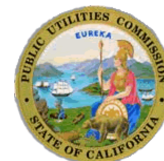

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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
COMMENTS ON THE PROPOSED DECISION**

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April 3, 2024

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SUMMARY OF RECOMMENDATIONS

- The Commission must modify the PD to correct errors that would result in an inaccurate FSR calculation:
  - The Commission should clarify the PD to account for the CAM, DR, and CPE allocations in the forecast RA cost component of the FSR calculation;
  - The Commission should clarify that removal of PCIA revenue occurs whether the PCIA is positive or negative;
  - The PD errs in removing the negative procurement offset;
  - The PD errs in its reliance on PG&E's administrative fee without sufficient evidence of the costs; and
  - The PD incorrectly states no party supports ED Staff's proposal focused on accounting for risk to preserve FSR affordability.
- The Commission must modify the PD to clarify the timing of the FSR calculation and posting:
  - The Commission should modify the PD to specify the date of the FSR calculation, the month of the data used in the calculation, and the effective date of the FSR posting;
  - The Commission should affirm the November 2024 FSR calculation will be the earliest calculation under the new rules; and
  - The Commission must modify the PD to correct errors that contradict the PD's intent to provide CCAs more time to post their first FSR after the phase one decision.
- The Commission must modify its tier one and tier two financial reporting requirements to align with CCA and industry standards:
  - The Commission must clarify the first tier reporting requirement to align with CCA audit schedules;
  - The Commission must clarify the timing of second tier reporting requirements so CCAs know specifically when to evaluate their metrics and report them to the Commission;
  - The Commission should make minor modifications to the definitions of DLOH and Adjusted DSCR for clarity and define cash reserves;
  - The Commission must modify the credit rating trigger to align with industry standards for the definition of "investment-grade";
  - The Commission must clarify the procurement contract default trigger to use more specific language; and
  - The Commission should consider workshops to further define the metrics and reporting requirements given the many intricate details associated with financial monitoring.
- The Commission should provide 90 days for the joint CCAs to file the advice letter developing additional registration requirements.

CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED DECISION

The California Community Choice Association[1] (CalCCA) submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *Decision Implementing Senate Bill 520 Regarding Standards for Provider of Last Resort*[2] (PD), mailed March 14, 2024.

I. INTRODUCTION

This proceeding's objective is to implement SB 520,[3] which rightly directed the Commission to ensure that a Provider of Last Resort (POLR) can serve its intended role of providing service to any returning customer without undermining reliability, jeopardizing the state's climate goals, or shifting costs to other customers. This phase of the proceeding focused on what the PD calls "mass involuntary returns" which "can involve substantial load, can occur with little to no advance notice to the POLR, and may occur under stressed (e.g., high priced) market conditions" and "tend to involve greater risk than other POLR services."[4]

When evaluating the risk of mass involuntary returns occurring, it is helpful to recognize that throughout the course of this proceeding, Load Serving Entities (LSE) have experienced the "stressed" market conditions described in the Commission's definition and continued to reliably serve customer load without failure. As of this filing, not a single community choice aggregator (CCA) has filed for an involuntary return due to the extreme market conditions LSEs faced over the course of this proceeding. These conditions, as described in CalCCA's Opening Brief,[5] include high summer 2022

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[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] Proposed *Decision Implementing Senate Bill 520 Regarding Standards for Provider of Last Resort*, Rulemaking (R.) 21-03-011 (Mar. 14, 2024).

[3] Senate Bill 520 (An act to amend Section 218 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.) (SB 520), introduced Feb. 14, 2023.

[4] PD at 9.

[5] *California Community Choice Association's Opening Brief*, R.21-03-011 (July 10, 2023) (CalCCA's Opening Brief).

forward energy prices, extreme heat resulting in record peak load in September 2022,[6] "extraordinarily high" natural gas prices resulting in high winter 2022-2023 actual energy prices,[7] prolonged capacity market tightness resulting in record high prices[8], and a significant increase in RPS costs that saw the Commission calculated benchmark more than double.[9]

With this experience in mind, the Commission must adopt a POLR framework that prioritizes (1) a workable customer return process and POLR procurement process, (2) an accurate financial security requirement (FSR) calculation methodology that accounts for the actual observed risks of customer return, and (3) a financial monitoring program framework that provides the Commission with enough advanced notice of potential customer returns. CalCCA supports many elements of the PD, including:

