



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

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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 MARKET OFFER PROCESS**

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*On behalf of*  
California Community Choice Association

June 6, 2022

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## SUMMARY OF RECOMMENDATIONS

- If the investor-owned utilities (IOUs) have proposed bid floors in their redacted Confidential Market Offer process filings, such bid floors should be rejected; imposing bid floors will reduce sales opportunities and leave more “unsold” Renewables Portfolio Standard (RPS) resources in the Energy Resources Recovery Account (ERRA), thereby increasing the Power Charge Indifference Adjustment (PCIA);
  - The proposed IOU Codes of Conduct (CoC) should be modified and enhanced to align with core CoC principals approved by the Commission in other contexts in which the IOUs administer solicitations in which they participate to ensure fair and non-discriminatory market offer processes;
  - Any requirement that bidders waive or limit their rights for redress for any violation of the terms of the solicitation should be removed because an IOU’s violation of its solicitation requirements for the Market Offer will have a long-lasting impact on the market as a whole; a simple re-solicitation, which would delay the transfer of RPS, will not resolve these issues; and
  - SDG&E should be required to revise its Market Offer process and submit a Supplemental Advice Letter revising its draft Market Offer pro forma contract to: (1) require the complete and final terms of the offer to be included in the contract form or forms to be used, and (2) include a provision whereby SDG&E notifies buyers of changes to the resource pools as is required for SDG&E’s Voluntary Allocation pro forma contracts.
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**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S  
COMMENTS ON MARKET OFFER PROCESS**

The California Community Choice Association<sup>1</sup> (CalCCA) submits these Comments in response to the *Joint Filing on Track 1- Draft 2022 Renewables Portfolio Standard Procurement Plan - Market Offer Process* filed May 2, 2022 (Market Offer Process, or MO Process) by Southern California Edison (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company (SDG&E) (collectively, the Joint IOUs). These Comments are filed timely pursuant to the *Assigned Commissioner's Ruling and Assigned Administrative Law Judge's Ruling Identifying Issues and Schedule of Review for 2022 Renewables Portfolio Standard ("RPS") Procurement Plans and Denying Joint IOUs' Motion to File Advice Letter for Market Offer Process*, dated April 11, 2022, as amended by the *Administrative Law Judge's Ruling Modifying the Schedule for Track 1 of the 2022 Renewables Portfolio Standard Procurement Plan*, issued on April 21, 2022 (April 21 Ruling).

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<sup>1</sup> 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.

## I. INTRODUCTION

The Joint IOUs' Market Offer Process filing includes several elements: (1) an overview of the proposed process; (2) each IOU's proposed solicitation protocol; (3) each IOU's proposed Code of Conduct (CoC) for solicitations in which the IOU participates as a bidder; and (4) filed separately, each IOU's "Confidential Market Offer Strategies Supporting Market Offer Process" document (Sales Strategy).<sup>2</sup> The Sales Strategies were filed separately pursuant to the April 21 Ruling and form part of the MO Process.<sup>3</sup> The MO Process, if adopted by the Commission, will govern the Market Offer portion of the Voluntary Allocation and Market Offer (VAMO) process ordered by Decision (D.) 21-05-030 (Phase 2 Decision).<sup>4</sup> CalCCA offers four recommendations, as noted below, aimed to maximize the benefits of the process to all parties.

First, CalCCA recommends that the Commission reject any bid floors established for the Market Offers. Significant portions of the Sales Strategies are redacted. Indeed, in the filings of both SCE and PG&E, approximately one-half of each document is completely redacted. Although any actual statements to this effect do not appear in the public versions of the Sales Strategies, CalCCA infers from the context that the Sales Strategies include each IOU's proposal to establish a bid floor for offers submitted by participants in the Market Offers.<sup>5</sup> Given the highly unique product and the purpose of the Market Offers, however, bid floors are

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<sup>2</sup> *Motion of Southern California Edison Company (U-338-E) for Leave to File its Confidential Appendix A to its Track 1 Draft 2022 Renewables Portfolio Standard Procurement Plan Under Seal*, R.18-07-003 (May 16, 2022) (SCE Sales Strategy); *Motion of Pacific Gas and Electric Company (U 39 E) for Leave to File Under Seal Confidential Material in Pacific Gas and Electric Company's (U 39 E) Track 1 - Draft 2022 Renewables Portfolio Standard Procurement Plan - Market Offer Process*, R.18-07-003 (May 16, 2022) (PG&E Sales Strategy); *Motion of San Diego Gas & Electric Company (U 902 E) for Leave to File Under Seal Its Market Offer Sales Framework*, R.18-07-003 (May 16, 2022) (SDG&E Sales Strategy).

