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 No. 17-04-018 (Filed April 25, 2017)

PROTEST OF THE CALIFORNIA COMMUNITY CHOICE ASSOCIATION

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In accordance with Rule 2.6 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California ("Commission"), the California Community Choice Association ("CalCCA") hereby submits this protest to the application ("Joint Application") jointly filed by Pacific Gas and Electric Company ("PG&E"), San Diego Gas & Electric Company ("SDG&E") and Southern California Edison Company ("SCE") (collectively, "IOUs") to abolish the existing Power Charge Indifference Adjustment ("PCIA") methodology and replace it with a Portfolio Allocation Methodology ("IOUs' Proposal").[1]

I. EXECUTIVE SUMMARY

CalCCA respectfully requests that the Commission dismiss the Joint Application without prejudice, and instead consider opening a new rulemaking proceeding to address PCIA reform and related issues within the context of California's emerging retail choice paradigm. Summary disposition will allow the Commission to efficiently and fairly examine the panoply of issues

[1] As further described below, CalCCA is concurrently filing a motion to dismiss the Joint Application without prejudice on the grounds that, among other things, reform of the PCIA should occur within the context of a rulemaking proceeding in which the scope of issues and timeline may be set by the Commission, not the IOUs.

implicated by PCIA reform.[2] Consideration of PCIA reform in a rulemaking proceeding, rather than an application, is also consistent with Commission precedent with regard to the PCIA and its related charges. The PCIA, Cost Responsibility Surcharge ("CRS") and Competition Transition Charge ("CTC") have all been established and revised in rulemaking proceedings.[3] Finally, consideration of the IOUs' Proposal and other related proposals in a Commission-instituted rulemaking proceeding is in accord with recent statements of intent from the Commission to open one or more rulemaking proceedings to broadly consider retail choice issues, which have been the topic of discussions at two recent *en banc* hearings.

With respect to the IOUs' Proposal, CalCCA offers the following general objections:

- The IOUs' Proposal unlawfully impinges on the statutory responsibility of Community Choice Aggregators to procure resources for their customers.
- The IOUs' Proposal unnecessarily prejudges fundamental Commission policies.
- The IOUs' claim of cost-shifting rests on a faulty view of market price benchmarks and ignores offsetting benefits.
- Many of the features touted by the IOUs could be applied to the current PCIA methodology.
- The IOUs' Proposal does nothing to remedy key deficiencies in the current PCIA methodology.
- The IOUs' proposal does not mitigate volatility and rate shock – problems that also apply to the existing PCIA structure.
- The IOUs' Proposal would result in unlawful rate discrimination.

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[2] As further described below (*see* note 57, below), the IOUs hold a tremendous advantage with respect to regulatory proceedings and it is incumbent on the Commission to counterbalance these advantages. *See also* note 5, below (describing the Commission's statutory obligations under Senate Bill ("SB") 790 (2011) to counterbalance the inherent market power advantages of the IOUs in the context of CCA programs).

[3] *See* note 9, below.

- The IOUs' Proposal has not been provided as a voluntary option instead of as a binding requirement upon Community Choice Aggregators.

II. BACKGROUND

A. Background on CalCCA

CalCCA is a nonprofit organization formed in June 2016 to represent the interests of California's Community Choice Aggregation ("CCA") programs in regulatory and legislative matters. Local communities are investigating and establishing CCA programs to customize and accelerate efforts to address climate change, renewable energy development, and for other important environmental and social issues. The operational CCA programs in California – Apple Valley Choice Energy, CleanPowerSF, Lancaster Choice Energy, Marin Clean Energy ("MCE"), Peninsula Clean Energy Authority, Redwood Coast Energy Authority, Silicon Valley Clean Energy Authority, and the Sonoma Clean Power Authority ("SCP") – comprise CalCCA's current voting members. In addition, CalCCA's affiliate members include Central Coast Power (counties of San Luis Obispo, Santa Barbara and Ventura), the cities of Corona, Hermosa Beach and San Jose, the counties of Los Angeles and Placer, Valley Clean Energy (city of Davis and Yolo County) and Western Riverside Council of Governments.[4]

CalCCA is participating in this proceeding to represent the views of CCA programs in California, and has collaborated with CCA programs in developing this protest. Given the many potential impacts of the Joint Application on CCA programs, CalCCA expects that individual CCA programs may also participate in this proceeding.

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[4] On February 1, 2017, the Commission held an *En Banc* Hearing on Community Choice Aggregator issues ("CCA *En Banc* Hearing"), and on May 19, 2017, the Commission held an additional *En Banc* Hearing on Retail Choice in California ("Retail Choice *En Banc* Hearing"). As described in the Staff White Paper accompanying the En Banc Hearing on Retail Choice in California ("Retail Choice White Paper"), currently 915,000 customers currently take service from Community Choice Aggregators and other communities are actively considering CCA programs. (*See* Retail Choice White Paper at 4-5.)

