milestones in the Phase 2 Decision have been missed, and many uncertainties and questions with respect to the requirements for the VAMO remain. For example, the IOUs were required by the Phase 2 Decision to "inform LSEs of their potential Voluntary Allocation shares" in February 2022.[8] Many community choice aggregators (CCAs), however, have yet to receive adequate information regarding their potential Voluntary Allocation shares.[9] Several filings and orders have also been issued that have revised the schedule in piecemeal fashion, but uncertainties regarding the VAMO schedule persist.

The outstanding issues on PCC classification and the schedule uncertainties currently present obstacles for non-IOU LSEs considering whether to elect to take their Voluntary Allocations.[10] Accordingly, CalCCA recommends that the Commission:

- ✓ Find that the allocation of RECs to non-IOU LSEs pursuant to the Voluntary Allocation process are not "resales" that require reclassification;

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7 *Id.* at 37.

8 *Id.*, Table 2 at 38.

9 For example, SDG&E unilaterally informed LSEs by email that it would revise its schedule to provide the forecast by April 29, 2022. PG&E states on its website dedicated to VAMO that it plans to "inform[] eligible LSEs of initial forecast allocation shares for Voluntary Allocation" on May 16, 2022, when it files its ERRA Forecast Application. However, by letter dated April 21, 2022 to the Executive Director of the Commission, PG&E requested an extension to May 31, 2022 to file its ERRA Forecast Application. PG&E's request for extension was granted by the Executive Direct by letter dated April 27, 2022. PG&E has yet to inform CCAs of a change to the date it will inform of the initial forecast allocation shares, and has not updated its VAMO website to reflect the change to May 31, 2022. PG&E's VAMO website is located at https://www.pge.com/en_US/for-our-business-partners/energy-supply/electric-rfo/wholesale-electric-power-procurement/2022-rps-voluntary-allocation.page?WT.mc_id=Vanity_rfo-2022-rps-voluntary-allocation

10 In addition, currently under suspension are the IOU Advice Letters proposing pro forma contracts for the Voluntary Allocation. *See* PG&E Advice 6517-E (Feb. 28, 2022), *suspended up to 120 days* (Mar. 29, 2022), *supplemented by* PG&E Advice 6517-E-A (Apr. 11, 2022); SCE Advice 4732-E (Feb. 28, 2022), *supplemented by* SCE Advice 4732-E-A (Mar. 18, 2022), *suspended up to 120 days* (Mar. 29, 2022); SDG&E Advice 3962-E (Feb. 28, 2022), *suspended up to 120 days* (Mar. 29, 2022). CalCCA filed protests to all three Advice Letters regarding unacceptable terms in the pro forma contracts. *See CalCCA Protest to PG&E AL 6517-E* (Mar. 21, 2022), *CalCCA Protest to SCE AL 4732-E* (Mar. 21, 2022), *CalCCA Protest to SDG&E AL 3962-E* (Mar. 21, 2022). Resolution of the outstanding issues with respect to the pro forma contracts is also necessary to provide certainty to parties considering accepting their Voluntary Allocations.

- ✓ Find that subsequent resales of the RECs obtained through the Voluntary Allocation process should be reclassified; and

- ✓ Adopt the VAMO schedule proposed by CalCCA.

II. CALCCA RESPONSES TO QUESTIONS 1-3

A. RULING QUESTION 1: *Should the Voluntary Allocation under the VAMO process be considered "resales" for purposes of determining PCC classifications? Why or why not? (a) If the Voluntary Allocation should be considered a resale, how should PCC classification for pre-June 1, 2010 RPS contract RECs be determined? (b) If the Voluntary Allocation is not considered a resale, how should PCC classification for pre-June 1, 2010 RPS contract RECs be determined?*

Voluntary Allocations should not be considered resales for purposes of determining PCC classifications. A Voluntary Allocation is not a traditional "sales" transaction – it is instead a Commission-approved and overseen regulatory mechanism to transfer to departed load customers the benefits of resources procured on their behalf. In addition, no statutes or Commission precedent require Voluntary Allocations to be treated as resales, or otherwise address this unique situation. As a result, RECs for pre-June 1, 2010 RPS contracts should retain the PCC classification held by the IOU prior to the Voluntary Allocation to the non-IOU LSE.

