PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item # 35 I.D. # 6090

ENERGY DIVISION RESOLUTION E-4013

November 9, 2006

R E S O L U T I O N

Resolution E-4013: the proposed tariffs filed by Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E), herein the "utilities," intended to implement the Community Choice Aggregation (CCA) Program are hereby adopted, as modified.

By PG&E Advice Letter (AL) 2784-E, SCE AL 1965-E, and SDG&E AL 1773-E, filed on February 14, 2006.

SUMMARY

This resolution approves the aforementioned utilities' Community Choice Aggregation (CCA) Implementation tariffs, which implement the States' CCA Program. This resolution also resolves the issues raised by the various parties in their protests and reply protests to the utilities' CCA Implementation tariffs. The CCA Implementation tariffs were filed pursuant to Assembly Bill (AB) 117, which authorized the creation of the CCA Program.

BACKGROUND

The Commission adopted D. 04-12-046, referred to as the "Phase One" Decision, in Rulemaking (R.) 03-10-003 on December 16, 2004, which addressed costs and other related matters relevant to Community Choice Aggregators pursuant to Assembly Bill (AB) 117.

The Commission adopted D. 05-12-041, the "Phase Two" Decision, on December 15, 2005, which resolved outstanding issues in R. 03-10-003, namely, those issues concerning transactions between the CCAs, the utilities, and their customers.

Pursuant to the Phase One Decision, the utilities filed interim CCA Implementation Tariffs on February 14, 2005; those tariffs were approved by the Energy Division on August 18, 2005.

The Phase Two Decision ordered the utilities to file revised tariffs in compliance with that decision no later than 60 days from its effective date. The utilities complied with this order by filling the advice letters containing these revised tariffs, which are the subject of this resolution, on February 14, 2006. These advice letters contain tariff revisions for the purpose of finalizing the implementation details of the CCA Program.

Shortly after the utilities filed their respective advice letters, the CCA parties requested, and were granted, a workshop to enable the parties to resolve their disagreements concerning the proposed tariffs and were given an extension of 60 days to file protests.

The Energy Division held the workshop on March 28, 2006. Protests were filed on May 5, 2006, and responses were filed on May 17, 2006.

NOTICE

The utilities state that copies of PG&E AL 2784-E, SCE AL 1965-E, and SDG&E AL 1773-E were mailed to the R. 03-10-003 service list.

PROTESTS

Local Power filed its protest on May 1, 2006 corresponding to PG&E AL 2784-E. A joint protest was filed by the City and County of San Francisco (CCSF), the City of Chula Vista (Chula Vista), and the Community Environmental Council (CEC) – referred to as the "CCA Parties" in this resolution – on May 5, 2006 regarding issues with PG&E AL 2784-E, SCE AL 1965-E, and SDG&E AL1773-E. Energy Choice, Inc. also filed a protest concerning all three utility advice letters on May 5, 2006.

The utilities filed a joint response to the parties' protests on May 17, 2006. The Utility Reform Network (TURN) also filed a reply to the protest filed by Energy Choice, Inc. on May 17, 2006.

DISCUSSION

Issues Raised In The Protest Of The City And County Of San Francisco, The City Of Chula Vista, And The Community Environmental Council (the "CCA Parties")

The CCA Parties request that specific language be added to the CCA Implementation tariffs in order to clarify what charges CCA customers will pay and how those charges will differ from those charges paid by bundled customers.

The CCA Parties believe that the utilities' tariff sheets need to accurately reflect the new charges that appear on the CCA customers' bill rather than compile a list of charges incorporated into the CCA CRS as PG&E has done. Based on discussions that CCSF had with PG&E, CCSF proposes the inclusion of the following language at the end of the "Billing" sections of each of the applicable PG&E rate schedules:

> *"DA and CCA customers pay the same amount bundled customers pay for the Energy Cost Recovery Amount, the DWR Bond Charge, and the CTC charge. The amount paid for the DWR Power Charge, however, varies between DA, CCA and bundled customers."*

The CCA Parties believe that similar language should be adopted for both SCE and SDG&E and that this language should be underlined or italicized in the respective tariff sheets. Moreover, the CCA Parties request that the following language be added to the "RATES" section of the proposed utilities Schedule CCA CRS (PG&E sheet 24404-E, SCE sheet 39979-E, and SDG&E sheet 19035-E):

> "The CCA CRS consists of the Department of Water Resources (DWR) Bond Charge, the Regulatory Asset, or its successor, Ongoing Competition Transition Charges and the DWR Power Charges, as set forth in each rate schedule. *CCA customers and bundled customers pay the same amount for the DWR Bond Charge, the Regulatory Asset, and the Ongoing Competition Transition Charge. The amount paid for the DWR Power Charge, however, varies between CCA and bundled customers."*

PG&E collaborated with CCSF in developing both sets of language insertions that the CCA Parties propose. PG&E is willing to include CCSF's proposed language in each of its applicable rate schedules under the Billing section and in the Rates section of its Schedule CCA CRS, sheet 24404-E. PG&E, however, does not agree that it is necessary to underline or italicize this language because, PG&E argues, doing so could de-emphasize other tariff provisions that are just as important.

