



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

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Order Instituting Rulemaking to Advance
Demand Flexibility Through Electric Rates.

R.22-07-005

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
OPENING BRIEF**

Evelyn Kahl,
General Counsel and Director of Policy
Leanne Bober,
Senior Counsel
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
(510) 980-9459
regulatory@cal-cca.org

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SUMMARY OF RECOMMENDATIONS

- ✓ The income-based fixed charge established pursuant to Assembly Bill 205 must exclude volumetric generation charges based on the plain language of the statute and to encourage conservation and dynamic pricing objectives; and
 - ✓ The income-based fixed charge should exclude generation related nonbypassable charges including the Power Charge Indifference Adjustment, the Cost Allocation Mechanism (CAM), and the Modified CAM.
-

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Pursuant to Rule 13.12 of the California Public Utilities Commission’s (Commission) Rules of Practice and Procedure, and the *Administrative Law Judge’s Ruling Requesting Track A Briefs on Statutory Interpretation* ([Ruling](#)), the California Community Choice Association¹ (CalCCA) submits this opening brief.

I. INTRODUCTION

CalCCA appreciates the Commission’s objectives in this proceeding to modify electric rates and establish demand flexibility policies, while balancing the goals of reliability, affordability, equity, efficiency, reducing greenhouse gas emissions, and enabling electrification.² As part of the Track A scope, the Commission will establish an income-based fixed charge as required by Assembly Bill (AB) 205.³ These comments respond to the Ruling’s

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.

² Rulemaking (R.) 22-07-005, *Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates* (July 22, 2022), at 1.

³ R.22-07-005, *Assigned Commissioner’s Phase 1 Scoping Memo and Ruling* (Nov. 2, 2022), at 2.

request for statutory interpretation of AB 205, including what the statute requires to be included or excluded within that charge.

While myriad charges included in the investor-owned utilities' (IOUs') rates can be considered for the income-based fixed charge, generation charges based on customer usage must immediately be taken out of consideration. Generation costs are inherently volumetric (both energy and capacity are purchased, and must be recovered from customers, on a volumetric basis).⁴ Indeed, AB 205 explicitly excludes from its definition of a "fixed charge" any charges "not based on volume of electricity consumed."⁵ The plain language of the statute therefore infers that the fixed charge must exclude volumetric generation charges. In addition, the push towards dynamic rates based on real-time pricing, plus the goal of incentivizing energy conservation by customers, all point toward the need to exclude volumetric generation charges from the income-based fixed charge.

CalCCA provides the following recommendations:

- ✓ The income-based fixed charge established pursuant to AB 205 must exclude volumetric generation charges based on the plain language of the statute and to encourage conservation and dynamic pricing objectives; and
- ✓ The income-based fixed charge should exclude generation related nonbypassable charges including the Power Charge Indifference Adjustment (PCIA), the Cost Allocation Mechanism (CAM), and the Modified CAM.

⁴ Capacity costs are Resource Adequacy (RA) requirements and are variable depending on the amount of load to be served by month, making them volumetric. In addition, the Commission is currently working to implement an RA program in R.21-10-002 that evaluates capacity for each hour of the day, translating even closer to a volumetric requirement.

⁵ Pub. Util. Code § 739.9(a).

II. THE AB 205 INCOME-BASED FIXED CHARGE MUST EXCLUDE VOLUMETRIC GENERATION CHARGES AND GENERATION RELATED NONBYPASSABLE CHARGES

A. The Plain Language of AB 205 Requires the Exclusion of Generation Charges from the Income-Based Fixed Charge

The plain language of AB 205 requires exclusion of generation (energy and capacity) charges from the income-based fixed charge, as such charges are necessarily volumetric. AB 205 requires the Commission to authorize a fixed charge for default residential rates by July 1, 2024, and explicitly requires that such a charge “not [be] based on the volume of electricity consumed.”⁶ Recovery by load-serving entities (LSEs), including community choice aggregators (CCAs), of energy and capacity costs from customers is necessarily by volume (as the LSE procures energy and capacity for customers based on volume and should be able to recover costs in the same manner). The plain language of AB 205 requires the income-based fixed charge to exclude charges based on usage (or volume consumed), and therefore such generation charges should be excluded.⁷

The rules of statutory construction support this conclusion. When construing the meaning of a statute, the Commission must ascertain the Legislature’s intent to effectuate the law’s purpose.⁸ The Commission must “look to the statute’s words and give them their usual and ordinary meaning.”⁹ This plain meaning controls, unless the words are ambiguous or lead to

⁶ Pub. Util. Code § 739.9(a).

