



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

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Order Instituting Rulemaking to Consider
New Approaches to Disconnections and
Reconnections to Improve Energy Access and
Contain Costs.

R.18-07-005

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS
ON ADMINISTRATIVE LAW JUDGE'S RULING ON DISCONNECTION
CAPS AND PAST-DUE PAYMENT ALLOCATION**

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SUMMARY OF RECOMMENDATIONS

The California Public Utilities Commission (Commission) should make the proportional allocation of past due payments between investor-owned utilities (IOUs) and community choice aggregators (CCAs) permanent for the following reasons:

- CCAs are in the public interest and should not be required to bear a disproportionate amount of financial risk for unpaid customer bills;
- The California Legislature's and Commission's preference for the proportional allocation of revenue to IOUs and CCAs in analogous situations supports the proportional allocation of past due bill payments to IOUs and CCAs; and
- The proportional allocation method will allow customers to remain with the CCA (rather than being returned to the IOU for nonpayment), allowing customers to benefit from CCA initiatives, potentially lower CCA rates, and local outreach assisting struggling customers.

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California Community Choice Association¹ (CalCCA) submits these comments pursuant to the *Administrative Law Judge's Ruling on Disconnection Caps and Past-Due Payment Allocation*² (Ruling), dated March 22, 2024. CalCCA takes no position on the disconnection caps. The comments below exclusively address the allocation by investor-owned utilities (IOUs) of payments of past-due unbundled customer bills between themselves and community choice aggregators (CCAs). For the reasons set forth below, the California Public Utilities Commission (Commission) should make permanent the proportional allocation of past due payments between IOUs and CCAs.

¹ California Community Choice Association represents the interests of 24 community choice electricity providers in California: Apple Valley Choice Energy, Ava Community Energy, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert 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.

² *Administrative Law Judge's Ruling on Disconnection Caps and Past-Due Payment Allocation*, R18-07-005 (Mar. 22, 2024).

I. INTRODUCTION

CalCCA appreciates the opportunity afforded by the Ruling to address whether to permanently discontinue the “Waterfall” method. The Waterfall is the IOU standard practice of crediting customer partial payments on delinquent unbundled customer accounts first to the IOU portion of the bill until the customer account is no longer subject to disconnection for delinquency, and only then to the CCA bill portion. The Waterfall is not required by statute or Commission directive, but is embedded in the Commission-approved IOU tariffs.³ The Waterfall was suspended multiple times during the Covid pandemic due to the disproportionate and inequitable financial risk it placed on CCAs as compared to IOUs.⁴ Instead, the Commission ordered the IOUs to proportionately allocate the past due payments among the IOUs and CCAs, most recently in Decision (D.) 21-11-014 extending the Waterfall suspension through September, 2024.⁵

The Commission’s findings supporting suspending the Waterfall in D.21-11-014 apply indefinitely, and support permanently authorizing the proportional allocation method. Significantly, the Commission found in D.21-11-014 that CCAs benefit customers as a whole, are in the public interest, and should not be placed at disproportionate financial risk by the

³ See Pacific Gas and Electric Company (PG&E) Electric Rule 23.R.2, 23.R.3; Southern California Edison Company (SCE) Rule 23.R.2; San Diego Gas and Electric Company (SDG&E) Rule 27.R.2; see also D.21-11-014, *Decision Directing Allocation of Payment on Past-Due Bills Between Investor-Owned Utilities and Community Choice Aggregators*, R.21-02-014 (Nov. 18, 2021), at 9 (“[t]he electric utility standard practice of prioritization of payments first to utility charges and secondly to non-utility charges is not legislatively required”).

⁴ See Resolution M-4842, extended in M-4849; see also PG&E Advice Letters 4244-G-B/5816-E-B, 4388-G/6092-E (approved by Energy Division and suspending until July 1, 2021, PG&E’s Waterfall method); see also SCE Advice Letter AL 2330G/4205-E (approved by Energy Division and implementing SCE’s “Zig Zag” proportional allocation method); see also SDG&E Advice Letter 2961-G/3716-E (approved by Energy Division and suspending until July 1, 2021 SDG&E’s Waterfall method); see also D.21-06-036, *Decision Addressing Energy Utility Customer Bill Debt Via Automatic Enrollment in Long Term Payment Plans*, R.21-02-014 (June 24, 2021) (extending Waterfall suspension to September 30, 2021).

⁵ D.21-11-014, Ordering Paragraph (O¶) 1, at 17.