SCE also does not agree that underlining or italicizing this language is necessary since other tariff provisions have equal importance. Moreover, SCE does not agree that the CCA Parties' proposed language is needed in each rate schedule. SCE does agree that further explanation may be needed to assist customers in differentiating between current utility charges and new CCA charges and proposes to include the following modified language in its Schedule CCA-CRS:

> *"CCA customers pay the same amount Bundled Service customers pay for the DWR Bond Charge and CTC. The amount paid for the DWR Power Charge, however, varies between CCA and Bundled Service customers."*

SDG&E argues that the CCA Parties are raising new tariff language that was not addressed in the Phase Two Decision or reflected in the proceeding's record. Furthermore, SDG&E believes that the proposed language is inappropriate in its rate schedules since SDG&E currently omits the DWR Bond Charge and charges for generation/commodity service. SDG&E believes that if this proposed language were to be added anywhere in SDG&E's tariffs, the addition would be more appropriate in Schedule CCA CRS as modified, below, in order to omit the reference to PG&E's Energy Cost Recovery Amount.

> *"CCA customers pay the same amount bundled customers pay for the DWR Bond Charge and the CTC charge. The amount paid for DWR power costs, however, varies between CCA and bundled service customers."*

The Energy Division notes that in the Phase Two Decision, the Commission found the following:

> "We generally agree that the technical work in R.02-01-011 should be applied to CCAs to the extent it would reflect utility losses associated with CCA load migration. Section 1708 requires notice and opportunity to be heard prior to modify as a Commission order. We must, therefore first consider the matter formally as it applies to CCAs and intend to do so following a decision in R.02-01-011."

In July 2006, the Commission adopted Decision 06-07-030 in Rulemaking (R.) 02-01-011 which updated the DA CRS calculations. The assigned ALJ in R. 03-10-003 will soon address the CCA CRS issues in light of this recent development in R.02-01-011 through a Decision. The utilities should make the necessary changes to their tariffs as ordered by this pending Decision.

The CCA Parties request that the submission of a CCA Implementation Plan to the Commission begin the six-month period in which the utilities are required to finalize the system changes that are necessary in order to accommodate the CCA Program.

In this section, each utility requires a "binding commitment" six months in advance of providing service to the first CCA. This six-month period will enable the utility to initiate the required service processes and infrastructure for the CCA Program.

This "binding commitment" appears to the CCA Parties to be a completely separate commitment from the one made under the CCA Open Season tariff. The CCA Parties note that the proposed six-month binding commitment appears to be the utilities' response to Conclusion of Law 51 in the Phase Two Decision, which states:

> "The earliest possible implementation date for a CCA's provision of service should be the date of the completion of all tariffed requirements but no later than six months following notice by a CCA to offer service or the date the CCA and the utility agree is reasonable, whichever is later, unless an order of the Commission or a letter from the Executive Director states otherwise."

The CCA Parties indicate that the utilities appear to have interpreted the phrase "notice by a CCA to offer service" as equivalent to a "binding commitment" described in the Open Season Tariff. The CCA Parties state that without further explanation in the tariffs, the CCA Parties can only infer that the use of the term "binding commitment" would be understood as a financial obligation on the part of a CCA that does not fulfill the notice requirement by a CCA.

The CCA Parties propose, as an alternative to a "binding commitment" language in this section, that the utilities accept submission of a CCA Implementation Plan to the Commission as evidence of the "seriousness of a commitment" to form a CCA Program. The submittal of the CCA Implementation Plan, the CCA Parties state, should indicate to the respective utility that it should begin making the necessary utility system changes required for the CCA Program which should be completed within six months.

The CCA Parties propose that the last two sentences of Section F.3 be replaced by the following:

> "In advance of providing service to the first CCA in (the utility's) service territory, (the utility) will require 6 months from the date the first CCA files its Implementation Plan with the CPUC or a mutually agreed upon date between (the utility) and the CCA."

The utilities agree to recognize that a CCA's Implementation Plan filing with the Commission should serve as the binding commitment necessary in order for them to take the steps to begin serving the CCA within six months.

