



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

04-16-12
04:59 PM

Order Instituting Rulemaking Pursuant to Senate)
Bill No. 790 to Consider and Adopt a Code of)
Conduct, Rules and Enforcement Procedures) R.12-02-009
Governing the Conduct of Electrical Corporations) (Filed February 16, 2012)
Relative to the Consideration, Formation and)
Implementation of Community Choice)
Aggregation Programs.)

**SOUTHERN CALIFORNIA EDISON COMPANY (U-338 E) REPLY COMMENTS ON THE
ORDER INSTITUTING RULEMAKING PURSUANT TO SENATE BILL NO. 790 TO
CONSIDER AND ADOPT A CODE OF CONDUCT, RULES AND ENFORCEMENT
PROCEDURES GOVERNING THE CONDUCT OF ELECTRICAL CORPORATIONS
RELATIVE TO THE CONSIDERATION, FORMATION AND IMPLEMENTATION OF
COMMUNITY CHOICE AGGREGATION PROGRAMS**

JANET COMBS
MONICA GHATTAS

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-3623
Facsimile: (626) 302-1910
E-mail: monica.ghattas@sce.com

Dated: **April 16, 2012**

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

Order Instituting Rulemaking Pursuant to Senate)	
Bill No. 790 to Consider and Adopt a Code of)	R.12-02-009
Conduct, Rules and Enforcement Procedures)	(Filed February 16, 2012)
Governing the Conduct of Electrical Corporations)	
Relative to the Consideration, Formation and)	
Implementation of Community Choice)	
Aggregation Programs.)	

**SOUTHERN CALIFORNIA EDISON COMPANY (U-338 E) REPLY COMMENTS ON THE
ORDER INSTITUTING RULEMAKING PURSUANT TO SENATE BILL NO. 790 TO
CONSIDER AND ADOPT A CODE OF CONDUCT, RULES AND ENFORCEMENT
PROCEDURES GOVERNING THE CONDUCT OF ELECTRICAL CORPORATIONS
RELATIVE TO THE CONSIDERATION, FORMATION AND IMPLEMENTATION OF
COMMUNITY CHOICE AGGREGATION PROGRAMS**

I.

INTRODUCTION

Pursuant to Rule 6.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), Southern California Edison Company (SCE) respectfully files these reply comments on the Commission’s Order Instituting Rulemaking Pursuant to Senate Bill No. 790 to Consider and Adopt a Code of Conduct, Rules and Enforcement Procedures Governing the Conduct of Electrical Corporations Relative to the Consideration, Formation and Implementation of Community Choice Aggregation Programs, Rulemaking (R.)12-02-009 (the Rulemaking). SCE, Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); Marin Energy Authority (MEA), San Joaquin Valley Power Authority, South San Joaquin Irrigation District, City of Santa Cruz, the Climate Protection Campaign, Direct Energy, LLC, Noble Americas Energy Solutions LLC, Constellation Newenergy, Inc., Alliance for Retail Energy Markets (AReM), and Direct Access

Customer Coalition (DACC) (collectively referred to as CCAA); the City and County of San Francisco (CCSF); Local Power Inc. (Local Power); Shell Energy North America (Shell Energy); and Women’s Energy Matters (WEM) filed Opening Comments on the Rulemaking on March 26, 2012. SCE responds to the parties’ Opening Comments on the Rulemaking below.

II.

DISCUSSION

In their Opening Comments, some parties suggest generally that the legislature, in enacting SB 790, intended to tip the scales in favor of community choice aggregators (CCAs) and not just level the playing field.¹ Based on the statutes enacted thus far by the legislature relating to CCAs, the idea that the legislature intended for the Commission and IOUs to promote, expand, and enhance the CCA program is incorrect. In fact, no statute thus far enacted by the legislature mandates the promotion of CCAs, but rather the statutes *authorize* the formation of CCAs(emphasis added)² and “*facilitate*[] the development of community choice aggregation programs or fair competition.”³ The legislature, by concluding the statement with *fair competition*, reveals its intent to level the playing field between CCAs and the IOUs. Plainly stated, the State does not pursue a vision to promote CCAs but rather seeks to provide fair competition between CCAs and the IOUs. Indeed existing law states that “nothing in this section shall be construed as . . . restrict[ing] the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.”⁴ In other words, customers are free to elect, or decline, CCA service. There is no policy preference for promotion of CCAs in statute.