<sup>3</sup> April 21 Ruling at 2.

<sup>4</sup> D.21-05-030, *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, R.17-06-026 (May 24, 2021).

<sup>5</sup> See SCE Sales Strategy; PG&E Sales Strategy; SDG&E Sales Strategy.

inappropriate and should be rejected. Bid floors will reduce sales and leave unsold RPS in the IOUs' portfolios, which directly contradicts the purpose of the Market Offer process.

Second, with respect to each IOU's CoC included in the MO Process, the Commission should order modifications to align the CoCs with core principles established for CoCs in previous situations involving the IOUs as participants in their own solicitations.

Third, the solicitation documents of SCE and PG&E include language by which all parties submitting bids in response to the offer agree to waive rights to any redress for any violation of the terms of the solicitation *other* than a re-solicitation. The entire VAMO process, including the solicitation protocols, CoCs, and Sales Strategies developed for use in the Market Offers, is novel and the documents are created for a specific and unique situation. The VAMO process, the result of almost a year's work in the Power Charge Indifference Adjustment (PCIA) proceeding, was ordered by the Commission to help address an imbalance in the distribution of costs in the IOUs' PCIA-eligible portfolio. Any violation of the protocols or CoCs governing the Market Offers will stymie the Commission's efforts to address this imbalance and have a wide-ranging effect on ratepayers throughout the state for years to come. The use of the waiver language in SCE's and PG&E's filing is inappropriate and the language should be deleted entirely.

Finally, SDG&E should be required to modify its Market Offer process filing and submit a Supplemental Advice Letter updating its pro forma contract to include the form or forms of the contract that will be used in the Market Offer and that specifies the product that SDG&E is offering. In addition, SDG&E should be required to include a provision in its pro forma contract (identical to the provision required by Energy Division with respect to SDG&E's Voluntary

Allocation pro forma contract) requiring it to provide notice of modifications to the resource pools.

CalCCA therefore requests that the Commission require the following:

- If the IOUs have proposed bid floors in their confidential Sales Strategies, such bid floors should be rejected as inappropriate given the highly unique product and purpose of the Market Offers;
- The proposed IOU CoCs should be modified and enhanced to align with core CoC principals approved by the Commission in other contexts in which the IOUs have bid into solicitations they administer;
- Any requirement that bidders waive or limit their rights for redress for any violation of the terms of the solicitation should be removed; and
- SDG&E should be required to revise its Market Offer process and submit a Supplemental Advice Letter revising its draft Market Offer pro forma contract to (1) require the complete and final terms of the offer to be included in the contract form or forms to be used, and (2) include a provision whereby SDG&E notifies buyers of changes to the resource pools as is required for SDG&E's Voluntary Allocation contracts.

## **II. THE MARKET OFFERS SHOULD NOT BE SUBJECT TO BID FLOORS**

While the existence of a bid floor in the IOUs' confidential Sales Strategies is unknown, CalCCA infers from the significant redactions throughout the Sales Strategies that the IOUs are proposing bid floors for offers submitted by participants in the Market Offers. If this is the case, such bid floors should be rejected for the following reasons: (1) bid floors can prevent the sale of RPS contrary to the intent of the VAMO process; and (2) the IOUs cannot reasonably set bid floors given there is no reference market for Market Offer transactions.

The purpose of the Commission's portfolio optimization efforts under the Phase 2 Decision is to achieve a "voluntary, market-based redistribution of excess resources" in the IOUs' supply portfolios.<sup>6</sup> The VAMO process is the single largest portfolio optimization effort ordered under the Phase 2 Decision. Under the Market Offer process, the IOUs will offer for sale

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<sup>6</sup> Phase 2 Decision at 10 (citing D.18-10-019 at 3).

“slices” of their PCIA-eligible RPS portfolios remaining after the completion of each IOU’s Voluntary Allocation of RPS volumes to LSEs in their service territory. Thus, the Market Offers have the potential to effect real change in the distribution of RPS among California LSEs, as envisioned by the Commission.

