FILED
07/31/23
04:59 PM
R2103011

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

Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	R.21-03-011

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S REPLY BRIEF

Evelyn Kahl,
General Counsel and Director of Policy
Lauren Carr,
Senior Market Policy Analyst
Eric Little,
Director of Regulatory Affairs

CALIFORNIA COMMUNITY CHOICE ASSOCIATION
One Concord Center
2300 Clayton Road, Suite 1150
Concord, CA 94520
Telephone: (510) 980-9459
E-mail: regulatory@cal-cca.org

July 31, 2023

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FINANCIAL SECURITY REQUIREMENTS AND RE-ENTRY FEES 3

A. The Commission Must Reject PG&E's Proposal to Base the FSR Calculation on Two Months of Energy Procurement 3

B. SCE Fails to Recognize the Inherent Mismatch in Timing between the ERRA Trigger Mechanism and the FSR Posting That does not Result in Indifference 6

C. The Commission Should Reject SCE's Rationale for Retaining Annual System Average Rates in the FSR Calculation Rather than Using Seasonal Rates 7

D. The Commission Should Dismiss Cal Advocates' Opposition to Incorporating Future Rate Changes Approved by the Commission in the FSR Calculation 9

E. The IOU's Proposal to Remove the Negative Procurement Cost Offset Would Create a Cost Shift by Ignoring Some Revenues the POLR Will Receive 9

F. The Commission Must Reject SDG&E and UCAN's Recommended Changes to the Use of Surety Bonds for the FSR Postings 10

1. The Statute Clearly Places No Restriction on How Much of the FSR can be Covered by a Surety Bond 11

2. There is No Evidence Supporting UCAN's Suggestion that the FSR be Increased if CCAs use a Surety Bond for their FSRs 11

G. The Commission should Adopt SCE's Recommendation for the POLR to Track Adjustments to the Re-Entry Fee Rather than Tracking Actual Costs 12

H. Cal Advocates Incorrectly States that CalCCA's FSR Calculation Example Contains an Error 13

III. CONTRACT ASSIGNMENT 13

A. The Commission Should Reject the Contract Assignment Proposals made by Cal Advocates and SEIA and LSA, as They Are not Voluntary for the CCA, IOU, and Supplier 13

B. Cal Advocates, SEIA, and LSE are Incorrect in Assuming Contract Assignments are Enforceable in Bankruptcy 14

C. SEIA and LSA are Incorrect in Their Assumption that Contract Novation will Result in Lower Costs to the POLR 16

D. The Commission Should Reject SEIA and LSA's Proposal to Allocate the Costs of Novated Contracts to Returning Customers 17

IV. FINANCIAL MONITORING 17

A. The Commission must not Evaluate Proposals under Cal Advocates' False Claims that the CCA Model has not been Stress Tested 17

B. Reject Cal Advocates Recommendation to Publicize CCA Financial Reporting 18

C. The Commission Should Reject Financial Reporting Requirements Proposed by SCE, Cal Advocates, and SDG&E that are not Based Upon Well-Defined Triggers that Demonstrate a Need for Commission Monitoring 19

1. Parties' Recommendations to Require Continual Financial Reporting by All CCAs Regardless of Financial Situation are Unnecessary and Duplicative 19

2. Use Debt Service Coverage Ratio Rather than the Cal Advocates-Recommended Current Ratio as a Trigger for Financial Reporting 20

3. Reject SDG&E's Proposal to Require all CCAs to Obtain a Credit Rating 21

4. Reject SDG&E's Proposal to Institute a Financial Review Group (FRG) 22

V. DURATION OF POLR SERVICE 24

A. The Commission Should Reject SBUA's Recommendation that Returning Customers Remain on POLR Service as Long as It Takes for the POLR Rate to Merge into the Default Service or for a New CCA to Assume Responsibility for the Load 24

VI. CONCLUSION 24

SUMMARY OF REPLY BRIEFS

- The California Public Utilities Commission (Commission) must reject Pacific Gas and Electric Company's (PG&E's) proposal to base the financial security requirement (FSR) calculation on two months of energy procurement;
- Southern California Edison Company (SCE) fails to recognize the inherent mismatch in timing between the Energy Resource Recovery Account (ERRA) trigger mechanism and the FSR posting that does not result in indifference;
- The Commission should reject SCE's rationale for retaining annual system average rates in the FSR calculation rather than using seasonal rates;
- The Commission should dismiss the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates) opposition to incorporating future rate changes approved by the Commission in the FSR calculation;
- The Investor-Owned Utilities' (IOUs') proposal to remove the negative procurement cost offset would create a cost shift by ignoring some revenues the Provider of Last Resort (POLR) will receive;
- The Commission must reject San Diego Gas and Electric Company (SDG&E's) and Utility Consumer Action Network's (UCAN's) recommended changes to the use of surety bonds for the FSR postings;
- The Commission should adopt SCE's recommendation for the POLR to track adjustments to the re-entry fee rather than tracking actual costs;
- Cal Advocates incorrectly states that CalCCA's FSR calculation example contains an error;
- The Commission should reject the contract assignment proposals made by Cal Advocates and the Solar Energy Industries Association (SEIA) and the Large-scale Solar Association (LSA), as they are not voluntary for the Community Choice Aggregator (CCA), Investor-Owned Utility (IOU), and supplier;
- Cal Advocates, SEIA, and LSA are incorrect in assuming contract assignments are enforceable in Bankruptcy;
- SEIA and LSA are incorrect in their assumption that contract novation will result in lower costs to the POLR;
- The Commission should reject SEIA and LSA's proposal to allocate the costs of novated contracts to returning customers;
- The Commission must not evaluate proposals under Cal Advocates' false claims that the CCA model has not been stress tested;