¹ For example, Shell Energy asserts that SB 790 “directs the Commission, in this proceeding, to address how to promote and expand the CCA program” and that the Rulemaking “fails to respond to the statutory directive to enhance the competitive environment for the CCA program.” Shell Energy Opening Comments, p. 3 (emphasis in original). See also, CCAA Opening Comments.

² Assembly Bill (AB) 117 (Stats.2002, c. 838) (“This bill would authorize customers to aggregate their electrical loads as members of their local community with community choice aggregators, as defined. The bill would authorize a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries.”).

³ Senate Bill (SB) 790 (Stats.2011, c. 599).

⁴ *Id.* at § 5, codified at CA Public Utilities Code § 366.2(c)(14).

A. The Commission Should Reject Proposals to Litigate Here Issues Pending or Resolved in Other Dockets

This Rulemaking was established by the Commission in order to comply with Section 707 of the California Public Utilities Code,⁵ which provides:

No later than March 1, 2012, the commission shall institute a rulemaking proceeding for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of the electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2. The code of conduct, associated rules, and enforcement procedures, shall do all of the following:

The statute then contains five subparts outlining various issues related to electric corporations' independent marketing division (IMD) and restrictions related to promotional or political advertising. Thus, the code of conduct and associated rules the Commission is to establish in this Rulemaking are related to marketing by utilities, and enforcement procedures related to violations of the code of conduct and associated rules that are to be established.

Several intervenors isolate subsection (a)(4)(A) of Section 707 which states, “[i]ncorporate rules that the commission finds to be necessary or convenient in order to facilitate the development of community choice aggregation programs, to foster fair competition and to protect against cross-subsidization paid by ratepayers.” They take this language out of context and seek to include several issues not related to marketing and enforcement in the code of conduct to be adopted in this proceeding. The Commission should decline to re-litigate in these proceeding issues that have been or are currently pending before the Commission in other proceedings. Indeed, as discussed below, some parties attempting to raise those issues here have raised these same requests in other more appropriate proceedings before the Commission. Therefore, litigating issues unrelated to CCA marketing in this proceeding would be an improper use of the Commission’s and parties’ resources because the record

⁵ All references to code sections are to the California Public Utilities Code unless otherwise stated.

related to those issues, as well as the expertise needed to address them, is housed in other proceedings. Certain issues raised by the parties' Opening Comments are specifically addressed below.

1. Cost Allocation Was Addressed in D.06-07-029 and Any Further Review Should Occur in the Long-Term Power Procurement Proceeding (LTPP)

In their comments, CCAA cite provisions of SB 790 and existing law⁶ for the proposition that the Commission in this proceeding should “reform its policies and programs to ensure that CC Aggregators and other non-IOU retail electricity suppliers are able to manage their generation procurement without having to also pay for or otherwise subsidize IOU supply procurement.”⁷ These attempts should be rejected. Long-term procurement should not be addressed in this proceeding because this issue has already been addressed in D.06-07-29 (R.06-02-013) with the representation and consideration of Direct Access (DA) and CCA parties. The record developed within R.06-02-013 considered the appropriate mechanism to allocate costs as well as obtain pre-approval by the Commission when the Cost Allocation Mechanism (CAM), as developed in the proceeding, is sought by an IOU.⁸ To the extent the Commission determines that additional review of procurement and CAM issues is necessary, they are more properly addressed in R.12-03-014, which is a successor docket to the LTPP dockets, which contain a full and complete record of the Commission's decisions thus far regarding procurement.⁹

⁶ See CCAA Opening Comments, p. 21-23, citing Sections 365.1(c)(2)(B); 366.2(a)(4) and(5); 366.2(g); 366.2(k)(1), (2) and (3); 380(b)(4); 380(g) and 380(h)(5).

⁷ CCAA Opening Comments, p. 24. See also CCSF and Shell Energy Opening Comments that support CCAA's comments.