- ✓ Maintaining the current six-month period for returning customers;
- ✓ Affirming that the POLR's primary responsibility is to provide continuity of service, and allowing the POLR to submit waiver requests consistent with existing RA and IRP rules;
- ✓ Continuing to require updated FSR calculations and postings twice per year;
- ✓ Modifying the forecast cost component of the FSR calculation to account for Cost Allocation Mechanism (CAM) and Demand Response (DR) allocations and utilize the Power Charge Indifference Adjustment (PCIA) Market Price Benchmark for RA and RPS costs;
- ✓ Modifying the forecast revenue component of the FSR calculation to utilize system average generation rates by customer class, incorporate Commission-approved generation rate changes in place during the calculation period, and differentiate generation rates by season;
- ✓ Rejecting Pacific Gas and Electric Company's (PG&E) proposal to base the FSR calculation on two months of energy procurement costs with no revenue offset;
- ✓ Allowing CCAs to use surety bonds for their FSR postings, as specified in the statute;
- ✓ Rejecting mandatory contract assignment and advanced POLR procurement or hedging;

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[6] California ISO Posts Analysis of September Heat Wave (News Release) (Nov.2, 2022).

[7] CAISO, Gas Conditions and CAISO Markets (Feb. 6, 2023).

[8] *California's Constrained Resource Adequacy Market: Ratepayers Left Standing in a Game of Musical Chairs* (Updated Jan. 16, 2024).

[9] https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/calculation-of-the-market-price-benchmarks-20212022.docx#:~:text=The%20RPS%20Adder%20is%20the,that%20eligibility%2C%20in%20%24%2FMWh., https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/calculation-of-the-market-price-benchmarks-20220930.pdf, and https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/community-choice-aggregation-and-direct-access/calculation-of-mpb-2023-2024-final.pdf show the RPS adder in 2021 at $14.23/MWh and the forecast RPS adder for 2024 at $31.73/MWh.

- ✓ Adopting Energy Division (ED) Staff's proposed financial monitoring requirements subject to the clarifications described herein;
- ✓ Affirming that any CCA-reported financial information be kept confidential; and
- ✓ Adopting CalCCA's proposal for newly forming CCAs.

These elements will enhance the POLR framework by solidifying the POLR's roles and responsibilities, improving the accuracy of the FSR calculation, and providing the Commission with more advanced notice of potential customer returns.

The PD must be modified, however, to correct the following errors that, if left uncorrected, would result in an inaccurate or unclear FSR calculation, unclear posting requirements, and incomplete financial monitoring requirements. In summary:

- The Commission must modify the PD to correct errors that would result in an inaccurate FSR calculation:
  - The Commission should clarify the PD to account for the CAM, DR, and CPE allocations in the forecast RA cost component of the FSR calculation;
  - The Commission should clarify that removal of PCIA revenue occurs whether the PCIA is positive or negative;
  - The PD errs in removing the negative procurement offset;
  - The PD errs in its reliance on PG&E's administrative fee without sufficient evidence of the costs; and
  - The PD incorrectly states no party supports ED Staff's proposal focused on accounting for risk to preserve FSR affordability.
- The Commission must modify the PD to clarify the timing of the FSR calculation and posting:
  - The Commission should modify the PD to specify the date of the FSR calculation, the month of the data used in the calculation, and the effective date of the FSR posting;
  - The Commission should affirm the November 2024 FSR calculation will be the earliest calculation under the new rules; and
  - The Commission must modify the PD to correct errors that contradict the PD's intent to provide CCAs more time to post their first FSR after the phase one decision.
- The Commission must modify its tier one and tier two financial reporting requirements to align with CCA and industry standards:
  - The Commission must clarify the first tier reporting requirement to align with CCA audit schedules;

- The Commission must clarify the timing of second tier reporting requirements so CCAs know specifically when to evaluate their metrics and report them to the Commission;
- The Commission should make minor modifications to the definitions of Days Liquidity on Hand (DLOH) and Adjusted Debt Service Coverage Ratio (DSCR) for clarity and define cash reserves;
- The Commission must modify the credit rating trigger to align with industry standards for the definition of "investment-grade";
- The Commission must clarify the procurement contract default trigger to use more specific language; and
- The Commission should consider workshops to further define the metrics and reporting requirements given the many intricate details associated with financial monitoring.

- The Commission should provide 90 days for the joint CCAs to file the advice letter developing additional registration requirements.

II. THE COMMISSION MUST MODIFY THE PD TO CORRECT ERRORS THAT WOULD RESULT IN AN INACCURATE FSR CALCULATION

The FSR is generally designed to cover the costs of providing service to returned customers for six months minus the revenues the POLR can expect to receive from the returned customers. The costs include forecast RA costs, forecast Renewable Portfolio Standard (RPS) costs, forecast energy costs, and administrative costs. The costs are offset by expected revenues from the returned customers during the same period.