- The Commission should reject Cal Advocates' recommendation to publicize CCA financial reporting;
- The Commission should reject financial reporting requirements proposed by SCE, Cal Advocates, and SDG&E that are not based upon well-defined triggers that demonstrate a need for Commission monitoring;
- Parties' recommendations to require continual financial reporting by all CCAs regardless of financial situation are unnecessary and duplicative;
- The Commission should use Debt Service Coverage Ratio rather than the Cal Advocates-recommended Current Ratio as a trigger for financial reporting;
- The Commission should reject SDG&E's proposal to require all CCAs to obtain a credit rating;
- The Commission should reject SDG&E's proposal to institute a financial review group; and
- The Commission should reject the Small Business Utility Advocates' (SBUA) recommendation that returning customers remain on POLR service as long as it takes for the POLR rate to merge into the default service or for a new CCA to assume responsibility for the load.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort.	R.21-03-011

CALIFORNIA COMMUNITY CHOICE ASSOCIATION
REPLY BRIEF

Pursuant to Rule 13.12 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure, and the schedule set forth in the *Assigned Commissioner's Amended Scoping Memo and Ruling*[1] (Ruling), dated June 19, 2023, the California Community Choice Association[2] (CalCCA) submits this Reply Brief in response to Parties' Opening Briefs.[3]

I. INTRODUCTION

In its Opening Brief, CalCCA made a number of recommendations on the definition of Provider of Last Resort (POLR) service, POLR procurement, contract assignment, the Financial Security Requirement (FSR) calculation – including the individual components of the calculation and measures to adjust the FSR to account for risk, and financial monitoring. CalCCA continues

---

1 *Assigned Commissioner's Amended Scoping Memo and Ruling*, Rulemaking (R.) 21-03-011 (June 19, 2023): https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M511/K719/511719405.PDF.

2 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 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.

3 All references herein to Parties' Opening Briefs refer to the Opening Briefs filed on July 10, 2023, in this proceeding (R.21-03-011).

to support these recommendations made in its Opening Brief. In response to Parties' Opening Briefs, CalCCA provides herein the following additional comments and recommendations:

- The Commission must reject Pacific Gas and Electric Company's (PG&E's) proposal to base the FSR calculation on two months of energy procurement;
- Southern California Edison Company (SCE) fails to recognize the inherent mismatch in timing between the Energy Resource Recovery Account (ERRA) trigger mechanism and the FSR posting that does not result in indifference;
- The Commission should reject SCE's rationale for retaining annual system average rates in the FSR calculation rather than using seasonal rates;
- The Commission should dismiss the Public Advocates Office at the California Public Utilities Commission's (Cal Advocates') opposition to incorporating future rate changes approved by the Commission in the FSR calculation;
- The Investor-Owned Utilities' (IOUs') proposal to remove the negative procurement cost offset would create a cost shift by ignoring some revenues the POLR will receive;
- The Commission must reject San Diego Gas and Electric Company (SDG&E) and Utility Consumer Action Network's (UCAN's) recommended changes to the use of surety bonds for the FSR postings;
- The Commission should adopt SCE's recommendation for the POLR to track adjustments to the re-entry fee rather than tracking actual costs;
- Cal Advocates incorrectly states that CalCCA's FSR calculation example contains an error;
- The Commission should reject the contract assignment proposals made by Cal Advocates and the Solar Energy Industries Association (SEIA) and the Large-scale Solar Association (LSA), as they are not voluntary for the Community Choice Aggregator (CCA), Investor-Owned Utility (IOU), and supplier;
- Cal Advocates, SEIA, and LSA are incorrect in assuming contract assignments are enforceable in Bankruptcy;
- SEIA and LSA are incorrect in their assumption that contract novation will result in lower costs to the POLR;
- The Commission should reject SEIA and LSA's proposal to allocate the costs of novated contracts to returning customers;

- The Commission must not evaluate proposals under Cal Advocates' false claims that the CCA model has not been stress tested;
- The Commission should reject Cal Advocates' recommendation to publicize CCA financial reporting;
- The Commission should reject financial reporting requirements proposed by SCE, Cal Advocates, and SDG&E that are not based upon well-defined triggers that demonstrate a need for Commission monitoring;
- The Commission should reject Parties' recommendations to require continual financial reporting by all CCAs regardless of financial situation are unnecessary and duplicative;
- The Commission should use Debt Service Coverage Ratio rather than the Cal Advocates'-recommended Current Ratio as a trigger for financial reporting;
- The Commission should reject SDG&E's proposal to require all CCAs to obtain a credit rating;
- The Commission should reject SDG&E's proposal to institute a financial review group; and
- The Commission should reject Small Business Utility Advocates' (SBUA) recommendation that returning customers remain on POLR service as long as it takes for the POLR rate to merge into the default service or for a new CCA to assume responsibility for the load.

II. FINANCIAL SECURITY REQUIREMENTS AND RE-ENTRY FEES

A. The Commission Must Reject PG&E's Proposal to Base the FSR Calculation on Two Months of Energy Procurement

PG&E continues to propose that the CCA's FSRs provide the POLR with "upfront and immediate access" to two months' forecasted energy costs with no revenue offset.[4] PG&E's liquidity issues – the apparent driver of this proposal – stem from a billing lag resulting from the timing of when California Independent System Operator Corporation (CAISO) payments are due relative to when PG&E receives POLR customers' payments on their bills.[5] SCE, who had not

[4] PG&E Opening Brief at 11.
[5] PG&E Opening Brief at 16-17.

weighed in on PG&E's proposal up until this point, indicated that "SCE finds PG&E's proposal reasonable assuming the Commission decides to address POLR liquidity needs through the CCA FSR rather than through other regulatory mechanisms. The existing CCA FSR is designed as an indifference mechanism for customers in a mass involuntary return, not as a means of ensuring POLR liquidity."[6] The Commission must reject PG&E's proposal, as PG&E has not demonstrated a need to radically change the purpose of the FSR, completely ignore the revenue side of the equation, and create FSR postings so high that they negatively impact CCA operations.

