

**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 THE PROPOSED DECISION APPROVING VOLUNTARY ALLOCATIONS
AND MODIFYING MARKET OFFER PROCESS FOR THE SALE OF EXCESS
RENEWABLE RESOURCES TO LOWER POWER CHARGE INDIFFERENCE
ADJUSTMENT COSTS PURSUANT TO DECISION 21-05-030**

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SUMMARY OF RECOMMENDATIONS

- ✓ The permission granted in the PD for the investor-owned utilities (IOUs) to include bid floors in their respective Market Offers should be removed. The PD justifies the inclusion of bid floors on an unsupported and unproven supposition that market manipulation can occur, and on a misleading characterization of the treatment of “unsold” Renewables Portfolio Standard (RPS) resources for the purposes of calculating the PCIA.
- ✓ The Commission should ensure that Market Offer deliveries begin expeditiously, by (1) removing the requirement in the PD that the IOUs offer long-term transactions in this first Market Offer if such a requirement will cause delay in the issuance of the solicitation, (2) incorporating CalCCA’s proposed schedule allowing Market Offer deliveries to begin no later than mid-February, 2023, and (3) ensuring that load-serving entities (LSEs) receive full calendar year value for 2023 even if deliveries do not begin on January 1, 2023.
- ✓ The PD should include a clarification that the “solicitation period” during which the IOUs may not hold concurrent RPS solicitations includes the period from the date of the posting through the final approval of contracts resulting from the Market Offers.

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The California Community Choice Association (CalCCA)¹ submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *Decision Approving Voluntary Allocations and Modifying Market Offer Process for the Sale of Excess Renewable Resources to Lower Power Charge Indifference Adjustment Costs Pursuant to Decision 21-05-030* (Proposed Decision or PD), mailed on September 29, 2022.

I. INTRODUCTION

CalCCA supports the Proposed Decision's significant steps toward ensuring the Market Offer process carries out the intent of the portfolio optimization ordered in Decision (D.) 21-05-

¹ California Community Choice Association represents the interests of 24 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, Energy For Palmdale's Independent Choice, 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.

030 (Phase 2 Decision).² Importantly, a decision on the Market Offer ensures that the second step of the Voluntary Allocation Market Offer (VAMO) process established in the Phase 2 Decision moves forward expeditiously, allowing load-serving entities (LSEs) access to the investor-owned utilities' (IOUs') excess renewable resources on behalf of their customers.

The Commission should, however, make two important modifications to the Proposed Decision. First, the PD incorrectly concludes that the IOUs are entitled to establish bid floors for the Market Offers. The PD bases its conclusion on both a fear of presumed LSE conduct that has simply not come to pass, and on a characterization of language from D.19-10-001 that may be misleading.³ As such, the basis supporting the PD's conclusion regarding the use of bid floors by the IOUs is suspect. The IOUs should be prevented from establishing bid floors for the Market Offers, which, if used, can decrease the volume of Renewables Portfolio Standard (RPS) resources sold through the Market Offers, and in so doing, can increase the Power Charge Indifference Adjustment (PCIA). Both results will frustrate the purpose of VAMO as intended by the Phase 2 Decision.

Second, the Commission should ensure that market offer deliveries begin expeditiously by removing the requirement that the IOUs offer long-term transactions in this first Market Offer if such a requirement will cause delay in the issuance of the solicitation. Instead, CalCCA's proposed schedule allowing Market Offer deliveries to begin no later than mid-February, 2023 should be incorporated into the PD. CalCCA reiterates the significance to participants of receiving the Market Offer deliveries throughout 2023, as well as receiving the full calendar year value of the products those participants have purchased.

² D.21-05-030, *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, R.17-06-026 (May 20, 2021).

³ D.19-10-001, *Decision Refining the Method to Develop and True Up Market Price Benchmarks*, R.17-06-026 (Oct. 10, 2019).

