

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



**FILED**

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R1807003

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  
REPLY 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

- Pacific Gas and Electric Company’s (PG&E’s) and Southern California Edison Company’s (SCE’s) arguments against removing their “waived claims” language regarding remedies for violations related to Market Offer solicitations should be rejected as PG&E and SCE ignore the unique nature of the Market Offers and the importance of ensuring investor-owned utility (IOU) portfolio optimization is administered effectively and equitably;
- San Diego Gas & Electric Company’s (SDG&E’s) request for a revision of the Code of Conduct requirements to allow IOU employees to transfer between the Market Offer bid and evaluation teams after bids are submitted should be rejected due to the potential for the IOUs to gain a competitive advantage; and
- The Proposed Decision should be clarified as requested by SCE to specify that all Power Charge Indifference Adjustment (PCIA)-eligible renewables portfolio standard (RPS) resources left over after the Voluntary Allocation are available for contracting in the Market Offer as required by Decision (D.) 21-05-030.

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The California Community Choice Association (CalCCA)<sup>1</sup> submits these reply 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), dated September 29, 2022.

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<sup>1</sup> 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.

**I. PG&E AND SCE’S ARGUMENTS AGAINST REMOVING THEIR “WAIVED CLAIMS” LANGUAGE IGNORES THE UNIQUE NATURE OF THE MARKET OFFER AND THE IMPORTANCE OF ENSURING IOU PORTFOLIO OPTIMIZATION IS EQUITABLE**

As CalCCA has emphasized, the Market Offer process, including the solicitation protocols, investor-owned utility (IOU) Codes of Conduct, and Sales Strategies developed for use in the Market Offers, is novel. The Voluntary Allocation Market Offer (VAMO) was created to accomplish Commission-ordered IOU portfolio optimization for the benefit of ratepayers throughout the state for years to come. Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) comment that the “waived claims” language put forward in their Market Offer pro forma contracts is standard in their own renewables portfolio standard (RPS) solicitation materials, and similar language has been used by various community choice aggregators (CCAs).<sup>2</sup> PG&E and SCE also claim that the Market Offer is similar to many previous RPS solicitations, and the remedies should match the remedies from those previous offers and be allowed in their Market Offer pro forma contracts.<sup>3</sup>

While the Commission intended the documents used in the Market Offer to be “based upon” standard forms where possible,<sup>4</sup> the Market Offers themselves are not “standard” transactions. The PD itself recognizes “certain aspects of the Market Offer process vary from the RPS rules and requirements due to the structure set up in Decision (D.) 21-05-03.”<sup>5</sup>

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<sup>2</sup> PG&E Opening Comments at 2-4; SCE Opening Comments at 8-10.

<sup>3</sup> See PG&E Opening Comments at 2 (PG&E’s waived claims language “has been in place and successfully utilized as part of its RPS solicitations approved as part of its Commission-overseen RPS plans”); see also SCE Opening Comments at 8 (“[t]he Market Offer process is not appreciably different from any other solicitation that SCE runs, and it is very similar to SCE’s past REC sales solicitations”).

<sup>4</sup> D.21-05-030, *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, Rulemaking (R.) 17-06-026 (May 20, 2021) (Phase 2 Decision), Conclusion of Law (COL) 8(b) at 59 ([t]he Market Offer process should be based upon existing processes, rules, oversight requirements, and reporting requirements for IOU REC solicitations previously approved in the Commission’s proceeding”).

<sup>5</sup> PD, COL 3 at 35.

The Market Offer transactions are not “simple” RPS solicitations, which is evident by the IOUs’ requests for significant additional time to submit compliant pro forma contracts. The IOUs themselves may participate in the Market Offers, either in their own offers, or in those of the other IOUs.<sup>6</sup> Violations in bidding or in evaluating bids will seriously impact the market price of RPS used to calculate the Power Charge Indifference Adjustment (PCIA) for all ratepayers. Unlike a “standard” IOU RPS solicitation, the injured party in the case of a mishandled Market Offer solicitation is not just the bidder who loses the contract.