PG&E's proposal assumes mass involuntary customer return will occur *and* that the POLR will not be able to finance any of the costs associated with the billing lag between when CAISO payments are due and when PG&E would receive customer payments. The Commission should not make these assumptions. PG&E does not justify the assertion that it will not be able to pay for or finance these costs in the event of mass involuntary customer return. While PG&E explains its estimated incremental procurement costs to provide two months of energy to returning customers of approximately \$200 million to \$400 million for 2020-2022, respectively,[7] this information does not confirm that the POLR will be unable to find adequate credit facilities upon customer return to cover that amount. Further, PG&E's estimation assumes that PG&E would need to provide energy to *all* CCA customers simultaneously, but PG&E provides no evidence to support that the full return of all CCA customers in its service area is the type of event that should be anticipated.

PG&E ignores that if the POLR does not have the liquidity to cover the re-entry costs immediately, the liquidity crunch will be relatively short-lived. In a period of rising energy prices, the IOU will have increased liquidity, rather than reduced liquidity, resulting from higher energy

---

6 SCE Opening Brief at 45.
7 PG&E Opening Brief at 14-16.

prices it receives for its resources than are reflected in customer rates. The revenues for these resources will come from the CAISO and will be made available to the POLR on the same time frame as the bills for the incremental load assumed.

As SCE points out, the FSR is not designed to ensure POLR liquidity. Decision (D.) 18-05-022, establishing Re-Entry Fees and FSRs for CCAs, found that, "[t]he purpose of the [FSR] statute appears to be more about basic financial security – ensuring that money is available – rather than liquidity."[8] If PG&E's concern is "liquidity" – having funds available when needed – the IOU should rely on short-term borrowing. Requiring a CCA to post security for a return on the basis of liquidity means that the CCA customers will pay the financing cost of that instrument regardless of whether the customers are returned to POLR service. Instead, using a balancing account with financing charges for the required liquidity would be less expensive and result in costs to provide liquidity incurred only if customers are actually returned to the IOU.

PG&E indicates that its proposal is necessary to "ensure uninterrupted electrical service to returned customers in all circumstances."[9] If PG&E and the Commission see there is a risk that PG&E cannot effectively serve its role as POLR without CCAs fronting two months of energy costs, then the Commission should move expeditiously to the second phase of this proceeding. The second phase must then focus on identifying a non-IOU entity whose financial capability is not threatened in the manner that PG&E is concerned. Absent that assessment, the Commission should continue with its plans to focus on modifications to the individual components of the FSR calculation to make them more accurate in this phase. It can then

---

[8] D.18-05-022, *Decision Establishing Re-Entry Fees and Financial Security Requirements for Community Choice Aggregators*, R.03-10-003 (June 7, 2018): https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M215/K726/215726275.PDF.

[9] PG&E Opening Brief at 11.

evaluate the need for an insurance pool to address PG&E's concern in the second phase of this proceeding and evaluate whether another entity should serve as the POLR.

B. SCE Fails to Recognize the Inherent Mismatch in Timing between the ERRA Trigger Mechanism and the FSR Posting That does not Result in Indifference

SCE recommends:

> …to truly fulfill the directives of Section 394.25(e) and protect customers for the risks and costs associated with CCA mass involuntary returns, the CCA FSR and Re-Entry Fees must be consistently enforced, and they have not been enforced in the recent past. For example, in 2022 the Commission declined to enforce CCA FSR amounts in SCE's service area that were significantly higher than the more common minimum FSR amounts, which occurred because forward energy prices were significantly higher over the six-month forward period.[10]

SCE ignores an inherent mismatch in the timing of FSR calculations and posting and the ERRA trigger mechanism. The FSR calculations and postings are based upon forecasts, while the ERRA trigger mechanism is retrospective. In SCE's 2022 example, the calculated FSRs were based on high summer forwards. Despite these high forwards, the IOU did not update their retail rates. If the high forwards materialize into high actuals, then it is highly likely the IOU will file an ERRA trigger as the current retail rates were insufficient to cover the higher prices in the energy market – which SCE did in its example. Because FSR calculations/postings and ERRA triggers happen at different points in time, the Commission asks CCAs to front those costs but does not ask IOU customers to react to those costs until after the fact. This mismatch does not meet the Commission's statutory requirements for indifference.[11] That is, any customer that has

---

[10] SCE Opening Brief at 26 (citations omitted).

[11] D.05-12-041, *Decision Resolving Phase 2 Issues on Implementation of Community Choice Aggregation Program and Related Matters*, R.03-10-003 (Dec. 15, 2002), at 26: "The statute requires that we set the [Cost Responsibility Surcharges] so as to make bundled customers indifferent to the CCA's offering of service.": https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/52127.PDF.

to immediately bear the financing costs of expected future costs would rather choose to be a bundled load customer where that uncertainty is replaced with after-the-fact certainty. Not only is the customer not indifferent to the uncertainty aspect of forecast versus actual costs, but they are not indifferent to paying now versus paying later even if there were no uncertainty.

A potential solution to make customers truly indifferent between CCA service and bundled service would be to evaluate the potential for an ERRA trigger at the time that the FSR is calculated based upon the estimated energy forwards, RA prices, and Renewable Portfolio Standard (RPS) prices. The IOUs would not be required to change retail rates under this mechanism but would need to evaluate a retail generation rate that is more indicative of the likely rate that would be paid by returning load given the estimate that under the current rates, the IOU would under-collect their ERRA balance. Placing the costs of energy, RA, and RPS on a forecast basis and making it consistent with the rates that the IOU would anticipate charging if those costs came true (i.e., a forecast basis) would be more reflective of the actual balance of revenues and costs and the actual securitization necessary. Conceptually, this is very similar to the point that CalCCA has made that if energy costs are calculated on a summer forecast, then the retail rates applied should be for summer rates also. Here, the difference is that the generation rate should reflect what is necessary to recover the forecast costs instead of the present rate which may or may not be capable of recovering the IOUs costs but are likely to cause an ERRA Trigger filing.