Waterfall.⁶ Requiring CCAs to bear the brunt of delinquent accounts while the IOUs reap the benefits of 100 percent of past due payments is an inequitable result that defies logic. The Commission should permanently require that IOUs and CCAs receive their proportional share of any past due payments for services they have provided, for the following reasons:

- CCAs are in the public interest and should not be required to bear a disproportionate amount of financial risk for unpaid customer bills;
- The California Legislature’s and Commission’s preference for proportional allocations of revenue to IOUs and CCAs in analogous situations supports the proportional allocation of past due bill payments to IOUs and CCAs; and
- The proportional allocation method will allow customers to remain with the CCA (rather than being returned to the IOU for nonpayment), allowing customers to benefit from CCA initiatives, potentially lower CCA rates, and local outreach assisting struggling customers.

II. BACKGROUND

The Waterfall was suspended several times during the Covid pandemic, initially up to July 1, 2021, through Advice Letters filed by the IOUs.⁷ CalCCA, on behalf of its CCA members, advocated that the Waterfall be suspended given the detrimental financial impact on CCAs, especially as customer arrearages rose.⁸ The suspensions accompanied many customer disconnection protection and arrearage assistance programs initiated during the pandemic. The Commission further extended the Waterfall suspensions in D.21-06-036 through September 30, 2021, slating the “permanent determination” of the Waterfall issue for Phase II of the proceeding.⁹ In Phase II, the Commission extended the Waterfall suspension for three additional

⁶ *Id.*, Finding of Fact (FOF) 8-9, at 16.

⁷ *See supra*, n. 4.

⁸ *See* R.21-02-014, *California Community Choice Association Comments on Order Instituting Rulemaking* (March 3, 2021), at 8-10; *California Community Choice Association Opening Brief* (April 23, 2021), at 3-4; R.21-02-014, *Comments of the California Community Choice Association on the Proposed Decision* (June 14, 2021), at 1-8; R.21-02-014, *Comments of California Community Choice Association on the Proposed Decision Directing Allocation of Payment on Past-Due Bills Between Investor-Owned Utilities and Community Choice Aggregators* (Nov. 4, 2021).

⁹ D.21-06-036, OP 10, at 32-33.

years in D.21-11-014, to September 30, 2024.¹⁰ The Commission made the following specific findings supporting its Waterfall suspensions:

- (1) Given that CCAs are in the public interest, shifting the risk of nonpayment from a customer to the CCA, who continues to serve that customer without collecting revenue and therefore placing that CCA in financial risk, is not in the interest of customers as a whole;
- (2) Nothing in the Public Utilities Code, including section 779.2 prohibiting disconnecting residential service for indebtedness owed to an entity other than the electrical corporation, requires prioritizing partial past due payments towards IOUs;
- (3) The Waterfall cannot be characterized as a uniform disconnection protection because it is a protection that can only be accessed unevenly by customers that have a CCA serving their community; and
- (4) In light of relevant, analogous legislative provisions requiring proportional allocation of relief during the pandemic, proportional allocation should continue on the same timeline as the Covid long-term payment plans (i.e., through September, 2024).¹¹

As set forth below, the Commission's justifications in D.21-11-014 for extending the suspension of the Waterfall: (1) continue to apply, (2) will apply indefinitely, and (3) support the proportional allocation method being made permanent.

III. THE PROPORTIONAL ALLOCATION METHOD SHOULD BE MADE PERMANENT

The logic and equity behind the Commission's Waterfall suspension throughout the pandemic and through September 2024 in D.21-11-014 will apply indefinitely. Unfortunately, customer arrearages have continued to increase over the past several years, but the inequitable result to CCAs and the public interest of the Waterfall will exist regardless of the arrearage magnitude. For the following reasons, the Commission should make the proportional allocation of past due payments to IOUs and CCAs permanent: (1) CCAs are in the public interest and

¹⁰ D.21-11-014, at 9-10, OP 1, at 17.

¹¹ *Id.* at 9-10.

should not be required to bear a disproportionate amount of financial risk of unpaid customer bills; (2) the California Legislature’s and Commission’s preference for proportional allocation of revenue to IOUs and CCAs in analogous situations supports the proportional allocation of past due bill payments to IOUs and CCAs; and (3) the proportional allocation method will prevent or defer CCA customers being returned to the IOU, allowing customers to benefit from CCA initiatives, lower CCA rates, and local outreach assisting struggling customers and potentially preventing disconnection.