The Commission should also clarify the PD’s requirement that the IOUs not be permitted to run RPS solicitations concurrently with the “solicitation period” of the Market Offer, to avoid future confusion regarding the exact terms of the prohibition.

CalCCA therefore recommends the following modifications and clarifications to the PD, as described more fully below and as provided in Attachment A:

- ✓ The permission granted in the PD for the IOUs to include bid floors in their respective Market Offers should be removed. The PD justifies the inclusion of bid floors on an unsupported and unproven supposition that market manipulation can occur, and on a misleading characterization of the treatment of “unsold” RPS for the purposes of calculating the PCIA.
- ✓ The PD should ensure that Market Offer deliveries begin expeditiously at full calendar year value, by (1) removing the requirement that the IOUs offer long-term transactions in this first Market Offer if such a requirement will cause delay in the issuance of the solicitation, (2) incorporating CalCCA’s proposed schedule allowing Market Offer deliveries to begin no later than mid-February, 2023, and (3) ensuring that LSEs receive full calendar year value for 2023 even if deliveries do not begin on January 1, 2023.
- ✓ The PD should include a clarification that the “solicitation period” during which the IOUs may not hold concurrent RPS solicitations includes the period from the date of the posting through the final approval of contracts resulting from the Market Offers.

II. FACTUAL, LEGAL, AND TECHNICAL ERRORS AND CLARIFICATIONS

A. The Justification Offered in the PD Permitting the IOUs’ Use of Bid Floors Does Not Support the PD’s Conclusion

Bid floors in the IOUs’ Market Offers should be rejected because: (1) they would prevent the sale of RPS resources, thereby increasing the PCIA, contrary to the intent of the VAMO process established in the Phase 2 Decision; and (2) the IOUs cannot reasonably set bid floors given there is no reference market for Market Offer transactions.

Countering the arguments in CalCCA’s Comments on the Market Offer Process,⁴ the PD states:

⁴ See *California Community Choice Association’s Comments on Market Offer Process*, R.18-07-003 (June 6, 2022) (CalCCA Comments on Market Offer Process), at 4.

We disagree with CalCCA and find [San Diego Gas & Electric Company's (SDG&E's)] and [Southern California Edison Company's (SCE's)] comments reasonable, that the RPS markets and the rules for an RPS sales framework are well established. Bid floors, should they be used, would avoid market manipulation and artificially low RPS product prices.⁵

However, SDG&E's and SCE's comments cannot reasonably be used as a basis to support the PD's conclusions regarding bid floors. According to the PD:

SDG&E contends that a bid floor would discourage gaming of the VAMO process by requiring participants who might defer all of their procurement to the Market Offer and bid artificially low prices. SCE argues that according to D.19-10-001, retained and unsold RECs are valued at the relevant market price benchmark for the year when the RECs are used for compliance.⁶

SDG&E's concern has simply not come to pass. According to the PD itself, 27 LSEs accepted Voluntary Allocations.⁷ Thus, an overwhelming majority of LSEs did not "defer all of their procurement" to game the system. The Voluntary Allocation phase of VAMO is complete; there is no reason for LSEs to bid "artificially low prices" in the Market Offers and SDG&E's fears have proved to be unfounded. Their fears therefore cannot be used as a reasonable rationale to permit bid floors in the Market Offers.

In addition, SCE's argument mischaracterizes D.19-10-001. What SCE fails to emphasize in their cite to D.19-10-001 is that the Decision requires unsold RPS to be valued at \$0 unless and until that RPS is eventually "used for compliance" by the IOU.⁸ Until such time, the IOU may continue to hold the RPS at \$0. There is no requirement that this RPS be "used for compliance," and there is also no deadline by which the "banked" RPS must be used. Thus, banked Renewable Energy Credits (RECs) can be held at \$0 indefinitely.

⁵ PD at 23.

⁶ *Id.* at 22.

⁷ *Id.*, Attachment A.

⁸ D.19-10-001 at 35.

