



**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 REPLY
COMMENTS ON ADMINISTRATIVE LAW JUDGE'S RULING ON
DISCONNECTION CAPS AND PAST-DUE PAYMENT ALLOCATION**

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

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SUMMARY OF RECOMMENDATIONS

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

- ✓ Pacific Gas and Electric Company's (PG&E) and San Diego Gas & Electric's (SDG&E) prioritization of their own payments at the expense of the public interest as a whole should be rejected;
- ✓ Southern California Edison Company's (SCE) recommendation to continue the proportional allocation method to ensure equity between bundled and unbundled customers is consistent with Decision 21-11-014's should be adopted;
- ✓ The Commission should adopt SCE's recommendation to continue the proportional allocation method to ensure system efficiencies and prevent customer confusion;
- ✓ PG&E's and SDG&E's assertions that unbundled customers are disadvantaged under the proportional allocation methodology should be dismissed;
- ✓ SDG&E's argument that CCAs are shielded from financial risk in that they can return customers to the IOUs is unsupported and should be rejected;
- ✓ PG&E's, SDG&E's, and The Public Advocate Office of the California Public Utilities Commission's (Cal Advocates) unsupported assertions that the waterfall itself will significantly reduce the risk of disconnections should be rejected; and
- ✓ Cal Advocates' unsupported assertion that the waterfall should be reinstated because the IOUs and CCAs adequately handled customer arrearages prior the pandemic should be rejected.

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California Community Choice Association¹ (CalCCA) submits these reply comments pursuant to the *Administrative Law Judge's Ruling on Disconnection Caps and Past-Due Payment Allocation*² (Ruling), dated March 22, 2024.

I. INTRODUCTION

CalCCA appreciates the opportunity to reply to party Opening Comments³ on the issue of the allocation between the investor-owned utilities (IOUs) and community choice aggregators (CCAs) of past-due partial payments from customers in arrears. Whether the IOUs should be allowed to continue their standard practice of paying themselves in full prior to allocating any of the payments to CCAs (the “waterfall method”) has been debated for many years. CalCCA has

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).

³ All references herein to party Opening Comments are to the Opening Comments filed in this Rulemaking (R.) 18-07-005, on or about April 19, 2024.

continually advocated on behalf of the CCAs that the only equitable solution is the proportional allocation of past-due partial payments among the IOUs and CCAs (the “proportional allocation method”).

To begin with, logic dictates that customer partial past-due payments should be treated identically to customer payments made in full and/or on time – proportionally among the IOUs and CCAs who served the customers and are recovering the associated revenue for services rendered. As billing agents for the CCAs, however, the IOUs adopted their “standard practice” of paying themselves first when a past-due partial payment is received in the name of lowering the risk of the customer being disconnected by the IOU.

The IOUs’ attempts to support the waterfall with Public Utilities Code section 779.2, which prohibits IOUs from disconnecting customers for nonpayment to a third party, were squarely rejected by the California Public Utilities Commission (Commission) in Decision (D.) 21-11-014.⁴ The Commission concluded that section 779.2 “does not prohibit utilities from allocating payments on outstanding residential utility bills proportionally between utility and non-utility charges.”⁵ The Commission also found that the waterfall method should not be viewed as a disconnection protection, given that “the Commission and utilities have developed multiple protections against disconnection, none of which include paying the utility before the CCA.”⁶ The Commission held that the public interest as a whole is supported through preventing the shift of financial risk to CCAs and ensuring CCA financial health. D.21-11-014 therefore suspended the waterfall through September 2024.

⁴ 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).

⁵ *Id.*, Conclusion of Law 3, at 16.

⁶ *Id.* at 10 (emphasis added).

The Commission is now considering permanently adopting the proportional allocation method. CalCCA notes that Southern California Edison Company (SCE) has changed its prior support for the waterfall by supporting in its Opening Comments the proportional allocation method based on the equity it provides to bundled and unbundled customers. Opening Comments of Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and The Public Advocates Office at the California Public Utilities Commission (Cal Advocates), however, support the waterfall.

With most of their arguments stripped in D.21-11-014, PG&E's and SDG&E's Opening Comments simply repeat their prior arguments that individual customers may be at greater risk for disconnection under the proportional allocation method. As discussed below, this argument was already rejected by the Commission in D.21-11-014 in favor of the proportional allocation's protection of customers as a whole and the financial health of CCAs since CCAs were found to be in the public interest.