In their comments to this draft resolution, the CCA Parties stated the following:

> "The utilities and the CCA Parties, having worked together, have agreed upon language to modify the Utility CCA tariffs to provide that the utilities have at least six-months notice prior to making system changes that the CCAs determine would be required for CCA implementation. The CCA Parties contend that such notice – or some other mutually agreed upon date – provide the Utilities with sufficient time to make necessary system adjustments."

The utilities take issues with this language because they state that:

> "…the CCA Parties' Comments erroneously imply that 1) the CCAs determine what utility system changes are needed for CCA implementation, and/or 2) the CCAs have the discretion to provide the six-month notice if they decide the utility system changes are not required."

The Energy Division supports the CCA Parties' proposal to allow the CCA Implementation Plan submittal to the Commission to serve as the commitment necessary for the utilities to begin making the system adjustments in order to serve CCAs.

In response to the parties' comments and reply comments, the Energy Division herein clarifies that the utilities have the sole responsibility for ensuring that their respective systems are ready for CCA implementation within six months from the date the first CCA files its Implementation Plan with the CPUC or a mutually agreed upon date between the utility and the CCA. The CCAs cannot determine which changes will be required – this is the utilities' responsibility.

Another clarification is that the first CCA does not have the discretion to provide a six-month notice if it believes that utility system changes are not required; the first CCAs must provide a six-month notice to the utilities either through its submittal of its Implementation Plan with the CPUC or by means of a mutually agreed upon date between the utility and the CCA, regardless of whether or not system changes are necessary.

The CCA Parties' proposal on this matter is hereby adopted, as clarified.

The CCA Parties request that language be included in the utilities' tariffs ordering that customers who opt-out during the CCA post-enrollment period are required to pay to the CCA for those cost that the CCA incurred in order to serve these customers during these customers' temporary stay on CCA service.

The CCA Parties request that the following language be added to the bottom of Section I. 5, which addresses the customer opt-out process from the CCA Program during the initial automatic enrollment period:

> "Customers who opt out in the post-enrollment period are required to pay the CCA for any electricity consumed between the enrollment with the CCA and return to (the utility)."

The utilities do not agree that this language should be included in Section I. 5 of their tariffs because this proposed language addresses the service relationship between a CCA and its customers. The utilities note that the Commission has ordered that utility tariffs cannot govern the relationship between a CCA and its customers.

The Energy Division notes that Section V. (Consumer Protection) of the Phase Two Decision unambiguously stated that "…utility tariffs are not the appropriate place to govern the relationships between CCAs and their customers."

If adopted, the language proposed by the CCA Parties would incorporate language into the utility tariffs that addresses the service relationship between a CCA and its customers, which runs counter to the Commission directive cited form Section V. of the Phase Two Decision.

The CCA Parties' proposed language shall not be included in Section I. 5.

The CCA Parties request the removal of the language which calls for the elimination of future communication between a CCA and customers who have opted-out of the CCA Program.

The CCA Parties state that the phrase "eliminate future communications from the CCA" should be removed from Section J.8. (CCA Service Mass Enrollment Processes) of PG&E's and SCE's Rule 23; and SDG&E Rule 27, which states, in full:

> "The CCA shall update its records within three (3) working days from the date of receiving a customers' opt-out notification from PG&E to remove the opt-out customer from CCA Service and **eliminate future communications from the CCA**." *(Emphasis has been added to the language which the CCA Parties cite.)*

The CCA Parties state that nothing in the Phase Two Decision restricts the right of a CCA to communicate with potential customers after they have opted-out of the CCA Program.

The utilities points out that, as was discussed in the March 28, 2006 workshop, that tariff language in Section J. 8. stating "eliminate future communications from the CCA" was intended to eliminate only subsequent "opt-out" notifications to those customers that have already opted-out of the CCA Program. The utilities propose that the following bolded language should be included into Section J.8. in order to clarify their intent:

> "The CCA shall update its records within three (3) working days from the date of receiving a customer's opt-out notification from the Utility to remove the opt-out customer from CCA Service and eliminate future **CCA Customer Notification as defined in Section H of this Rule** from the CCA.

The Energy Division generally agrees with the utilities' proposed modification to Section J.8., but believes that the utilities' recommended modification would be more clear if they added the following underlined language: *(note that the utilities' recommendations nor the Energy Division's modification should be underlined or bolded in the tariffs.)*

> "The CCA shall update its records within three (3) working days from the date of receiving a customer's opt-out notification from the Utility to remove the opt-out customer from CCA Service and eliminate future **CCA Customer Notification <u>concerning a customer's option to opt-out of the CCA Program,</u> as defined in Section H of this Rule** from the CCA.

The modified language, above, shall replace, in its entirety, Section J. 8. of PG&E's and SCE's Rule 23, and Section J. 8. of SDG&E's Rule 27.

