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Decision 18-05-022 May 31, 2018

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Portions of AB117 concerning Community Choice Aggregation.	Rulemaking 03-10-003

DECISION ESTABLISHING REENTRY FEES AND FINANCIAL SECURITY REQUIREMENTS FOR COMMUNITY CHOICE AGGREGATORS

Summary

This decision establishes reentry fees and financial security requirements applicable to community choice aggregators (CCAs), as required by Public Utilities Code Section 394.25(e). Reentry fees include utility administrative costs and procurement costs resulting from a mass involuntary return of CCA customers to utility service, and the financial security requirements must cover those potential costs. This proceeding is closed.

Background

The Commission needs to implement Public Utilities Code Section 394.25(e) as it relates to community choice aggregators (CCAs), which reads:

> If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or

> other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

In order to implement this statutory provision, the Commission must determine: 1) the reentry fee, and 2) the bond or insurance sufficient to cover the reentry fee.[1]

Testimony on these issues was presented by the "Joint Utilities" (Southern California Edison Company (SCE), Pacific Gas and Electric Company (PG&E), and San Diego Gas & Electric Company), Marin Clean Energy, and the California Community Choice Association (CalCCA). Evidentiary hearings were held on October 11 and 12, 2017. Opening and Reply Briefs were filed by the Joint Utilities and CalCCA.

The Commission previously addressed issues of the appropriate reentry fee and financial security requirement (FSR) for electric service providers (ESPs) in Decisions (D.) 11-12-018 and D.13-01-021.

Discussion

The basic idea behind Section 394.25(e) is to ensure that existing customers of an electric utility are protected from potential costs resulting from a mass involuntary return of CCA customers to the utility. Those potential costs fall into two categories: 1) the administrative costs incurred by the utility for returning

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[1] Resolution (Res.) E-4133 (December 20, 2007) provided an interim methodology for calculating the amount of a bond required by Section 394.25(e) that has been used to date.

CCA customers to utility service, and 2) the incremental procurement costs incurred by the utility for procuring electricity for the returned customers.

Reentry Fee: Administrative Costs

The Joint Utilities and CalCCA agree that the reentry fee should include the administrative costs to the utility of taking back the former customers of the CCA, but differ on the proxy to use for determining the cost.

According to CalCCA:

> The Commission should base the administrative cost component of the reentry fee on the CCA Mass Enrollment Fee plus an estimate of the number of customers being switched over to bundled service multiplied by the tariffed Community Choice Aggregation Service Request (CCASR) fee. (CalCCA Reply Brief at 12-13.)

The Joint Utilities recommend a different approach:

> The Joint Utilities propose to use a proxy of these costs for FSR based on the reentry fee *for voluntary returns* in each utility's Schedule CCA-SF, which is designed to recover the incremental administrative costs for individual voluntary returns. In contrast, CalCCA proposed use of the Mass Enrollment Fee in each utility's Schedule CCA-SF, plus an estimate of the number of customers being switched over to bundled service multiplied by the tariffed CCASR Fee. (Joint Utilities Opening Brief at 15.)

CalCCA argues that a mass involuntary return of customers to the utility would largely be an "*en masse*" (rather than individual) transfer, and that it could be done in an orderly manner. Since a large group return would result in lower per-customer administrative costs than one-at-a-time individual returns, CalCCA argues that the tariffed fee used for mass enrollment in a CCA should be used as a proxy for the cost of a mass return to the utility. (CalCCA Reply Brief at 13.)

The Joint Utilities disagree; they argue that it is not clear that a mass return could or would be so orderly or would precisely coordinate with a utility billing cycle. Accordingly, the Joint Utilities argue that CalCCA's proposed proxy is not sufficient to cover the utilities' incremental administrative costs, which may include off-cycle meter reads, off-cycle customer bills, and some additional correspondence, none of which are reflected in CalCCA's proposed administrative cost proxy. In addition, the Joint Utilities point out that: "Use of the CCASF re-entry fee as the proxy for administrative costs is consistent with the methodology adopted for ESPs in D.11-12-018." (Joint Utilities Reply Brief at 12.)

