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

| Application of Southern California Edison Company (U 338-E), Pacific Gas and Electric Company (U 39-E), and San Diego Gas & Electric Company (U 902-E) for Approval of the Portfolio Allocation Methodology for all Customers. | Application 17-04-018 (Filed April 25, 2017) |
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# PROTEST OF THE SONOMA CLEAN POWER AUTHORITY TO APPLICATION FOR APPROVAL OF PORTFOLIO ALLOCATION METHODOLOGY

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# PROTEST OF THE SONOMA CLEAN POWER AUTHORITY TO APPLICATION FOR APPROVAL OF PORTFOLIO ALLOCATION METHODOLOGY

## 1. INTRODUCTION

The Sonoma Clean Power Authority ("SCPA") protests the Application filed by PG&E, Southern California Edison, and San Diego Gas and Electric ("IOUs") for approval of a "Portfolio Allocation Methodology" (the "Methodology") to replace the current Power Charge Indifference Adjustment ("PCIA").

SCPA was formed in December 2012 and operates a "community choice aggregation" ("CCA") program in Sonoma and Mendocino Counties. SCPA was the second operational CCA in the State of California. SCPA serves approximately 230,000 accounts, representing a population of 520,000 and an annual load of 2,383 GWh. SCPA has a direct interest in this proceeding on behalf of our customers and our climate goals. The proposed increase in exit fees would be very burdensome for our customers, especially those with low or fixed incomes. The forced assignment of contract attributes proposed in the Methodology would

make it exceedingly difficult to meet our goals of greenhouse gas ("GHG") reductions, matching supply and demand, and local generation.

## 2. BASIS OF PROTEST

As the Commission has recognized by holding its *en banc* sessions on February 1 and May 19, the market for retail electric service in California is in flux. The total amount of load served by all community choice aggregators ("CCAs") such as the Sonoma Clean Power Authority ("SCPA") is likely to increase dramatically in the near future. Managing this sea change will require thoughtful, comprehensive, and balanced consideration by the Commission of a wide range of issues, and input from a wide range of stakeholders. As public entities governed by locally-elected boards, CCAs have deep ties to local communities, and are in a better position than IOUs to reach local customers and to work cooperatively with other local agencies to implement the range of programs necessary for California to meet its long-term greenhouse gas reduction goals.

One key issue the Commission must address during this transition is how best to ensure "indifference" between bundled and unbundled customers with respect to legacy generation costs. SCPA acknowledges that ensuring such "indifference" is a requirement of the law allowing CCAs to exist. SCPA has no interest in imposing unjustified costs on remaining bundled customers.[1] SCPA is committed to working with the IOUs and other stakeholders to develop a mechanism that will protect all customers from unfair cost-shifting, while

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[1] As is the case with almost all CCAs, each member of SCPA's governing board, in his or her capacity as an elected city council member or county supervisor, has both bundled and unbundled customers as constituents. Because they represent both bundled and unbundled customers, CCA board members have no interest shifting costs unfairly from one group to the other.

ensuring that exit fees are not so high as to impact the long-term economic viability of SCPA and other CCAs. Although the IOUs recognize that "California stands at the cross-roads of its energy future" (Application at 1), the procedural mechanism and timeline proposed by the IOUs are wrong. Ensuring we take the right path at this cross-road requires consideration of many related issues; the indifference issue is just one of them. To meet the Commission's goal of ensuring a carefully-planned, smooth transition to a non-IOU-centric retail generation market, it is imperative that the Commission not make changes to the mechanism used to determine "indifference" in this narrow, separate proceeding, which does not allow the Commission to consider that issue alongside, and in the context of, the many other "transition" issues. The Commission should consider the "indifference" issue – and, more generally, the question of how to best manage the IOUs' existing above-market portfolios in light of the likely future loss of IOU load to CCAs – as a part of a comprehensive proceeding incorporating feedback from all affected stakeholders. The limited, one-off Application proposed by the IOUs, in which the full range of creative solutions to the "above-market portfolio" issue will not be available for the Commission to consider, is not an appropriate venue for an issue of this magnitude.

For these reasons, SCPA supports dismissal of this Application without prejudice, for the reasons set forth above and in the Motion to Dismiss filed by the California Community Choice Association ("CalCCA"). SCPA also joins and incorporates the comments and concerns raised by the Protest filed by CalCCA to the Application.