⁸ CCAA's proposed Non-Marketing IOU Rule #8 would direct non-marketing IOUs to attribute all costs associated with developing and implementing the code of conduct (including regulatory costs associated with seeking approval of compliance plans) to the non-marketing IOU's generation function. (CCAA Opening Comments Exhibit A, p. 12). Such a determination of costs should be made in the LTPP proceeding. Moreover, this is a clear attempt to shift all costs associated with this rulemaking to bundled customers. It is inappropriate to attribute all costs associated with this Rulemaking and the implementation of the final rules only to bundled ratepayers when the benefits of such rules will be enjoyed by all customers in proportions appropriately determined in the LTPP proceeding.

⁹ R.12-03-014 specifically contemplates addressing resource adequacy, the IOUs bundled procurement plans, CAM and developing and refining procurement rules. See generally R.12-03-014. Some CCA parties submitted comments on R.12-03-014 urging the Commission to move CAM issues to this Rulemaking. See R.12-03-014: Comments of the Western Power Trading Forum on Preliminary Scoping Memo, dated April 6, 2012, p. 5; Comments of AREM and DACC on Preliminary Scoping Memo, dated April 6, 2012, at pp. 3-4; Opening Comments of MEA Regarding the Rulemaking

Continued on the next page

2. Separation of Generation and Delivery Services is More Appropriately Raised in the IOUs' General Rate Cases

CCAA, in proposed Code of Conduct Rule 2, suggest that in this proceeding the Commission should adopt rules that would functionally separate the IOUs generation and delivery services.¹⁰ Such a rule would be inappropriate because Section 707 does not require the Commission to consider restructuring the manner in which the IOUs do business in this Rulemaking. Moreover, this issue is outside the scope of this proceeding and would require the involvement of many stakeholders not involved here. Instead, this issue is more properly addressed in the IOUs' general rate case proceedings.

3. The Power Charge Indifference Adjustment (PCIA) was Recently Addressed in the DA Proceeding (R.07-05-025) and a Draft Resolution is Pending

CCAA request that the Commission revise the PCIA in this proceeding.¹¹ The Commission recently addressed PCIA for DA and CCA customers in D.11-12-018 in the DA proceeding, R.07-05-025.¹² On April 4, 2012, three members of CCAA (AReM, DACC, and MEA) submitted an *ex parte* letter to Commissioners Peevey, Simon, Florio, Sandoval, and Ferron in R.07-05-025, requesting the Commission issue the resolution to implement provisions of D.11-12-018 related to the PCIA. On April 6, 2012, the Energy Division issued a draft resolution on the indifference methodology. Therefore, it is unnecessary for this issue to be re-litigated here. Doing so would also be duplicative and unnecessary waste of Commission resources.

Continued from the previous page

Issued on Long-Term Procurement Planning, dated April 6, 2012, at p. 2. SCE disagrees. To the extent that CCAA parties which to litigate whether or not the CAM needs to be revised in response to related portions of SB790, it is more appropriate to do so in R.12-03-014. Moreover, ratepayer advocates are fully engaged with these issues in the LTTP proceeding and can provide valuable input on any potential negative impacts to SCE bundled customers.

¹⁰ CCAA Opening Comments, Exhibit A, p. 4. Several other rules, including Rules 9 and 10, proposed by CCAA refer to an electrical corporation's "Retail Electric Generation Service." To the extent that the rules refer to this, SCE requests that these rules not be considered for the reasons discussed in this section.

¹¹ CCAA Opening Comments, p. 30.

¹² See D.11-12-018.