C. The Commission Should Reject SCE's Rationale for Retaining Annual System Average Rates in the FSR Calculation Rather than Using Seasonal Rates

SCE recommends the Commission reject CalCCA's proposal to use seasonal rates to calculate generation revenues component of the FSR because "CalCCA identifies no reasonable

means of adjusting the generation costs for seasonality."[12] No party has put forth a reasonable means to estimate seasonal generation costs because, as CalCCA explained,[13] it is unclear whether it is possible given how the existing PCIA market price benchmark is formulated and how contracting is performed in annual or multi-year periods.

SCE states:

> The IOUs and Cal Advocates point out that introducing a seasonality adjustment on the revenues side of the CCA FSR and Re-Entry Fees calculation without adjusting for the seasonality of RA prices on the cost side, as CalCCA proposes, would be a disproportionate change because it would reflect more revenues and less costs in the summer, despite the fact that summer generation rates are higher because the costs of energy and capacity are higher in the summer.[14]

SCE fails to recognize that it is the current FSR calculation, not CalCCA's proposal, that disproportionately adjusts for seasonality by including seasonal energy costs, through the use of an ICE forward specific to the forecast six-month period, but no other seasonal measures including those related to revenues. The result of doing so is that the vast majority of the FSR *costs* are seasonally differentiated but none of the FSR *revenues* are seasonally differentiated. CalCCA estimates that energy costs make up 85 percent of the cost component of the FSR, while RA costs only make up 10-14 percent.[15] Reflecting seasonal rates in the FSR calculation would remedy this existing misalignment.

The Commission should not condition the adoption of seasonal rates on the adoption of seasonal generation costs. Instead, the Commission should reflect seasonal values where such information is readily available and reasonably accurate: in the IOU rates used to calculate forecast

---

[12] SCE Opening Brief at 34-35.
[13] CalCCA Opening Brief at 29.
[14] SCE Opening Brief at 35 (footnote omitted).
[15] This calculation is based upon the data submitted by the IOUs and CalCCA within the April 4, 2023, workshop to provide FSR calculators for a sample calculation.

revenues, and in the forwards used to calculated forecast energy costs. It should not do so where those values are not supported by evidence sufficient to provide a reasonably accurate value.

D. The Commission Should Dismiss Cal Advocates' Opposition to Incorporating Future Rate Changes Approved by the Commission in the FSR Calculation

Cal Advocates is the only party that opposes CalCCA's proposal to incorporate future Commission-approved rate changes in the revenue component of the FSR calculation. It argues that because the IOUs only incorporate approved rate changes in their ERRA forecast and ERRA update applications, including future rate changes in the FSR calculation would result in greater inaccuracy and less transparency.[16] The Commission should dismiss Cal Advocates opposition and adopt CalCCA's proposal to incorporate future Commission-approved rate changes in the FSR.

CalCCA's proposal would only incorporate future rates if those rates were known with certainty at the time the calculation is made. Reflecting the most current rates ensures that the forecast costs and offsetting revenues are reasonably aligned. Omitting known rate information from the FSR calculation would make it less accurate, because the calculation will be based on outdated rates that will not actually be in place during the period covered by the FSR. For this reason, the Commission should reject Cal Advocates' arguments that including Commission-approved future rates in the FSR calculation will make the calculation less accurate and less transparent.

E. The IOU's Proposal to Remove the Negative Procurement Cost Offset Would Create a Cost Shift by Ignoring Some Revenues the POLR Will Receive

SCE recommends the Commission adopt the IOUs' proposal to remove the negative procurement cost offset of administrative costs in the CCA FSR because administrative costs

---

[16] Cal Advocates Opening Brief at 10.

associated with switching CCA customer service accounts to the POLR are recovered through service fees rather than IOU procurement rates.[17] The Commission should reject this proposal.

Prohibiting excess procurement revenues from reducing administrative costs would create a cost shift by allowing the CCA's payment of the Re-Entry Fee to reduce the costs bundled customers pay through the ERRA. Any projected revenues greater than the Energy, RA, and RPS costs would go to the ERRA to pay down the balances of both returning load and existing bundled load rather than paying down the costs of the returning customers administrative fees. The Commission should not allow this cost shift to occur.

Whether the costs are recovered through service fees or procurement rates, if SCE's recommendation is approved, the CCA would pay for both the procurement costs and administrative costs while bundled load benefits from any overpayment of ERRA costs. If revenues received from returning customers are forecasted to fully cover all costs, a CCA should not be required to post in excess of the minimum FSR. As such, CalCCA recommends the Commission reject SCE's proposal and retain the negative procurement cost offset.

F. The Commission Must Reject SDG&E and UCAN's Recommended Changes to the Use of Surety Bonds for the FSR Postings

Two parties recommend changes to the FSR to address the IOU concerns around the liquidity of surety bonds. SDG&E recommends the Commission "limit use of the bond to a *de minimus* portion of the FSR in order to preserves [sic] necessary liquidity for the POLR."[18] UCAN recommends increasing the FSRs for CCAs who rely on surety bonds to reflect the "issue of lack of liquidity of surety bonds."[19] The Commission must reject these recommendations for the reasons described below.