The anomaly in the treatment of “banked” RPS versus RPS “used for compliance” likely dates from the origin of the VAMO concept, in which Working Group 3 proposed all RPS remaining after the entire VAMO process be allocated to the LSEs.⁹ It made sense for the proposed allocation to be on a pro-rata basis, and “at no cost.”¹⁰ The Phase 2 Decision, however, declined to require this allocation of unsold RPS, and maintained the existing method for determining that RPS’s value.¹¹ This resulted in the current situation whereby unsold RPS can be held by the IOUs indefinitely at \$0. The inequity in the treatment of “unsold” RPS will therefore be exacerbated by the use of bid floors in the Market Offers.

The likely outcome of the Market Offer process if a bid floor is adopted is that the IOUs will impute a “value” to the RPS that may exceed the actual value of that RPS to the market – *i.e.*, what participants are willing to bid in the Market Offer. Thus, some portion of RPS is likely to remain unsold. Allowing the IOUs to, in effect, deem the resources “unsold” prevents a potential reduction in the PCIA.

As CalCCA has repeatedly argued,¹² the use of bid floors in the Market Offers contradicts the purpose of the Commission’s portfolio optimization efforts in the Phase 2 Decision, which is to achieve a “voluntary, market-based redistribution of excess resources” in the IOUs’ supply portfolios.¹³ By proposing bid floors, the IOUs will have calculated that offers below a certain price should be rejected because the “value” of the RPS to the IOU is greater than the bid floor they specify. As CalCCA has repeatedly expressed, there is no analogous established market for the products in the Market Offer. Thus, the IOUs’ establishment of a bid

⁹ *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company, California Community Choice Association, and Commercial Energy*, R.17-06-026 (February 21, 2020), at 37.

¹⁰ *Id.*

¹¹ Phase 2 Decision at 29.

¹² CalCCA Comments on Market Offer Process at 4.

¹³ See Phase 2 Decision at 10 (citing D.18-10-019 at 3).

floor must be based on some calculation of the value of that RPS to the IOU. The IOUs' establishment of a bid floor therefore substitutes the IOUs' estimation of the "value" of that RPS for the true "market" value the Phase 2 Decision presumably intended to achieve. As a result, the PD's allowance of bid floors in the Market Offer should be removed as set forth in Appendix A hereto.

B. The Commission Should Ensure that Market Offer Deliveries, at Full Calendar Year Value, Begin Expediently

Of paramount importance to the CCAs is that the Market Offer process begin expeditiously, as proposed in both the IOUs' Market Offer filing, as well as the schedules included in Assigned Commissioner and ALJ Rulings on the VAMO process.¹⁴ As such, CalCCA recommends that if the PD's requirement that the IOUs offer 35 percent of the remaining long-term contracts after the Voluntary Allocation results in significant delay of the Market Offer solicitation, such a requirement should be rejected for this first Market Offer. In addition, CalCCA recommends that the Commission adopt the Market Offer schedule set forth below, which is modeled after the IOUs' proposed schedule in their Market Offer filing, but

¹⁴ See R.18-07-003, *Joint Filing on Track 1 – Draft 2022 Renewables Portfolio Standard Procurement Plan – Market Offer Process* (May 20, 2022), at 12 (incorporating the IOUs' proposed Market Offer timeline for 2022); see also R.18-07-003, *Amended Scoping Memo and Ruling of the Assigned Commissioner* (Apr. 6, 2022), at 4 (providing a "home for administration of the VAMO issues related to the RPS program"); *Assigned Commissioner 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* (Apr. 11, 2022) (requiring IOUs' proposed Market Offer Process filings by May 2, 2022); *Administrative Law Judge's Ruling Modifying the Schedule for Track 1 of the 2022 Renewables Portfolio Standard Procurement Plan*, R.18-07-003 (Apr. 21, 2022) (modifying the schedule for the VAMO filings and process); *Administrative Law Judge's Ruling Modifying the Renewables Portfolio Standard Program's Procedural Schedule to Accommodate Filing of Voluntary Allocation and Market Offer Information Adopted in Decision 21-05-030* (May 20, 2022) (May 20 ALJ Ruling) (modifying the procedural schedule for the VAMO filings and setting the schedule for the Proposed Decision and resolution of the IOUs' Tier 2 Market Offer Pro Forma Contract Advice Letters for the third quarter of 2022, and for the IOUs to commence Voluntary Allocation and Market Offer deliveries in the first quarter of 2023).

revised to reflect the date of issuance of the PD. In addition, even if the Market Offer deliveries begin after January 1, 2023, LSEs should still receive full calendar year value of the RPS resources for 2023, as set forth below.