B. Principles For Fair Competition

The Legislature established the CCA option in 2002 through Assembly Bill ("AB") 117. In 2011, the Legislature affirmed and expanded protections for CCA programs in SB 790. Pursuant to these statutes and the IOUs' inherent market power, the Commission is tasked with promoting fair competition by, among other things, guarding against cross-subsidization of IOU costs.[5] The Commission is also tasked with ensuring fairness and customer indifference with respect to the departure of CCA customers.[6] These counterbalancing responsibilities should guide the Commission in its evaluation of the Joint Application.

The Commission should also evaluate the IOUs' Proposal in light of past history with nonbypassable charges,[7] beginning with the Commission's Preferred Policy Decision in 1995, followed by the Legislature's adoption of AB 1890 in 1996.[8] Importantly, all major decisions on nonbypassable charges have been issued in rulemaking proceedings where the Commission examined nonbypassable charges within a broader industry context.[9]

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[5] *See, e.g.,* Decision ("D.") 04-12-046 at 3 ("The state Legislature has expressed the state's policy to permit and promote CCAs by enacting AB 117…."). *See also* D.12-12-036 at 6 (citing SB 790, § 2(h), and Pub. Util. Code § 707(a)(4)(A)) ("In SB 790, the legislature directed the Commission to develop rules and procedures that 'facilitate the development of community choice aggregation programs, … foster fair competition, and … protect against cross-subsidization paid by ratepayers.'").

[6] *See, e.g.,* Public Utilities Code sections 366.2(f) and 365.2. Unless otherwise noted, all subsequent statutory references are to the Public Utilities Code.

[7] In this protest, CalCCA uses the term "nonbypassable charges" to generally describe various charges for generation-related stranded costs, as opposed to reliability-related costs, associated with customers departing bundled service and taking service from Community Choice Aggregators and other alternative service providers.

[8] *See* D.95-12-063, as modified by D.96-01-009. The Legislature codified the Preferred Policy Decision in AB 1890 (1996).

[9] *See, e.g.,* D.95-12-063 (issued in R.9-04-031); D.02-11-022 (issued in R.02-01-011); D.04-12-046 (issued in R.03-10-003); D.06-07-030 (issued in R.02-01-011); D.08-09-012 (issued in R.06-02-013); D.11-12-023 (issued in R.07-05-025) and D.13-08-023 (issued in P.12-12-010).

C. The PCIA Working Group

In D.16-09-044, the Commission addressed certain concerns regarding the current PCIA methodology and the potential for future PCIA reform. D.16-09-044 was issued after an initial workshop in which parties "expressed legitimate concerns and proposals" with respect to the PCIA, but which the Commission found to be outside the scope of the current Energy Resource Recovery Account ("ERRA") proceeding.[10] The Commission directed the formation of a working group, led by SCE and SCP, to review PCIA-related issues and to present proposed reform measures in the form of "petitions."[11] In two key respects, the IOUs' Proposal does not comport with D.16-09-044.

First, the IOUs did not allow the PCIA working group process to conclude before starting to aggressively advocate for the Commission's replacement of the PCIA methodology.[12] In doing so, the IOUs detracted from the working group process and undermined the cooperation intended by the Commission when it directed the formation of the PCIA working group.

Second, the IOUs submitted their proposal as an "application," when the Commission explicitly directed that PCIA reform measures should be brought forward as a petition. While the Commission's reasoning was not expressly stated, it is reasonable to assume that the Commission intended that any significant reform proposal should be considered in a proceeding that gives the Commission broad flexibility to consider alternative proposals. As noted previously, each of the Commission's nonbypassable charge decisions has been issued within the

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10 *See* D.16-09-044 at 19-20.

11 *See* D.16-09-044 at 20.

12 On January 24, 2017, in the middle of the PCIA working group process, the IOUs began a series of *ex parte* meetings with Commission offices to promote their PAM proposal. *See Southern California Edison Company's Notice of Ex Parte Communication,* dated January 27, 2017, filed in A.16-05-001. Top IOU executives also conducted *ex parte* meetings February 23, 2017 and March 13, 2017.

context of a rulemaking proceeding.[13] The IOUs' approach departs from the Commission's directive.

D. The Commission's Expressed Intent Is To Open A Rulemaking Proceeding

Within the last three months, the Commission has conducted two *en banc* hearings on retail choice in California's energy market.[14] The Commission is focusing much attention on retail choice options and the role of the IOUs in the future. The Commission's Retail Choice White Paper aptly describes many of the challenges facing the electric services industry and the need for coordinated examination of policies. In response, the Commission indicated that it "intends to open a Rulemaking to examine, and coordinate among other open proceedings, an examination of the future role(s), structure(s), fiscal and other functions of the three large California electric IOUs."[15]

It is premature to consider major cost allocation and related issues in the context of the Joint Application. Doing so would undermine the Commission's efforts to arrive at its own determination of market structure and to enact a cost allocation methodology that supports the Commission's vision.