---

17 SCE Opening Brief at 33-34.
18 SDG&E Opening Brief at 20.
19 UCAN Opening Brief at 9.

1. The Statute Clearly Places No Restriction on How Much of the FSR can be Covered by a Surety Bond

SDG&E suggests its recommendation to limit the use of the bond to a "de minimus portion" of the FSR could be consistent with the statute because Section 394.25(e) "does not require the *entire* amount of the FSR be secured through a bond."[20] The Commission must reject this argument. As the Commission previously determined, the statute is clear that CCAs can use surety bonds for their FSR postings.[21] The governing statute has not changed and continues to permit the use of a bond. Importantly, the statute does not put *any* limits on the amount of the FSR that can be covered by surety bonds, and given the clarity of the statutory language it is impermissible to impute a limitation. The Commission cannot limit the use of surety bonds for FSR postings. Doing so would be inconsistent with the statue.

2. There is No Evidence Supporting UCAN's Suggestion that the FSR be Increased if CCAs use a Surety Bond for their FSRs

UCAN's proposal to increase the FSRs for CCAs who rely on surety bonds is an attempt to address concerns expressed by the IOUs and summarized in D.18-05-022:

> Collecting on a surety bond is similar to collecting on an insurance claim, where a litigious and delayed process for resolving a claim is not unusual. This is problematic, particularly when the IOU may need immediate liquidity to procure resources to serve the involuntarily-returned CCA customers, and accounts for why surety bonds are not used in the energy procurement business.[22]

The Commission expressly rejected this argument in D.18-05-022 when implementing the statute with respect to CCAs:

---

[20] SDG&E Opening Brief at 20.

[21] *See* D.18-05-022 at 9 (confirming that the use of surety bonds is consistent with the express statutory language).

[22] *Id.*at 9 (citation omitted).

> The purpose of the statute appears to be more about basic financial security – ensuring that money is available – rather than liquidity. The fact that surety bonds may not be commonly used for other purposes in the energy procurement business does not control in this context, where there is express statutory language. Accordingly, we approve the use of surety bonds as FSR for CCAs.[23]

The IOUs' supposition was not sufficient when raised before the Commission previously, and it is not sufficient now to remove surety bonds as an option. It is also not sufficient justification for increasing the FSR for CCAs that use surety bonds. Even if the purpose of the FSR was to provide liquidity, increasing the FSR does nothing to resolve the IOUs' perceived issues with immediate liquidity associated with surety bonds. For these reasons, the Commission should reject UCAN's proposal.

G. The Commission should Adopt SCE's Recommendation for the POLR to Track Adjustments to the Re-Entry Fee Rather than Tracking Actual Costs

SCE supports the Energy Division Staff Proposal to require the IOUs to track adjustments to the Re-Entry Fees rather than tracking actual costs.[24] CalCCA also supports the Energy Division Staff Proposal. The Energy Division Staff Proposal would ensure Re-Entry Fees and FSRs are set consistently.

In the complicated world of the IOU Procurement Plans, it is difficult to imagine how the POLR could identify all costs (associated with energy, RA, and RPS) specific to returning customers. For example, if the IOU finds it has a long RA position in at least one of the months, it will not buy RA, and use a resource in the existing IOU portfolio instead. It would not be possible to determine which resource in its existing portfolio it used for the returning customers. This difficultly in precisely tracking costs is why the FSR uses a benchmark. As all costs

---

23 *Id.*

24 SCE Opening Brief at 57-58.

associated with customer return cannot be successfully calculated, CalCCA supports SCE's recommendation to track adjustments to Re-Entry Fees rather than actual costs.

H. Cal Advocates Incorrectly States that CalCCA's FSR Calculation Example Contains an Error

Cal Advocates find that CalCCA's example FSR calculation presented at the April 4, 2023, workshop "contains errors" because it reduces the CCA load used to calculate forecasted energy costs by the CCA's vintaged load share of energy in the PCIA portfolio.[25] CalCCA's example FSR calculation does not include an error; it correctly reflects CalCCA's proposal to reduce the energy volumes used in the FSR calculation to remove amounts hedged through the PCIA portfolio. Using the word "error" incorrectly implies a miscalculation. Instead, CalCCA's example calculates the FSR correctly per its proposal, and Cal Advocates simply disagrees with the proposal.

III. CONTRACT ASSIGNMENT

A. The Commission Should Reject the Contract Assignment Proposals made by Cal Advocates and SEIA and LSA, as They Are not Voluntary for the CCA, IOU, and Supplier

SEIA and LSA propose contract novation in which the POLR takes on all rights and obligations under the deregistering CCA's contract.[26] Cal Advocates propose the POLR have a right of first refusal (ROFR) over the returning CCA's contracts.[27] CalCCA continues to recommend the Commission reject mandatory contract assignments for the reasons described in its Opening Brief:

- Adopting contract novation or ROFR requirements could have significant cost impacts on existing and future contracts in order to prepare for an event unlikely to occur in the first place;

---

[25] Cal Advocates Opening Brief at 11.
[26] LSA/SEIA Opening Brief at 3-5.
[27] Cal Advocates Opening Brief at 19-20.

- There are existing contracts that do not contain these provisions, including long-term contracts to meet RPS requirements. To implement a new requirement would potentially mean the re-negotiation of contracts whose terms and conditions may have been set years prior;
- The IOUs do not support mandatory contract assignments because the POLR would play no role in negotiation;
- The Commission does not have clear authority under PU Code 387 to mandate contract novation or a ROFR; and
- Mandatory resource assignment presents serious legal questions in the context of bankruptcy.[28]

As SCE states, "… most parties who participate in the market – including the CCAs and IOUs – oppose mandatory contract assignments as impractical, unnecessary and unlawful because they would result in cost shifting."[29] The Commission should reject SEIA and LSA and Cal Advocates proposals for mandatory contract assignments and only adopt contract assignment rules to the extent that they are voluntary for the CCA, IOU, and supplier.

