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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment.	Rulemaking 17-06-026 (Filed June 29, 2017)

APPLICATION FOR REHEARING OF PENINSULA CLEAN ENERGY, MARIN CLEAN ENERGY, AND SONOMA CLEAN POWER AUTHORITY OF DECISION 18-10-019

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Pursuant to Public Utilities Code section 1731(b)(1) [1] and Rule 16.1 of the California Public Utilities Commission ("Commission") Rules of Practice and Procedure, Peninsula Clean Energy ("PCE"), Marin Clean Energy ("MCE"), and Sonoma Clean Power Authority ("SCP") respectfully submit this Application for Rehearing of Decision 18-10-019 ("PCIA Decision") issued on October 19, 2018. Section 1731(b) requires that an application for rehearing be filed no later than 30 days after the date of issuance of the decision for which rehearing is sought. This application for rehearing is timely filed.

The Commission fails to meet its statutory duty to set the Power Charge Indifference Adjustment ("PCIA") based on a factual and legal determination that the investor-owned utilities ("IOUs") incurred legitimately unavoidable costs and took all reasonable steps to minimize above-market costs. Furthermore, the PCIA decision fails to meet the requirements of Sections 365.2 and 366.2(f)(2) by attributing costs to the earliest CCA departing load customers (including those served by PCE, MCE, and SCP) that Pacific Gas and Electric Company

[1] All subsequent statutory references are to the Public Utilities Code.

("PG&E") admits were not incurred on behalf of that departing load. For these reasons, the Commission should grant this Application for Rehearing. In addition, PCE, MCE, and SCP join and support the Application for Rehearing advanced by the California Community Choice Association ("CalCCA"). The Commission should also grant rehearing on the grounds described in CalCCA's application.

I. THE COMMISSION FAILS TO MEET ITS STATUTORY DUTY TO SET THE NEW PCIA BASED ON A FACTUAL AND LEGAL DETERMINATION THAT THE IOUs INCURRED LEGITIMATELY UNAVOIDABLE COSTS AND TOOK ALL REASONABLE STEPS TO MINIMIZE ABOVE-MARKET COSTS

The Commission appropriately acknowledged that "any PCIA methodology adopted by the Commission to prevent cost increases for either bundled or departing load" should, among other things, "only include legitimately unavoidable costs and account for the [investor-owned utilities' ('IOUs')] responsibility to prudently manage their generation portfolio and take all reasonable steps to minimize above-market costs."[2] Yet the final PCIA Decision establishes a new PCIA with no legal or factual determination that the utilities incurred legitimately unavoidable costs and took all reasonable steps to minimize above-market costs. The Commission's failure constitutes an abuse of discretion and fails to ensure (i) that the IOUs meet the mandates of the Procurement Policy Manual, which confirms and implements the IOUs' duty to mitigate its losses and "provides all of the requirements and guidance provided by the Commission to its jurisdiction entities under [Sections] 380, 454.5, and 399.11-399.20,"[3] and (ii) ratepayer indifference established in Section 366.2(f)(2).

[2] D.18-10-019 at 106 (citing Scoping Memo Guiding Principles).
[3] The Procurement Policy Manual was adopted by Scoping Ruling filed on June 2, 2010 in Rulemaking 10-05-006, and is available at: http://docs.cpuc.ca.gov/PublishedDocs/EFILE/RULINGS/118826.PDF.

The PCIA Decision includes an unsubstantiated "finding" in dicta that:

> this principle is satisfied because we have acted in this proceeding to determine with unprecedented precision the nature of the costs incurred by the Joint Utilities, and we are initiating a second phase of this rulemaking that offers the promise of meaningful progress toward reducing the levels of above-market costs going forward.[4]

However, this "finding" is unsupported by substantial evidence. More importantly, the PCIA Decision itself cites to no evidence, establishes no findings of fact, nor draws any conclusions of law necessary to meet its statutory responsibility to ensure that the IOUs incurred legitimately unavoidable costs and took all reasonable steps to minimize above-market costs.

Thus, the Commission must act to either:

1) address whether the IOUs incurred unavoidable costs and took all reasonable steps to minimize above-market costs *before* establishing a new PCIA; or,

2) at the very least, ensure that parties may further continue in Phase 2 of this proceeding to identify the extent to which the costs incurred by the IOUs to date are illegitimate and avoidable.