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13 *See* note 9, above.

14 *See* note 4, above (referencing the CCA *En Banc* Hearing and the Retail Choice *En Banc* Hearing).

15 Retail Choice White Paper at 13. The Retail Choice White Paper goes on to state "This, in turn, requires a discussion of the scope and scale of the current framework for regulation of competition – including customer centered technologies - and the structure of the retail electric market, and the transition from IOUs' responsibilities today and their responsibilities in the future. As part of this process, the CPUC will likely examine a variety of different retail market and customer choice constructs to assess what best practices and lessons learned can be applied in California given our unique set of public policy goals. *** Finally (and as a fundamental framing consideration), it is critical to recognize that whatever the specific outcomes of this proceeding, it is very difficult to conceive of a scenario where the CPUC and CEC will not find that significant changes to the regulatory model and the utility structure are required." (Retail Choice White Paper at 13-14.)

III. PROTEST

For reasons stated above, the Commission should dismiss the Joint Application without prejudice. In further support of this request, CalCCA provides the following initial objections to the IOUs' Proposal.

A. The IOUs' Proposal Unlawfully Impinges On The Statutory Responsibility Of Community Choice Aggregators To Procure Renewable Resources For Their Customers

The Public Utilities Code provides that Community Choice Aggregators "shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute."[16] This responsibility is consistent with other statutory provisions.[17] The IOUs' Proposal unlawfully impinges on this responsibility.

The IOUs' Proposal provides for mandatory transfer of renewable energy credits ("RECs") and Resource Adequacy ("RA") attributes to CCA programs.[18] Community Choice Aggregators are given no choice in the matter, and little advance information about the resources or ability to manage the resources. By design, the IOUs' approach "optimizes the existing [IOU] resources,"[19] with no regard to the resulting displacement of CCA procurement autonomy. The IOUs do not address this significant problem.

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16 Section 366.2(a)(5).

17 *See, e.g.,* Section 380(a)(5) (defining the following as a legislative objective with respect to the resource adequacy program: "[m]aximize the ability of community choice aggregators to determine the generation resources used to serve their customers."). *See also* Section 454.51(d) (expressly providing a self-procurement option for Community Choice Aggregators with respect to renewable integration requirements).

18 *See, e.g.,* Joint IOUs-01 at 37.

19 *See* Joint IOUs-01 at 25.

For existing Community Choice Aggregators, which have already procured renewable resources on behalf of their customers, the forced transfer of RECs would result in being over-procured, and the need to sell or otherwise dispose of excess RECs. For new Community Choice Aggregators, the IOUs' Proposal could unduly interfere with procurement-related decisions and CCA program goals.

Community Choice Aggregators' procurement decisions incorporate a range of goals and values in addition to environmental compliance, including enhanced local generation and job creation, a diverse technology mix, and better matching supply to demand. The forced receipt of RECs from the IOUs would impair the ability of CCAs to pursue these goals.

B. The IOUs' Proposal Would Place An Unreasonable Administrative Burden On Community Choice Aggregators, And Would Degrade The Value Of Long-Term Resources

The IOUs' Proposal relies on a bifurcated means of determining bundled customer indifference. The IOUs propose to value *energy* with reference to spot market energy prices and to offset that value from the IOUs' costs (a process similar in certain respects to today's PCIA process); the IOUs do *not* propose to transfer *energy* to Community Choice Aggregators. As described above, the IOUs propose a different approach for RECs and RA attributes; the IOUs propose to transfer RECs and RA attributes to Community Choice Aggregators.

The forced transfer of RECs and RA attributes to Community Choice Aggregators would create a significant burden for Community Choice Aggregators. The IOUs have offered no justifiable reason why Community Choice Aggregators should be forced to receive and dispose of the IOUs' unwanted REC and RA attributes. Absent agreement from a Community Choice Aggregator, placing an additional burden on a Community Choice Aggregator is unfair and contrary to their legal responsibility to undertake their own procurement.

Additionally, the IOUs' Proposal would result in a substantial portion of the value of the IOUs' long-term renewables portfolio standard ("RPS") resources being lost. Under the IOUs' Proposal, Community Choice Aggregators merely get the short-term value of transferred RECs. The transfer of RECs alone eliminates the ability for a Community Choice Aggregator or third-party purchaser to prudently manage the resource, including terminating the agreement or otherwise making use of contractual rights to maximize the value. If the RPS agreements were assigned to Community Choice Aggregators, bid into Community Choice Aggregator Requests for Offers ("RFOs"), or sold in the market, the full value of the resource could be more fully realized. Several Community Choice Aggregators have observed that the IOUs either do not participate in CCA RFOs, or impose undue contract requirements in the context of participating in CCA RFOs.