In addition, the Commission should deny the Application for other legal, policy, and factual reasons, including the following:

1. *The Application Violates Public Utilities Code §366.2(c)(7)*

As applied to SCPA's customers, the IOU's proposed Methodology would violate Public Utilities Code §366.2(c)(7), which requires the Commission to set the cost-recovery mechanism applicable to a CCA at the time the Commission certifies the CCA's implementation plan. The statute contains no provision allowing the Commission to change the cost-shifting mechanism after the fact. It would be unfair to a CCA and its customers to change the cost-shifting mechanism for a CCA and its customers after the CCA started service based on the assumption that the cost-shifting mechanism designated by the Commission at the time of Implementation Plan approval would continue to apply.[2]

2. *The Application Violates Public Utilities Code §366.2(f)(2)*

As applied to SCPA's customers, the Methodology would violate Public Utilities Code §366.2(f)(2) by imposing on those customers charges for costs that were avoidable by PG&E. The Commission approved SCPA's original Implementation Plan on October 4, 2013 and its First Revised and Updated Implementation Plan on February 20, 2015.[3] Once PG&E knew that it no longer had to serve load in areas subject to these implementation plans, it should have liquidated and sold those portions of its portfolio applicable to

[2] This does not mean that the Commission is unable to make changes to improve the PCIA cost-recovery mechanism, or that SCPA would be unwilling to agree to more fundamental exit fee changes as a part of a larger settlement of transition issues.

[3] The original plan was for service to unincorporated Sonoma County, the Cities of Cotati, Sebastopol, Santa Rosa, and Sonoma, and the Town of Windsor. The revised plan extended service to Petaluma, Rohnert Park, and Cloverdale. SCPA is in the process of rolling out service to Mendocino County under a Second Revised and Amended Implementation Plan certified by the Commission on December 29, 2016.

SCPA's customers. SCPA has consistently responded to requests by PG&E to provide detailed forecasts of SCPA load so that PG&E could take appropriate actions relating to its resource planning. By failing to dispose of such above-market resources, and instead holding onto those resources even as the market value of those resources declined, PG&E has caused the amount owed by SCPA's customers under both the PCIA and the new proposed Methodology to increase.[4] SCPA's customers should not have to pay these additional, entirely avoidable costs caused by PG&E's failure to mitigate losses by not promptly disposing of unneeded parts of its portfolio.[5] If PG&E has failed to manage its portfolio reasonably to reduce portfolio costs to the maximum extent reasonably possible, neither SCPA's customers nor PG&E's bundled customers should have to pay for any additional costs arising from that failure either.[6] Additional costs arising

[4] This situation is analogous to a classic breach-of-contract situation, in which Party A contracts to sell a goods to Party B in the future, but Party B breaches and fails to take delivery. In such circumstances, Party A has a legal duty to mitigate its damages by promptly reselling the goods to a third party. Absent this duty to mitigate, Party A would be in a no-lose situation: If the market price for the goods goes up, it would sell them for an even higher price than it had contracted for, but if the market price goes down, it could recover the difference between the contract price and the market price from Party B. This well-established duty to mitigate is inherent in the statutory requirement that only *unavoidable* costs may be collected from departed load customers.

[5] Not having access to the details of PG&E's portfolio due to confidentiality restrictions, SCPA has not calculated the avoidable costs its customers have paid (and may continue to pay) under PCIA or the proposed Methodology. However, since changes in the PCIA amount reflect changes in the market value of PG&E's portfolio, it is possible that more than half of the 2017 PCIA charges on SCPA customers represent avoidable costs, since the PCIA charge imposed on SCPA's residential customers increased from $0.011 per kilowatt-hour in 2014 to $0.030 per kilowatt-hour in 2017 – a 273 percent increase.

[6] This is not surprising; neither the IOUs nor their shareholders nor their employees have any economic incentive to reduce or mitigate generation portfolio costs, since the IOUs can pass 100% of those costs through to ratepayers.

from a failure to mitigate or a failure to reasonably manage the contracts are not "unavoidable" and thus cannot be charged against SCPA's customers. That the IOUs may not be able to sell specific long-term contracts to exactly match a specific CCA's departed load, or that such sales have not traditionally been conducted, does not mean such mitigation-of-losses actions are not practical. IOU supply contracts could be resold in different forms or "bundles" with different terms to increase the number of potential buyers and maximize the contracts' value.

3. *The Application violates Public Utilities Code §366.2(a)(5)*

   By forcing CCAs to pay for and take specific attributes from contracts in the IOUs' portfolios, the proposed Methodology violates Public Utilities Code §366.2(a)(5), which makes a CCA "solely responsible for all generation procurement activities" for its customers. The proposed Methodology results in "forced procurement" of portions of the IOUs' portfolios by CCAs. For existing CCAs like SCPA, would force SCPA to take on contract attributes (such as RECs and RA) that it has already procured and does not need. In addition, CCAs are not in a good position to resell attributes because it would receive the allocations of them too late to obtain appropriate market value (e.g., receiving RA after it has purchased 100 percent of RA for a given year and after other entities have also done so).