In either scenario and to comply with its statutory responsibility, the Commission must remediate the avoidable costs it determines the IOUs incurred to both reduce above-market costs going forward and decrease the costs that ALL ratepayers must pay, both bundled and unbundled.[5]

A. By Failing to Enforce the Mandates of the Procurement Policy Manual, the Commission's Decision Fails to Meet Statutory Requirements

To comply with Section 366.2(f)(2), the Commission established Guiding Principle 1.h in the Scoping Memo for this proceeding and concluded that only unavoidable costs should be included in the PCIA. However, the Commission failed to fulfill this requirement by ignoring

[4] D.18-10-019 at 129 (citing Scoping Memo Guiding Principles).
[5] The Commission can conduct this exploration for the benefit of this proceeding and setting the new PCIA rate without re-litigating or reopening any specific past determinations, as expressly required in the Scoping Memo's directive in this proceeding that "the scope of this proceeding will not include revisiting prior Commission determinations regarding the reasonableness of the IOUs' past procurement actions." *See* September 25, 2017 *Scoping Memo and Ruling of Assigned Commissioner* at 19.

the statutory mandates that support the Procurement Policy Manual. Consequently, the Commission failed to ensure that the IOUs prudently managed their generation portfolios and took all reasonable steps to minimize above-market costs for all ratepayers. As such, the Commission has failed to meet its duties pursuant to Sections 380, 454.5, and 399.11-399.20 and ensure that only unavoidable costs are included in the PCIA under Section 366.2(f)(2).

1. Standard of Conduct #4 Implements and Confirms the Statutory Requirements for Prudent Management of a Utility's Generation Portfolio and an IOUs' Duty to Mitigate

The Procurement Policy Manual sets standards for prudent management of a utility's generation portfolio. Standard of Conduct #4 requires that:

> In administering contracts, the utilities have the responsibility to dispose of economic long power and purchase economic short power in a manner that minimizes ratepayer costs. Once a contract has been deemed compliant with the utilities' procurement plan, the contract is not subject to reasonableness review. However, the administration of the contract by the utility remains subject to a reasonableness review and disallowance through ERRA proceedings.

Thus, the IOUs have an obligation to prudently manage their generation portfolio, and the Commission must vigilantly review the IOUs' management practices particularly regarding utility-owned generation ("UOG") where the utility's inherent financial incentive is to increase capital costs in its rate base. Despite longstanding requirements that the utilities forecast load and adjust their activities to mitigate impacts on bundled customers over time from their UOG, the IOUs have only in the last few years made strides to improve their departing load forecasting.

Furthermore, Standard of Conduct #4 incorporates the broader duty of a party to mitigate its losses. A damaged party may not simply sit back and do nothing, if doing so will increase its loss. The damaged party is under a legal duty to mitigate – to avoid – its losses. This mitigation requirement particularly applies to situations in which a party has an economic incentive to sit

back and take no action, transferring all risk of market changes to its competitors. Failure to enforce this legal duty permits the party to reduce or eliminate competition. To avoid this unfair practice, the law requires such a party to mitigate its damages by promptly re-contracting with a third party for the sale of the goods. If the party fails to do so, it can recover no damages or losses it could have reasonably avoided.[6]

2. The Record Confirms that the IOUs Have Failed to Avoid Over-Procurement and Minimize Portfolio Costs

The original Proposed Decision of Administrative Law Judge ("ALJ") Roscow emphasized that "[t]he record in this proceeding **clearly** demonstrates that… the Joint Utilities have not made a convincing showing regarding **what actions, *if any*,** they have taken since 2004 to comply with the Commission directives …."[7] This proceeding's record is replete with evidence that the IOUs failed to avoid over-procurement and minimize portfolio costs and meet their broader duty to mitigate, particularly in the face of increasing departing load.