1. The PD’s Requirement of the Addition of Long-Term Transactions to the Market Offer Should Be Rejected if it Causes Delay in the Issuance of the First Market Offer Solicitation

CalCCA encourages the Commission to remove the long-term product requirement in the PD for this first Market Offer if this is necessary to ensure that the Market Offer solicitation occurs expeditiously. The PD requires the IOUs to offer 35 percent of the remaining PCIA-eligible long-term contracts after the Voluntary Allocations, despite both PG&E and SCE only offering short-term transactions in their pro forma contracts.¹⁵ In recent discussions with CalCCA, the IOUs have informed CalCCA that the IOUs are not currently in position to move forward quickly with Market Offer solicitations if those solicitations are required to include a long-term product.

Both the IOUs and LSEs have worked to advance the VAMO process since early 2022, with several decision, rulings and resolutions issued to ensure the VAMO moves forward.¹⁶ In addition, the May 20, 2022 ALJ Ruling acknowledges through its tight schedule the urgency of completing review and approval of the various issues, methodologies, and Advice Letters associated with VAMO to allow deliveries associated with both the Voluntary Allocation and Market Offer transactions to begin on or before January 1, 2023.¹⁷

CalCCA once again emphasizes the importance of early 2023 deliveries under this first Market Offer and urges the Commission to take steps necessary to expedite the Market Offers so

¹⁵ PD at 16-19.

¹⁶ *See infra*, n. 14.

¹⁷ May 20 ALJ Ruling at 4-7.

that transactions for delivery in early 2023 can be executed and approved. Accordingly, CalCCA requests that the Commission remove the requirement in the PD that this initial Market Offer include a long-term transaction requirement if such removal will avoid delay in the initial Market Offer solicitation.

2. The PD Should Incorporate CalCCA’s Proposed Market Offer Schedule Ensuring Market Offer Deliveries Begin by Mid-February 2023

Set forth below is a proposed schedule for the Market Offer process that will enable deliveries to begin mid-February 2023. Because the PD includes directives for the IOUs regarding additional and/or revised terms for their Market Offer Pro Forma contracts, CalCCA proposes the schedule below to enable the IOUs to establish the Market Offer solicitation and socialize it with LSEs. The schedule also provides the required time for participants to obtain approval of the Market Offer contracts from their respective governing boards, once notified of their accepted offer from the IOUs. The proposed schedule is similar to the timeline the Commission approved for LSEs to make their selections under the Voluntary Allocation process. Unlike the Voluntary Allocation process, however, where LSEs had only to make an allocation percentage from their own IOU, the Market Offer process now allows LSEs to not only choose a percentage but also determine an appropriate price for not one but for all three of the IOUs’ Market Offer solicitations.

CalCCA proposes the schedule in the table below, which assumes the Decision is issued on November 3, 2022.

CalCCA Proposed VAMO Schedule:

VAMO Milestone	Date
Final Decision Proposed– MO Process	November 3, 2022
IOUs submit Revised Pro Forma Contracts via Advice Letter	Week of November 7, 2022
Commission issues Draft Resolution approving Advice Letter	Week of November 28, 2022
IOUs issue Market Offer Solicitations	Week of December 12, 2022
IOUs hold Participants’ Webinar	Week of December 12, 2023
Market Offer Bids Due	December 28, 2022
IOUs Notify Participants of Bids Selected	January 6, 2022
IOUs Provide Selected Participants with Agreements for Execution	No Later than January 13, 2023
Market Offer Deliveries Commence	February 10, 2023