SDG&E also argues in favor of the waterfall on the basis that it "disagrees" with the Commission's finding in D.21-11-014 that the waterfall shifts financial risk to the CCAs in contravention of the public interest. SDG&E ignores that when a customer is returned by a CCA to an IOU for nonpayment, the CCA has already provided services to a customer and incurred potentially uncollectible debt, creating financial risk.

In addition, in response to the Ruling's question of whether the proportional allocation will "significantly" increase the risk of disconnection, PG&E, SDG&E and Cal Advocates respond in the affirmative but fail to provide any basis or support to demonstrate this "significant" risk.

Finally, Cal Advocates surmises in its Opening Comments, without support, that the waterfall worked sufficiently before the pandemic and therefore the Commission should reinstate it. However, Cal Advocates' argument fails to address that the waterfall has been inherently inequitable since it was incorporated into the IOUs' tariffs in 2005.

As set forth below, the Commission should continue the proportional allocation method for the following reasons:

- ✓ PG&E's and SDG&E's prioritizing their own payments at the expense of the public interest as a whole should be rejected;
- ✓ SCE's recommendation to continue the proportional allocation method to ensure equity between bundled and unbundled customers is consistent with D.21-11-014 and should be adopted;
- ✓ The Commission should adopt SCE's recommendation to continue the proportional allocation method to ensure system efficiencies and prevent customer confusion;
- ✓ PG&E's and SDG&E's assertions that the waterfall should be reinstated because unbundled customers are disadvantaged under the proportional allocation methodology are inconsistent with D.21-11-014's focus on the proportional allocation method's benefits to customers in the aggregate and should be dismissed;
- ✓ SDG&E's argument that CCAs are shielded from financial risk in that they can return customers to the IOUs is unsupported, commercially unreasonable, and should be rejected;
- ✓ PG&E's, SDG&E's, and Cal Advocates' unsupported assertions that the waterfall itself will "significantly" reduce the risk of disconnections should be rejected; and
- ✓ Cal Advocates' unsupported assertion that the waterfall should be reinstated because the IOUs and CCAs adequately handled customer arrearages prior to the pandemic should be rejected.

II. THE COMMISSION SHOULD NOT ALLOW PG&E AND SDG&E TO PRIORITIZE THEIR OWN PAYMENTS AT THE EXPENSE OF THE PUBLIC INTEREST AS A WHOLE

PG&E's and SDG&E's continued support of the waterfall and prioritization of their own payments should be rejected consistent with the Commission's finding in D.21-11-014 that the

proportional allocation method supports the public interest as a whole by preventing the shift of financial risk to CCAs. As the Commission stated in D.21-11-014:

When the utility prioritizes the payment to the utility, the risk shifts from the individual customers facing disconnection to the CCA, who continues to serve that customer without collecting revenue. While 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.** . . . The Commission has determined that CCAs are in the public interest, in that CCAs allow for a publicly-managed alternative to private utility procurement of resources. Resources have been devoted to the establishment, integration, and growth of CCAs within the IOU service territories. Transferring customer load incurs costs of service that will potentially be recovered from customers. . . . **We have determined that the shift of financial risk from individual customer to CCA [through the waterfall] is not in the interest of customers as a whole**⁷

The Commission has already clearly found that the waterfall method's shift of financial risk to CCAs is not in the public interest. While the Commission's findings were made in the context of continuing the suspension of the waterfall during the COVID long-term payment plans, the public interest in the existence and financial health of CCAs applies indefinitely.

It should also be noted that the IOUs are only able to prioritize their own payments because of their statutory obligation to provide billing services to the CCAs.⁸ There is, however, no corresponding statutory requirement for the waterfall (as determined in D.21-11-014). Given the Commission has already determined that the waterfall is not in the public interest, PG&E's and SDG&E's arguments should be rejected and the proportional allocation should be made permanent.

⁷ D.21-11-014, at 11-12 (emphasis added).

⁸ See Public Utilities Code § 366.2(c)(9) (“[e]lectrical corporations shall continue to provide all . . . billing, collection, and customer service to retail customers that participate in [CCA] programs”).