For example, after confirming that PG&E was long in resource adequacy, energy, and RPS supply, PG&E Witness Wan admitted that PG&E failed to avoid over-procurement. Witness Wan stated that PG&E has sold none of its long-term RPS contracts in the market, nor is there any plan to do so in the joint IOUs' proposal, despite years of increasing departing load.[8] Similarly, during cross examination ALJ Roscow questioned why PG&E sold no products until

[6] "A party injured by a breach of contract is required to do everything reasonably possible to negate his own loss and thus reduce the damages for which the other party has become liable. The plaintiff cannot recover for harm he could have foreseen and avoided by such reasonable efforts and without undue expense. However, the injured party is not precluded from recovery to the extent that he has made reasonable but unsuccessful efforts to avoid loss." (*Brandon & Tibbs v. George Kevorkian Accountancy Corp.* (1990) 226 Cal.App.3d 442, 460, internal citations omitted.); *see also* D.08-09-012 at 54 (utilities were expected to manage their generation portfolio to mitigate loses due to the ten year limitation);
[7] August 1, 2018 *Proposed Decision of ALJ Roscow Modifying the Power Charge Indifference Adjustment Methodology* (R.17-06-026) at 62 (emphasis added).
[8] 1 Tr. 38:7-39:13 (Wan).

2018 when it first noticed a long position in 2014 and knew that MCE departed in 2010. ALJ Roscow remarked regarding PG&E's failure to avoid over-procurement:

> [I]sn't it in kind of all parties' and all ratepayers' self-interest to ensure that double procurement doesn't happen? ... So why would you say that in your original proposal there's no plan to provide a bundled product that would include the [Renewable Energy Certificates ("RECs")] that I assume would be most attractive to the departing load? It seems like you're holding back the RECs for some reason?[9]

ALJ Roscow thus ascertained that either PG&E benefits from holding unneeded RECs or PG&E improperly failed to act in accordance with statute and Commission policy. Either scenario violates the principles of indifference and prudent portfolio management.

Similarly, as evidence of SCE's failures to prudently manage its portfolio, SCE Witness Cushnie admitted that "Edison has a single resource, I believe, that is post-2002. And that's the Mountain View generating station. And I haven't looked at its revenue requirement versus market revenues in a long time. So I don't know if it's ever had a net positive under your question."[10]

Finally, evidence of SDG&E's similar failures are also in the record. For example, in response to the question of whether the utilities have submitted any necessary applications to justify cost recovery of longer than the ten year limit (which would have provided evidence that SDG&E was prudently managing its portfolio), Witness Shults stated "as for SDG&E, we have not submitted such an application."[11]

The PCIA Decision ignores this record evidence that the IOUs failed to meet statutory requirements and take reasonable actions to manage their portfolios. Compounding this error is

[9] 1 Tr. 76:1-24; 80: 22-81:4.
[10] 2 Tr. 338: 13-19 (Cushnie).
[11] 3 Tr. 436: 16-437:16 (Shults).

that the final PCIA Decision excises out ALJ Roscow's conclusion that the IOUs have not complied with prior Commission directives. The result is a PCIA Decision that improperly and unlawfully includes avoidable costs in the new PCIA.

3. The Existence of the ERRA Proceeding and Other Regulatory Venues to Evaluate Utility Prudence Does Not Relieve the Commission of Its Statutory Duties In This Proceeding

The Commission has a duty to ensure that "departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load."[12] Furthermore, the Commission must ensure that all rates and charges collected by a public utility are "just and reasonable," including the PCIA, and a public utility may change no rate "except upon a showing before the [C]ommission and a finding by the [C]ommission that the new rate is justified."[13]

The Commission may have allowed costs in previous proceedings[14] it may now determine to be avoidable. The Commission's actions in past proceedings do not preclude it from safeguarding all ratepayer interests now, both bundled and unbundled, having conducted in this proceeding, "with unprecedented precision," the most thorough accounting of IOU costs to date.[15] In evaluating the IOUs' actions regarding portfolio management and avoidance of above-market costs to set a new PCIA, if the Commission finds that the utilities acted improperly or that more review is warranted, then the Commission must not ignore the record, should hold the utilities accountable for their past mismanagement to the benefit of all ratepayers, and set the new PCIA excluding avoidable costs.

[12] *See* Pub. Util. Code § 365.2.
[13] *See* Pub. Util. Code §§ 451, 454.
[14] There is no need to relitigate those previous proceedings and contravene the Scoping Memo's prohibition against doing so.
[15] D.18-10-019 at 129.