CalCCA is *not* proposing the involuntary assignment of RPS agreements to Community Choice Aggregators. Nonetheless, in reviewing nonbypassable charges and alternative arrangements, the Commission should explore avenues to maximize, or at least not degrade, the value of the IOUs' RPS resources.

C. The PAM Proposal Prejudges Fundamental Commission Policies, While Remaining Noticeably Silent On Other Corollary Policies

The Commission has signaled its intent to institute a rulemaking proceeding to assess the regulatory model and IOU structure, and potentially put into place fundamental changes.[20] The Joint Application is therefore premature. CalCCA objects to the IOUs' disjointed proposal in which selective, IOU-centric change would be accomplished without considering and adopting broader, corollary changes. The Commission should not countenance these prejudicial actions.

1. The IOUs' PAM Proposal Implicates Key RPS Decisions

The Joint Application proposes that the IOUs be allowed to sever RECs from underlying energy, but that the RECs transferred to Community Choice Aggregators should nevertheless be counted as Portfolio Content Category ("PCC") 1 products, not PCC 3.[21] Likewise, the IOUs' Proposal requires that the Commission accelerate a decision on whether or not the IOUs' existing RPS contracts satisfy the requirement under SB 350 with respect to being "long-term."[22] These matters are prerequisites of the IOUs' Proposal, even as envisioned by the IOUs,[23] but highly uncertain. Preserving PCC1 status for RECs that are separated from the underlying energy has been contested in the past,[24] and may require legislative action. Moreover, determination of the long-term contract requirement under SB 350 should be undertaken in a comprehensive manner with other SB 350 implementation issues.

2. The IOUs' Proposal Improperly Seeks Rehearing Of Cost-Recovery Decisions and Eliminates Basic Incentives for Prudent Procurement

As part of the IOUs' Proposal, the IOUs attack several of the Commission's recent cost-recovery decisions and propose that such decisions be reversed. Specifically, the IOUs request that the Commission reverse various nonbypassable charge decisions that limit cost-recovery to ten years for IOU-owned generation and energy storage resources.[25] In addition, the IOUs seek a true-up for any sales of excess resources they undertake, rather than being held to any form of

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20 *See* note 15, above.

21 *See* Joint IOUs-01 at 37-38.

22 *See* Joint IOUs-01 at 38.

23 *See* Joint IOUs-01 at 37-38 (seeking Commission "findings" and "clarifications").

24 *See, e.g.,* D.11-12-052.

25 *See* Joint IOUs-01 at 59-61.

objective benchmark.[26] These requests fail to follow the procedural requirements for modifying or rehearing Commission decisions. In addition, the IOUs' requests fail to explain and justify the nexus between these decisions and the IOUs' Proposal, and why the IOUs' Proposal is unworkable without reversing these decisions.

The Commission adopted a ten-year limit on cost recovery in part as an incentive for the IOUs to prudently manage their procurement and to make appropriate adjustments to their portfolio. For example, the Commission reasoned that ten years should be sufficient time for the IOUs to adjust their portfolio in response to departure of load: "[t]he utilities can, over time, adjust their load forecasts and resource portfolios to mitigate the effects of [departing load] on bundled service customer indifference. By the end of a 10-year period, we assume the IOUs would be able to make substantial progress in eliminating such effects for customers who cease taking bundled service during that period."[27] Eliminating the ten-year requirement harms both bundled and CCA customers because it reduces the incentive for IOUs to prudently plan and then adjust their portfolios as CCA programs develop.

Further, in the PCIA methodology the Commission adopted a benchmark as a proxy for market value based on IOU transactions and other market information. The Commission adopted a benchmark that reflected a combination of positions and outcomes.[28] By developing a market benchmark that reflects the three IOUs' recent transactions and and other market indicators, the Commission sought to hold the IOUs to moored to certain objective, external standards. Although CalCCA leaves open whether the existing benchmark is the appropriate

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26 *See* Joint IOUs-01 at 27, note 44.

27 D.08-09-012 at 54.

28 *See* D.11-12-023 at 22-23.

benchmark, eliminating the existing benchmark, as proposed by the IOUs, would remove the few aspects of the PCIA that addressed the issue of prudent contract management.

3. The IOUs' Proposal Seeks To Prejudge Nonbypassable charge Treatment For Pre-2009 Vintages

The IOUs acknowledge that the Commission is, in the context of the recently consolidated ERRA proceedings, considering the issue of *negative* PCIA amounts and whether pre-2009 vintage customers should continue to pay the PCIA.[29] This issue has not been examined by the Commission, yet the IOUs seek to foreclose review and instead propose that this issue be categorically resolved in this proceeding.[30] Once again, this approach is procedurally improper and inappropriate.

