



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

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

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SUMMARY OF RECOMMENDATIONS

- ✓ Adopt the recommendations of Alliance for Retail Energy Markets (AReM) and Shell Energy North America (US), L.P. D/B/A Shell Energy Solutions (Shell) to modify the PD to require direct billing of load-serving entities (LSEs) for opt-out and backstop procurement costs;
- ✓ Reject Pacific Gas and Electric Company's (PG&E's) and Southern California Edison Company's (SCE's) request to embed the Modified Cost Allocation Mechanism (MCAM) charge in distribution rates;
- ✓ Reject the request of PG&E, SCE and San Diego Gas & Electric Company (SDG&E) to remove the PD's one-time allocation of Resource Adequacy (RA) capacity and Renewables Portfolio Standard (RPS) attributes to LSEs with load departing after 2019;
- ✓ Adopt the recommendation of Protect Our Communities Foundation (PCF) that if the Commission adopts the investor-owned utility (IOU) customer charge, the costs should move with the customers of the non-IOU LSE to the new provider of service in the event of a non-IOU LSE's bankruptcy or termination of service; and
- ✓ Require the IOUs to seek approval through a Tier 3 Advice Letter for procurement greater than five percent above the opt-out or backstop amount.

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The California Community Choice Association (CalCCA)¹ submits these reply 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

In response to party Opening Comments, CalCCA provides the following recommendations:

- ✓ Adopt the recommendations of AREM/Shell to modify the PD to require direct billing of LSEs for opt-out and backstop procurement costs;
- ✓ Reject PG&E’s and SCE’s request to embed the MCAM charge in distribution rates;
- ✓ Reject the request of PG&E, SCE and SDG&E’s remove the PD’s one-time allocation of RA capacity and RPS attributes to LSEs with load departing after 2019;
- ✓ Adopt the recommendation of PCF that if the Commission adopts the IOU customer charge, the costs should move with the customers of the non-IOU LSE to the new provider of service in the event of a non-IOU LSE’s bankruptcy or termination of service; and
- ✓ Require the IOUs to seek approval through a Tier 3 Advice Letter for procurement greater than five percent above the opt-out or backstop amount.

II. THE COMMISSION SHOULD ADOPT THE RECOMMENDATIONS OF AREM AND SHELL TO MODIFY THE PD TO REQUIRE DIRECT BILLING OF OPT-OUT AND DEFICIENT LSES

The PD notes the preferred option from a policy perspective of direct billing of opt-out and deficient LSEs as opposed to an IOU customer charge.² However, the PD concludes that Public

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 PD at 17 (having the IOUs bill the appropriate LSEs directly “would be preferable, on a policy basis” and “would be far easier to implement, with no requirement for billing system changes . . .”); *see also* CalCCA Opening Comments at 3-6 (all references to party Opening Comments are to the comments filed in this Docket in response to the PD on April 18, 2022).

Utilities Code Sections 365.1(c)(2) and 454.41(c) require the Commission to adopt the IOU customer charge rather than directly billing LSEs. In their Opening Comments, AReM and Shell correctly note (as also detailed in CalCCA’s Opening Comments) that Sections 365.1(c)(2) and 454.41(c) do not expressly require the Commission to place the MCAM costs in an IOU customer charge.³ Instead, the Commission can ensure that all benefitting customers pay the costs of the procurement (thereby ensuring a non-bypassable charge) through direct LSE billing. The LSEs paying the MCAM costs will charge customers through their generation rates, just as the IOUs charge their customers for the same costs.

In fact, PG&E/SCE’s Opening Comments request significant modifications to the PD to resolve the complexities and significant cost recovery issues associated with an IOU customer charge.⁴ In particular, PG&E/SCE note the significant time (up to 24 months) and costs (for PG&E, \$3 million) associated with billing system changes to accommodate the MCAM charge.⁵ PG&E/SCE note that the Tier 2 advice letter process will introduce additional delay and costs, for which the IOUs request they be able to recover.⁶ In addition to the significant rate design issues flagged by PG&E/SCE, these complexities further support the Commission instead adopting direct LSE billing to avoid the significant costs, delay, bill distortion and migration issues presented by the IOU customer charge.