Furthermore, the Commission has drastically limited the scope of the ERRA proceeding, which has dismantled the Commission's evaluation of prudence in IOU portfolio management to the point where the Commission has failed its statutory responsibilities in this regard. The following recent history of PG&E's ERRA process showcases the inability for CCAs and other stakeholders to find a venue to address billions of dollars in PG&E procurement costs:

June 1, 2017: PG&E files its 2018 ERRA Forecast Application (A.17-06-005).

July 7, 2017: A diverse group of customer representatives and ratepayer advocates including CCAs, Irrigation Districts, AReM/DACC, and ORA file responses to this Application. Many of these highlight PG&E's failure to demonstrate prudent management of contracts.[16]

July 17, 2017: PG&E replies to protests arguing that PG&E's administration of procurement contracts, as well as its management of procurement portfolios are outside the scope of an ERRA forecast proceeding and best addressed in the compliance phase, and "[t]he Joint CCA Parties can conduct a review of how PG&E administered its procurement contracts, including whether there were actions it could have or should have taken to reduce procurement costs, in the ERRA Compliance proceeding."[17]

July 12, 2017: Pre-hearing conference - Joint CCAs argue demonstration of prudent contract management should be in scope of ERRA Forecast.

Aug 4, 2017: Scoping Memo and Ruling of Assigned Commissioner is issued, agreeing with PG&E's position that "PG&E's administration of procurement contracts, as well as its management of procurement portfolios are outside the scope of an ERRA forecast proceeding and **best addressed in the compliance phase**."[18]

Feb 28, 2018: PG&E files ERRA Compliance Application (A.18-02-015) seeking recovery of costs for 2017.

[16] *See* Protest of the City and County of San Francisco (A.17-06-005), at 2 ("the record indicates that PG&E is not prudently managing its portfolio"); Protest of Marin Clean Energy, Peninsula Clean Energy Authority, the Silicon Valley Clean Energy Authority, and Sonoma Clean Power Authority to PG&E's Energy Resource Recovery Account Application (A.17-06-005), at 3-6 ("while PG&E professes concern for its bundled customers' costs in making the unsubstantiated claim that the current PCIA results in a cost-shift to bundled customers, it ignores the fact that the lack of prudent contract management may be a driving factor in increasing those costs.").

[17] PG&E Reply to Protests for Application (A.17-06-005) at 3-5.

[18] Scoping Memo and Ruling of Assigned Commissioner (A.17-06-005) at 3 (emphasis added).

Apr 6, 2018: SCP and ORA submit protests because PG&E's portfolio management practices were not prudent and did not minimize ratepayer costs.[19]

Apr 16, 2018: PG&E replies that "Prudence Review Of PG&E's Portfolio Management Is Inconsistent With Pubic Utilities Code Section 454.5(d)(2)" and should therefore not be in scope for the ERRA Compliance proceeding. PG&E later clarifies that "the question of whether PG&E prudently administered and managed its QF and non-QF contracts in accordance with the contracts' provisions is within the scope of the proceeding. But that issue does not encompass either of the issues raised by SCP, portfolio management and load forecasting."[20]

Apr 27 2018: Pre-hearing conference. SCP requests that prudent management be recognized within scope in ERRA Compliance Proceeding. PG&E argues their bundled procurement plan is the appropriate venue for determining these issues as the ERRA Compliance proceeding determines whether the utility complied with the plan. SCP notes that bundled procurement plans are silent about contract management.

May 14, 2018: Scoping Memo and Ruling of Assigned Commissioner is issued, finding that "this proceeding will not evaluate longer term decisions such as whether or not to continue to operate a plant; that is **more appropriate for a general rate case or a separate application proceeding**."[21]

This timeline describes how parties first sought review of IOU portfolio management in the ERRA forecast docket, but were told to await the ERRA compliance docket. When the same parties then sought review of IOU portfolio management in the ERRA compliance docket, the Commission again deferred its statutory duty and told parties that such a review was more appropriate for a general rate case or a separate application proceeding. The parties are still waiting for the Commission to meet its statutory responsibilities, while all customers continue to suffer the consequences of avoidable costs being included in setting their rates.