The successful sale of RPS through the Market Offers will both increase revenue and reduce the amount of “unsold” RPS accounted for in the ERRRA. Both actions potentially reduce the PCIA for all customers. However, when those resources remain “unsold,” they are valued at \$0 for the PCIA calculation.<sup>7</sup> Thus, the IOUs’ failure to accept sales at below their own established bid floor – and therefore allowing the IOUs to deem the resources “unsold” – potentially deprives all customers paying the PCIA from revenue for those lost sales and prevents a potential reduction of the PCIA.

In addition, the IOUs cannot reasonably set a bid floor for the Market Offers as there is no analogous established market for the products being offered. Unlike the vast majority of RPS transactions, the Market Offer products are not firm products. These “slices” are not a fixed volume, and do not originate from a fixed set of resources. The “slices” of RPS product to be sold in the Market Offers are instead offers of whatever volumes are generated during the term of the contract. In addition, the set of resources providing the RPS energy and renewable energy credits (RECs) may decrease over time due to the IOUs’ ongoing portfolio optimization efforts. Thus, the volume of RPS sold may vary greatly throughout the term of the contract, making this product riskier for buyers than a typical sale. There is no established “market” for this “slice” product – this type of product is not currently available or frequently, if ever, transacted. Thus, there is no established reference point to which a bid floor can reasonably be tied.

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<sup>7</sup> D.19-10-001, OP 3.b. at 56.

If they propose bid floors, the IOUs will have apparently calculated that if offers for this product fall under a particular price, the RPS energy and RECs should not be sold, and should instead be retained for the IOUs' own use. In effect, the IOUs will be taking the position that the "value" of the RPS to them is greater than the bid floor they specify – if an offer comes in under the bid floor, it makes more economic sense for the IOU to retain the RPS and RECs for its own purposes. By establishing bid floors, the IOUs will insert their own "value" into a process that is intended to be market driven. Interestingly, this contradicts SCE's argument last year in which it supported what it deemed the "underlying foundation of the Phase 1 Decision (D.18-10-019) that IOU portfolio generation resources and their associated attributes only have 'value' to the extent that value can be monetized for customers in the relevant energy markets."<sup>8</sup> SCE's argument last year is correct in that the true "market value" for this product is determined by bidders in an actual sale, not by some unstated "value" claimed by the IOUs. For the reasons set forth above, any IOU request for bid floors for the Market Offers should be rejected.

### **III. THE IOUS' CODES OF CONDUCT SHOULD BE MODIFIED AND ENHANCED TO ENSURE FAIR AND NON-DISCRIMINATORY MARKET OFFER PROCESSES**

The Phase 2 Decision allows the IOUs, as LSEs, to participate in Market Offer solicitations that they administer.<sup>9</sup> As part of its review of the Market Offer proposals, the Commission commits to considering "appropriate rules for IOU participation in Market Offers."<sup>10</sup> In addition, if the IOU participates in its own Market Offer, "the IOU must (i) submit bids to the [Independent Evaluator (IE)] and [Energy Division (ED)] in advance of the Market

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<sup>8</sup> *Opening Comments of Southern California Edison Company (U 338-E) on the Proposed Decision of Administrative Law Judge Wang on Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, R.17-06-026 (April 26, 2021), at 5.

<sup>9</sup> D.21-05-030 at 64, OP 3(c).

<sup>10</sup> *Id.* at 25.

Offer launch or (ii) establish dual procurement teams separated by an ethical wall, with monitoring by the IE to ensure a fair and non-preferential process.”<sup>11</sup> Appendix C of the Market Offer Process filing includes each IOU’s proposed Market Offer CoC defining rules for its participation in Market Offer solicitations.