1. The Voluntary Allocations Under the VAMO Process are the Product of a Regulatory Mechanism Rather Than a "Sales" Transaction

CalCCA has and continues to support the Joint IOUs' position that Voluntary Allocations are not comparable to resale arrangements, and therefore PCC classifications should not be changed because the resource is allocated. As the IOUs discuss in detail in the Joint Motion, the Voluntary Allocation process is not a standard sales transaction.[11] The Voluntary Allocation is a Commission-approved and overseen regulatory mechanism, not a sale. It is intended to transfer the value of attributes to the parties on whose behalf the original contracts were procured. As the

[11] Joint Motion at 6-9.

IOUs have explained, "[a]llocation of the [RECs] under the Voluntary Allocation process simply allows the value of [Power Content Category] 0 RECs to follow the departed load customers who are already obligated to pay for them."[12] The Voluntary Allocation is a specific response to a unique challenge: ensuring bundled and departed load customers each bear their share of costs, and enjoy their share of benefits, of resources purchased on their behalf.

Voluntary Allocations bear none of the hallmarks of a traditional "sales" transaction. The product offered is a unique "slice" of the IOU's PCIA-eligible RPS portfolio, and the price to be paid is not subject to negotiation. Only certain counterparties (i.e., the non-IOU LSEs serving departed customers for whom the RECs were procured) are even eligible to participate, and their level of participation is fixed by the Phase 2 Decision. Under the Voluntary Allocation, the recipient LSEs have no contact with the original seller, and the underlying contract itself remains untouched, including its term. Voluntary Allocations do not bear the hallmarks of traditional sales because the allocations are intended to accomplish a different, and complex, set of objectives.

2. Statute and Commission Precedent do Not Require Voluntary Allocations to be Treated as Resales

Permitting Voluntary Allocations to retain the original PCC classification of the original holder does not, as has been argued by TURN and CUE, fail "to conform to Commission precedent implementing the governing statutory requirements."[13] In addition, TURN and CUE's arguments that the Joint IOUs "seek to override [the Phase 2 Decision] and relitigate issues already resolved in that decision"[14] are not consistent with the actual findings of the Phase 2

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12 *Id.* at 7.

13 *Response of The Utility Reform Network and the Coalition of California Utility Employees to the Joint Motion of Southern California Edison Company, Pacific Gas and Electric Company and San Diego Gas & Electric Company to Amend Scoping Memorandum to Accommodate Voluntary Allocation Structure,* R.18-07-003 (December 23, 2021) (TURN/CUE Response) at 1.

14 *Id.* at 3.

Decision. TURN is correct that the Commission has previously considered the question of whether long-term treatment can be retained if contracts are "repackaged" as short-term transactions for RPS compliance.[15] But notwithstanding TURN's repeated efforts to liken them,[16] allocations under VAMO structured to redistribute the costs and benefits of the IOUs' RPS portfolios are simply not resales. Neither statute nor Commission decision has determined that they are. In fact, the implication that there has been a decision on this point is incorrect. TURN and CUE's arguments are unpersuasive and rely on precedent that does not support their positions.

a. Commission Precedent Finding that Unbundling of Energy and RECs Results in PCC Reclassification Does Not Apply to the Voluntary Allocation

TURN and CUE make a general pronouncement that the IOU's proposal "fails to conform to Commission precedent implementing the governing statutory requirements"[17] because "[p]ursuant to D.11-12-052, any resale of energy and/or RECs associated with [contracts executed prior to June 1, 2010] must be assigned the PCC that would apply if the resource was first contracted after June 1, 2010."[18] TURN and CUE's reliance on D.11-12-052 is disingenuous. TURN and CUE quote the following sentence from D.11-12-052 as support for their argument (emphasis added):

> If any RECs from a contract signed prior to June 1, 2010, are *unbundled and sold separately* after June 1, 2010, the underlying energy may not be used for RPS compliance; and the unbundled RECs will be counted in accordance with the limitations on § 399.16(b)(3), as set out in § 399.16(c)(2).[19]

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15 *See* D.12-06-038, *Decision Setting Compliance Rules for the Renewables Portfolio Standard Program,* R.11-05-005 (June 21, 2012) at 44.

16 *See, e.g., Reply Comments of The Utility Reform on the Proposed Phase 2 Decision of ALJ Wang on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, R.17-06-026 (May 3, 2021) at 2.

17 TURN/CUE Response at 1.

18 *Id.* at 3.

19 D.11-12-052, *Decision Implementing Portfolio Content Categories for the Renewables Portfolio Standard Program,* R.11-05-005 (Dec. 15, 2011) at 62.