3. The PD Should Ensure That LSEs Receive Full Value for Their 2023 Market Offer Purchases

Under the Market Offer process, LSEs will bid on (and if successful receive) a percentage of available RPS resources. Even if the Market Offer deliveries do not begin on January 1, 2023 as previously planned, LSEs should still receive the full percentage value based on the full calendar year of available resources. In other words, the Market Offer should not pro-rate the percentages based on a start date after January 1, 2023. If such a pro-ration occurs LSEs will not have received the full value of the RPS they intended to purchase.

There are several ways to ensure that LSEs receive the full calendar year value of the RPS resources. The PD can allow LSEs to choose different percentages for each year (2023 and 2024), to recognize that the 2023 resources will likely not be available for the full year. Or, the PD could keep the same percentage factor but require the IOUs to fulfill this obligation (based on a full year’s allocation) over the remaining ten to eleven months of 2023. Neither of these proposed solutions appears problematic to implement, provided the Market Offer is not over-

subscribed (e.g., LSEs request to purchase more RPS resources than are available in the remaining eleven months).

C. The PD Should Clarify the Length of the “Solicitation Period” During Which the IOUs May Not Hold Concurrent RPS Solicitations

The PD correctly prohibits the IOUs from holding RPS solicitations concurrently with the Market Offer.¹⁸ CalCCA respectfully requests a minor clarification to define specifically the “solicitation period” for these purposes. CalCCA requests this “solicitation period” include the date the solicitation is posted by the IOU through and including the date the final executed agreement under that solicitation is formally approved by the Commission. If instead, the “solicitation period” is defined as encompassing the entire delivery period (January 2023 through December 2024), this would preclude the possibility of further IOU RPS solicitations during that time if RPS resources still remained available after both the Voluntary Allocation and Market Offer process.

III. 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.

¹⁸ See PD, Conclusion of Law 10, at 36, and Ordering Paragraph 9, at 39.

Respectfully submitted,

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

FINDINGS OF FACT

27. The rules for an RPS solicitations protocols/ framework are well established. Notwithstanding the practice in previous RPS solicitations, the Market Offer is unique and no IOUs may not set bid floors to avoid market manipulation.

CONCLUSIONS OF LAW

~~5. If SCE uses bid floors it should follow the bid floor methodology approved in D.21-01-005 for its 2021 RPS Plan.~~

11. It is reasonable to not allow concurrent solicitations of similar RECs under VAMO and non-VAMO processes for the same solicitation period, which shall be defined as the period from the date the solicitation is posted through and including the date the final executed agreement under the solicitation is formally approved.

ORDERING PARAGRAPHS

~~4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall offer 35 percent of the remaining Power Charge Indifference Adjustment eligible long term contracts in the Market Offer.~~

9. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall each not conduct concurrent non-Market Offer solicitations for similar Renewables Portfolio Standard products during the same solicitation period, which shall be defined as the period from the date the solicitation is posted through and including the date the final executed agreement under the solicitation is formally approved.

~~12. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company shall update their proposed timeline for the Market Offer process. The following timeline for the Market Offer process is adopted:~~

<u>VAMO Milestone</u>	<u>Date</u>
<u>IOUs submit Revised Pro Forma Contracts via Advice Letter</u>	<u>Week of November 7, 2022</u>
<u>Commission issues Draft Resolution approving Advice Letter</u>	<u>Week of November 28, 2022</u>
<u>IOUs hold Participants' Webinar</u>	<u>Week of December 12, 2023</u>
<u>Market Offer Bids Due</u>	<u>December 28, 2022</u>
<u>IOUs Notify Participants of Bids Selected</u>	<u>January 6, 2022</u>
<u>IOUs Provide Selected Participants with Agreements for Execution</u>	<u>No Later than January 13, 2023</u>
<u>Market Offer Deliveries Commence</u>	<u>February 10, 2023</u>