It is not possible to determine with certainty or precision how any future mass involuntary return to utility service would occur. It is possible that it could be orderly, and synchronized with the local utility's meter-reading and billing cycles, but it could also be disorderly, and fall between meter-reading and billing cycles. Accordingly, the Joint Utilities' proposed proxy for administrative costs is more consistent with the requirements of Section 394.25(e), as well as more consistent with this Commission's approach for ESPs, and we adopt their proposal and the corresponding per-customer fees of $4.24 for PG&E, $1.12 for SDG&E and $0.50 for SCE.

CalCCA notes that there is a large variation in the per-customer administrative cost reentry fees of the different utilities, with PG&E at $4.24 per customer account and SCE at $0.50, and argues that if the Commission uses these fees here, it should be fixed for all utilities at $0.50. (CalCCA Opening Brief at 15.) The Joint Utilities respond that this reflects differences in the systems of each utility, such as the level of automation, and that the specific number is more appropriately addressed in each utility's General Rate Case (GRC). (Joint Utilities Reply Brief at 12-13.)

While we agree with the Joint Utilities that the most appropriate place to address this issue is in each utility's GRC, we note that there is an oddly wide range of fees, and we are concerned by the Joint Utilities statement that: "In addition, the services covered by the various IOU fees are not identical." (*Id.*) This appears to be potentially problematic, as there should generally be consistency between the utilities on what services this fee should cover; the Joint Utilities themselves state: "The decision here should adopt the structure for the administrative fee and <u>what services it covers</u> …" (*Id.* at 13, *emphasis added*.)

The record in this proceeding is not detailed enough on this issue to determine if the services covered by the administrative fees are the same across the three utilities. Accordingly, the utilities are directed to file a Tier 1 Advice Letter that provides a detailed description of the specific services that are covered, their corresponding costs, and how those costs were calculated. In their next GRC, each utility must identify the administrative fee as a separate item, describe its components and how it is calculated, and provide a comparison of its fee with that of the other major California utilities. Prior to the next GRC, each utility may decrease the administrative fee via a Tier 1 Advice Letter, but may not increase the fee via Advice Letter.

Reentry Fee: Procurement Costs

One threshold question that needs to be addressed is whether the reentry fee should reflect the possibility that a utility could incur incremental procurement costs, particularly in the case of a mass involuntary return of customers. It is possible that in that situation there could be procurement costs, so it is both reasonable and consistent with the law to include them, and the Joint

Utilities and CalCCA concur that the reentry fee should take into consideration incremental procurement costs. (Joint Utilities Opening Brief at 14-15; CalCCA Opening Brief at 11-13.)

The main question to address then becomes determining the amount of the reentry fee that appropriately reflects procurement costs. CalCCA recommends that the reentry fee should be based upon six months of incremental procurement. (CalCCA Opening Brief at 11.) According to CalCCA:

> With regard to the incremental procurement cost component for the reentry fee, six months of incremental procurement should be sufficient for the IOUs to successfully procure any resources needed to cover a mass reentry of CCA customers to IOU bundled service. Currently, a CCA customer who voluntarily elects to return to IOU bundled service is required to provide the IOU with six months' advance notice to allow IOUs to conduct any incremental procurement that is necessary before the CCA customer returns to bundled service. [fn. omitted] There is no compelling reason that an IOU would need more than that same six-month period to successfully procure additional resources to cover a mass reentry. (*Id.* at 12.)

The Joint Utilities argue that the incremental procurement costs for the reentry fees should be based upon a one-year period. (Joint Utilities Opening Brief at 14.) According to the Joint Utilities:

> While a one-year period is not likely to achieve the full indifference of bundled service customers to mass involuntary returns, it provides for reasonable protection of bundled service customers, and aligns with the requirement that a CCA provide a one-year advance notice of a voluntary service termination, to allow the IOU sufficient time to plan to serve the involuntarily returning CCA load. (*Id.* at 14-15, footnotes omitted.)

In D.13-01-021, the Commission addressed the issue of the time period to be covered for calculating incremental procurement costs for determining financial security requirements for ESPs. In that decision, the Commission stated:

> As originally determined in D.03-05-034 and as reaffirmed in D.11-12-018, we concluded that a six-month notice period would allow sufficient time for the IOU to adjust its procurement portfolio to accommodate the additional bundled load due to returning DA customers. Thus, no cost shifting would occur thereafter as a result of serving the returning DA customers. (D.13-01-021 at 21-22.)