4. *The Application Relies on a Non-Existent Category of REC*

   Under California law, any Renewable Energy Credits allocated to CCAs under the Methodology would constitute "unbundled" RECs and have a much lower value that a "Category 1" REC. In D.11-12-052, the Commission noted that the definition of "unbundled RECs" as "RECs

procured separately from the RPS-eligible generation originally associated with the RECs" was the Legislature's intended meaning of that term, and that "the analysis of the place of unbundled RECs in the portfolio content categories is based on the established understanding of the term as denoting RECs that are separated from the electricity from which they were originally associated. (D.11-12-052 at 30, 31.) By proposing a "Category 1" status for RECs that are clearly "unbundled," the Application is contrary to State law.

5. *The Application Fails to Address Problems with the Existing PCIA*

The Methodology fails to address or correct many deficiencies in the existing PCIA cost recovery method. Most significantly, the amount of the charge proposed by the Methodology will continue to be subject to large year-to-year variations that are entirely outside a CCA's control. The Application also fails to address the opacity surrounding the IOUs' portfolio costs and exit fee calculations. While the Application dangles the possibility of providing CCAs with additional access to portfolio and contract data (which CCAs have been requesting for years), no specific access is promised (this issue being proposed for a "Phase 2" of the proceeding).[7] Any change to the existing PCIA method must result in a charge that is calculated based upon transparent access to all of its inputs and that does not vary significantly over time, and which is easily forecast.

[7] This Application was filed at the end of a six-month Commission-directed stakeholder process in which CCAs and other LSEs sought improvements to PCIA data access and transparency, but failed to obtain IOU agreement to any changes. The Commission should require the IOUs to provide this access – which is also needed to evaluate the annual PCIA exit fee – whether or not the proposed Methodology is adopted.

Such certainty is in the interest of all ratepayers. The proposed Methodology does not accomplish this, and will leave CCAs and their customers at continued risk of large variations in exit fee costs that are entirely outside their control.[8]

6. *The Proposed Methodology Destroys Part of the Value of IOU Contracts*

The Methodology promises that "all customers pay for exactly all of the costs of the generation resources procured on their behalf, and receive exactly all of the benefits of those resources." (Application at 16.) But this promise is only half-true: customers of CCAs and other LSEs will pay for all the costs, but will not receive all the benefits. Dribbling out the energy, REC, and RA value of the IOUs' long-term portfolios in one-year increments to multiple parties results in valuations for those elements that are lower than if contracts in the IOUs' portfolios were sold whole. SB 350 recognized this higher value of long-term contracts and required their use in meeting procurement targets. Despite the Application's attempt to pitch the Methodology as transferring portions of the IOUs' portfolios to CCAs, the Methodology gives CCAs no legal rights whatsoever in the IOUs' portfolio contracts (or in the management of those contracts), even though they would pay, as the Application notes, "exactly all the costs" of the

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[8] Many other deficiencies in the PCIA are not addressed by the Application. For example, the IOUs allocate the PCIA among rate classes on a "Top 100 hours" basis rather than a total load basis, which results in a significant decrease in the PCIA for large industrial customers at the expense of residential customers. This same issue spills over into the Methodology proposed by the present Application, which would allocate costs using the "Top 100 Hours" method, but allocate benefits (including REC and RA benefits) based on total load.

contracts.

7. *IOUs Should be Required to Divest Generation Assets*

If the Commission is inclined to adopt the Methodology, it should do so only on the condition that actual or de-facto control over the IOUs entire generation portfolio (for both dispatch and contract management purposes) be transferred to a third party, who would be given a financial incentive to reduce overall portfolio costs for the benefit of both IOU and CCA customers.[9] Transferring control to a third party would ensure that the contracts are fairly managed on behalf of all customers, and would avoid the quite-likely scenario, ten years down the road, in which the IOUs continue to manage all these contracts even though IOU bundled customers represent just a small minority of beneficiaries of those contracts.[10]

8. *Elimination of 10-Year Allocation Limit is Contrary to Commission Precedent*

The Application proposes to eliminate the 10-year cost allocation limit for UOG fossil fuel resources acquired through a procurement process that the Commission adopted in D.04-12-048, and to eliminate the similar 10-year limit for storage resources adopted in D.14-10-045. It proposes to replace these limits with an entirely arbitrary one: "until the last of the long-term

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[9] Due to contract terms and credit considerations, an actual assignment or transfer of contracts may not be possible. However, it should be possible for the contracts to remain nominally with the IOUs, but with decisions about the contracts being made by the third-party contract manager who is tasked with maximizing value for all ratepayers.