B. Cal Advocates, SEIA, and LSE are Incorrect in Assuming Contract Assignments are Enforceable in Bankruptcy

In supporting its ROFR proposal, Cal Advocates suggests that:

> …CalCCA confuses Chapter 11 bankruptcy, which covers corporate reorganization, with Chapter 9 bankruptcy, which covers CCAs and other municipalities. A federal bankruptcy court has limited authority in a Chapter 9 bankruptcy due to the Tenth Amendment and the federal law constrains the bankruptcy court from the types of interventions described by CalCCA.[30]

SEIA and LSA similarly suggest the federal bankruptcy courts have limited authority in a Chapter 9 case and therefore "…the debtor – in this case the CCA – will retain its property and operational control even after it files for bankruptcy."[31]

---

28 CalCCA Opening Brief at 10-15.
29 SCE Opening Brief at 15.
30 Cal Advocates Opening Brief at 20.
31 LSA Opening Brief at 13.

Cal Advocates, SEIA, and LSA's arguments miss the point. The provision of the Bankruptcy Code that makes *ipso facto* clauses, like the proposed automatic reassignment provision, generally unenforceable in bankruptcy is expressly incorporated into Chapter 9.[32] Thus, such a clause would likely be assignable only at the election of the entity seeking bankruptcy protection – whether in Chapter 9 or Chapter 11. These parties also ignore that Chapter 9 relief is available only to a "political subdivision or public agency or instrumentality of a State."[33] While there is one example of a California CCA seeking relief under Chapter 9,[34] an IOU like PG&E is not so eligible and may only seek relief under Chapter 11. Finally, while Section 904 of the Bankruptcy Code limits the Bankruptcy Court's ability to interfere with an eligible municipality's property, revenues, and powers of governance, by electing federal bankruptcy relief the municipality subjects itself to the requirements of that chapter the Bankruptcy Code.[35]

The case that Cal Advocates cites reiterates these basic principles.[36] While the Bankruptcy Court's authority to afford interim relief in a Chapter 9 proceeding is limited by

---

32 11 U.S.C. § 901.

33 11 U.S.C. § 101(40).

34 In *Re Western Community Energy*; Bankr. C.D. Cal., Case No. 21-12821.

35 *See County of Orange v. Merrill Lynch & Co. (In re County of Orange),* 191 B.R. 1005, 1021 (Bankr. C.D. Cal. 1996) ("By authorizing the use of chapter 9 by its municipalities, California must accept chapter 9 in its totality; it cannot cherry pick what it likes while disregarding the rest."); *see also In re City of Vallejo*, Case No: 08-26813, Dkt. No. 473, p.4:7-12 (Bankr. E.D. Cal. March 13, 2009) ("[w]hen a state authorizes its municipalities to file a chapter 9 petition it declares that the benefits of chapter 9 are more important than state control over its municipalities.").

36 *See* Cal Advocates Opening Comments n. 106 citing United States v. Bekins, 304 U.S. 27, 54 (1938) ("The State acts in aid, and not in derogation, of its sovereign powers. It invites the intervention of the bankruptcy power to save its agency which the State itself is powerless to rescue.").

Section 904,[37] the Bankruptcy Court will ultimately be asked to confirm a plan of adjustment that provides for the municipality's reorganization on a final basis.[38]

Arguments that the proposed assignment rules are not ipso facto clauses are also misguided. The proposed regulation would impose into a contract between the CCA and a private counterparty a requirement that the counterparty terminate its relationship with the CCA and instead transact with the POLR. In the context of a CCA bankruptcy filing, this functions as *ipso facto* provision, i.e., a termination or modification of an executory contract triggered by insolvency or a bankruptcy filing.

C. SEIA and LSA are Incorrect in Their Assumption that Contract Novation will Result in Lower Costs to the POLR

SEIA and LSA suggest that mandatory contract novation "provides greater security for the financer (allowing projects to go forward) and reduces the financing costs and thus the overall costs of the contract."[39] As CalCCA explained in its Opening Brief, SEIA and LSA's assumption that contract novation will reduce financing costs may not always hold true.[40] It is unclear whether all generators or market participants would actually transact with contract assignment to the POLR as a contractual condition. Even if they were willing, all such conditions come at a cost dependent on the credit risk of both counterparties. Additionally, contract novation could be more expensive than the POLR procuring from the market depending on when the CCA entered into the contract relative to when the POLR procures for returned customers. If market conditions ease between the CCA's procurement and customer return, it could be more

---

[37] See, e.g., *In re City of Detroit* 841 F.3d 684 (6th Cir. 2016) (Bankruptcy Court lacks authority to enjoin chapter 9 debtor against shutting off water supply).

[38] See *In re Valley Health System* (Bankr. C.D. Cal. 2010) 429 B.R. 692 (confirming chapter 9 plan of adjustment including the sale of assets, after analyzing California state law requirements).

[39] LSA/SEIA Opening Brief at 6-7.

[40] CalCCA Opening Brief at 10-11.

cost effective for the POLR to procure from the market rather than have the CCA's contract assigned to the POLR.

D. The Commission Should Reject SEIA and LSA's Proposal to Allocate the Costs of Novated Contracts to Returning Customers

SEIA and LSA recommend "[t]he costs of the contracts which are novated from a failed CCA to a POLR should be allocated to the customers of the CCA who are returned to the POLR to ensure that there is no cost shift between bundled customers of the POLR and the returning customers of the CCA."[41] The Commission must reject this recommendation, as it would create a fundamental shift in how the market works in a manner that puts contracting risk on customers rather than load-serving entities (LSEs). Procurement contracts are between the generator and the LSE, not the generator and the customers of the LSE. It is, therefore, the LSE that determines its risk profile associated with contracting, which contracts to take on, and how to recover costs for those contracts. The current FSR and re-entry fee mechanism is consistent with this market structure by requiring the CCA to post the FSR and pay re-entry fees associated with incremental costs. The Commission should not modify this structure as SEIA and LSA suggest by requiring contract novation and putting the risk of those novated contracts on customers.