4. Section 707 Does Not Require an Unnecessary and Costly Expansion of IOU Operational Responsibilities Under the Tariffs

CCAA's proposed Code of Conduct Rule #7 proposes to unnecessarily expand SCE's operational requirements related to CCAs. Specifically, it provides for: (1) daily revenue transfers to CCAs¹³; (2) new fees owed by IOUs to CCAs¹⁴; (3) all unbilled charges and ISO penalties incurred by the CCA must be reimbursed by the IOU without regard to whether the CCA could have avoided the charges and penalties¹⁵; (4) the IOUs must maintain detailed logs of issues including records regarding customer calls to call centers and issues raised by the CCA¹⁶; (5) the IOUs to redesign bills in order to reallocate NEM charges and credits presumably at bundled customers' expense¹⁷; and (6) requires IOUs to provide written explanations to CCAs within three business days of why a customer has been dropped, such as if they move, refused to pay their bills, etc.¹⁸ Additionally, CCAA's proposed Code of Conduct Rule #14 requires that IOUs not provide customers with a method for opting-out of CCAs.¹⁹ These changes would result in potentially costly operational impacts to SCE and several of them have been previously addressed and incorporated into SCE's Commission-approved Tariffs. CCAA's proposed Code of Conduct Rules #7 and #14 are attempts to revise the IOUs tariffs without proper basis.

¹³ CCAA Opening Comments, Exhibit A, p. 6, proposed rule 7(b). *See* SCE's Tariff Rule 23.Q.3 which provides for the later of the next business day after payment or 17 calendar days after bill rendering.

¹⁴ *Id.* proposed rule 7(a), (d), and (e). These proposed rules cite to Appendices which are not included. Under SCE's Tariff Rule 23, SCE serves as the Meter Data Management Agent (MDMA) for CCAs. MDMA activity is governed by Rule 22.G.7 and by reference, the Direct Access Standards for Metering and Meter Data, which contains performance requirements but does not specify any penalties.

¹⁵ *Id.*, proposed rule 7(a) and (g). *See* footnote 15, *infra*.

¹⁶ *Id.*, proposed rule 7(c) and (h). SCE's Tariff Rule 23.C.4 establishes responsibility for answering questions about bills, emergency situations, etc. It contains no provisions regarding the maintenance of a call log except for certain circumstances, such as storm calls. This rule would expand this requirement.

¹⁷ *Id.*, proposed rule 7(e).

¹⁸ *Id.*, proposed rule 7(d). A utility customer may be "dropped" for various reasons. SCE's Tariff Rule 23.T provides for certain circumstances when a customer may be removed from CCA service. In the event a customer is removed from a rate plan in error, then, SCE's Tariff Rule 17 provides for rebilling to ensure the customer and the ratepayers are made whole as a result of overcharges or undercharges.

¹⁹ *Id.*, p. 8. SCE's Tariff Rule 23.1 specifically addresses opt out procedures making this provision unnecessary.

Moreover, these proposals are outside of the scope of this proceeding, which should be limited to marketing. As such, the Commission should not consider these proposals in this proceeding.

* * *

To the extent that CCAA proposes the addition of rules²⁰ related to issues outside the scope of Section 707, these rules should not be included for consideration in this proceeding and the Commission's marketing Code of Conduct and Associated Rules.

B. CCAA's Code of Conduct Proposals Are Duplicative and Over-broad

In addition to proposing rules related to issues outside the scope of this proceeding, CCAA proposes adding several duplicative and over-broad rules to the Commission's proposed Code of Conduct. SCE addresses many of CCAA's proposed rules below:

- Several of CCAA's proposed rules require the IOUs not to tie the provision of any tariffed service to the taking of any other product or service offered or provided by the IOU.²¹ As stated in Opening Comments, SCE supports a rule that would prohibit the use of rates and programs as a bargaining chip to steer customers away from CCAs; however, SCE requests that the Commission continue to recognize certain Commission-approved energy-based programs should continue to be offered only to bundled customers, such as Critical Peak Pricing (CPP) or Real Time Pricing (RTP).
- CCAA's proposed Code of Conduct Rule #8 would establish financial accounting rules for the IOUs, including a provision that marketing IOUs provide CCAs with a detailed accounting of lobbying and marketing activities upon request. The Commission's proposed rules would require that any independent marketing be paid for by IOU shareholders; as

²⁰ See *Id.*, pp. 11 & 12, Rules Regarding Non-Marketing Electrical Corporation #4, #6 and #8.

²¹ *Id.*, pp. 4 & 8, Proposed Rules of Conduct #4 and #13; and p. 12, Proposed Non-Marketing IOU Rule #5.

such, accounting requirements, beyond the audits proposed to ensure that marketing IOUs adhere to the Code of Conduct, would be inappropriate.²²

- CCAA’s proposed Code of Conduct Rule #11 is adapted from the Commission’s proposed Rule 8, and would seek to broaden that rule.²³ As SCE explained in its Opening Comments, these rules would severely burden its ability to provide customers with effective customer service.²⁴
- CCAA’s proposed rules²⁵ would also place limits on the IOUs’ ability to advertise or market programs and services, going a step further than the rules proposed by the Commission, to prohibit the IOUs from broadly marketing services to all ratepayers and the community.²⁶ SCE agrees that the IOUs should not use ratepayer funds to market against CCAs, as outlined by the Rulemaking’s proposed rules; however, SCE should not be restricted from broadly marketing its services to all ratepayers and the community. SCE has not only a right,²⁷ but a responsibility, to provide customers with information about the programs and services it offers. These proposed rules also limit SCE’s ability to promote Commission-authorized

²² Proposed Rule 8(b) would require the IOUs to make payments to CCAs of any fees owed to the CCA “as described in the attached fee schedules in Appendix A and B.” (CCAA Opening Comments Exhibit A, p. 7). SCE was unable to identify any fee schedules attached to CCAA’s Opening Comments. Thus, SCE is not able to address this statement and the Commission should reject CCAA’s proposal.

²³ CCAA Opening Comments Exhibit A, p. 8. CCAA’s rule goes further to require IOUs to transfer all CCA customers to CCA customer specialists. It is unclear if “CCA customer specialist” would refer to an IOU employee specifically trained to deal with CCA matters, or if it would require the IOU’s to transfer all customer inquiries to the appropriate CCA. Transferring customers with CCA related questions to a non-IOU representative would be an inappropriate, a major departure from Tariff Rule 23, and would significantly interfere with the IOU’s ability to provide basic customer service.

²⁴ SCE Opening Comments, pp. 6-7.

²⁵ CCAA Opening Comments, Exhibit A, p.8. Proposed Rule of Conduct #12, and pp. 11-12, Proposed Non-Marketing IOU Rule #4.

²⁶ CCAA’s proposed Non-Marketing IOU Rule #3 additionally states that the IOU shall not “affirmatively act to retain or obtain a customer for any retail electric supply service offered or provided by the Non-Marketing IOU.” This would place a very broad communication ban on the IOUs. For example, some IOU marketing is performed via mass media (e.g. television, newspapers, social media, etc.) that cannot be limited to specific bundled service customers. But such marketing could be construed as an affirmative act to obtain a customer. The IOUs should not be restricted from carrying out broad, territory-wide marketing campaigns for Commission-approved services and programs.

²⁷ As stated in opening comments, these proposed rules would infringe on SCE’s First Amendment right to free speech.

utility rates, services and programs, as well as its ability to provide education and outreach related to broader Commission policies.

- Much of CCAA’s proposed Non-Marketing IOU Rule #3 is duplicative of the Rulemaking’s proposed Rule 2; however it adds that an IOU shall not “affirmatively act to retain or obtain a customer for any retail electric supply service offered or provided by the Non-Marketing IOU.”²⁸ As mentioned above, SCE agrees that IOUs should not make provision of programs or services contingent on an agreement by a customer not to participate in a CCA; however, IOUs should not be restricted from affirmative acts which are not otherwise prohibited by the code of conduct. For example, the IOUs should not be restricted from carrying out broad, territory-wide marketing campaigns performed via mass media (e.g. television, newspapers, social media, etc.) for Commission-approved programs and services even if this could be construed as an affirmative act to obtain a customer.

C. SCE Agrees that the Dispute Resolution Process Should be Less Rigid, as Suggested by SDG&E and PG&E in Opening Comments

SDG&E and PG&E both note in their Opening Comments that the expedited procedure for resolving CCA Complaints should be less rigid than outlined in the draft Enforcement Procedures. SB790 contains statutory deadlines requiring the CPUC to conclude a CCA complaint case within 180 days unless the deadline is extended by a specific order or consent.²⁹ SCE agrees with PG&E and SDG&E that in some cases, requiring a utility to respond to a complaint case in 15 days may not be feasible. SCE also agrees that the draft Enforcement Procedures should permit the use of dispute resolution services offered by the Commission. Therefore, the draft Enforcement Procedures should be revised to provide that while the parties explore dispute resolution and settlement, they should be directed to meet with an assigned Administrative Law Judge (ALJ) at an expedited prehearing

²⁸ CCAA Opening Comments, Exhibit A, p. 12.