D. The IOUs' Proposal Is Premised On Inaccurate Cost-Shifting Claims

In the Joint Application, the IOUs rely on purported "cost-shifting" as their reason for seeking changes to the PCIA methodology. For example, the IOUs proclaim that "the current Commission-approved method of recovering costs from departing load customers is *broken*, and that the cost shift from departing load customers to remaining bundled service customers is increasing."[31] Moreover, the IOUs state that "[a]ttempting to *'fix'* the inputs to the Current Methodology is not the answer…*any* cost-allocation mechanism that relies on administratively-set benchmarks ultimately will result in cost shifting to or from remaining bundled service customers depending on actual market outcomes."[32]

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29 *See* Joint IOUs-01 at 33, note 60.

30 *See id.*

31 Joint IOUs-01 at 4; emphasis added.

32 Joint IOUs-01 at 13; emphasis added. *See also id.* at 15 ("Proxies – by their nature – do not reflect actual market conditions and therefore shift costs in one direction or the other.")

The IOUs' cost-shifting claims are flawed and misleading. CalCCA is not opposed to openly and comprehensively examining the current nonbypassable charge framework to explore cost-shifting issues. But as described below, the IOUs' cost-shifting claims suffer from a number of important flaws. Additionally, any serious examination of cost-shifting must be premised on all parties, not just the IOUs, having transparent access to information that forms the basis for nonbypassable charges.

First, the IOUs' assertion of a purported cost-shift relies on the IOUs' flawed "benchmarks." Although the IOUs denounce the current market price benchmarks, the IOUs fail to expressly state which market price benchmarks they rely upon in their cost-shifting claims, choosing instead to generically state that the information is "derived from *a blend of RECs index* numbers as well as [private] *broker* quotes."[33] With respect to RECs, in particular, index-based "numbers" suffer from a principal deficiency: the numbers are derived from indices that are short-term-based, and therefore should not be used in determining REC value for the IOUs' renewable energy portfolio. The IOUs' renewable energy portfolios are principally comprised of long-term resources. An index based on short-term transactions is incongruent with this underlying product.

Second, noticeably absent from the Joint Application is any discussion about mutuality and the benefits that inure to the IOUs and their bundled service customers as a result of the departure of CCA customers. With respect to mutuality, the Commission is charged with ensuring that all customers – bundled and departing – are protected.[34] The Commission must also ensure that benefits, as well as costs, are factored into nonbypassable charges.[35] In any

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33 *See* Joint IOUs-01 at 19, note 30.

35 *See, e.g.,* Section 366.2(g) ("Estimated net unavoidable electricity costs paid by the customers of a community choice aggregator shall be reduced by the value of any benefits that

future consideration of a successor nonbypassable charge methodology, the following benefits should be considered and offset against costs:

- The IOUs' portfolio provides a long-term hedge against market price volatility.
- Departure of customers to CCA service results in an increase to the IOU's RPS percentage, thereby minimizing or eliminating additional transactional costs.
- Departure of customers to CCA service also results in a decreased need by the IOUs to procure additional resources, thereby minimizing or eliminating additional transactional costs.
- Departure of customers allows the IOUs to dispatch more economically efficient generators in their stack, resulting in a lower average cost to serve remaining bundled load.
- The IOUs' existing "negative" PCIA balance has not been addressed by the IOUs in the Joint Application, and it is unclear how the IOUs plan to address situations in which "negative" charges arise in the future.

E. The IOUs' Proposal Does Nothing To Remedy Deficiencies In The Current Nonbypassable charge Methodology

CalCCA is open to the idea of modifying the current nonbypassable charge methodology, however, such consideration should occur in a rulemaking proceeding under timelines and scoping plans that are set by the Commission, not the IOUs. If the Commission were to consider modifying the current nonbypassable charge methodology, the following deficiencies should be addressed – deficiencies that are not addressed in the IOUs' Proposal.

1. Poor Resource Planning Should Be Curbed

As a purported basis for the IOUs' Proposal, the IOUs claim that departing load from CCA programs is expanding at unprecedented levels.[36] Yet, despite this, the IOUs are still

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remain with bundled service customers…."). *See also* D.08-09-012 at 10 ("[B]undled customers should be no worse off, nor should they be any better off as a result of customers choosing alternative energy suppliers (ESP, CCA, POU or customer generation).").