IV. FINANCIAL MONITORING

A. The Commission must not Evaluate Proposals under Cal Advocates' False Claims that the CCA Model has not been Stress Tested

Cal Advocates claims that "[t]he CCA model in California has not yet been stress tested by an extended national recession lasting longer than a single quarter" when discussing its recommendations for financial monitoring CCAs.[42] The Commission should not let this false claim drive any findings or policy decisions in this proceeding. "Extended national recessions"

---

[41] LSA/SEIA Opening Brief at 4.

[42] Cal Advocates Opening Brief at 14.

are not the only ways to stress test the CCA model. In fact, in the last few years alone, the CCA model has been stress tested in many different ways. As described in CalCCA's Opening Brief,[43] in 2022 and 2023 alone, LSEs have experienced exceptionally high summer forwards, an extreme heat event resulting in a new all-time CAISO system peak, winter electricity prices four times higher than previous years, and prolonged capacity shortfalls driving up RA costs. This all took place immediately after the COVID-19 pandemic, which necessitated providing relief to residential customers through additional time to pay off deferred energy bills and a suspension of disconnections. Throughout this extended period of stress testing, "mass involuntary returns" of CCA customers did not occur. The Commission must not evaluate the recommendations made in this proceeding under the false perception that the CCA model has not been stress tested.

B. Reject Cal Advocates Recommendation to Publicize CCA Financial Reporting

Cal Advocates suggests that the Commission should reject the Energy Division Staff Proposal for confidential treatment of CCAs' financial reporting because Joint Powers Authorities, as public agencies, are obligated to report financial metrics on a quarterly basis.[44] The Commission should reject Cal Advocates' recommendation for the same reasons CalCCA provided in its Opening Brief.[45]

First, publicizing market-sensitive information about one LSE would put that LSE at a competitive disadvantage relative to other LSEs and the LSE's counterparties who may take actions in buying from and/or selling to the CCA that they would not have if they were positioned similar to any other market participant. *Second*, a CCA triggering financial reporting will not always mean the CCA will return load to the POLR, and, therefore, there is not a clearly

---

43 CalCCA Opening Brief at 2-4.

44 Cal Advocates Opening Brief at 16.

45 CalCCA Opening Brief at 47-48.

defined need for publicizing the reported information. The purpose of financial monitoring should be to keep the Commission apprised of potential financial situations that *may* result in customer return if not properly addressed. The Energy Division Staff Proposal accomplishes this. *Finally*, CCAs are transparent about their financial conditions. They make their financial circumstances public in their Board packets and through links on their website and the CalCCA website. This includes data points necessary to calculate days liquidity on hand, data points necessary to calculate debt ratio, risk management policies, and ratemaking policies and changes It does not include defaults on RA contracts or non-payments to CAISO scheduling coordinators, energy and hedging contract term details, or the status of procurement contracts. Publicizing additional information including when CCAs trigger financial reporting and information submitted by CCAs pursuant to the requirements in the Energy Division Staff proposal is unnecessary and harmful to CCAs given the market-sensitive information that could be provided to other market participants. The Commission should make it explicit that: (1) an event that triggers CCA financial reporting, and (2) information submitted by a CCA pursuant to its financial reporting requirement, is confidential including from the POLR.

C. The Commission Should Reject Financial Reporting Requirements Proposed by SCE, Cal Advocates, and SDG&E that are not Based Upon Well-Defined Triggers that Demonstrate a Need for Commission Monitoring

1. Parties' Recommendations to Require Continual Financial Reporting by All CCAs Regardless of Financial Situation are Unnecessary and Duplicative

Several parties recommend the Commission require some form of financial reporting for all CCAs regardless of financial condition.[46] The Commission should reject this recommendation. While CalCCA generally supports financial monitoring and reporting to aid in

---

[46] Cal Advocates Opening Brief at 18, PG&E Opening Brief at 21, SCE Opening Brief at 54, and SDG&E Opening Brief at 22.

alerting the Commission of potential customer returns,[47] the Commission should focus its financial monitoring on CCAs that have a demonstrated need for it. CalCCA does not support requiring CCAs to continually report financial metrics to the Commission without hitting a trigger that indicates a need to do so. Requiring quarterly reporting for all CCAs regardless of whether a CCA has experienced a triggering event would be unnecessary.

SCE suggests that the Energy Division Staff Proposal, which CalCCA supports with modifications, lacks transparency and "relies too much on the honor system" regarding the reporting of triggering events.[48] CalCCA disagrees. Unlike profit-motivated LSEs, CCAs make their financial circumstances public, both in their Board packets and through links on their website and the CalCCA website. In addition, the Commission has important existing enforcement mechanisms that it could apply to financial reporting. Failure to report a triggering event could be considered a Rule 1 violation, meaning CCAs would be obligated to report a triggering event or face the consequences of a Rule 1 violation. Relying on existing enforcement mechanisms will ensure CCAs report upon identification of a trigger event. Therefore, rather than requiring regular reporting, the Commission should require a CCA to assess its financial metrics once every 60 days, and report to Energy Division within 10 days if it observes a trigger event.