The FSR and re-entry fee changes in the PD correctly "focus on improving the accuracy of different inputs into the FSR and re-entry fee calculation"[10] as opposed to modifying the structure of the calculation to cover POLR liquidity needs. The PD falls short of all the changes needed to make the FSR as accurate as it could be, however, and should be modified as described in the following sections to ensure the FSR accurately reflects POLR costs when providing service to returned customers.

A. The Commission Should Clarify the PD to Account for the CAM, DR, and CPE Allocations in the Forecast RA Cost Component of the FSR Calculation

The PD adopts a modification to the FSR calculation to account for the CCA customers' allocation of RA from CAM and DR resources. CalCCA strongly supports the PD's adoption of this and other consensus based FSR calculation recommendations. The Commission should clarify the PD to direct that the FSR calculation will also account for central procurement entity (CPE) allocations.

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[10] PD at Finding of Fact 15.

When PG&E's and Southern California Edison Company's (SCE) local Resource Adequacy (RA) CPEs purchase RA, the system RA is allocated to all LSEs within each CPE's area. This allocated system RA must also be accounted for in the FSR. CPE allocations can be accounted for the same way system RA CAM allocations are accounted for, by subtracting the CPE System RA allocations in megawatts (MW) from the CCA's System RA requirement. While the Commission may have intended to include CPE allocations in its definition of CAM allocations, the Commission should modify the PD to make it explicitly clear that CPE RA allocations will also be accounted for in the FSR calculation.

B. The Commission Should Clarify that Removal of PCIA Revenue Occurs Whether the PCIA is Positive or Negative

The PD states, "first, revenues from PCIA rates of CCA customers shall be removed from the IOU POLR's generation revenues."[11] Since the removal of the PCIA component of the retail rate used to calculate the revenues in the FSR and re-entry fee can either be positive or negative, the Commission should clarify that the rate component reflecting PCIA should be removed whether that component is positive or negative. The IOUs argued that PCIA should be excluded because it is not incremental revenue. It is also not an incremental negative revenue. Therefore, the Commission should clarify that the PCIA component of the retail rate used to calculate the expected revenues in the FSR and re-entry fee will be net of the PCIA component regardless of whether the PCIA component is positive or negative.

C. The PD Errs in Removing the Negative Procurement Offset

The negative procurement offset component of the FSR calculation nets negative procurement costs (when the forecast price of new power is lower than the system average generation rate) against administrative costs. The PD removes the negative procurement offset under the rationale that "when attaining bundled utility service, all new customers are charged an administrative service fee which is not offset by any negative procurement costs. Similarly, customers are charged an administrative fee if they voluntarily transfer from a CCA back to bundled service."[12] The PD goes on to state that "[u]nless the actual administrative costs are tracked at the time of POLR service, failing to include minimum administrative costs in the FSR calculation will result in actual, incremental administration costs being shifted to IOU bundled customers, in conflict with Section 394.25(e)."[13]

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11 PD at 31.
12 *Id.* at 31.
13 *Id.* at 46.

The PD fails to recognize that by removing the negative procurement offset, the Commission is creating a cost shift to CCA customers by requiring a CCA to post an inflated FSR relative to the costs the POLR will actually incur. The revenues the POLR receives from returned customers will offset all procurement costs the POLR incurs on behalf of the returned customers. It is only due to the accounting methods of the IOUs that any excess revenues obtained from returned customers will not offset the administrative costs. Instead, the IOUs accounting practices would have any over-collection from returning customers go to the IOUs' ERRA. In a case where the returning customer has paid more in FSR or re-entry fee than the cost of the energy, RPS, and RA, the excess revenues will be used to offset all ERRA costs and will be enjoyed by IOU bundled load instead of those returning under a potentially very high FSR or re-entry fee. Instead of eliminating the negative offset, the Commission should order the IOUs to allow a transfer from ERRA to the administrative fees to allow the returning customer to fully use the FSR or re-entry fee that they have provided. If anticipated revenues fully cover the sum of all costs, there is no rational reason to select a single cost element as the basis for an FSR minimum.

Whether the costs are recovered through service fees or procurement rates, if the PD is adopted as is, 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 modify the PD to retain the negative procurement cost offset.

D. The PD Errs in Its Reliance on PG&E's Administrative Fee without Sufficient Evidence of the Costs

The PD acknowledges that "it is concerning that PG&E's per-customer fee continues to be significantly higher than that of the other IOUs" and directs parties to evaluate this issue in PG&E's General Rate Case.[14] CalCCA appreciates the PD's direction to PG&E to describe the impacts of a Billing System Upgrade Project on the level of automation and identify the administrative fee as a separate item, describe its components, and explain how it is calculated.[15] Such transparency is particularly needed given in response to a Joint CCA data request,[16] PG&E indicated that they have no work papers to describe how they arrived at the processing time, which is the driver of the cost.