The Commission has previously provided guidance on necessary CoC components for an IOU’s participation in its own solicitations.<sup>12</sup> These components are intended to protect confidential, market-sensitive information (including any non-public information that would be useful to a bidder and third-party information received by the IOU) and ensure a fair and non-preferential solicitation. Components of an effective CoC include:

- Functional separation of IOU employees conducting the solicitation from those preparing bids;
- Information technology firewalls and restrictions on access to physical files to prevent bid teams receiving confidential market-sensitive information;
- An affirmative requirement that employees involved in bids and solicitations certify that they will abide by the CoC;
- Monitoring by an IE and Procurement Review Group (PRG);

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<sup>11</sup> *Id.*

<sup>12</sup> See D.07-12-052, *Opinion Adopting Pacific Gas and Electric Company’s, Southern California Edison Company’s, and San Diego Gas and Electric Company’s Long-Term Procurement Plans*, R.06-02-013 (Dec. 21, 2007) at 206-07, n.236 (describing the requirements for CoCs to ensure that an IOU cannot use “inside information” to its own advantage); see also D.20-06-002, *Decision on Central Procurement of the Resource Adequacy Program*, R.17-09-020 (June 11, 2020) at 65-66 (directing PG&E and SCE acting as Central Procurement Entities (CPEs) in the procurement of local resource adequacy “to establish a strict [CoC] to be signed by all IOU personnel involved in the RFO process to prevent sharing of sensitive information between staff involved in developing utility bids and staff who created bid evaluation criteria and selected winning bids”); see also D.20-12-006, *Decision on Track 3.A Issues: Local Capacity Requirement Reduction Compensation Mechanism and Competitive Neutrality Rules*, R.19-11-009 (Dec. 3, 2020) at 32-33 (adopting PG&E’s and SCE’s respective competitive neutrality procedures, and noting that each CPE will also create CoCs); see also PG&E Advice Letter 6386-E (Nov. 1, 2021), accepted as of April 18, 2022 (PG&E’s Annual CPE Compliance Report with Independent Evaluator Report attached detailing its CPE CoC) and SCE Advice Letter 4626-E (Nov. 1, 2021), accepted as of March 10, 2022 (SCE’s Annual CPE Compliance Report with Independent Evaluator Report attached detailing its CPE CoC).

- A requirement that IOU Bids be submitted prior to third-party bids; and
- Adequate consequences for violations of the CoC.<sup>13</sup>

As set forth below, each IOU's proposed CoCs is missing some portion of the above elements and should be modified to ensure fair and non-preferential Market Offer processes. In addition, all of the IOUs' CoCs inadequately address the consequences of violations of the CoCs, as discussed below.

**A. Specific Modifications Should Be Made to Each of the IOUs' CoCs**

The Commission should require the following modifications to each of the IOUs' CoCs.

**1. SCE COC**

SCE's CoC contains language addressing the majority of the components required in an effective CoC. However, the Commission should require the following modifications to SCE's CoC to ensure fair and non-discriminatory participation by SCE in the Market Offer:

- Section I. of SCE's CoC requires that once a solicitation launches, members of its bid solicitation team may not transfer to become members of the bid team. However, the first sentence of the second paragraph of Section I. allows a member of the Market Offer Solicitation Team (MOST) to transfer to the Market Offer Bid Team (MOBT), which should be deleted as it is inconsistent with the prior paragraph, and would inappropriately allow a member of the bid team to have knowledge of third party bid information while formulating SCE's bid; and
- The CoC should require all employees involved in the Market Offer to sign the Certification included on the last page of the Code of Conduct.

**2. PG&E COC**

PG&E's proposed CoC should be revised to address all of the components listed above, as follows:

- In section 6, the term of the CoC should be revised to last until one year after the approval of the last Market Offer contract;

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<sup>13</sup> *Id.*

- PG&E should be required to submit bids to the IE and PRG prior to the submission of third-party bids;
- PG&E should adopt SCE’s commitment to preventing simultaneous competing solicitations for the same products during the same delivery period by prohibiting the sale of RECs through PG&E’s RPS sales program while a Market Offer solicitation is open;
- PG&E’s prohibition on transfers of employees from the solicitation team to the bid team should be extended from “submission of executed contracts” to at least one year after CPUC approval of the market offer contracts;
- The CoC should state that an IE will monitor its Market Offer and compliance with the CoC;
- Section 7 should be amended to state that violations of the CoC should be disclosed in the IE Report; and
- All employees involved in the Market Offer should be required to sign the Certification included on the last page of the CoC.