But this language does not support their preferred reading. TURN and CUE would have us believe the resale is the key to changing the PCC classification. However, the sentence makes clear it is the fact of the ***unbundling*** and ***separate*** sale of energy and RECs that changes the classification, not the resale. In fact, D.11-12-052's Conclusions of Law and Ordering Paragraphs make this point. Conclusion of Law 24 states that RECs from PCC 0 contracts that are "unbundled" and sold separately are subject to reclassification. [20] Ordering Paragraph 17 repeats this same language.[21] Thus, TURN/CUE's argument is misplaced and should be rejected.

b. The Phase 2 Decision's Holding Regarding Long-Term Contracting Requirements Does Not Apply to PCC Classification on Voluntary Allocation

TURN and CUE also argue that the Phase 2 Decision holds "that the allocation of contracts under the VAMO should be treated as a resale for purposes of compliance with the long-term contracting requirements outlined in §399.13(b)." [22] This, again, is simply not the case.

The language cited by TURN and CUE in support of this position actually concerns the treatment of long-term allocations under the long-term contracting requirements in § 399.13(b).[23] The Phase 2 Decision requires long term allocations to last for a specified period of years to receive "long-term" treatment under the RPS requirements. But the Phase 2 Decision does not even address, let alone dispose of the underlying issue – whether or not the allocations are resales for PCC classification purposes.

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20 *Id.* at 75.
21 *Id.* at 82-83.
22 TURN/CUE Response at 3.
23 Phase 2 Decision at 22 ("[w]e conclude that providing an opportunity for LSEs to receive long-term credit for RPS contracts that have less than 10 years remaining through Voluntary Allocations would violate Section 399.13(b). Thus, generation from IOUs' long--term contracts in an allocation with less than 10 years remaining will be included in short-term allocations.").

TURN and CUE's underlying concern seems to be what they term "perceived loopholes established for VAMO resources" that could be created if PCC classifications transfer to the recipients of the Voluntary Allocation.[24] But there are no "loopholes" precisely because there is no statutory language or Commission decision directly addressing the question of PCC classification in the context of a Voluntary Allocation. This issue has simply not been addressed. In addition, the Commission would not be creating a "loophole" by finding that the allocations are not resales because of their unique status as a Commission created mechanism rather than an actual sale.

3. Retaining the PCC Classification of a Product Allocated Through the Voluntary Allocation Implements the Intent of the Phase 2 Decision

The Phase 2 Decision addresses portfolio optimization and ensuring cost indifference for bundled and unbundled customers. CalCCA agrees with the IOUs that the purpose of the Voluntary Allocation is to allow RPS procurement "to 'follow' customers who move from bundled service to [CCA] or [Direct Access] service *without alteration of the benefits conveyed by such procurement*."[25] Only by allowing the PCC classification to be retained can the Commission comply with the Phase 2 Decision's Conclusion of Law 10: "[i]t is reasonable and consistent with existing Commission decisions on renewable energy attributes to preserve the bundled nature of energy and compliance attributes through [VAMO] sales contracts."[26] Retaining the PCC Classification best implements the Commission's intent to maintain the "bundled nature of energy and compliance attributes" for departed customers through the Voluntary Allocation.

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24 TURN/CUE Response at 3.
25 Joint Motion at 3 (emphasis added).
26 Phase 2 Decision at 60, Conclusion of Law 10.

For all of the reasons set forth above, Commission should adopt the Joint IOUs' recommendation that PCC classifications be retained following the Voluntary Allocation.

B. RULING QUESTION 2: *If the Commission determines that PCC-0 designation should be retained for this initial Voluntary Allocation from IOUs to LSEs, how should subsequent resale of these contracts by an LSE affect their REC PCC classification?*

1. Subsequent Resales of Contracts by LSEs After the Voluntary Allocation Should Result in Reclassification

CalCCA agrees with the Joint IOUs that the allocation recipient LSE's PCC 0 classification should be reclassified on subsequent downstream transfer of the REC from the recipient LSE to a third party. As set forth in the Joint IOU Motion, "post-allocation resale of a PCC 0 REC by an IOU or a non-IOU LSE would alter the classification of the PCC 0 REC to either PCC 1, PCC 2, or PCC 3 according to the same rules that apply today to any resale."[27]

C. RULING QUESTION 3: *While D.21-05-030 (Table 2) provides a schedule for the VAMO process, it also authorizes the RPS proceeding to adjust the timing and process for the filings. Does our consideration of Voluntary Allocations and PCC classification issues necessitate a change in that schedule? If so, propose a revised schedule and justification for the need to make changes.*