[19] *See* Protest of Sonoma Clean Power (A.18-02-015) at 2-3 ("SCP protests this Application on two grounds, 1) that PG&E's portfolio management practices were not prudent and did not minimize ratepayer costs, and, 2) that PG&E's bidding behavior distorted market prices to the detriment of CCA customers."); *see also* Protest of ORA (A.18-02-015) at 3 (Based on its initial review, ORA identified the following issue to be within the scope of the proceeding: "[w]hether PG&E administered and managed its own generation facilities prudently, according to Standard of Conduct 4 (SOC 4).").

[20] Reply of PG&E (A.18-02-015) at 5 & 7.

[21] Scoping Memo and Ruling of Assigned Commissioner (A.18-02-015) at 5 (emphasis added).

Thus, not only has the Commission failed to meet its statutory responsibility in this proceeding under Sections 380, 454.5, and 399.11-399.20 and ensure that only unavoidable costs are included in the PCIA under Section 366.2(f)(2), the Commission continues to fail, as described in the timeline above, to conduct the statutorily-required prudency review of IOU portfolio management that will ensure that all customers – bundled and unbundled— are paying rates based on only unavoidable costs.

While the PCIA Decision sets forth that Phase 2 will consider *future* portfolio optimization and shareholder responsibility for future portfolio mismanagement, the Commission abuses its discretion and ignores its statutory responsibilities by ignoring record evidence of *past* portfolio mismanagement in setting a new PCIA that includes costs associated with that past mismanagement. PCE, MCE, and SCP all agree that it is important to reform utility portfolio management practices to ensure future costs are as low as possible, however, the Commission must also ensure costs being included in 2019 rates meet all statutory requirements. The Commission should grant rehearing to ensure that all ratepayers are made whole for the past mismanagement of the utilities regarding the utilities' unnecessary accumulation and pass through of above-market costs.

B. The Record Provides A Basis For Finding That the IOUs Failed to Prudently Manage Their Generation Portfolios to the Detriment of All Ratepayers

The Commission not only fails to meet its statutory duty to set the new PCIA based on a factual and legal determination that the IOUs incurred legitimately unavoidable costs and took all reasonable steps to minimize above-market costs, the record provides a basis to conclude that the IOUs were responsible for imprudent management of their generation portfolios that created significant above-market costs to the detriment of all ratepayers. The Commission should not ignore this record evidence. Instead, the Commission must acknowledge and take steps to

remedy this past conduct and establish a PCIA rate that specifically accounts for the established utility mismanagement. At the very least, enough evidence exists so the Commission should explore these concerns of past mismanagement more thoroughly in Phase 2. The PCIA Decision fails to acknowledge or even discuss the proven deficiencies of the IOUs to forecast and account for CCA departing load.

1. By Failing to Conduct Proper Forecasting and Make the Proper Adjustments to Its Procurement Strategies, the IOUs Harmed All Ratepayers By Passing Through Avoidable Above-Market Costs

At hearings, SCE and PG&E confirmed that the IOUs disregarded the Commission's longstanding guidance in Decision 04-12-046 and Decision 04-12-048 by establishing a narrowly defined threshold for forecasting departing load. For example, SCE Witness Cushnie explained that:

> [i]n the case of Southern California Edison, what we're looking for is for the newly-forming CCA to give us sufficient confidence as to their formation plans so that we can then plan to balance the portfolio around their formation intentions. To date, only one of our CCAs has provided a binding notice of intent….[22]

PG&E Witness Lawlor similarly explained that based on MCE's implementation plan, "it looks like [the CCA is] negotiating a long-term electricity supply contract"[23] and that PG&E does not "manage to a departure. We had an open need, and we manage it in a bundled way."[24] Witness Lawlor explained that "[a]t the time we did not use the forecast for forecasting load departure. We concluded we needed to use more of a bright line methodology, and that looked at binding notice of intent or basically when they go live."[25]

[22] *See* 4 Tr. 809: 20-810:26 (Cushnie).
[23] 4 Tr. 813: 9-10 (Lawlor) and 4 Tr. 817: 13-820:16 (Lawlor).
[24] 4 Tr. 822: 18-28 (Lawlor).
[25] 5 Tr. 857: 12-21 (Lawlor).