[14] PD at 41.
[15] *Id.* at 42.
[16] CalCCA's Opening Brief at Attachment A.

CalCCA has raised this issue within PG&E's GRC[17] but no changes were made despite the lack of support for PG&E's calculation.

Despite this lack of proper vetting and documentation, the PD relies on all the IOUs' administrative fees, including PG&E's, to set the FSR minimum for LSEs in their areas. The PD revises the FSR minimum to be "the greater of the viability amounts required for CCAs and ESPs (i.e., $147,000 for CCAs, and $25,000 or the per customer amount required by Section 394(b)(9) for ESPs) or the calculated per customer administrative fee."[18]

PG&E's administrative fee of $4.24 per customer is clearly based on a more manual process than the other IOUs'. PG&E's GRC[19] and Advice Letter 5359-E[20] provides a generic accounting of how the cost is estimated and offered categories of costs and an estimated four minutes per account processing time.[21] This information is not enough to know how administrative costs would change depending on number of customers returning. For example, it is not clear if the $4.24 per customer fee is based upon returning one customer at a time or multiple customers, and how this time and cost estimate would change under mass involuntary return. Under a mass involuntary return, the primary focus of this proceeding, PG&E would likely experience efficiency gains associated with returning multiple customers at one time. It cannot be determined if such efficiency gains are factored into PG&E's administrative fee. Therefore, until PG&E and stakeholders can further investigate PG&E's administrative fee in PG&E's GRC, the Commission should set PG&E's administrative fee at the average of the other two utilities for the purposes of the FSR calculation.

E. The PD Incorrectly States No Party Supports ED Staff's Proposal Focused on Accounting for Risk to Preserve FSR Affordability

To address the cost and affordability of the FSR, ED staff proposed to allow a discount to the FSR amount for CCAs that can demonstrate adequate hedging contracts and that it is not at financial risk.[22] The PD states, "[n]o party supports ED staff's proposal to apply a discount to the FSR amount

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17 PG&E Application (A.) 18-12-009, *Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 2020. (U39M)* (Dec. 13, 2018) (PG&E Application), Exhibit PG&E-6, at 2-28.

18 PD at 46.

19 PG&E Application, Exhibit PG&E-6, at 2-28.

20 PG&E Advice 5359-E *Description of Customer Re-entry Fee in Electric Schedule E-CCA, Services to Community Choice Aggregators in Compliance with Decision 18-05-022*, R.03-10-003 (Aug. 17, 2018).

21 CalCCA's Opening Brief at Attachment A.

22 *Id.*

under specified conditions, either in concept or as proposed."[23] This statement is incorrect. CalCCA supported ED staff's proposal in concept, and consistently highlighted the importance of accounting for risk in the FSR calculation throughout the course of the proceeding. Specifically, CalCCA's Opening Brief recommends the Commission "offer a discount to the FSR amount for LSEs that demonstrate [a] low risk of failure" and provides suggested modifications to ED staff's proposal to make it less restrictive.[24] While the PD recognizes CalCCA's assertion that some of the qualifications in the ED staff's proposal are overly restrictive,[25] it is incorrect to state that no party supports the ED staff's proposal in concept.

The Commission should modify the PD to express CalCCA's support for ED staff's proposal and adopt ED staff's proposal with the modifications described in CalCCA's Opening Brief.[26] The FSR calculation as adopted in the PD considers only the consequences of failure and ignores the probability of failure. This will result in CCAs securitizing the full expected costs of a customer return in advance, even if the probability of that return is slim. Excessively high FSRs take up liquidity or credit capacity that could be used to purchase hedges to mitigate price risk during high priced summers or procure clean energy resources to meet state policy and promote reliability by building the resource stack. The Commission should not continue to ignore the probability of involuntary customer return, as the result is increased costs to customers for an event that is unlikely to occur.

III. THE COMMISSION MUST MODIFY THE PD TO CLARIFY THE TIMING OF THE FSR CALCULATION AND POSTING

A. The Commission Should Modify the PD to Specify the Date of the FSR Calculation, the Month of the Data Used in the Calculation, and the Effective Date of the FSR Posting

The FSR calculation schedule is outlined in PG&E and SCE's Rule 23 and SDGE's Rule 27.[27] The schedule as currently drafted leaves some room for interpretation, creating the potential for inconsistent calculations among IOUs like those that occurred for the summer 2022 FSR

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[23] CalCCA's Opening Brief at 52.
[24] CalCCA's Opening Brief at 39.
[25] PD at 52.
[26] CalCCA's Opening Brief at 39.
[27] SCE Rule 23 section W, PG&E Rule 23 section W, and San Diego Gas & Electric (SDG&E) Rule 27 section W.