CalCCA reiterates that remedies for IOU violations of the approved Market Offer process should be significant enough to deter the prohibited behavior. An order from the Commission that the solicitation be redone is inadequate. PG&E and SCE’s “waived claims” language is therefore inappropriate for the Market Offer pro forma contracts.

## **II. SDG&E’S REQUEST TO ALLOW IOU EMPLOYEES TO TRANSFER BETWEEN MARKET OFFER BID AND EVALUATION TEAMS AFTER BIDS ARE SUBMITTED SHOULD BE REJECTED DUE TO THE POTENTIAL IOU COMPETITIVE ADVANTAGE**

San Diego Gas & Electric (SDG&E) objects to the PD’s prohibition of members of an IOU’s bid team moving to an evaluation team during the Market Offer evaluation process (i.e., after bids are submitted) when an IOU participates in its own Market Offer solicitation.<sup>7</sup> In fact, consistent with Codes of Conduct approved in other situations in which IOUs participate in their own solicitations,<sup>8</sup> the PD requires firewalls between bid and solicitation teams to remain in place for one year after the Commission approves the last Market Offer contract.<sup>9</sup> SDG&E states that “once bids

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<sup>6</sup> Phase 2 Decision, COL 8(c) at 60 (requiring “rules for IOU participation in solicitations they administer” in the Market Offer).

<sup>7</sup> SDG&E Opening Comments at 4 (referring to the PD at 24, and Ordering Paragraph (O¶) 8(a) at 38-39).

<sup>8</sup> See R.18-07-003, *California Community Choice Association’s Comments on Market Offer Process* (June 6, 2022), at 7, n.12.

<sup>9</sup> PD at 24, and O¶ 8(a) at 38-39.

are submitted there is no conceivable market-harm or IOU-specific benefit by allowing that “bid-formulating” employee to subsequently transfer to a role involving “bid evaluation” tasks.<sup>10</sup>

After bids are submitted, additional negotiations may occur between the evaluation team and bidders. An employee with knowledge of IOU information and strategy concerning the IOU’s bid should not be part of that continuing evaluation and negotiation process. Any such participation could result in an unfair advantage for the IOU and should be prohibited.

Accordingly, the Commission should reject SDG&E’s request.

**III. THE PD SHOULD BE CLARIFIED AS REQUESTED BY SCE TO SPECIFY THAT ALL PCIA-ELIGIBLE RPS RESOURCES LEFT OVER AFTER THE VOLUNTARY ALLOCATION ARE AVAILABLE FOR MARKET OFFER CONTRACTING**

As stated in CalCCA’s Opening Comments on the PD, the Commission should remove the requirement that the IOUs offer long-term contracts in this first Market Offer if such an offering will cause delay in the solicitation beyond the first quarter of 2023.<sup>11</sup> Regardless of the Commission’s decision on this issue, however, the PD should be clarified as requested by SCE to ensure that all PCIA-eligible RPS energy remaining after the Voluntary Allocation is offered in the Market Offer as required by the Phase 2 Decision.<sup>12</sup> Therefore, Ordering Paragraph (O¶) 3 of the PD should be revised to remove the phrase “short-term,” to read:

3. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are approved to offer 100 percent of their remaining Power Charge Indifference Adjustment eligible ~~short-term~~ contracts in the Market Offer.<sup>13</sup>

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<sup>10</sup> SDG&E Opening Comments at 4.

<sup>11</sup> CalCCA Opening Comments at 6-8.

<sup>12</sup> Phase 2 Decision, O¶ 3(a) at 64.

<sup>13</sup> PD, O¶ 3 at 38. In addition, while CalCCA recommends that the Commission remove the requirement that the IOUs offer long-term contracts, if it does adopt this requirement the following changes to O¶ 4 should also be made:

#### IV. CONCLUSION

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

Respectfully submitted,

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