The record evidence in this proceeding clarifies that by the IOUs' admitted failure to conduct proper forecasting and adjust their procurement strategies appropriately, the IOUs harmed all ratepayers by passing through above-market costs.

2. PG&E Willfully Ignored MCE's Departing Load in 2010 and Failed to Adjust Its Portfolio – Again Harming All Ratepayers

PG&E's actions in the face of MCE's departing load in 2010 provides a more specific example in the record of this proceeding of IOU portfolio mismanagement that harmed all ratepayers. PG&E admitted it formally knew of MCE's load departure well before that departure through MCE's CPUC-certified implementation plan, but ignored such notice[26] (the implementation plan indicated departing load in 2010, forecasts of load growth through 2019, and indications of active negotiations for long-term power contracts to serve this load).[27] Yet PG&E continued to execute long-term contracts in 2010 (representing approximately 1.7 GW of capacity) that did not account for MCE's actual and reasonably forecastable departing load – which were executed *after* MCE submitted its implementation plan and some of which were executed after certification of MCE's implementation plan by the Commission, and approximately 600 MW of which was executed after MCE launched.[28] As a result, <u>all</u> customers are paying for these avoidable costs.[29]

By failing to acknowledge the record evidence of past utility mismanagement, the PCIA Decision unlawfully sets a new PCIA on an established record of inappropriate above-market costs that have harmed all ratepayers. The Commission should take this opportunity afforded by

[26] 4 Tr. 822: 3 (Lawlor); 5 Tr. 857: 12-21 (Lawlor).
[27] 4 Tr. 817: 13-822: 3 (Lawlor); 5 Tr. 857:13-21 (Lawlor); *see also* CalCCA Brief at 99.
[28] *See* Exh. CalCCA-123, Maximum Contract Capacity; *see also* Exh. CalCCA-123, PG&E 2010 Contract Execution Dates from Attachment 10 ALJ Requested Data Matrix.
[29] Even more egregiously, MCE customers who departed from PG&E in 2010 are still today paying for these costs that should not be attributed to them.

its close examination of utility above-market costs to hold the utilities accountable for their past mismanagement. A new PCIA rate should specifically account for the Commission's resolution of that past IOU mismanagement that created avoidable costs.

II. THE PCIA DECISION FAILS TO MEET THE REQUIREMENTS OF SECTIONS 365.2 AND 366.2(F)(2) BY UNLAWFULLY ATTRIBUTING COSTS TO THE EARLIEST DEPARTING LOAD CCA CUSTOMERS (INCLUDING THOSE SERVED BY PCE, MCE, AND SCP) THAT PG&E ADMITS WERE NOT INCURRED ON BEHALF OF THAT DEPARTING LOAD

The PCIA Decision ignores record evidence that the PCIA has included costs for early departing load customers, including those served by PCE, MCE, and SCP, that PG&E admits were not incurred on behalf of that departing load. Thus, the PCIA Decision and new PCIA methodology is not based on substantial evidence and fails to meet the requirements of Sections 365.2 and 366.2(f)(2).

Sections 365.2 and 366.2(f)(2) limit cost recovery from CCA customers to those costs attributable to those customers. The Commission has long endorsed the approach that procurement costs cannot reasonably be attributable to customers unless a utility procures a resource to serve those customers after accounting for reasonable anticipated departing load.[30] To mitigate the risk of unnecessary resource commitments that may become stranded due to departing load, longstanding Commission policy has directed the utilities to forecast departing load using all available information.[31]

Yet, PG&E admitted it ignored these directives. Instead, PG&E adopted a self-serving and narrow threshold for forecasting departing load that required almost near-certainty that load would depart.[32] PG&E ignored various indications of load departure (actual and imminent) to

[30] *See* D.03-04-030 at 54; D.04-12-046 at 30; D.04-12-048, Ordering Paragraph 9 at 239.
[31] *See* D.03-04-030 at 54; D.04-12-046 at 30; D.04-12-048, Ordering Paragraph 9 at 239.
[32] *See* 4 Tr. 809: 20-810: 3 (Cushnie); 4 Tr. 813: 9-15 (Lawlor); 4 Tr. 817: 13-820:16 (Lawlor); 4 Tr. 814: 8-16 (Lawlor); 4 Tr. 821: 26-822:3 (Lawlor); 5 Tr. 857: 13-21 (Lawlor); *see also* CalCCA Brief at 98-99.

justify its procurement on behalf of departing load for as long as possible.[33] Particularly in the early years of CCA formation, PG&E's unreasonable threshold for forecasting load departure resulted in PG&E ignoring the potential for dramatic future increases in CCA customer departure as PG&E actively and aggressively executed long-term power contracts. Only in complying with Decision 14-02-040, after substantial load departure, did PG&E forecast CCA departing load in its bundled procurement plan.