A. CCAs are in the Public Interest and Should Not be Required to Bear a Disproportionate Amount of Financial Risk from Unpaid Bills

As noted by the Commission in D.21-11-014, there is no basis in statute, the public interest, or in equity for CCAs to bear a disproportionate amount of financial risk from unpaid bills.¹² The Commission recognized the statutory origin and value of CCAs in D.21-11-014, finding that “CCAs are in the public interest, in that CCAs allow for a publicly-managed alternative to private utility procurement of resources.”¹³ In addition, the Commission recognized that the Legislature enabled CCAs by enacting Assembly Bill (AB) 117,¹⁴ adding Section 366.2 to the Public Utilities Code, stating that “[c]ustomers **shall** be entitled to aggregate their electric loads as members of their local community with [CCAs].”¹⁵ IOUs are required to continue providing the billing, collection, and customer service functions to CCA customers

¹² *Id.*, at 9-10, COL 2-3, at 16 (finding that the Waterfall “is not legislatively required” and rejecting the IOUs’ argument that Public Utilities Code section 799.2 supports the Waterfall, stating that section 799.2 only prohibits disconnection for indebtedness owed to an entity other than the utility, and: (1) “does not require utilities to apply payments on outstanding residential utility bills first to utility charges before non-utility charges,” and (2) “does not prohibit utilities from allocating payments on outstanding residential utility bills proportionally between utility and non-utility charges”).

¹³ *Id.*, at 11.

¹⁴ Stats. 2002, Ch. 838.

¹⁵ *Id.*, at 4-5, COL 1, at 16 (citing Public Utilities Code § 366.2(a)(1)) (emphasis added).

(who are still provided transmission and distribution services by the IOU).¹⁶ However, as noted in D.21-11-014, no statute directs the IOUs to pay themselves first when a customer partially pays a past due bill.¹⁷

The Commission finds in D.21-11-014 that “[f]inancially sound CCAs benefit customers as a whole,”¹⁸ rather than benefitting just the interest of one customer:

[w]hile it is correct that prioritizing any payments toward utility charges is better for the individual customer, shifting the risk onto the CCA is not in the interest of customers **as a whole** . . . Resources have been devoted to the establishment, integration, and growth of CCAs within the IOU service territories.¹⁹

Diverting all payments to the IOU of past due amounts through the Waterfall places a CCA in an inequitable and financially precarious position. The Commission should make permanent the equitable solution of proportional allocation of past due payments of utility bills, while relying on other disconnection protections that don’t financially harm the entities providing services to customers.

B. The California Legislature and Commission Have Demonstrated a Preference for Proportional Distribution of Revenue Between IOUs and CCAs in Other Contexts

In addition to the extensions of the Waterfall during the pandemic, the California Legislature and Commission have demonstrated a preference for proportional distribution of revenue amongst IOUs and CCAs in analogous contexts to the allocation of past due bill payments. Notable examples of such proportional distribution include:

- AB 135 adding Section 9 to Government Code Section 16429.5(g), requiring: (1) that IOUs use “existing **proportional payment processes** adopted by the [Commission] in response to the COVID-19 pandemic to allocate any partial payment made by customers to the utility and other load serving entities in proportion to their respective

¹⁶ Public Utilities Code § 366.2(c)(9).

¹⁷ *Id.*, at 9.

¹⁸ *Id.*, FOF 9, at 16.

¹⁹ *Id.*, at 11-12 (emphasis added).

shares of the outstanding customers charges”; and (2) that funding received through [the California Arrearage Payment Program (CAPP)] against customer charges owing the utility and other load serving entities (including CCAs) be credited **in proportion to** their respective shares of the customer arrearages.²⁰

- In addition, the Commission approved a plan for remittances to CCAs with customers enrolled in the Arrearage Management Plan (AMP) for costs of forgiving generation-related arrearages associated with the unbundled customers to be on a **proportional basis**.²¹
- Furthermore, in the Percentage of Income Payment Plan pilot, the Commission requires the IOUs to “remit costs recovered and attributable to CCA customers **proportionally** to the generation costs for customers of the CCA.”²²

Indeed, the proportional allocation of revenue to the entity that earned that revenue is a logical approach chosen by the Legislature and Commission on several occasions and demonstrates a preference toward such proportional allocation.

C. The Proportional Allocation of Past Due Payments Will Defer CCA Customers Being Reverted Back to the IOUs for Nonpayment and Allow Customers to Benefit from CCA Initiatives, Rates, and Outreach Preventing Disconnections

In partnership with the Commission and IOUs, CCAs are working to prevent disconnections and assist customers struggling to pay their bills. Proportional allocation of past due payments will prevent or defer customers being returned to the IOU for nonpayment, allowing customers to benefit from CCA initiatives, rates, and CCA community outreach that can lower customer arrearages and prevent disconnections. Examples of such CCA initiatives include:

- ✓ San Jose Clean Energy (SJCE) established an Emergency Bill Relief pilot program in the first quarter of 2024 that offers up to \$1,600 to customers at risk of disconnection. For most participating customers, this level of support is expected to eliminate all

²⁰ *Id.*, at 5 (citing Government Code Section 16429.5) (emphasis added).