calculations.[28] CalCCA appreciates the Commission's efforts to clarify the calculation schedule in the PD. The PD states:

> To ensure the calculations are applied consistently across the IOUs, the semi-annual CCA and ESP FSR calculations shall be calculated as follows:
>
> - **May**: Using May as the calculation month, with the energy quotes and FSR posting covering June – November.
> - **November**: Using November as the calculation month, with the energy quotes and FSR posting covering December – May.[29]

Given this language combined with language from the existing IOU tariffs regarding when adjustments to the FSR must be posted (July 1 and January 1),[30] CalCCA understands the PD's clarifications to mean:

- **May:** Using April forwards, May as the calculation month, and a FSR posting deadline July 1, with energy quotes and FSR posting covering June – November
- **November:** Using October forwards, November as the calculation month, and a FSR posting deadline of January 1, with energy quotes and FSR posting covering December -May

To be explicitly clear of the forwards used, the calculation month, and the deadline for posting any adjustments to the FSR, the Commission should update the PD to either affirm or correct CalCCA's understanding described here.

B. The Commission Should Affirm the November 2024 FSR Calculation will be the Earliest Calculation Under the New Rules

The PD does not affirmatively state which FSR update will be the first under the new rules. The PD does provide several implementation steps that must be taken before the calculation can incorporate the changes in the PD. These steps include the Commission adoption of the final decision, meet and confers to develop seasonal generation rates, and IOU Advice Letter filings implementing the decision.[31] CalCCA expects that for all these steps to occur with sufficient time for review and

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[28] SCE Advice 4789-E *Community Choice Aggregator Financial Security Requirement Reports for May 2022* (May 10, 2022) and SCE Advice 4789-E-A *Supplement to Advice 4789-E, Southern California Edison Company's Community Choice Aggregator Financial Security Requirement Reports for May 2022* (May 19, 2022).

[29] PD at 56.

[30] See for example, PG&E Rule 23 at 59 (PG&E Rule 23 at 59): "PG&E will calculate a CCA's FSR amount semi-annually and submit the updated amount to the CPUC by May 10 and November 10 of each year. Updated FSR amounts for each CCA will be submitted in a Tier 2 advice letter to the Commission's Energy Division. Any adjustments to the CCA FSR amount must be posted by the following January 1 and July 1, respectively".

[31] PD at Conclusions of Law 35.

implementation that the November 2024 FSR calculation would be the earliest that the new rules could reasonably go into effect. CalCCA, therefore, recommends that the PD clarify that the new FSR calculation go into effect no earlier than the November 2024 Advice Letters.

C. The Commission Must Modify the PD to Correct Errors that Contradict the PD's Intent to Provide CCAs More Time to Post their First FSR after the Phase One Decision

The PD states that, "[f]or the first FSR posting following this decision, CCAs and ESPs shall be provided an additional 30 days to comply, with the first designed FSR amount due on the 1st day of the second month following the IOU's initial calculation. All subsequent FSR postings shall follow the current 30-day deadline from the initial calculation."[32] The PD goes on to state in a footnote that if the IOUs first FSR calculation following the decision happened in November, the CCAs would have until January 1 to update their FSR posting.[33]

CalCCA supports the PD's intent, which is to allow CCAs additional time to provide their first FSR posting following the IOUs' first calculation after the final decision. CCAs have generally had very stable FSRs under the current calculation, and the modifications proposed in the PD may result in very different FSRs than CCAs have been used to. The PD must be clarified, however, to ensure it achieves the Commission's intent of giving CCAs additional time for their first posting.

IOU tariffs state that "[a]ny adjustments to the CCA FSR amount must be posted by the following January 1 and July 1, respectively".[34] Therefore, in order for the Commission to give CCAs an additional 30 days to post its updated FSR amount, it would need to give CCAs until February 1 to update their posting. The Commission should modify the language in the PD to require the first FSR posting after the decision to be in place on the first day of the third month following the initial calculation.

The Commission should also consider giving longer than 30 additional days to post the first FSR after the decision. As the FSR calculation methodology changes, CCAs may find it more beneficial to use surety bonds for their FSR posting. Since the implementation of the FSR, few CCAs have used surety bonds to meet their FSRs. If the new calculation produces a significant jump in the FSR posting the use of a surety bond will be more likely. Since few CCAs have used one, it can be anticipated that creating the instrument will take some time with the financial institution and the POLR to ensure the

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[32] PD at 53.