⁷ To the extent any existing components of IOU generation charges other than energy or capacity are “fixed” (for example, systems costs of the IOUs) and are considered for inclusion in the income-based fixed charge, the Commission must ensure such inclusion does not represent cost shifting between unbundled and bundled customers in violation of Public Utilities Code section 366.3. *See* Cal. Pub. Util. Code § 366.3 (requiring the Commission to “ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load”).

⁸ D.12-12-033, *Decision Adopting Cap-and-Trade Greenhouse Gas Allowance Revenue Allocation Methodology for the Investor-Owned Electric Utilities*, R.11-03-012 (Dec. 20, 2012) (citing *Imperial Merchant Servs., Inc. v. Hunt*, (2009) 47 Cal.4th 381, 387-388).

⁹ *Id.*

more than one reasonable interpretation, in which case “courts may consider other aids, such as the statute’s purpose, legislative history, and public policy....”¹⁰ In other words, “[i]f there is no ambiguity in the language of the statute, ‘then the legislature is presumed to have meant what it said, and the plain meaning of the language governs.’”¹¹ Given the plain meaning of AB 205, requiring the income-based fixed charge to *not* be based on customer usage, volumetric generation charges must be excluded from such a charge.

B. Ensuring Generation Charges are Based on Usage Will Encourage Conservation and Responsiveness to Grid Needs

The exclusion of volumetric generation charges from the income-based fixed charge will also encourage conservation and responsiveness to grid needs, while the components of the fixed charge can address equity and affordability. First, AB 205 requires that the Commission ensure that the fixed charge, among other things, “not unreasonably impair incentives for conservation [and] energy efficiency.”¹² Along with the need for LSE cost recovery of energy and capacity costs based on the volume consumed by customers, charging customers based on their usage of electricity will incentivize customers to monitor and/or alter their consumption to control costs and conserve energy. Along with the fixed charges for non-volumetric aspects of providing electricity service, the Commission can therefore meet the goals set forth in section 739.9(d).

Second, ensuring generation charges are based on customer usage is consistent with the establishment of real-time, dynamic, pricing being considered in Track B of this proceeding and

¹⁰ *Id.*

¹¹ D.12-12-033 (citing *Smith v. Rae-Venter Law Group* (2002) 29 Cal.4th 345, 358).

¹² Pub. Util. Code § 739.9(d)(2). Section 739.9(d) also requires that the fixed charge “reasonably reflect an appropriate portion of the different costs of serving small and large customers,” “not unreasonably impair incentives for . . . beneficial electrification and greenhouse gas emissions reduction,” and be “set at levels that do not overburden low-income customers.”

through the California Energy Commission's Load Management Standards (LMS).¹³ Response by customers to grid needs via real-time rates can only be accomplished if the generation charges remain volumetric. Therefore, to achieve the grid reliability envisioned by Track B and the LMS through dynamic rates, generation charges must be excluded from the income-based fixed charge.

C. The Income-Based Fixed Charge Should Exclude Generation Related Volumetric Nonbypassable Charges

AB 205 removes the requirement that the nonbypassable rate component for certain public purposes programs be collected based on usage so that such charges can now be recovered through the income-based fixed charge.¹⁴ However, nonbypassable *generation related* charges such as the PCIA, the CAM,¹⁵ and the Modified CAM¹⁶ are by their nature volumetric and cannot be collected through a fixed charge. Pub. Util. Code section 366.2(f) requires CCA customers to reimburse the IOU that previously serve the customer for net unavoidable electricity costs of the IOU attributable to that customer prior to the customer's departure. That reimbursement, in the form of the PCIA, is nonbypassable.¹⁷ Similarly, customer charges for CAM and the Modified CAM are based on IOU purchases of energy and capacity on behalf of other LSE customers, including CCA customers. The PCIA, CAM and Modified CAM involve customer charges for the net costs incurred by the IOU which are based on customer volumetric needs for energy and capacity, and therefore should be recovered based on volume and not be recovered in a fixed charge.

¹³ California Energy Commission, 2022 Load Management Rulemaking, Docket 21-OIR-03 (adopting amendments to the Load Management Regulations to require IOUs, large Publicly Owned Utilities, and large CCAs to adopt hourly locational, marginal rates to allow customers to adjust their load to respond to prices and GHG signals through automation technologies).

¹⁴ Pub. Util. Code § 381(a).

¹⁵ See D.06-07-030 (adopting the CAM).