### **3. SDG&E COC**

SDG&E’s CoC should be modified to:

- Require the CoC’s term to last until one year after the approval of the Market Offer contracts;
- Require SDG&E to submit Market Offer bids to the IE and PRG prior to the submission of third-party bids;
- Adopt SCE’s commitment to preventing simultaneous competing solicitations for the same products during the same delivery period by prohibiting the sale of RECs through SDG&E’s RPS sales program while a Market Offer solicitation is open;
- Prohibit the transfer of employees from the Bid Evaluation Team (the solicitation team) to the SDG&E Front Office (the bid team) for at least one year after approval of the Market Offer contracts; and
- Include consequences for a violation of the CoC, including disclosure of that violation by SDG&E to the Commission’s Energy Division, PRG and the IE, as well as discussions between SDG&E, ED, PRG and the IE regarding appropriate remedies to address the violation. Such a violation should also be disclosed in the IE Report.

**B. The IOUs' Consequences for Violations of the CoCs and Proposed Remedies are Insufficient and Will Not Protect the Market from IOU Misconduct**

As noted above, one of the major components of an IOU's CoC for its own solicitations is the section establishing the consequences of any breach of that CoC. None of the IOUs have included sufficient language addressing this point. Indeed, the SCE and PG&E propose nothing other than a presentation to their own IE and PRGs, and then a "discussion" with Energy Division staff.<sup>14</sup> SDG&E's CoC does not address violations of the CoC at all. As is examined in more detail below, the market impact of an IOU's breach of its obligations in the context of a Market Offer can have statewide, significant impacts.

The IOUs' participation in their own solicitations is one of the major characteristics that differentiates the Market Offer from "regular" RPS sales. The CoCs are necessary to enable that participation, while ensuring a fair and equitable Market Offer. A CoC without material consequences for violations does not adequately address the risk of harm that could result from misconduct. Given the importance of the Market Offer to the PCIA calculation going forward, the remedy for such a violation should not rest with the IE and PRG, as proposed by the IOUs, and should not be limited to a re-solicitation. In addition, the Market Offer process documents *must not* include a provision limiting remedies for violations of the CoCs, discussed below.

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<sup>14</sup> SCE proposed CoC, section J (SCE will provide notice of a CoC violation to the Commission's Energy Division, PRG and the IE, the IE will discuss the impact of the violation in its IE Report, and SCE shall consult with the ED, PRG and IE regarding appropriate remedies to address a CoC violation); PG&E proposed CoC, section 7 (PG&E will provide notice of a CoC violation to Energy Division, the PRG and the IE, and will consult with Energy Division, the PRG and the IE regarding the appropriate remedies to address a CoC violation).

#### **IV. BIDDERS' REMEDIES FOR VIOLATIONS OF MARKET OFFER PROCESS REQUIREMENTS SHOULD NOT BE WAIVED OR OTHERWISE LIMITED**

The limitations on remedies or waivers of claims for violations of the approved Market Offer processes proposed by both SCE and PG&E leave insufficient remedies available to market participants. SDG&E does not address remedies or claims for violations in its Market Offer process proposal, but the Commission should prohibit SDG&E from imposing any similar limitations on remedies or waivers of claims. Given the nature of the Market Offers and their potential impact on the PCIA as a whole, remedies for IOU violations should be significant enough to deter the prohibited behavior. In addition, because the impact of misconduct will affect the PCIA for all customers in the service territory, a remedy must also reach to all customers. Limiting the IOU's consequence to simply re-soliciting the offer is insufficient.

Section 8.3 of SCE's solicitation instructions include language regarding "waived claims."<sup>15</sup> Under this language, by submitting a bid in the solicitation all offerors agree that the sole means of challenging the conduct or results of the Solicitation is a complaint filed under Article 3, Complaints and Commission Investigations, of Title 20, Public Utilities and Energy, of the California Code of Regulations.<sup>16</sup> Bidders further agree that the exclusive remedy available to Buyer in the case of such a protest shall be an order of the Commission that SCE again conduct any portion of the Solicitation that the Commission determines was not previously conducted in accordance with these Instructions (including any associated documents), and Buyer expressly waives any and all other remedies.<sup>17</sup>

PG&E's solicitation instructions contain very similar language by which participants in the offer agree to seek redress only through Commission processes or a protest to the advice

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<sup>15</sup> MO Process, Appendix B-1 at 40.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.*, Appendix B-1 at 41.

letter filing seeking approval of the ultimate contract or contracts.<sup>18</sup> Participants will also agree that the exclusive remedy available to each participant shall be an order of the Commission that PG&E again conduct any portion of the Solicitation that the Commission determines was not previously conducted in accordance with the Solicitation Protocol.<sup>19</sup> Participants also waive all other remedies.<sup>20</sup>