[33] *Id.*

[34] See for example, PG&E Rule 23 at 59, SCE Rule 23 at 55, and SDG&E Rule 27 at 46.

instrument is acceptable. It is unknown how long it will take for this process to complete, but it is likely to be longer than the 30-day extension. Given this, CalCCA recommends extending the time for the first posting after the decision to 60 days rather than 30 days. This would require the first FSR posting after the decision to be in place on the first day of the fourth month following the initial calculation.

IV. THE COMMISSION MUST MODIFY ITS TIER ONE AND TIER TWO FINANCIAL REPORTING REQUIREMENTS TO ALIGN WITH CCA AND INDUSTRY STANDARDS

A. The Commission Must Clarify the First Tier Reporting Requirement to Align with CCA Audit Schedules

The PD adopts a two-tier financial reporting structure. The PD states that "[u]nder the first tier, all CCAs, regardless of their financial standing or years of operation, shall be required to provide to ED copy of their most recent audited financial information. The audited financial statement shall be provided twice a year, in January and July."[35] CalCCA appreciates the Commission's desire for CCA financial statements, and notes that CCAs make their yearly audited financial statements and quarterly unaudited financial statements publicly available on their websites.

CCAs are only required to receive one financial audit per year,[36] and the timing by which they receive their audited financial statement depends on the CCA's fiscal year end date which varies by CCA. CalCCA understands that the PD's intent may be to receive audited financial statements twice per year for ease of information collection and to ensure it receives audited financial statements regularly and relatively close to their publication; however, given that CCAs are only required to conduct an annual audit the current PD language would mean that the Commission receive the same report twice. Accordingly, CalCCA recommends that the PD be modified to state that CCAs must provide their most recent audited financial statements annually following their publication in either January or July, whichever comes earlier.

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35 PD at 77.

36 For Joint Powers Authorities, see CA Gov. Code 6505(b). For cities, see for example, the City of San José City Charter Section 805(a): "…Conduct or cause to be conducted annual post audits of all the fiscal transactions and accounts kept by or for the City. Such audits shall include but not be limited to the examination and analysis of fiscal procedures and the examination, checking and verification of accounts and expenditures. The audits shall be conducted in accordance with generally accepted auditing standards and accordingly shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances. The audits shall include the issuance of suitable reports of examination so the Council and the public will be informed as to the adequacy of the financial statements of the City."

B. The Commission Must Clarify the Timing of Second Tier Reporting Requirements so CCAs Know Specifically When to Evaluate Their Metrics and Report Them to the Commission

The PD states that "Within 10 days of the occurrence of any of the [tier two] conditions, the CCA shall submit a confidential letter to the Director of Energy Division to indicate which Tier 2 condition(s) has/have been triggered."[37] For most of the tier two conditions, this reporting timing is workable as long as 10 days is modified to 10 business days. For the DLOH and Adjusted Debt Service Coverage Ratio condition, however, more clarification is needed to define an "occurrence," otherwise the language could be interpreted to mean a CCA would need to monitor these metrics continuously, which, besides being onerous, would be difficult to do because DLOH is based on annual expenditures which do not become final until the end of a given period (e.g., month or quarter). It could also mean reporting numbers that have not been reviewed by the CCA's management or boards, who review each monthly or quarterly financial statement including these calculations before they are finalized.

For these reasons, the Commission should modify its required reporting timing to the following:

> Within 10 **business** days of the occurrence of any of the above conditions **except for the calculation of DLOH, Adjusted Debt Service Coverage, and Cash Reserves**, the CCA shall submit a confidential letter to the Director of Energy Division to indicate which Tier 2 condition(s) has/have been triggered. **For the calculation of DLOH, Adjusted Debt Service Coverage, and Cash Reserves, the CCA shall submit a confidential letter to the Director of Energy Division within 10 business days of the CCA's acceptance of a financial statement (but no longer than monthly) that indicates that a Tier 2 condition has been triggered.**

C. The Commission Should Make Minor Modifications to the Definitions of DLOH and Adjusted DSCR for Clarity and Define Cash Reserves

CalCCA appreciates the PD's adoption of its proposed definitions of DLOH and Adjusted DSCR used as conditions for tier two reporting. So that there is no room for misinterpretation of the definitions, the Commission should adopt minor changes to the definitions. These modifications will ensure CCAs are explicitly clear on the definition of "annual" for the purposes of conducting the DLOH and Adjusted DSCR calculations and ensure CCAs use the most current information available

[37] PD at 79.

to them to calculate these metrics (e.g., the last twelve-month period rather than the last calendar year or the last fiscal year).

The Commission should modify footnote 216 to read:

> DLOH shall be calculated as: the CCA's available unrestricted cash and investments and eligible unused bank ~~**LOCs**~~ **credit agreements** and capacity under commercial paper programs, multiplied by 365. This amount shall then be divided by **the total of the last twelve months of the** CCA's ~~**annual**~~ operating and maintenance expenses, excluding depreciation and amortization.