1. The VAMO Timeline Proposed in the Phase 2 Decision Should be Revised for the Voluntary Allocation to Proceed Only After Commission Resolution of the PCC Classification and IOU Pro Forma Contract Term Issues

The Commission's consideration of Voluntary Allocations and PCC classification necessitates changes to the VAMO process schedule. As noted above, the compliance "value" of such resources to LSEs depends greatly on the PCC classification that such resources receive. LSEs will therefore be reluctant to elect their allocation until the PCC classification issue is resolved. In addition, and as noted in CalCCA's Protests to the IOU Advice Letters proposing

[27] Joint Motion at 4.

their Voluntary Allocation pro forma contracts,[28] certain IOU contract terms present uncertainties to parties which must be resolved prior to LSEs electing to sign the contracts. Therefore, until both the PCC classification issues and the protests on IOU contract terms are resolved, LSEs are reluctant to participate in the Voluntary Allocation process.

Set forth below is a proposed schedule for the entire VAMO process, with the goal of both Voluntary Allocation and Market Offer deliveries beginning January 1, 2023. The proposed schedule would provide time for CCAs to pursue approval of VAMO contracts, once notified of their allocation share from the IOUs, from their governing boards. Under the schedule, such approval could be sought by the CCAs after receiving guidance from the Commission on the PCC classification issue, and from Energy Division on both the Voluntary Allocation pro forma contract issues and the Market Offer pro forma contract and process issues.

Finally, the schedule for Voluntary Allocation contracting should be revised from the schedule set forth in Phase 2, Table 2. The Ruling cites Table 2 as requiring "Voluntary Allocation contracting [to] commence 21 days after Commission approval of final 2022 RPS Plans."[29] However, approval of the final 2022 RPS Plans will likely not occur until at least February 2023. As noted in the Commission's April 11, 2022 Ruling regarding issues and schedule for the 2022 RPS Plans, Voluntary Allocation and Market Offer deliveries are anticipated to begin in January 2023.[30] Therefore, as set forth in CalCCA's proposed schedule below, contracting for both the Voluntary Allocation and Market Offer must be complete well in advance of January 2023.

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28 *See infra,* n. 10.

29 Ruling at 2 (citing Phase 2 Decision at 38, Table 2).

30 *Assigned Commission and Assigned Administrative Law Judge's Ruling Identifying Issues and Schedule of Review for 2022 Renewables Portfolio Standard Procurement Plans and Denying Joint IOUs' Motion to File Advice Letters for Market Offer Process,* R.18-07-003 (Apr. 11, 2022) at 13.

Table 1: CalCCA Proposed VAMO Schedule

VAMO Milestone	Date
Party Comments submitted – PCC Classification/VAMO Schedule	April 28, 2022
IOU Joint Market Offer (MO) Process Filing	May 2, 2022
Proposed Decision – PCC Classification/VAMO Schedule	May 6, 2022 (Shortened Comments Period – Comments 5/13, Replies 5/18)
IOU Individual MO Process -Confidential Filing	May 16, 2022
IOUs Complete Process of Informing LSEs of Voluntary Allocation (VA) Shares	May 31, 2022
Final Decision – PCC Classification and VAMO Schedule	June 2, 2022 (Voted on at Commission meeting)
Party Comments – IOU MO Process Filing	June 6, 2022
Energy Division Action on Tier 2 Voluntary Allocation Pro Forma Contract (VA) Advice Letters	June 9, 2022
Replies – IOU MO Process	June 13, 2022
IOUs, Small Utilities, ESPs and CCAs file Draft 2022 Annual RPS Procurement Plan Filings	July 1, 2022
Proposed Decision – MO Process	July 18, 2022
IOUs and LSEs complete process of determining interest in VA elections and sign VA contracts	By July 29, 2022
Comments – MO Process PD	August 8, 2022
Replies – MO Process PD	August 15, 2022
IOUs submit Motions to Update Draft 2022 RPS Procurement Plans	August 15, 2022
Final Decision – MO Process	September 15, 2022 (Voted on at Commission meeting)
Energy Division Action on Tier 2 MO Pro Forma Contract Advice Letters	September 29, 2022
IOU/LSE MO Contracting Concludes	November 15, 2022
Commence VA and MO Deliveries	January 1, 2023

III. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests consideration of the Comments and proposed Schedule set forth herein and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,

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CALIFORNIA COMMUNITY CHOICE ASSOCIATION

April 28, 2022