[10] This highlights a key and fundamental problem with any PCIA- or PAM-like "indifference" methodology, which allows IOUs to retain generation contracts and assets while charging departed customers fees that change year-by-year depending on the market. SCPA believes that any viable long-term solution must require the actual or "virtual" divestiture of IOU assets in proportion to the amount of departed load.

contracts associated with those customers' vintaged portfolios expires." (App. at 61, fn. 105). The IOUs argue that modification of the 10-year period was contemplated by these decisions; however, the former made clear that decision would be made on a *case-by-case basis at the time the resource was acquired* (D.04-12-048 at 61), and the latter made clear than any extension must be determined *on a case-by-case basis,* so that the Commission could consider "the specific facts of each case" (D.14-10-045 at 55). The IOUs have not provided any reasons for extending the period for any specific resource, and it is apparent that such a resource-by-resource evaluation goes well beyond the scope of the other issues raised by the Application. Such a case-by-case consideration should occur, if at all, in separate proceedings.

9. *The Proposed Methodology is More Complex than the PCIA*

While touting the new Methodology as administratively simple, a review of the Application (and particularly its appendices) reveals that it is anything but. It will require continual ongoing review by the Commission, its staff, and staff and consultants for CCAs and DA providers to ensure that the complex accounting for the Methodology is properly performed, and that the various portfolio "attributes" are properly accounted for and promptly distributed to CCAs and DA providers. This will require ongoing involvement and review of the Commission and its staff, and give rise to additional proceedings if disputes arise as to the proper allocation of the "attributes."

10. *The Application's Schedule is Too Short.*

The timeline proposed in the Application is too short to allow for a rigorous evaluation of the Methodology, particularly given the lack of data transparency provided to date.

## 3. PROCEDURAL MATTERS

Pursuant to Rule 2.6(d), SCPA provides the following procedural comments:

***Proposed Category***

The proceeding is appropriately categorized as "ratesetting."

***Need for Hearing***

SCPA believes that evidentiary hearings will be necessary.

***Issues to be Considered***

SCPA is still evaluating the Application and issues associated with the IOUs' proposed Methodology. SCPA reserves the right to identify additional issues that should be addressed in this proceeding. However, on initial review, the issues presented above and in the Protest of CalCCA provide a list of key issues that the Commission should address in this proceeding.

***Proposed Schedule***

The IOUs' proposed procedural schedule shows how unreasonable it is to try to consider the significant issues raised in the context of an Application rather than a rulemaking. The proposed schedule does not provide adequate time for SCPA and other CCAs to issue data requests to the IOUs, obtain responses, analyze the data, and make any follow-up requests. The proposed schedule allocates just seven business days for settlement discussions, requires any alternative proposal to the IOUs' Proposal to be offered by July 14, 2017, and allocates only one week for hearings on a matter that will give rise to many

factual, legal, and policy disputes. The proposed procedural schedule also defers major policy and rate issues to subsequent phases; for example, by deferring consideration of transparency issues (which are critical to Community Choice Aggregators and their customers) to a second phase of this proceeding. The proposed schedule is much too short to allow the parties and the Commission to fully consider the significant issues raised by the Application.

## 4. PARTY STATUS

Pursuant to Rule 1.4(a)(2), SCPA hereby requests party status in this proceeding. As described herein, SCPA has a material interest in the matters being addressed in this proceeding. SCPA designates the following person as the "interested party" in this proceeding, and requests that he be placed on the service list for receipt of all correspondence, pleadings, orders and notices in this proceeding:

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## 5. CONCLUSION

The retail energy market in California is changing, and is at a critical junction. The Commission is right to focus on developing a process to manage this transition in a comprehensive, thoughtful, balanced way. Opening a rulemaking proceeding with a broad, holistic scope will maximize the odds of continued success toward multiple goals, such as meeting the State's greenhouse gas reduction goals, ensuring both customer choice and customer indifference, protecting low-income consumers, and ensuring system reliability and resilience.

The "indifference" question must be decided in this larger context. The Commission should decline to address the critical issue of departing load charges in this separate, narrow Application.

SCPA appreciates the Commission's consideration of these matters, and looks forward to working with the Commission, the IOUs, and other interested stakeholders to ensure a successful transition to a new retail generation marketplace.

Respectfully submitted,

By: /s/ Steven S. Shupe

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