The Commission should modify footnote 216 to read:

> Adjusted Debt Service Coverage Ratio shall be calculated as: Numerator: ~~**Annual**~~ **For the last twelve months**, recurring revenue plus interest income plus withdrawals from a Rate Stabilization Fund, minus recurring annual cash operating expenses and General Fund Transfers over the prior twelve-month period (where recurring revenue and recurring expenses exclude special, one-time items, and annual operating expenses exclude depreciation and amortization expenses). Denominator: Aggregate ~~**annual**~~ **debt service over the prior twelve-month period** (i.e., principal, interest, and fees, **as applicable, associated with the debt**).

The PD also uses "cash reserves" as a tier two trigger. Unlike for DLOH and Adjusted DSCR, however, the PD does not define cash reserves. The definition of cash reserves should include cash, cash equivalents, short-term investments, and unused credit facilities. This will ensure the definitions of DLOH and cash reserves align, which appears to be the Commission's intent given its description of DLOH.[38]

D. The Commission Must Modify the Credit Rating Trigger to Align with Industry Standards for the Definition of "Investment-Grade"

The PD indicates that CCAs would be subject to the tier two financial reporting requirements if they receive "a credit rating at or below BBB-/Baa3 from S&P & Moody's."[39] The PD also states in a footnote that this condition is "[o]nly applicable to CCAs who are downgraded from an investment grade rating to a noninvestment grade rating, as specified."[40]

It appears the intent of the PD is to require CCAs to report if they go from an investment grade credit rating to a non-investment grade credit rating, which CalCCA supports. The PD should

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[38] PD at 78: "DLOH (cash reserves) is less than 45 days, and Adjusted Debt Service Coverage Ratio (cash plus lines of credit) is less than 1.0." (footnotes omitted)

[39] *Id.* at 78.

[40] *Id.*

therefore be modified to require tier to financial reporting if a CCA receives "a credit rating ~~at or~~ below BBB-/Baa3 from S&P & Moody's." This modification would be consistent with the ratings S&P and Moody's consider investment grade.[41] It would also be consistent with what the CAISO considers investment-grade for its purposes of providing unsecured credit.[42]

E. The Commission Must Clarify the Procurement Contract Default Trigger to Use More Specific Language

One condition in the PD that would require a CCA to adhere to tier two reporting requirements is "[t]he CCA defaults on one or more procurement contracts required to meet RA requirements or to the CAISO scheduling coordinator due to non-payment."[43] The PD errs by not clarifying this condition to (1) make it specific to the buyer's payment obligation, and (2) use standard contract language.

First, contractual breaches may occur for a number of reasons unrelated to CCA financial condition. The PD, as drafted would not limit this condition to procurement contract defaults related to the CCA's financial condition. Defaults not related to the CCA's financial condition, such as defaults caused by a seller or defaults related to a buyer's non-financial performance obligations, should not trigger tier-two financial reporting. *Second*, the Commission should modify the PD to use the term "Event of Default" because it is a standard defined term in RA contracts that has written notice requirements and that can result in contract termination if not cured.

The Commission should modify this condition to use the CalCCA provided language in its Opening Brief: (1) Event of Default with respect to a buyer's payment obligations under a procurement contract required to meet Resource Adequacy requirements, provided that a CCA is entitled to any applicable cure periods under such procurement contract or (2) failure to pay a CAISO scheduling coordinator.[44]

F. The Commission Should Consider Workshops to Further Define the Metrics and Reporting Requirements Given the Many Intricate Details Associated with Financial Monitoring

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[41] S&P Global, *Guide to Credit Rating Essentials* at 9: https://www.spglobal.com/ratings/_division-assets/pdfs/guide_to_credit_rating_essentials_digital.pdf; Moody's, *Rating Symbols and Definitions* at 9: https://ratings.moodys.com/rmc-documents/53954.

[42] CAISO Business Practice Manual for Credit Management and Market Clearing at 39: https://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Credit%20Management%20and%20Market%20Clearing.

[43] PD at 78.

[44] CalCCA's Opening Brief at 46.

CalCCA generally supports the PD's financial reporting framework. The recommendations in sections IV.A through IV.E are clarifications necessary for the financial monitoring framework to function in a clear and consistent manner. The rules for financial monitoring must be clear, particularly considering that penalties will apply to CCAs that do not report consistent with the rules adopted in this PD. If the Commission declines to adopt CalCCA's proposed modifications to the financial reporting framework, the Commission should consider directing parties to hold workshops to further define the tier one reporting requirement, the metrics used for tier two, and the timing for CCAs to report when they meet tier two conditions.