III. THE COMMISSION SHOULD REJECT PG&E/SCE’S REQUEST TO EMBED THE MCAM CHARGE IN THE IOU DISTRIBUTION RATES

If the Commission adopts the IOU customer charge rather than direct LSE billing, it should reject PG&E/SCE’s request to embed all MCAM costs in the IOU distribution rates. The PD agrees that:

embedding the opt-out and backstop procurement costs in the distribution rates [for bundled and opt-out/deficient LSE customers] is not transparent and does not allow for real comparisons between the costs of different providers, causing the potential for unfair competition.⁷

³ AReM Opening Comments at 3-6; Shell Opening Comments at 3-6.

⁴ See PG&E/SCE Opening Comments at 6-7 (requesting timely cost recovery of additional system upgrades necessary to implement the MCAM customer charge); 8-9 (requesting removal of the MPB costs from the applicable non-IOU LSE portion of a customer’s bill); 10 (requesting clarification of the language required in the “Fast Lane” portion of the bill); and 11-12 (requesting clarification on IOU rate design for the MCAM customer charge).

⁵ *Id.* at 6.

⁶ *Id.* at 6.

⁷ PD at 50.

The PD thus attempts to reduce the impact of placing the entire MCAM charge in the distribution portion of the bill by directing the IOUs to place the MPB portion of the costs in the LSEs' generation portion of the bill. The above-market costs would remain in the distribution section of the bill.⁸ To increase transparency and promote fair price comparisons for customers, the Commission should direct all opt-out and backstop procurement costs to be included on the generation side of the bill. At a minimum, however, the Commission should reject PG&E/SCE's request to modify the PD to move the MPB portion of the costs out of the generation portion and into the distribution portion of the bill.

Additionally, PG&E/SCE argue that Section 394(f) governing ESPs "prohibits the Commission from regulating generation charges for [ESPs]," and that "[s]imilarly, the Commission does not regulate [CCA] rates."⁹ CalCCA agrees with the IOUs' conclusions regarding jurisdiction. Ordering the IOUs to include a separate line item of the MPB costs on the generation portion of the bill, however, does not constitute Commission regulation of ESP or CCA rates. PG&E/SCE's argument should be rejected.

Finally, PG&E/SCE request that the Commission modify the PD's requirement that the MCAM charge be "broken out separately" in a "separate line item" for opt-out and backstop LSE customers, "so that customers can more effectively compare costs that are related to provision of generation and distribution services."¹⁰ PG&E/SCE request that instead of a separate line item, the Commission should include the MCAM charge in the total distribution rate, and communicate to customers elsewhere on the bill the portion of the MCAM charge that is embedded in the distribution rate. With its request to embed both the MPB and above-market costs within the distribution charge, PG&E/SCE would effectively remove all attempts by the Commission in the PD to increase transparency for customers, reduce bill distortions, and ensure fair competition among IOUs/opt-out or deficient non-IOU LSEs and self-procuring LSEs. PG&E/SCE's request should be rejected.

⁸ *Id.* at 50.

⁹ PG&E/SCE Opening Comments at 9.

¹⁰ PD at 50.

IV. THE COMMISSION SHOULD REJECT THE IOU'S REQUEST TO REMOVE THE PD'S ONE-TIME ALLOCATION OF RA CAPACITY AND RPS ATTRIBUTES TO LSES WITH LOAD DEPARTING AFTER 2019

The Commission should reject PG&E/SCE's and SDG&E's proposals to eliminate the one-time allocation of RA capacity and RPS energy to the Joint California CCAs.¹¹ The IOUs argue that the PD violates "settled law" in the Power Charge Indifference Adjustment (PCIA) proceeding (R.17-06-026) by making a "one-time provision" on behalf of customers of the Joint CCAs who departed SDG&E's retail service since 2019. The Joint California CCAs are ordered to pay for the RA capacity and RPS attributes at the MPB (through bilateral contracts), while the departed load customers will pay for the above-market costs through the PCIA.