[36] *See* Joint IOUs-01 at 15.

unnecessarily and imprudently procuring on behalf of these departing customers. For example, in Draft Resolution E-4851, the Energy Division is proposing to accept SCE's request to purchase output from a 125 megawatt solar facility ("Maverick Solar Project"). The proposed power purchase agreement for the Maverick Solar Project resulted from a 2015 solicitation process, and presumably reflects 2015 prices, not 2017 prices. SCE submitted its advice letter request a few months ago – *after* SCE began communicating with the Commission about the significant departure of CCA customer load.[37] While CalCCA at present takes no position on the merits of the Maverick Solar Project, SCE's request is an example of how the IOUs are engaging in imprudent resource planning – claiming significant expected departure of CCA customer load, yet continuing to procure as though the departure will not occur.

"Stranded" or "unavoidable" costs must be understood within a proper context. A cost should not be considered "stranded" or "unavoidable" if the IOU fails to make reasonable adjustments to its resource portfolio. Proper determination of nonbypassable charges is inextricably tied to proper resource planning. This is clearly seen in the Commission's conclusions with respect to AB 117 and its language regarding the CRS: "The objective of AB 117 in requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is to minimize the CRS (and all utilities liabilities that are not required) and promote good resource planning by the utilities."[38]

To avoid inefficient and anticompetitive outcomes, the IOUs should bear the burden in showing that additional purchases are "unavoidable." This is particularly appropriate in the

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[37] The IOUs began aggressively communicating with the Commission about CCA load departure in January 2017 and SCE submitted its advice letter for the Maverick Solar Project in February 2017.

current environment, which the IOUs describe as "greater levels of customers depart [IOU] procurement service, which is happening now and accelerating."[39] The IOUs should not have it both ways: raising concerns about CCA customer departure, while at the same time making significant, additional purchases.

2. The Long-Term Hedge Value Of Resources Is Not Reflected

Under the current nonbypassable charge framework, energy is valued on a single, year-ahead basis, which does not reflect any long-term hedge value associated with the energy. While this approach is less than ideal as part of the current compromise, it is at least better than the IOUs' Proposal where energy is valued at the even shorter-term *spot market price*. Neither of these approaches reflect the long-term hedge associated with the IOUs' existing resources – a value that benefits bundled customers. As noted previously, the indifference standard requires that benefits be accounted for and offset against costs in determining the nonbypassable charge. As such, the Commission should remedy this defect with the current methodology, and should reject efforts by the IOUs to further disregard this defect.

3. Year-of-Departure Valuation Should Be Considered

Under the current nonbypassable charge framework, there is no opportunity given to value the IOUs' portfolio on a net present value basis using expected prices as of the year of departure. Instead, each year the IOUs' portfolio is subjected to an annual, ongoing valuation. For example, if PG&E's portfolio had been valued in 2010, when the first wave of MCE's customers departed, the overall "unavoidable costs" would have been significantly less than what has occurred by operation of the annual valuation process. In other words, once PG&E knew it no longer had to serve load in MCE's service area, PG&E could have liquidated or reallocated a

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[38] D.04-12-046 at 29.

relative share of its portfolio. By failing to dispose of the relative share of its portfolio, and instead holding onto all resources, especially as the market value of those resources declined, PG&E has caused the nonbypassable charge paid by CCA customers to artificially increase. CCA customers should not have to pay avoidable costs caused by an IOU's failure to mitigate losses by promptly disposing of unneeded parts of its portfolio.

4. An Eventual End To Nonbypassable charges Should Be Pursued

The Commission and Legislature have long held that cost-recovery associated with market structure changes should be transitional and should eventually end.[40] In the Commission's first CCA-related decision the Commission set forth its expectations with respect to an eventual end to nonbypassable charges: "[w]e also anticipate that each CCA's CRS liability would terminate at some point."[41] This view is also consistent with the Commission's long-term procurement plan decisions, which reflect an expectation that the IOUs will no longer be procuring for CCA customers.[42]

In light of the emergence of CCA programs, it is reasonable and appropriate for the Commission to set forth a plan by which nonbypassable charges are eventually eliminated. One option that has been advanced by CCA parties is making available to Community Choice

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39 *See* Joint IOUs-01 at 3.

40 For example, in describing the "competition *transition* charge," the Commission cited AB 1890 for the view that cost-recovery should be limited and lead to an accelerated and eventual end. (*See* D.97-06-060 at 60-61 (citing AB 1890; Sec. 1(b) ["(b)... It is the...intent of the Legislature that during a limited transition period ending March 31, 2002, to provide for all of the following: (1) Accelerated, equitable, nonbypassable recovery of transition costs associated with uneconomic utility investments and contractual obligations."]).)

41 *See, e.g.,* D.04-12-046 at 27.

42 *See, e.g.* D.04-12-048; Conclusion of Law 16. *See also* D.08-09-012 at 54-55.