V. THE COMMISSION SHOULD PROVIDE 90 DAYS FOR THE JOINT CCAS TO FILE THE ADVICE LETTER DEVELOPING ADDITIONAL REGISTRATION REQUIREMENTS

The PD directs community choice aggregators to "file a joint Tier 2 advice letter within 60 days of the effective date of this decision to further develop the additional registration requirements proposed by [CalCCA]."[45] CalCCA appreciates the Commission's adoption of CalCCA's registration requirements. Because no new CCAs are in the process of registering in the near future, the Commission should modify the PD to allow the joint CCAs 90 days to file their advice letter. This will provide more time for the joint CCAs to provide a thorough response to the additional details that need to be developed.

VI. CONCLUSION

CalCCA appreciates the opportunity to comment on the PD. For all the foregoing reasons, the Commission should modify the PD as provided in Appendix A.

Respectfully submitted,

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

April 3, 2024

45 PD at Ordering Paragraph 5.

APPENDIX A

TO
CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S COMMENTS ON THE PROPOSED DECISION

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

Proposed text deletions show as ~~**bold and strikethrough**~~
Proposed text additions show as **bold and underlined**

FINDINGS OF FACT

16. There is general consensus among the parties in this proceeding that the FSR and re-entry fee calculation should be modified to: use the Commission's annual RA Market Price Benchmarks to forecast the costs of system and flexible RA; use the IOU POLR's system average residential and non-residential customers generation rates to forecast the IOU's generation revenues associated with each CCA; and account for the CCA customers' allocation of RA from the IOU POLR's CAM **resources, including resources procured by the CPE,** and DR resources.

~~**38. Allowing negative procurement costs to be netted against the administrative fee in the FSR and re-entry fee calculation results in inconsistent treatment between customers that are involuntarily returned to IOU bundled service and new customers or voluntary returns to IOU bundled service.**~~

39. The POLR will incur incremental administration costs for returning customers ~~**irrespective of whether there are**~~ **and may incur** "negative" procurement costs **if generation revenues exceed procurement costs**.

69. Most CCAs are required by state law to publicly post audited financial statements **and do so once per year**.

71. No party contests ED Staff's proposed Tier 2 reporting requirements (i.e., the reporting required if a CCA triggers certain triggering conditions) **but a number of clarifications need to be made to implement them.**

CONCLUSIONS OF LAW

11. In the event there is a mass involuntary return of customers to POLR service, Energy Division should promptly re-allocate the returning customers' share of RA from the IOU POLR's CAM **resources, including CPE resources,** and DR resources to the IOU POLR.

~~**24. Negative procurement costs should no longer be netted against the incremental administrative costs in the FSR and re-entry fee calculation.**~~

25. The minimum FSR amount should be the greater of the viability amounts required for CCAs and ESPs (i.e., $147,000 for CCAs, and $25,000 or the per customer amount required by Section 394(b)(9) for ESPs) or the calculated per-customer administrative fee. **Until the PG&E administrative fee has been completely evaluated in PG&E's next GRC, the administrative fee for CCAs in PG&E's service area should be the average of SCE and SDG&E's administrative fee for the purposes of the FSR calculation.**

28. For the first FSR posting following this decision, it is reasonable to provide CCAs and ESPs an additional ~~**30**~~ **60** days to comply, with the first designated FSR amount due on the 1st day of the ~~**second**~~ **fourth** month following the IOU's calculation.

41. It is reasonable to require CCAs to provide Energy Division with their most recent audited financial information, in January ~~**and**~~ **or** July of every year **whichever comes earlier relative to the availability of the availability of the audited financial statement**.

47. It is reasonable to adopt a penalty structure, based on the current scheduled penalties for late RA filings, for CCAs that fail to submit a confidential letter to Energy Division within 10 days of the occurrence of any of the Tier 2 triggering conditions adopted in this decision**, except for the calculation of DLOH, Adjusted Debt Service Coverage, and Cash Reserves. For the calculation of DLOH, Adjusted Debt Service Coverage, and Cash Reserves the CCA shall submit a confidential letter to the Director of Energy Division within 10 business days of the CCA's acceptance of a financial statement (but no longer than monthly) that indicates that a Tier 2 condition has been triggered.**

ORDERING PARAGRAPHS

5. Community Choice Aggregators are directed to file a joint Tier 2 advice letter within ~~**60**~~ **90** days of the effective date of this decision to further develop the additional registration requirements proposed by California Community Choice Association.

6. Community Choice Aggregators are required to provide Energy Division a copy of their most recent audited financial information, in January ~~**and**~~ **or** July of every year **whichever comes earlier relative to the availability of the audited financial statement**.