In D.13-01-021, however, the Commission set the time period for calculating incremental procurement costs to cover eight months, rather than six months, in order to account for the additional two-month "safe harbor" period when DA customers could switch to a different service provider. (*Id.* at 22-23.) In the present context, similarly to D.13-01-021, a six-month period for calculating incremental procurement is also appropriate.

Forecasts of incremental procurement costs shall be calculated using the methodology set forth in the Joint Utilities' testimony (Ex. JU-01, Appendix E), to the extent that methodology is consistent with this decision.

Financial Security Requirement

In addition to determining the appropriate reentry fee, the Commission must determine the appropriate amount, type and holder of the FSR. As a threshold question, CalCCA argues that the FSR to be posted by CCAs does not need to mathematically equal the reentry fee. First, CalCCA argues that even if the reentry fee includes procurement costs, the FSR should only include administrative costs, not procurement costs. (CalCCA Opening Brief at 13-16.) Second, CalCCA argues that if a CCA has an investment grade credit rating, there is not a need for that CCA to post collateral, so there would be no FSR for CCAs with an investment grade credit rating. (CalCCA Opening Brief at 15-16.)

The Joint Utilities disagree, and argue that the FSR must be sufficient to cover the reentry fees, without omitting procurement costs or otherwise reducing the FSR relative to the applicable reentry fee. (Joint Utilities Reply Brief at 4-5.)

CalCCA's approach asks the Commission to calibrate the level of the FSR to the risk of CCA failure; according to CalCCA, the risk of CCA failure is low, so it is appropriate to discount the FSR by a corresponding amount. (*See*, CalCCA Opening Brief at 6-16.) At the same time, however, CalCCA only provides very broad standards to actually perform that calculation; this is difficult for the Commission to reconcile with the language of Section 394.25(e), which reads: "As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees." Because this Commission cannot accurately determine in advance the likelihood (and potential impact) of failure for each individual CCA, the more prudent approach to ensuring compliance with the statute is to have the FSR match the level of reentry fee.

The next issue to address is the specific form of the FSR – possible forms addressed in this proceeding include cash, letters of credit, and surety bonds; it is not clear if other forms of FSR, such as insurance, may also be feasible. Letters of credit were acceptable to both CalCCA and the Joint Utilities. (*See*, CalCCA Opening Brief at 17-18; Joint Utilities Opening Brief at 22-23.) Accordingly, use of letters of credit as an FSR is approved.

The parties disagreed on the possible use of surety bonds to meet the statutory requirement. CalCCA argues that the statute uses the word "bond," so a bond should be an acceptable form of FSR. (CalCCA Reply Brief at 14-15.) The Joint Utilities argue that surety bonds are impractical and unreliable, as they do not provide adequate liquidity to be a usable FSR in the current context. (Joint Utilities Opening Brief at 22-23.)

The Joint Utilities describe the problem with surety bonds as follows:

> Collecting on a surety bond is similar to collecting on an insurance claim, where a litigious and delayed process for resolving a claim is not unusual. This is problematic, particularly when the IOU may need immediate liquidity to procure resources to serve the involuntarily-returned CCA customers, and accounts for why surety bonds are not used in the energy procurement business (*Id*. at 22.)

At the same time, however, the language of Section 394.25(e) states that the CCA: "[S]hall post a bond or demonstrate insurance sufficient to cover those reentry fees." In short, the argument that a bond is similar to insurance tends to confirm that the use of bonds is consistent with the statutory language, and in fact a bond (or insurance) may be required by the statute. The purpose of the statute appears to be more about basic financial security – ensuring that money is available – rather than liquidity. The fact that surety bonds may not be commonly used for other purposes in the energy procurement business does not control in this context, where there is express statutory language. Accordingly, we approve the use of surety bonds as FSR for CCAs.

Cash (held by the utility) was acceptable to the Joint Utilities, while cash (held by the Commission) was acceptable to CalCCA. (*See*, CalCCA Opening Brief at 17-18.) We find that a CCA may use cash as an FSR, but the question remains where it should be posted. CalCCA expresses reluctance to post cash deposits with the utilities, preferring that FSR be posted with the Commission. (CalCCA Reply Brief at 15.) This has in fact been the historic practice, but with the growth (both in numbers and size) of CCAs, this approach becomes less sustainable, and presents potential problems. It is more appropriate for the FSR to be held in escrow by a third party, rather than by the CCA, the utility, or the Commission. The third party acting as the escrow holder of FSR should be an independent financial institution, not an affiliate of either the utility or the CCA. Accordingly, cash may be used as an FSR, with the U.S. branch of a commercial bank acting as the escrow holder on terms and conditions acceptable to both parties, and with escrow fees paid by the CCA.