2. Use Debt Service Coverage Ratio Rather than the Cal Advocates-Recommended Current Ratio as a Trigger for Financial Reporting

Cal Advocates recommends the Commission use Current Ratio less than 2.0 to trigger financial monitoring and not use Debt Service Coverage Ratio less than 1.0 because using Debt Service Coverage Ratio would "add unnecessary complexity and require the Commission to have deep knowledge of the debt structure of a CCA."[49] The Commission should not adopt this

---

[47] CalCCA Opening Brief at 43-44.
[48] SCE Opening Brief at 53.
[49] Cal Advocates Opening Brief at 16.

recommendation. Current Ratio is a less reliable measure of financial strength than Debt Service Coverage Ratio. The Debt Service Coverage Ratio below 1.0, as proposed by Energy Division Staff, signifies losses or slim surpluses and should be used to trigger financial reporting.

3. Reject SDG&E's Proposal to Require all CCAs to Obtain a Credit Rating

SDG&E recommends the Commission require all CCAs to obtain a credit rating. SDG&E suggests such a requirement would provide the Commission with an "objective means of evaluating CCAs' financial condition."[50] The Commission should dismiss SDG&E's recommendation that all CCAs must pursue a compulsory credit rating because (1) it would place an undue burden on CCAs and (2) other financial monitoring mechanisms better fit the Commission's needs in the context of customer return to the POLR.

The Commission should not require all CCAs to obtain credit ratings given the undue burden it would place on smaller or newly forming LSEs. Obtaining a credit rating by an independent agency is costly and requires an extreme amount of time and effort that may be too burdensome for smaller or newly formed LSEs. In addition, forcing newly launched CCAs to get credit ratings before they are ready and have established an operating history is very likely to increase the costs for new CCAs both in (1) staff time and direct costs to work with rating agencies; and (2) higher procurement costs across the board.

Requiring credit ratings of all CCAs would be unduly burdensome, particularly when the Commission can obtain valuable information through the reporting requirements proposed by Energy Division Staff. These requirements would require reporting of information regarding contracting, financials, and plans for correction and/or market exit upon a CCA meeting the following triggers:

---

[50] SDG&E Opening Brief at 22.

- Downgrade below investment grade credit rating, or
- Days Liquidity on Hand (DLOH) is less than 45 days and Debt Service Coverage Ratio falls below 1.0, or
- Cash reserves is below five percent of annual expenses, or
- Default on procurement contract required to meet Resource Adequacy requirements or to the CAISO scheduling coordinator due to non-payment, or
- Insolvency or bankruptcy.

These triggers are objective, as SDG&E desires, and would enable a more regularly updated evaluation of financial conditions than the rating agencies could provide through updating credit ratings.

4. Reject SDG&E's Proposal to Institute a Financial Review Group (FRG)

SDG&E proposes the Commission develop a FRG comprised of CCA representatives, relevant Commission staff, and consumer interest representatives to engage with CCAs without an investment grade credit rating or "reasonably appear to be experiencing financial trouble."[51] The Commission should reject this recommendation, as it extends beyond the Commission's authority and serves no clear purpose.

CCA local governing boards have oversight and approval authority over CCA procurement activities and financial decisions. Therefore, unlike with the IOUs and the Procurement Review Group (PRG), the CCA will not be filing either a quarterly compliance report or an advice letter for which those reviewing parties may participate. Indeed, this is the purpose of the PRG as the group has no authority to require changes of the IOUs nor to reject any recommended procurement strategies. It is not even the Commission that would review any changes contemplated by the CCA. Rather this would be done by the CCA Board. Given that

---

[51] SDG&E Opening Brief at 22.

the Commission has no authority to dictate CCA procurement and financial decisions, SDG&E's intended purpose of an FRG is unclear.

SDG&E's Opening Brief fails to provide any details on the expected outcomes of these meetings beyond warning the Commission and the POLR of a potential return of customers. Since CCAs would not have filings with the Commission that would necessitate such review by parties that would intervene in a proceeding, it is not clear what purpose SDG&E's proposal would serve. SDG&E's proposal, therefore, appears to provide no additional value relative to more substantive proposals such as financial reporting upon certain triggers, as proposed by Energy Division Staff. SDG&E also fails to provide any details on how the Commission would ensure the participants have the expertise necessary to participate, and how the Commission would ensure confidential information is not shared with other market participants.

The Commission should not introduce a new time-consuming task with no authority to impact outcomes or clear purpose. To do so would result in unreasonable spending of customer funds. The purpose of financial monitoring should be to ensure that the Commission and the POLR are not surprised by immediate customer returns. The Commission should therefore forego the establishment of an FRG and instead adopt the process in the Energy Division Staff Proposal, with the modifications described in CalCCA's Opening Brief,[52] which would require meetings between Energy Division and the CCA triggering financial reporting on up to a monthly basis.

[52] CalCCA Opening Brief at 43-47.

V. DURATION OF POLR SERVICE

A. The Commission Should Reject SBUA's Recommendation that Returning Customers Remain on POLR Service as Long as It Takes for the POLR Rate to Merge into the Default Service or for a New CCA to Assume Responsibility for the Load

SBUA recommends POLR service be provided "as long as it takes for the POLR rate to be merged into the default service, or for a new CCA to assume responsibility for the load."[53] The Commission should not adopt this recommendation. As SCE notes, "[m]ost parties appear to agree that the switching rules remain reasonable and do not require modification."[54] This includes, apart from SBUA, a general agreement on the existing six-month duration of POLR service.

The current six-month duration of POLR service recognizes that the IOU must adjust its procurement activity to accommodate the additional load associated with the returning customers. It also sets a defined period of time that incentivizes the POLR to complete procurement and hedging activity on a timeline that supports timely return of customers to bundled service. Modifying the duration of POLR service to be for an undefined length of time (as long as it takes for the POLR rate to merge into default service) is unnecessary and diminishes these incentives.

VI. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests the Commission adopt the recommendations herein.

---

[53] SBUA Opening Brief at 3.

[54] SCE Opening Brief at 7

Respectfully submitted,

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

July 31, 2023