¹⁶ See D.22-05-015 (adopting the Modified CAM).

¹⁷ Pub. Util. Code § 366.2(g)(2).

III. CALCCA RESPONSES TO THE RULING

1. Section 739.9(a) defines a “fixed charge” as “any fixed customer charge, basic service fee, demand differentiated basic service fee, demand charge, or other charge not based on the volume of electricity consumed.” Section 739.9(e)(1) provides “For the purposes of this section and Section 739.1, the commission may authorize fixed charges for any rate schedule applicable to a residential customer account. The fixed charge shall be established on an income-graduated basis with no fewer than three income thresholds so that a low-income ratepayer in each baseline territory would realize a lower average monthly bill without making any changes in usage. The commission shall, no later than July 1, 2024, authorize a fixed charge for default residential rates.”

a. Does “no fewer than three income thresholds” mean a minimum of three or four tiers of fixed charge levels?

No comment at this time.

b. What types of current or potential residential charges and service fees should be considered a “fixed charge” subject to the income-graduation requirements of Section 739.9(e)?

See sections II.A. and B., above.

c. What types of residential charges and service fees should not be considered a “fixed charge” and therefore should not be subject to the requirements of Section 739.9(e)?

See sections II.A. and B., above.

d. Section 739.9(e)(1) provides that the Commission may authorize “fixed charges” for any residential rate, and that “[t]he fixed charge shall be established on an income-graduated basis with no fewer than three income thresholds so that a low-income ratepayer in each baseline territory would realize a lower average monthly bill without making any changes in usage.” Do you agree that the statute permits the Commission to authorize a bundle of fixed charges for a residential rate (e.g. one rate with both a basic service fee and a demand-differentiated service charge) that, collectively, comply with the requirement for income graduation with no fewer than three income thresholds so that a low-income ratepayer in each baseline territory would realize a lower average monthly bill without making any changes in usage?

No comment at this time.

- e. **How should “a low-income ratepayer in each baseline territory” be defined in the context of this paragraph?**

No comment at this time.

2. **Section 739.9(e)(2) states “For purposes of this subdivision, ‘income-graduated’ means that low-income customers pay a smaller fixed charge than high-income customers.” How should “customers” be defined in the context of this paragraph? Should the Commission define a customer as a household, and if so, how should the Commission define a household?**

No comment at this time.

3. **Section 739.9(f) states “Notwithstanding the requirements of subdivision (d) of Section 739 and Section 739.7, the commission shall not apply the composite tier method to the treatment of any revenues resulting from any fixed charge adopted pursuant to this Section.” This Section was amended to prohibit the use of the composite tier method, which is the concept of including the fixed charge amount as part of the Tier 1 rate for purposes of calculating the tier differential. Do you have any comments about interpreting Section 739.9(f)?**

No comment at this time.

4. **Section 381(a) states “To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service.”**

This section was amended to remove the requirement that nonbypassable charges (NBCs) are collected on the basis of usage. Are there any remaining statutory restrictions for specific NBCs (e.g. wildfire charges) that would prevent recovery through a fixed charge?

See section II.C., above.

5. **Section 739.1(a)(1) states “The average effective CARE discount shall not be less than 30 percent or more than 35 percent of the revenues that would have been produced for the same billed usage by non-CARE customers. The average effective discount determined by the commission shall not reflect any charges for which CARE customers are exempted, discounts to fixed charges or other rates paid by non-CARE customers, or bill savings resulting from participation in other programs, including the medical baseline allowance pursuant to subdivision (c) of Section 739. The average effective CARE discount shall be calculated as a weighted average of the CARE discounts**

provided to individual customers.” Note that CARE-exempt charges include the CARE surcharge, Wildfire Fund charge, the Self Generation Incentive Program, and the Wildfire Hardening Fixed Recovery Charge.

- a. Does the statute prevent recovery of CARE-exempt charges through a fixed charge?**

No comment at this time.

- b. If CARE-exempt charges are recovered through a fixed charge, should the CARE discount be applied as a line item discount to the entirety of the bill (fixed and volumetric components) after the CARE-exempt charges are subtracted from the fixed charge?**

No comment at this time.

- 6. Do you have any other comments about interpreting AB 205 statutory requirements?**

No comment at this time.

IV. CONCLUSION

CalCCA appreciates the Commission’s consideration of the recommendations set forth herein.

Respectfully submitted,



Evelyn Kahl,
General Counsel and Director of Policy
CALIFORNIA COMMUNITY CHOICE
ASSOCIATION

January 23, 2023