Aggregators the option of a lump-sum buyout comparable to that which was accomplished for various publicly owned utilities.[43]

5. Mechanisms Are Required To Reduce Volatility And Avoid Rate Shock

One particularly troubling aspect of the PCIA has been its volatility and abrupt changes. The IOUs' Proposal similarly does not provide for reduced volatility and does not protect against rate shock. Standard ratemaking practices provide for smoothing to avoid these effects, particularly where the rate mechanism in question relates to conditions with a long-term price. Nonbypassable charges are intended to protect bundled customers from paying an undue share of the above-market costs of long-term utility contracts and resources. Given that nonbypassable charges relate to long-term resources, there is no reason to address them in a manner that results in frequent fluctuations and steep changes in rates. Doing so is very detrimental to CCA programs that must consider the overall rates for electricity paid by their customers.

6. Reasonable Access Must Be Provided To Underlying Data

In D.16-09-044, the Commission directed the formation of the PCIA working group to focus specifically "on the issues of improved transparency and certainty related to PCIA."[44] As part of the PCIA working group process, the CCA parties advanced a proposal to remove data access restrictions for certain employees of Community Choice Aggregators, subject to various non-disclosure provisions. The IOUs did not accept this reform. As part of the IOUs' Proposal, the IOUs advanced their own proposal for improving transparency, claiming that "[the IOUs'

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43 *See, e.g.,* D.09-08-015 and D.10-11-011 (describing and approving lump-sum buyout arrangements for publicly owned utilities).

44 D.16-09-044 at 20.

Proposal] will also be more transparent, so that LSEs and their customers can thoroughly review the costs and benefits that are allocated as part of each vintaged portfolio."[45]

Community Choice Aggregators have been unable to fully review the calculation of the PCIA because the calculation relies on confidential information. With the IOUs' Proposal, the IOUs now recognize that transparency is critical, but suggest that it should be addressed in a second phase.[46] Postponing this critical issue is inappropriate. Transparency should be an integral component of any nonbypassable charge mechanism discussion up-front, and CalCCA looks forward to having this matter addressed by the Commission with respect to the existing nonbypassable charge methodology.

F. The IOUs' Proposal Would Result In Unlawful Rate Discrimination

As the Commission has previously stated, a particular rate treatment is considered unlawful discrimination if the treatment draws "an unfair line" or strikes "an unfair balance" between similarly situated entities and there is no rational basis for the different treatment.[47] As briefly described below, the Joint Application presents numerous instances that rise to the level of unlawful discrimination.

1. Other Forms of Departing Load Are Not Subject To The IOUs' Proposal

The IOUs draw an arbitrary line between CCA customers and other forms of departing load. With respect to CCA customers, the IOUs propose to apply the full effects of the IOUs' Proposal, including the requirement that Community Choice Aggregators accept transfers of RECs and RA attributes. With respect to other forms of departing load, like customer generation departing load and load served under the IOUs' Green Tariff Shared Renewables program, the

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45 Joint IOUs-01 at 6.

46 *See* Joint IOUs-01 at 45.

47 *See, e.g.,* D.11-03-031 at 2 (citing D.06-04-041 at 5-6).

IOUs do *not* propose forced transfers of RECs and RA attributes.[48] Rather, for these other forms of departing load, the IOUs propose a methodology similar to the current methodology, namely, financial valuation of above-market costs.[49]

On this basis, the IOUs' Proposal is discriminatory on its face. If there is to be any line drawn between different forms of departing load, it should be the Commission, not the IOUs, that draw this line.

2. Pre-2009 Vintages Are Not Subject To The IOUs' Proposal

The IOUs propose that pre-2009 PCIA vintages would not be subject to any charges. In this regard, the IOUs state, subject to a reservation of rights with respect to utility-owned generation, that pre-2009 vintages would not be subject to the IOUs' Proposal.[50] As noted above, this key issue is currently before the Commission.[51] The IOUs offer no rationale for why pre-2009 vintage customers should be excluded from the IOUs' Proposal.

3. The IOUs' Proposal Results In An Unfair Balance Between Existing Community Choice Aggregators And New Community Choice Aggregators

Under the Joint Application, the IOUs require that RECs and RA attributes be transferred to *all* Community Choice Aggregators – without regard to whether a Community Choice Aggregator is fully resourced or not. While this proposal has many problems, it is particularly problematic with respect to *existing* Community Choice Aggregators. Existing Community

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48 *See, e.g.,* Joint IOUs-01 at 57.

49 For presumably strategic reasons, the IOUs do not disclose the facts of this valuation process, but rather defer this pivotal issue until after "a final decision resolving this Application is issued." (*See, e.g.,* Joint IOUs-01 at 57 ["[T]he Joint Utilities propose that the consideration of how to set the appropriate 'purchase price' for the RECs and RA be deferred to a Tier 3 advice letter, to be filed upon receiving a final decision resolving this Application."]).

50 *See, e.g.,* Joint IOUs-01 at 33, note 60.

51 *See* note 29, above.