The Joint Utilities propose that the amount of the FSR be calculated and updated monthly, in order to mitigate the uncertainties of the potential timing and market conditions at the time of an involuntary return of customers to the utility. (Joint Utilities Opening Brief at 12-14.) CalCCA opposes this proposal, arguing that updating the FSR on a monthly basis would be "inappropriate, unnecessary, and burdensome." (CalCCA Opening Brief at 19.) CalCCA proposes that CCAs should instead generally update their FSRs annually. (CalCCA Reply Brief at 12.)

CalCCA points out that the utilities argued for monthly updating of the FSR for ESPs, and the Commission expressly rejected that argument, finding that doing so added administrative burdens without offsetting benefits. (CalCCA Opening Brief at 20, citing D.13-01-021.) CalCCA is correct – D.13-01-021 rejected monthly FSR updates for ESPs, and instead adopted a six-month schedule for updates. (D.13-01-021 at 23-25.) The Joint Utilities have not provided an adequate justification for deviating from that approach here; accordingly, we will require the FSR for CCAs to also be updated twice a year, consistent with the approach adopted in D.13-01-021.

The specific details adopted in D.13-01-021 are:

> We shall modify the directive in D.11-12-018 to call for the ESP security amount to be recalculated twice each year, in November and May, by the tenth day of each month, and with any adjustments

> to the security amount implemented on the following January 1 or July 1, respectively. […]We shall also adopt a 10% deadband for purposes of requiring any adjustments to the ESP posted amounts. (D.13-01-021 at 25.)

For efficiency reasons, it generally makes sense that this aspect of the FSR implementation should be similar for ESPs and CCAs, so the same approach is adopted here for CCAs, including the 10% deadband.

Since the FSRs for CCAs are subject to update, that includes the existing interim FSRs posted pursuant to Resolution E-4133. The interim FSRs for existing CCAs are to be replaced by FSRs consistent with this decision. This change should be made as soon as practicable, and is not required to occur only in November or May. Any interim CCA financial security held by the Commission pursuant to Resolution E-4133 should be returned to the CCA once the CCA has complied with the FSR adopted here. A CCA should submit a compliance advice letter to Energy Division notifying Energy Division of compliance with the FSR adopted here. Once Energy Division has notified the Commission's Fiscal Office that the CCA has complied with the requirements of this decision, the Fiscal Office shall return any interim financial security to the CCA.

CalCCA argues that if the FSR incremental procurement cost is negative, those negative procurement costs should offset up to 100% of the incremental administrative costs, and that this approach is consistent with what the Commission approved for ESPs in D.13-01-021. (CalCCA Opening Brief at 23-24.) The Joint Utilities oppose this approach, arguing that negative procurement costs should not offset incremental administrative costs, because in certain situations the fact that incremental procurement costs are below the utility's average bundled rate does not actually result in savings to bundled customers. (Joint Utilities Opening Brief at 24-25.)

For ESPs, the Commission held:

> We shall permit the financial security amount to be calculated by netting any negative procurement costs against incremental administrative costs, with a floor of zero. The IOUs offers no convincing reason to support their opposition to treating both cost elements on a net basis.
>
> We shall set the floor on negative incremental procurement costs such that the net financial security amount is not less than zero. The negative incremental procurement costs shall be allowed to offset up to 100% of the calculated incremental administrative costs. Since both administrative costs and procurement costs are incurred in connection with an involuntary return of DA customers to bundled service, it is reasonable to consider the net effect of both elements of costs in determining the amounts, if any, necessary to compensate the IOU and to avoid cost shifting to other customers. (D.13-01-021 at 31.)

We will follow the same approach here, and allow negative procurement costs to offset incremental administrative costs. The Joint Utilities point out that this could result in an FSR of zero if negative procurement costs completely offset incremental administrative costs, and they recommend a minimum FSR of $147,000. (Joint Utilities Comments at 12, citing to Ex. JU-01 at 33-34.) This is a valid point, and we adopt a minimum FSR of $147,000.

Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Allen in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments and reply comments were filed by the Joint Utilities and CalCCA.