PG&E admitted that clear knowledge of imminent and actual departing load did not cause it to alter its procurement practices and portfolio management. In the context of MCE's initial departure in 2010, PG&E opined that such a small amount of departing load (.1% to .2% of PG&E bundled load) was not significant enough to alter PG&E's procurement in any way.[34] In fact, PG&E admitted that it would take load departures <u>of greater than 10-20%</u> before it made <u>any</u> portfolio adjustments.[35] Moreover, in defending its decision to continue to buy on behalf of MCE customers in 2010 despite MCE's actual launch, PG&E indicated that its 2010 executed contracts were "purchased . . . knowing that [PG&E] needed to meet its RPS targets on a total portfolio basis . . . ."[36] Contrary to the requirements of statute and Commission decisions, PG&E admitted, "We don't manage to a departure. We had an open need, and we manage it in a bundled way . . . We would have continued to procure based on the *bundled* total need."[37]

PG&E's admission that no amount of CCA departures up to 10-20% would be cause to change PG&E's procurement practices makes clear that procurement up to 10-20% of PG&E's load should <u>not</u> be attributable to departing CCA load. By its own admission, PG&E held all of

[33] *See* 4 Tr. 809: 20-810: 3 (Cushnie); 4 Tr. 813: 9-12 (Lawlor); 4 Tr. 814:7-11 (Lawlor); 4 Tr. 817: 13-822: 3 (Lawlor); 5 Tr. 857: 13-21 (Lawlor).
[34] 4 Tr. 814:7 – 11 (Lawlor); 4 Tr. 822: 24-823: 20 (Lawlor); 5 Tr. 853:25-854:2 (Lawlor).
[35] 1 Tr. 37:17-21 (Wan).
[36] 4 Tr. 822: 24-823: 20 (Lawlor).
[37] 4 Tr. 822: 24-823: 20 (Lawlor) (emphasis added).

its resources acquired prior to 10-20% CCA departure to benefit bundled customers, while allocating costs to departing load customers. Either PG&E continued to hold all of its resources acquired prior to 10-20% CCA departure to benefit bundled customers or PG&E failed to act in accordance with state law and Commission policy to forecast departing load and manage its portfolio. Both scenarios violate indifference, and the Commission's failure to address and act upon this evidence violates Sections 365.2 and 366.2(f)(2)-(g).

By failing to even address this evidence, much less ensure CCA customers only pay for costs attributable to them, the PCIA Decision perpetuates the harm caused to early departing load customers—including those served by PCE, MCE, and SCP. The Commission's inaction sanctions the attribution of costs that PG&E admits were not incurred on behalf of our departing load. Thus, the PCIA Decision fails to meet the requirements of Sections 365.2 and 366.2(f)(2)-(g) and the new PCIA methodology is not based on substantial evidence. Furthermore, the PCIA Decision compounds those failures by foreclosing the opportunity in Phase 2 of this proceeding to gather further evidence that would assist in identifying with further specificity which costs incurred by the IOUs are appropriately attributable to CCA customers and determine how best to correct for any costs improperly attributed to other CCA customers in prior years.

III. CONCLUSION

The Commission should not hesitate to use the opportunity afforded it by the PCIA proceeding to hold the IOUs accountable for the IOUs' past procurement mismanagement without revisiting the Commission's prior individual procurement decisions. The Commission can do so both by setting the PCIA appropriately prospectively and by taking the opportunity in Phase 2 of the PCIA proceeding to both delve into and correct for the avoidable and unattributable costs that all ratepayers — both bundled and unbundled— may have been burdened with in prior years. For the reasons described above and in CalCCA's application for

rehearing, the Commission should grant rehearing.

Respectfully submitted,

November 19, 2018

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