Choice Aggregators are expected to be fully resourced. Indeed, to avoid additional cost allocation, under the process being considered by the Commission in the Integrated Resource Plan docket Community Choice Aggregators must show they are fully resourced.[52] In light of this, the impact of the IOUs' Proposal is unlawfully discriminatory. To implement the IOUs' Proposal, existing Community Choice Aggregators would need to either sell their own resources to make room for the transferred IOU attributes or dispose of the transferred IOU attributes. In either case, the administrative and financial burden on existing Community Choice Aggregators is unlawfully discriminatory.

G. The IOUs Fail To Explain Why The PAM Proposal Has Not Been Provided As A Voluntary Arrangement Instead Of As A Binding Requirement

The IOUs propose that, with respect to Community Choice Aggregators, the approach in the Joint Application would be mandatory.[53] The IOUs offer no justification for this approach. The IOUs appear to recognize some value in voluntary arrangements:

> The Joint Utilities also contemplate that separate settlements may be negotiated with individual CCAs, ESPs, or other providers to resolve the departing load obligations of their customers, should there be interest in doing so. PG&E has engaged in ongoing settlement discussions with SCP as a means for resolving its customers' departing load obligations, or an alternative to the PAM proposal, and intends to continue those discussions after the filing of this Application.[54]

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52 *See, e.g., Proposal for Implementing Integrated Resource Planning at the CPUC,* dated May 17, 2017, at 75.

53 *See, e.g.,* Joint IOUs-01 at 5 (stating that the IOUs' Proposal will "completely replace" the current methodology).

54 Joint Application at 25-25.

In D.16-09-044 the Commission spoke about the IOUs "providing a menu of options in paying off the PCIA."[55] A voluntary approach (or some other negotiated nonbypassable charge arrangement) is consistent with this menu of options; a mandatory approach is not.

IV. PROCEDURAL MATTERS

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

A. Proposed Category

The proceeding is appropriately categorized as "ratesetting."

B. Need for Hearing

CalCCA believes that evidentiary hearings will be necessary.

C. Issues to be Considered

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

D. Proposed Schedule

The IOUs' proposed procedural schedule illustrates the unreasonable process embedded in the Joint Application. Not only does the proposed procedural schedule unjustifiably defer major policy and rate issues to subsequent phases, but it suggests an unreasonable view of next steps. For example, the IOUs propose to defer consideration of transparency issues (which are critical to Community Choice Aggregators and their customers) to a second phase of this proceeding. The IOUs make no commitments that they will agree to provide any further transparency regarding the procurement processes as part of the negotiation that would

[55] *See* D.16-09-044 at 19.

supposedly occur during this later phase of the proceeding. Likewise, the IOUs propose that any alternative proposal to the IOUs' Proposal *must* be offered by July 14, 2017.[56] This deadline is artificial and unworkable, and would prevent parties from setting forth robust, alternative proposals.

V. PARTY STATUS

Pursuant to Rule 1.4(a)(2), CalCCA hereby requests party status in this proceeding. As described herein, CalCCA has a material interest in the matters being addressed in this proceeding. CalCCA designates the following person as the "interested party" in this proceeding:

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VI. CONCLUSION

As a concluding thought, CalCCA wishes to remind the Commission of an observation provided ninety years ago, which the Commission recently confirmed is relevant today. In considering the Joint Application and other IOU-initiated "reforms," the Commission must recognize and counterbalance the extensive advantage IOUs have in regulatory litigation. One way that the Commission can do this is to define the rules of the road pursuant to a Commission-instituted rulemaking proceeding.

> The relative advantage of utilities in ratemaking litigation has long been recognized. One writer observed the following [in 1926]:
>
> > 'Successful regulation of great public utility corporations, with their properties and their services ramifying in every direction, with vast

[56] *See* Joint Application at 29.

> revenues flowing in continuously, with nationwide alliances, and clearing-houses of technical information and expert service, is no simple and easy matter. ***'If the Commission depends upon the consumers or the municipalities to present the public side of the controversy, the evidence in most cases will be heavily one-sided. A group of consumers, or an individual municipality — perhaps a small one — or a loosely associated group of municipalities, working from the outside with no funds except what 'they dig out of their jeans' with no hope of ever getting it back, are pitted against the companies having all the inside experience and knowledge, and able to tap the consumers' till with confidence that whatever they spend to defeat the consumers will be added to the cost of service and taxed back in the rates which the consumers themselves will have to pay. If the municipalities or the consumers spend a dollar of their own money, the utility will spend two and make them pay in the bargain. Financial resources, experience, inside knowledge, expert affiliations, great things at stake and continuity of interest, combine to give the utilities an overwhelming advantage in the presentation of their cases before Commission and Courts.'[57]

CalCCA appreciates the Commission's consideration of the matters addressed herein.

Dated: May 30, 2017

Respectfully submitted,

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[57] D.00-02-046 at 20.