The Commission should reject the IOUs' conclusion that the PD violates "settled law" concerning allocation of RA capacity and RPS attributes to LSEs who received departing load. First, the Commission is not bound by its past decisions – in fact, its authority to deviate from past decisions is well-established.¹² In addition, the Commission carves out its "one-time provision" for the allocation of the RA capacity and RPS attributes in this unique situation in which SDG&E was aware that a significant portion of its load would depart for the Joint California CCAs after 2019. The Joint California CCAs had filed their Implementation Plans, and the schedule for the load departure was known by SDG&E and the CCAs. SDG&E argues that "load departure is hardly a novel circumstance and cannot justify circumvention of" Commission precedent. However, the Commission's one-time allocation of RA capacity and RPS attributes in this circumstance is justified and ensures that the capacity procured on behalf of the departed load serves the load for which it was specifically intended.

In addition, the PD should be revised to ensure that the non-IOU LSEs can purchase all relevant RA attributes associated with its share of the procurement, including System RA, RPS attributes, as well as any associated Local and Flexible RA attributes. This revision is necessary especially in SDG&E's service territory which does not have a central procurement entity for Local RA.

¹¹ PG&E/SCE Opening Comments at 2-4; SDG&E Opening Comments at 3-7. The Joint California CCAs include San Diego Community Power, Clean Energy Alliance, Desert Community Energy, City of Pomona, and Santa Barbara Clean Energy.

¹² D.88-12-083, *In re Pacific Gas & Electric Co.* (1988), 30 Cal.P.U.C.2d 189, 223-225; *see also* D.21-06-042, *Application of Southern California Edison Company (U338E) for Approval of its Charge Ready 2 Infrastructure and Market Education Programs* (June 24, 2021) at 4 ("[i]t is settled that the Commission is not bound by its precedent"); Cal. Pub. Util. Code § 1708 ("[t]he commission may at any time . . . rescind, alter, or amend any order or decision made by it.").

V. THE COMMISSION SHOULD ADOPT PCF'S RECOMMENDATION THAT COSTS MOVE WITH A CUSTOMER IN THE EVENT THE PD ADOPTS IOU CUSTOMER BILLING AND AN LSE FILES FOR BANKRUPTCY OR OTHERWISE TERMINATES SERVICE

PCF argues that if the Commission adopts IOU customer billing for MCAM, in the event of a non-IOU LSE's bankruptcy or termination of service the customer charges (*i.e.*, the MCAM costs) should move with the customers of the non-IOU LSE to the new provider of service to these customers. Direct billing of LSEs will prevent this customer migration issue, and CalCCA requests that the Commission modify the PD to require direct billing of LSEs for the MCAM.¹³ If the Commission nonetheless adopts the IOU customer charge for MCAM costs, however, CalCCA agrees with PCF's recommendation. As currently written, the PD would require the MCAM costs in this circumstance to be allocated using the Cost Allocation Mechanism (CAM). However, spreading the costs among all LSEs would constitute an impermissible cost shift.

VI. THE COMMISSION SHOULD REQUIRE THE IOUS TO SEEK APPROVAL THROUGH A TIER 3 ADVICE LETTER FOR PROCUREMENT GREATER THAN FIVE PERCENT ABOVE THE OPT-OUT OR BACKSTOP AMOUNT

PG&E/SCE request modification of the PD to allow the IOUs to seek advice letter approval for opt-out or backstop procurement in excess of the PD's allowance of five percent over the opt-out or deficient quantities.¹⁴ If the Commission modifies the PD to allow the IOUs to seek such approval, the PD should require such request to be through a Tier 3 Advice Letter.

VII. CONCLUSION

CalCCA appreciates the opportunity to submit these reply comments and requests adoption of the recommendations proposed herein.

Respectfully submitted,



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April 25, 2022

¹³ As set forth in CalCCAs' Opening Comments, directly billing LSEs avoids potential cost shifts associated with direct customer billing and customer migration to another LSE. *See* CalCCA Opening Comments at 6-8.

¹⁴ PG&E/SCE Opening Comments at 13.