CalCCA argued that Public Utilities Code Section 394.25(e) expressly provides for bonds to be used for financial security purposes, and the proposed decision (which did not approve them) should be modified to allow their use. (CalCCA Comments at 10-11.) That change has been made; bonds may be used for satisfy the FSR.

The Joint Utilities pointed out that allowing negative procurement costs to offset incremental administrative costs could result in an FSR of zero, and they recommended a minimum FSR of $147,000. (Joint Utilities Comments at 12.) That change has been made; there is now a minimum FSR of $147,000.

Other minor changes have been made to the proposed decision to clarify implementation details.

Assignment of Proceeding

Commissioner Michael Picker is the assigned Commissioner and Peter V. Allen is the assigned ALJ in this proceeding.

Findings of Fact

1. A utility may incur administrative costs when a CCA customer is involuntarily returned to utility service.
2. Accurately predicting the timing and manner of a mass involuntary return of CCA customers to utility service is not feasible.
3. There is a wide variation between utilities in the level of administrative costs incurred when a CCA customer is involuntarily returned to utility service.
4. A utility may incur incremental procurement costs when a CCA customer is involuntarily returned to utility service.
5. A six-month notice period allows sufficient time for a utility to adjust its procurement portfolio to accommodate additional bundled load due to returning CCA customers.

6. Accurately predicting the risk of a CCA failure and its potential scope and consequences is not feasible.

7. The Commission addressed issues of the appropriate reentry fee and FSR for ESPs in D.11-12-018 and D.13-01-021.

8. Letters of credit, surety bonds, and cash held by a third party, are acceptable forms of FSR.

9. FSRs for ESPs are updated twice per year, with a 10% deadband, pursuant to a method adopted in D.13-01-021.

10. Resolution E-4133 provided for CCAs to post an interim financial security requirement of $100,000 with the Commission.

Conclusions of Law

1. Public Utilities Code Section 394.25(e) requires implementation of both a reentry fee and a corresponding FSR to address the costs of a potential mass involuntary return of CCA customers to utility service.

2. The reentry fee should cover both administrative costs and incremental procurement costs.

3. The reentry fee covering administrative costs should reflect equivalent services across utilities.

4. The FSR should cover all reentry fees, but should not exceed them.

5. Reentry fees and FSRs for CCAs should at this time generally be similar to those implemented for ESPs.

6. Any interim financial security posted with the Commission should be returned to the posting CCA when the CCA complies with the financial security requirements of this decision.

O R D E R

IT IS ORDERED that:

1. For purposes of calculating the financial security requirement pursuant to Public Utilities Code Section 394.25(e), the reentry fee for community choice aggregators includes both utility administrative costs and incremental procurement costs.

2. For purposes of calculating the financial security requirement pursuant to Public Utilities Code Section 394.25(e), the per-customer reentry fee for utility administrative costs is to be based upon the reentry fee for voluntary returns in each utility's Schedule CCA–SF, which are currently $4.24 for Pacific Gas and Electric Company, $1.12 for San Diego Gas & Electric Company and $0.50 for Southern California Edison Company.

3. The utilities are to file Tier 1 Advice Letters providing a detailed description of the specific services that are covered by the reentry fee for utility administrative costs, including how those costs were calculated.

4. In their next general rate case, each utility must identify the administrative fee as a separate item, describe its components and how it is calculated, and provide a comparison of its fee with that of the other major California utilities.

5. For purposes of calculating the financial security requirement pursuant to Public Utilities Cod Section 394.25(e), the reentry fee for incremental procurement costs is to be based upon six months of incremental procurement, as calculated in Decision 13-01-021.

6. The financial security requirement includes both utility administrative costs and incremental procurement costs.

7. Letters of credit, surety bonds, and cash held by a third party are acceptable forms for satisfying the financial security requirement.

8. The amount of the financial security requirement is to be updated twice per year, with a 10% deadband, consistent with the method adopted for electric service providers in Decision 13-01-021.

9. To the extent that the applicable incremental procurement cost is negative, those negative procurement costs will offset up to 100% of the applicable administrative costs, with a minimum financial security requirement of $147,000.

10. A community choice aggregator should submit a compliance advice letter to Energy Division providing notice of compliance with the financial security requirement adopted here and requesting return of any interim financial security posted with the Commission.

11. This proceeding is closed.

This order is effective today.

Dated May 31, 2018, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners