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**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  
(Filed October 2, 2003)

**AMENDED SCOPING MEMO AND RULING OF THE ASSIGNED  
COMMISSIONER AND ADMINISTRATIVE LAW JUDGE AMENDING THE  
SCOPING MEMO AND REOPENING THE RECORD**

This ruling revises the scoping memo and reopens the record in this proceeding to receive supplemental information and briefing on a number of issues. It establishes a schedule for service of the supplemental briefing and information. The ruling also directs that parties filing briefs on legal obligations arising under Pub. Util. Code § 394.25(e) in both Rulemaking (R.) 03-10-003 and R.07-05-025 shall serve their briefs on the service lists of both proceedings.

**Procedural Background**

On October 10, 2008, the assigned Commissioner and Administrative Law Judge (ALJ) issued a ruling which amended this proceeding to add a separate phase to address the bond or insurance to be posted by a community choice aggregator (CCA) to ensure there is no cost-shifting in the event CCA customers are involuntarily returned to bundled service. (*See*, Pub. Util. Code, § 394.25(e).) Pursuant to the October 10 Ruling, a workshop was held on November 17 and 18, 2008 to discuss the elements to be included in the re-entry fee, the methodology for calculating the bond requirement, and the options for satisfying

the bond requirement (e.g., surety bond, letters of credit). Upon conclusion of the workshop, it was determined that it would be beneficial for parties to meet informally to explore the possibility of reaching a compromise on the methodology for calculating the CCA bond requirement.

On June 24, 2009, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E),<sup>1</sup> The Utility Reform Network (TURN), San Joaquin Valley Power Authority (SJVPA), and City of Victorville (Victorville) jointly filed a motion for adoption of two settlement agreements. The CCA Bond/Re-Entry Fee Settlement Agreement would establish the methodology for calculating the bond amount and re-entry fee. The Accounts Receivable Offset Settlement Agreement, entered into by PG&E, SCE, TURN, SJVPA, and Victorville, would offset the gross bond amount through the grant to the IOU of a first priority security interest under the California Uniform Commercial Code in CCA Accounts Receivable.

On September 8, 2010, the assigned ALJ issued a proposed decision that approved the two settlement agreements, with some clarifications, and resolved outstanding disputed issues. Upon the request of parties, the time to file comments on the proposed decision was extended. Comments were filed on December 7, 2010 and reply comments were filed on December 14, 2010.

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<sup>1</sup> This decision refers to PG&E, SCE, and SDG&E collectively as the investor-owned utilities (IOUs).

## **Discussion**

The settlement agreements were entered into almost two years ago when there were no CCAs in operation. Since that time, Marin Energy Authority (MEA) has commenced its CCA program, and has been in operation for almost eight months. Additionally, the two settling parties who were actively investigating or implementing CCA programs (SJVPA and Victorville) are no longer doing so.<sup>2</sup> Based on these changes, we are withdrawing the ALJ's proposed decision and reopening the record in this proceeding to receive additional information on the issues specified below.

## Legal Issues

Phase III of R.07-05-025 is considering, among other things, the legal issues pertaining to the Electric Service Provider (ESP) bonding requirement. The bonding requirement for CCAs and ESPs both arise under Pub. Util. Code § 394.25(e). Although the methodology for calculating the bond/re-entry fee for CCAs and ESPs may differ, parties are asked to brief whether the legal obligations arising under § 394.25(e) would apply differently to these two entities. To prevent duplication of effort, the briefing schedule established by ALJ Pulsifer in R.07-05-025 (see Attachment A) shall apply. Therefore, legal briefs shall be due on January 24, 2011, and reply legal briefs due on February 11, 2011. Further, rather than filing separate briefs in the two dockets, parties shall file a single brief in both dockets addressing the legal issues. To ensure that parties in R.07-05-025 are notified of this requirement, this ruling shall be served on the service list of R.07-05-025.

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<sup>2</sup> See *Reply Comments of the San Joaquin Valley Power Authority and City of Victorville*, filed December 14, 2010.

For purposes of filing the legal briefs only, parties shall include the unconsolidated captions for both R.03-10-003 and R.07-05-025 on the Title Page where, in between the proceeding numbers, the words "(NOT CONSOLIDATED)" are prominently set forth. Attachment B of this ruling contains the format that should be used on the Title Page. The first paragraph of the brief should also state that the filing of the document is pursuant to the assigned Commissioner and ALJ Amended Scoping Memo and Ruling in R.03-10-003. Service on both service lists is required.

Additional Information Concerning Bond Methodology

The proposed decision had acknowledged that, due to the novelty of the issues addressed in this proceeding, any adopted bond calculation methodology may need to be reconsidered, and possibly modified, once parties had actual experience with CCA programs. Since MEA has now implemented its CCA program, we believe that it would be reasonable to review the bond calculation methodology to supplement the record so that we may consider whether the proposed decision should be adopted, as currently written, or modified.

We are reopening the record to take additional briefing on the following issues:

1. Should there be a different methodology for calculating the bond requirement for a CCA during its first few years of operation? If so, why? How would this methodology differ from the sliding scale factors proposed in Section C.10 of the Bond/Re-Entry Fee Settlement Agreement? Parties advocating for a different methodology should also explain why the sliding scale factors proposed in Section C.10 do not adequately address the needs of a new CCA program.
2. Section C.12, *Posting and Adjustments to CCA Bond Amounts*, of the Bond/Re-Entry Fee Settlement Agreement proposed

that the bond amount be calculated twice a year (unless a new phase of the CCA Service program is implemented) and adjusted if/when the amount is more than 10% above or below the then-current CCA posted bond amount. In comments to the proposed decision, the City and County of San Francisco (CCSF) has proposed that the bond amount be calculated on a monthly basis, with adjustments when the amount is more than 20% above or below the then-current CCA posted bond amount. Should the frequency of the bond calculation or the trigger amount before the bond amount is adjusted be revised, as proposed by CCSF in its comments to the proposed decision? Why or why not?

3. Should Section C.14, *Failure to Post the Required Bond Amount*, of the Bond/Re-Entry Fee Settlement Agreement be approved as proposed? Under what circumstances, if any, should a CCA's failure to post the required bond not be considered an emergency under Rule 23.T.3? Under what circumstances, if any, should a utility be allowed to pursue the termination process under Rule 23.T.4?
4. What procedures, if any, should be in place to ensure that changes in a CCA's bond obligation due to market volatility does not cause an otherwise financially stable CCA to cease operations?
5. MEA and CCSF have both challenged the implied volatility data used to calculate the stressed energy price. CCSF has also challenged the reliability of the implied volatility data used by PG&E. If the implied volatility data set proposed in the Bond/Re-Entry Fee Settlement Agreement is not used, what should be used instead? If the implied volatility data proposed in the Bond/Re-Entry Fee Settlement Agreement is used, should it be verified by the Commission's Energy Division? If so, how?

With the exception of the issues listed above, supplemental information on any other issues will not be considered. Parties wishing to file comments in

response to any of the questions above shall do so by February 28, 2011; reply comments shall be due on March 14, 2011.

**Schedule**

It is anticipated that the additional information may be obtained through the filing of supplemental briefs and replies, and that no evidentiary hearings are necessary. However, if a party believes evidentiary hearings are necessary, it must make this request at the time it files its supplemental brief on the proposed methodology for calculating the bond/re-entry fee and specifically state the disputed material issues of fact which require hearings. The proposed schedule is as follows:

<b>Event</b>	<b>Date</b>
Briefs on Legal Issues	January 24, 2011
Reply Briefs on Legal Issues	February 11, 2011
Supplemental Briefs on Proposed Bond Methodology	February 28, 2011
Supplemental Reply Briefs on Proposed Bond Methodology	March 14, 2011
Revised Proposed Decision (PD)	May/June 2011
Comments on Revised PD	20 days after Revised PD mailed
Reply Comments on Revised PD	5 days after comments
Final Decision	June/July 2011

As stated above, this schedule is based on the assumption that evidentiary hearings are not necessary. In any event, we intend to resolve this phase of the proceeding within 18 months of the issuance of this Scoping Memo.

(See, Section 1701.5.)

**IT IS RULED** that:

1. The Scoping Memo of this proceeding is amended to take supplemental information on legal issues pertaining to the bond requirement and the methodology for calculating the community choice aggregator (CCA) bond requirement.

2. Briefing on the legal issues pertaining to the bond requirement shall be due on January 24, 2011; reply briefs shall be due on February 11, 2011. Briefs on the legal issues shall comply with format requirements contained in Attachment B of this ruling and the first paragraph of the brief should also state that the filing of the document is pursuant to the assigned Commissioner and Administrative Law Judge Amended Scoping Memo and Ruling in Rulemaking (R.) 03-10-003. Service on both service lists is required.

3. Briefs responding to the questions raised in this Ruling concerning the methodology for calculating the CCA bond requirement shall be due on February 28, 2011; reply briefs shall be due on March 14, 2011.

4. The amended timetable is as set herein.

5. This Amended Scoping Memo and Ruling shall also be served on the service list of R.07-05-025.

Dated January 14, 2011, at San Francisco, California.

/s/ MICHAEL R. PEEVEY  
Michael R. Peevey  
Assigned Commissioner

/s/ AMY YIP-KIKUGAWA  
Amy Yip-Kikugawa  
Administrative Law Judge