²¹ Resolution E-5114, *Approval of Arrearage Management Plans for Large Investor-Owned Electric and Gas Utilities*, December 17, 2020.

²² D.21-10-012, *Decision Authorizing Percentage of Income Payment Plan Pilot Programs*, R.18-07-005 (Oct. 7, 2021), at 32 (emphasis added).

overdue balances owed to SJCE and Pacific Gas and Electric Company (PG&E) and temporarily avert disconnections;

- ✓ Peninsula Clean Energy (PCE) provided a \$300 bill credit to approximately 5,800 CARE and FERA customers in December, 2023; and
- ✓ MCE continues to work closely with its customers to ensure successful AMP completion – in 2022, MCE’s success rate for customer AMP completion was 34 percent, compared to PG&E’s success rate of 21 percent.²³

In addition, many CCA rates are lower than their IOU counterparts, providing CCA customers with lower bills and an increased chance of staying current. For example:

- ✓ Sonoma Clean Power currently saves customers between five to seven percent on their total electric bill;
- ✓ PCE recently announced it will freeze its rates at 2023 levels in response to the announcement of a 15 percent rate increase from PG&E, allowing customers to save between 10-15 percent on their electric generation charges. Since its inception in 2016, PCE has generally offered its customers a discount of at least five percent below PG&E’s baseline electric generation rate;
- ✓ SJCE customers currently save above eight percent on electricity compared to PG&E. SJCE has expanded eligibility for its SJ Cares program, which offers an additional 10 percent discount for low-income customers for a total discount of 18 percent; and
- ✓ San Diego Community Power (SDCP) recently approved new rates that will result in customers seeing an average decrease of 17.7 percent in their electricity generation costs compared to their rates in 2023. SDCP had previously approved electricity rates for 2023 that were three percent less than San Diego Gas & Electric’s rates.

Finally, the local community focus of CCAs allows them to gauge best strategies in their communities for higher customer participation rates in programs assisting struggling customers. Alongside the Commission and IOUs, CCA initiatives, rates, and outreach can contribute to the prevention of increasing arrearages and potential disconnections.

²³ See California Public Utilities Commission, *Report on Residential and Household Utility Service Disconnections Pursuant to Public Utilities Code Section 910.5* (April, 2023), at 12-13.

IV. CALCCA'S RESPONSES TO THE QUESTIONS FOUND IN THE RULING

1. **Would extending the use of the proportional allocation method significantly increase the risk of energy disconnections for customers in arrears? Please explain why or why not.**

CalCCA does not have access to data to respond to the question of whether extending the use of the proportional allocation method will “significantly” increase the risk of energy disconnections for customers in arrears. The answer to this question will hinge on many factors, including the dollar and time threshold for disconnection set by the IOUs. Regardless and as discussed above, the Waterfall method is an inequitable practice that is not in the public interest, places CCAs at financial risk, and should be permanently discontinued. In addition, CCAs have initiatives, rates, and outreach practices unique to their organizations that can assist customers in preventing increased delinquencies and potential disconnections.

2. **Should the proportional allocation method be extended beyond the end of September 2024?**
 - a. **If so, should it be extended through October 1, 2026, the period equivalent to the duration of the extended AMP program and 24-month payment plans? Or should the Commission make the proportional allocation method permanent?**

The proportional allocation method should be made permanent, and should not be tied to the extended AMP program and 24-month payment plans. The reasoning for replacing the Waterfall with the proportional allocation method applies regardless of whether there is one customer or one million customers in arrears. Payments for past due bills owed to more than one entity (here the IOUs and CCAs) should be allocated to such entities in proportion to the services provided by those entities.

- b. **If so, should the proportional allocation scheme apply to all past-due payments? If not, which types of past-due payments should be subject to the proportion allocation method?**

Yes, the proportional allocation method should apply to all past-due payments.

V. CONCLUSION

For all the foregoing reasons, CalCCA respectfully requests that the Commission make permanent the proportional allocation of payments of past-due bills between CCAs and IOUs.

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl". The signature is written in a cursive style with a large initial 'E' and a long, sweeping tail.

Evelyn Kahl,
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