²⁹ Senate Bill (SB) 790 (Stats.2011, c. 599) § 5, codified at CA Public Utilities (P.U.) Code § 366.2(c)(11).

conference to determine how quickly testimony can practically be prepared, what discovery is necessary, and when the hearing should be held. The extent to which the complainant and defendant should have the opportunity to file supplemental and/or rebuttal testimony also should be left to the discretion of the assigned ALJ. This provides the flexibility necessary to the ALJ and parties to determine what the schedule should be for filing testimony, convening hearings, and submitting briefs all while maintaining the expedited schedule requested by the statute.

CCAA suggests that the Enforcement Procedures should be modified to permit the complainant to propound discovery on the defendant, which must be filed and served within 15 days of the date discovery is served.³⁰ SCE suggests that the defendant also be permitted to propound discovery on complainant during the pendency of a complaint case. Moreover, to the extent that the complainant or defendant may need added time in which to respond to discovery, the ALJ should be empowered to grant such extensions when circumstances warrant.

CCAA also suggests that all parties must agree to extend the date of an evidentiary hearing on a Complaint beyond 45 days. SCE suggests that the ALJ be permitted, on the request of a party or after a review of the Complaint, to extend the evidentiary hearing date when circumstances warrant. Finally, CCAA's proposed Rules Regarding Enforcement Procedures #7 would mandate that "the Commission *shall* cooperate with and *assist* the CCA complainant in its effort to recover damages from the offending utility. . . ." It is inappropriate for the proposed rules to mandate action by the Commission. Moreover, once the Commission makes a determination on a complaint, the utility must comply with such a decision or appeal it. To the extent that the utility fails to comply with the decision of the Commission, the complainant would be free to file a subsequent complaint alleging violations of Section 2106.

³⁰ See CCAA Opening Comments, Exhibit A, p. 10, Proposed Rule Regarding Enforcement Procedures #4

D. CCAA’s Definitions Do Not Add Clarity and Most Are Already Included or Addressed in Rules

In its Opening Comments CCAA proposes a series of revisions of the definitions proposed by the Commission in this proceeding containing a draft Code of Conduct. While SCE appreciates all attempts to add clarity to the rules, CCAA has proposed definitions that are generally covered by SCE’s tariffs. Moreover, some definitions proposed by CCAA are incongruous with the definitions contained in tariffs in a way that could cause additional confusion.³¹ SCE suggests that the definitions provided by the Commission, with certain clarifications as suggested in SCE’s opening comments, are sufficient.

E. A Hearing is Not Needed to Address the Draft Rules of Conduct and Enforcement Process Required by SB 790

WEM requests that hearings be held on this matter. SCE disagrees. Hearings are not necessary for this Rulemaking at this time unless there are disputed issues of material fact. Based on the Opening Comments, the Rulemaking is dealing with primarily policy determinations and developing a new code of conduct and associated rules. Thus, SCE agrees with the Rulemaking that the record for this proceeding can be developed through filed comments and reply comments and hearings are not necessary.³²

III.

CONCLUSION

SCE appreciates the opportunity to provide the Commission its reply comments on the Rulemaking.

³¹ Electrical Corporation Billing Error is addressed, and has been the subject of very recent Commission attention, in Rule 17 Section D.

³² R.12-02-009, Order Instituting Rulemaking, issued February 23, 2012, p. 16.

Respectfully submitted,

JANET COMBS
MONICA GHATTAS

/s/ Monica Ghattas

By: Monica Ghattas

Attorney(s) for
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue
Post Office Box 800
Rosemead, California 91770
Telephone: (626) 302-6981
Facsimile: (626) 302-6693
E-mail: monica.ghattas@sce.com

April 16, 2012