III. SCE'S RECOMMENDATION TO CONTINUE THE PROPORTIONAL ALLOCATION METHOD SHOULD BE ADOPTED

The Commission should adopt SCE's recommendation to make the proportional allocation method permanent to ensure equitable treatment of all customers. Even though SCE previously supported the waterfall, SCE now recognizes in its Opening Comments that the waterfall method "resulted in a different treatment of bundled and unbundled customers," and that the proportional allocation method should instead remain in place because it "allows for bundled and unbundled customers to be treated in the same manner, . . . result[ing] in more equity between bundled and unbundled customers."⁹ As set forth below, SCE's recommendation is (1) consistent with the Commission's findings in D.21-11-014 that the proportional allocation should be continued because it ensures equitable treatment of all customers, rather than advantaging or disadvantaging individual customers as PG&E and SDG&E continue to argue, and (2) ensures system efficiencies and the prevention of customer confusion through continuing the proportional allocation method.

A. SCE's Acknowledgment that the Proportional Allocation Method Supports Equitable Treatment of All Customers Aligns with D.21-11-014 and Should be Adopted

SCE's acknowledgment that the proportional allocation method supports equitable treatment of all customers is consistent with D.21-11-014 and should be adopted. The focus on how an individual customer is impacted by the waterfall or proportional allocation methods was dismissed in D.21-11-014 in favor of the proportional allocation's benefit to customers as a whole. The continued focus in PG&E's and SDG&E's Opening Comments on how the proportional allocation method may disadvantage individual unbundled customers if they lose the disconnection protection afforded through the waterfall is therefore inconsistent with the

⁹ SCE Opening Comments, at 12-13.

Commission's focus on customers in the aggregate and the public interest as a whole. In fact, in D.21-11-014, the Commission cited the potential individual advantage of a bundled customer with a CCA in its territory as a reason to suspend the waterfall:

Not all customers have the option to unbundle. If no CCA serves their community, bundled customers will not have access to the extra disconnection protection that unbundled customers may enjoy [through the waterfall] . . . While utilities argue that prioritizing payments toward the utility (or disconnectable) charges is more supportive of customers, it is a practice that can only be applied unevenly. This arbitrarily provides some customers extra support by virtue of the presence of a CCA serving their community. . .¹⁰

As noted above, the Commission found that the focus should be on customers as a whole, rather than individual customers, in determining the appropriate allocation method. For all of the same reasons cited in D.21-11-014 and in SCE's Opening Comments, the Commission should reject PG&E's and SDG&E's arguments focusing on preventing individual customer disconnections. The Commission should instead permanently adopt the proportional allocation method to ensure all customers are treated equitably.

B. The Commission Should Adopt SCE's Recommendation to Continue the Proportional Allocation Method to Ensure System Efficiencies and Prevent Customer Confusion

The Commission should also adopt the proportional allocation method based on SCE's recommendations of system efficiencies and prevention of customer confusion. SCE states:

the implementation of the proportional allocation method was complex, but now that it is built into the system, it would be impactful to change it again. Aside from the system costs, SCE would have to update all regulatory notices.¹¹

System efficiencies will result across all IOU and CCA territories by continuing the proportional allocation method that has been in effect since 2020. In addition, SCE supports continuing the

¹⁰ *Id.* at 12.

¹¹ SCE Opening Comments, at 13.

proportional allocation method to prevent customer confusion. CalCCA agrees that system efficiencies and prevention of customer confusion are additional factors favoring permanently adopting the proportional allocation method.

IV. SDG&E’S ARGUMENT THAT CCAS ARE SHIELDED FROM FINANCIAL RISK IN THAT THEY CAN RETURN CUSTOMERS TO THE IOU IS UNSUPPORTED AND SHOULD BE REJECTED

SDG&E’s argument that the Commission was “incorrect” when it held that the waterfall improperly shifts financial risk to the CCAs in contravention of the public interest should be rejected.¹² SDG&E states that CCAs are shielded from financial risk from the waterfall given their ability to return customers to the IOU for nonpayment, and that CCAs have the ability to “mitigate risk of unpaid utility bills within both their ratemaking practices and in their own board adopted customer disconnection policies.”¹³ SDG&E therefore states that it “disagrees” that the waterfall shifts risks to CCAs.¹⁴

First, regardless of SDG&E’s opinion on whether the waterfall places CCAs at greater risk, the Commission squarely found in Finding of Fact (FOF) 8 in D.21-11-014 that “[a]pplying payments first to the outstanding utility charges on the bill before applying payment to the outstanding non-utility charges on the bill increases CCA’s financial risk.”¹⁵ Second, SDG&E ignores the fact that by the time a CCA returns a customer to the IOU for nonpayment, the customer has received services for many months from the CCA without paying the CCA for those services in return. SDG&E fails to explain how CCAs are not financially impacted being unable to recoup revenue the CCA is entitled to for the services rendered. Further, SDG&E’s

¹² See SDG&E Opening Comments, at 7 (“SDG&E maintains that the basis for the assumption that the risk is “shifted” to the CCAs is incorrect. . . .”).

¹³ *Id.* at 8.

¹⁴ *Id.* at 9.

¹⁵ D.21-11-014, FOF 8, at 16.

assumption that CCAs are able to forecast and “mitigate” arrearages, which have increased dramatically over the past four years as recognized by SDG&E in footnote 1 of their comments,¹⁶ is not commercially reasonable, is not in the public interest which favors the availability and financial health of CCAs, and should be rejected.

V. PG&E’S, SDG&E’S, AND CAL ADVOCATES’ UNSUPPORTED ASSERTIONS THAT THE WATERFALL SIGNIFICANTLY REDUCES THE RISK OF DISCONNECTION SHOULD BE REJECTED

In response to the Commission’s question as to whether extending the use of the proportional allocation method “significantly” increases the risk of energy disconnections for customers in arrears, PG&E, SDG&E and Cal Advocates answer in the affirmative but with no support behind their statements:

- SDG&E states that it “believes” the disconnection risk will increase but fails to provide any proof.¹⁷ SDG&E also fails to specify whether it “believes” the disconnection risk will “significantly” increase.
- PG&E answers that the use of the proportional allocation will “significantly” increase the risk, with no support other than a frequently utilized example of one hypothetical customer and how the allocation will occur in both the waterfall and proportional allocation methods for that customer. This hypothetical customer, however, must be viewed in the silo presented by PG&E – on a 12-month payment plan with no ability to change the threshold for disconnection, and no assistance or action from the CCA with respect to the customer. And, as stated above, PG&E continues its tunnel vision into the impact on individual customers, rather than customers as a whole, in contravention of D.21-11-014.
- Cal Advocates opines that the extension of the proportional allocation “may” increase the risk of disconnections, with no support. Cal Advocates also does not answer whether the proportional allocation will “significantly” increase the risk.

As noted in CalCCA’s Opening Comments, the IOUs are in the best position to provide data to support any argument that the permanent suspension of the waterfall will “significantly”

¹⁶ SDG&E Opening Comments, at 1, n.1 (stating that the total residential arrearages of the large IOUs have increased from \$429 million in January 2019 to \$2.127 billion in December 2023).

¹⁷ SDG&E Opening Comments, at 6.

impact disconnection risk. Given the lack of any support for their assertions, PG&E, SDG&E, and Cal Advocates have proven that they are unable to demonstrate a “significant risk.” Also given the many factors that can reduce such risk moving forward (including the impact of CCA programs, rates, and public outreach discussed in CalCCA’s Opening Comments), it is clear that the proportional allocation method should be permanently established as the most equitable cost allocation method for past-due payments.

VI. CAL ADVOCATES’ UNSUPPORTED ASSERTION THAT THE WATERFALL SHOULD BE REINSTATED BECAUSE THE IOUS AND CCAS ADEQUATELY HANDLED CUSTOMER ARREARAGES PRIOR TO THE PANDEMIC SHOULD BE REJECTED

Cal Advocates argues without support that it appears the CCAs and IOUs “were able to handle customer arrearages before the COVID pandemic” when the waterfall was in effect and therefore the waterfall should be reinstated. Cal Advocates also states that because the COVID pandemic has ended and “customers are more able to find employment and pay off arrearages,” the waterfall should resume.¹⁸ First, Cal Advocates fails to recognize that the CCAs have advocated for the proportional allocation since 2005, or that the waterfall method is inherently inequitable, as discussed herein. Second, Cal Advocates provides no support for its argument that customers are now able to find employment and pay off arrearages – to the contrary, arrearages have nearly quadrupled since 2019.¹⁹ Without support for its statements, Cal Advocates’ assertions supporting the waterfall should be rejected.

¹⁸ Cal Advocates’ Opening Comments, at 8.

¹⁹ See *infra.*, n. 16.

VII. CONCLUSION

For all of the foregoing reasons, CalCCA requests that the Commission permanently adopt the proportional allocation method for the allocation of past-due partial payments between IOUs and CCAs.

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl". The signature is written in a cursive, flowing style.

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

May 3, 2024