As noted previously, the CoCs of each of SCE and PG&E form part of the Market Offer Process. These Market Offers are not simple RPS transactions where the only injury in the case of a mishandled solicitation is to a bidder who loses the contract. In contrast, violations of the solicitation documents will affect the revenues collected by the IOUs with respect to the Market Offer as a whole, and therefore the resultant PCIA going forward. For example, failure to apply the evaluation criteria appropriately will result in either greater or lesser revenue to offset PCIA costs. More significantly, any violation of a CoC by, for example, a prohibited use of confidential, market-sensitive information, would seriously impact the market price of RPS used to calculate the PCIA, not to mention erode participants' faith in the integrity of the Market Offer process.

Limiting bidders' claims to Commission dispute resolution, or an advice letter protest, fails to provide sufficient deterrence against such potentially damaging misconduct. Because the impacts will be long-lasting and statewide, all remedies should be available, including a review of potential disallowances in the relevant ERRA Compliance Application.

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<sup>18</sup> *Id.*, Appendix B-2 at 11.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

**V. SDG&E MUST REVISE ITS SOLICITATION DOCUMENTS AND SUBMIT A SUPPLEMENTAL ADVICE LETTER TO SPECIFY MARKET OFFER CONTRACT DETAILS AND A REQUIREMENT THAT IT NOTIFY BUYERS OF A CHANGE IN THE RESOURCE POOLS**

SDG&E should be required to not only specify the products and the contract to be used in its Market Offer, but also to include the same contract term regarding notice of modifications to the resource pool that Energy Division is requiring SDG&E to include in its Voluntary Allocation pro forma contract.

First, SDG&E’s draft “Market Offer Protocols for the Sale of Renewable Energy Products” included in the Market Offer Process document<sup>21</sup> indicates that SDG&E may offer both long and short term sales.<sup>22</sup> SDG&E also provides that bidders into its Market Offer must “mark up” SDG&E’s Long-form Confirmation to the Western Systems Power Pool (WSPP) agreement or Edison Electric Institute (EEI) Agreement.<sup>23</sup> However, the Market Offer pro forma contracts for both bundled and unbundled product SDG&E submitted to the Commission for approval are draft WSPP confirmations.<sup>24</sup> SDG&E must be required to specify through both a revision to its Market Offer Process filing and its Market Offer pro forma (through a Supplemental Advice Letter) the contract that will be used for the Market Offer, and the product or products that will be offered.

In addition, SDG&E should be required to include in the approved Market Offer pro forma contract a provision whereby it will inform buyers of changes to the resource pools making up the “slice” of the portfolios purchased through the Market Offer. The Draft

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<sup>21</sup> MO Process Appendix B.3.

<sup>22</sup> *Id.*, Appendix B.3 at 3.

<sup>23</sup> *Id.*, Appendix B.3 at 5.

<sup>24</sup> Advice Letter 3983-E, San Diego Gas & Electric Approval Request of Market Offer Contracts for Renewables Portfolio Standard Resources Pursuant to Decision 22-01-004, (April 4, 2022) (SDG&E Market Offer Pro Forma Advice Letter).

Resolution regarding the Voluntary Allocation pro forma contract requires SDG&E to adopt CalCCA's proposed language regarding these points in the voluntary allocation pro forma contract.<sup>25</sup> The same concerns apply to the Market Offer pro forma contract, and therefore SDG&E should be required to insert the following language (identical to the language required in SDG&E's Voluntary Allocation pro forma) in its Market Offer pro forma contract:

With fifteen (15) day's prior notice to Buyer, Seller may add or remove a Resource from the Resource Pools as provided herein. Seller may remove a Resource from the Resource Pools for the following reasons: (i) if Seller's power purchase agreement corresponding to the Resource has been modified, terminated, or assigned to a third party, (ii) if the Resource is no longer in Seller's PCIA-eligible portfolio due to Commission order or direction, or (iii) if the Resource is owned by Seller but ceases operation for Seller.

## **VI. CONCLUSION**

For all the foregoing reasons, CalCCA respectfully requests consideration of these Comments on the IOUs' Market Offer process and looks forward to an ongoing dialogue with the Commission and stakeholders.

Respectfully submitted,



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June 6, 2022

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<sup>25</sup> Draft Resolution E 5216 (June 23, 2022) at 16.