CCSF contends that PG&E's existing billing service will not enable a CCA to provide a clear price comparison to residential customers or recoup some of its costs via a demand charge under PG&E's Rate Ready Billing.

CCSF has two concerns with PG&E providing a CCA only four rate options.

First, CCSF indicates that PG&E's existing billing service will not enable a CCA to provide clear price comparisons to residential customers. Secondly, it appears to CCSF that there is no option under PG&E's Rate Ready Billing for a CCA to recoup some of its costs via a demand charge, and that such an option should be available to CCAs. CCSF also recommends that the following language be included in PG&E's tariff section P.1.b.(2):

> "(a) A CCA must select for each service account one of four (4) rate options for its electric supply services:
>
> - a non-volumetric fixed price (lump sum)
> - a 1-tier price per kWh

- a tiered price per kWh that mirrors the number of tier rates that PG&E charges its fully bundled customers
- a time-of-use rate option (charges for time-of-use (TOU) periods specified in PG&E's applicable TOU Schedule for the Customer) including, at the CCA's discretion, demand charges."

PG&E explains that the reason why CCSF will not be able to provide price comparison relative to what PG&E customers pay is because CCSF plans to offer rate options which differ from the ones PG&E currently has in effect. Moreover, PG&E states that, as a result of the Phase I proceeding, the Commission ordered PG&E to unbundle its billing service in order to allow CCA to select individual elements of PG&E's billing service – not to provide a billing service offering to mirror PG&E rates. PG&E states that the ability to provide a mirrored rate structures and the unbundling of billing services are separate issues.

PG&E cites the Phase Two Decision, page 49, in order to clarify that its Rate Ready service is an optional offering, if PG&E and a CCA can agree to modifications to this offering and as long as it is offered at cost.

The Energy Division finds that the issues raised by CCSF represent policy issues that are beyond the scope of this proceeding. The Energy Division's dispute resolution process cannot be used as an avenue to create new Commission policy. CCSF should file a Petition to Modify the Phase Two Decision if it seeks to clarify Commission directives on issues related to billing service option and rate ready billing. CCSF's requests on these matters are hereby rejected.

The CCA Parties request that the text regarding the utilities' obligation to cooperate in the open season be reinserted in the open season tariffs.

The CCA Parties believe that the deletion of the footnote that was originally in the open season rules was not authorized by the Phase Two Decision or by the subsequent modification in D. 06-02-006. The CCA Parties believe that this footnote should be reinserted into the open season tariff. The footnote stated the following:

> "Nonparticipation in this rule by a CCA in no way relieves PG&E **(SCE, or SDG&E)** of its obligation to engage in sound resource planning and to cooperate fully with any potential CCA program implementation."
> *(Parenthesis added by the Energy Division)*

The utilities respond to this issue by stating that they deleted this language because its intent was unclear and this language could be interpreted to mean that the utilities are subject to resource planning obligations beyond what is required in P.U. Code Section 454.5, as codified by Assembly Bill 57.

However, the utilities are not opposed to adding a footnote explaining that the utilities are required to fulfill the same sound resource planning requirement as in P.U. Code Section 454.5. In order to do so, PG&E and SDG&E propose the following modification (which the Energy has underlined) of this footnote to be included in the tariff.

> "Nonparticipation in this rule by a CCA in no way relieves (utility) of its obligation to engage in sound resource planning <u>as required by P.U. Code Section 454.5 and the directives of the Commission as adopted in each utility's procurement plans</u>, and to cooperate fully with any potential CCA program implementation."

In their comments to this Resolution, the CCA Parties state that the above "…caveats constrain the obligation and requirement for sound resource planning to two parts – the requirements of P.U. Code Section 454.5 and CPUC directives regarding utility procurement plans." The CCA Parties believe that these two caveats "should not be defined as containing the universe of issues that impact sound resource planning," and propose the following language to revise this footnote:

> "Nonparticipation in this rule by a CCA in no way relieves the utility of its obligation to engage in sound resource planning. **Sound resource planning included but is not necessarily limited to utility requirements to meet** P.U. Code section 454.5 and the directives of the Commission as adopted in each utilities procurement plans, **as well as** cooperation with any potential CCA program implementation." (The CCA Parties' proposed language revision has been bolded.)

The utilities state that the CCA Parties' disagreement with this footnote is not supported by legal or record-based analysis.

The Energy Division refers the parties to the plain language of P.U. Code Section 454.5, which, as noted by the parties, offers guidelines for utilities to follow when

proposing a procurement plan. In particular, the Energy Division cites Section 454.5 (b), which states:

> "An electric corporation's proposed procurement plan shall include, **but not be limited to, all of the following:" (Emphasis added)** This statute goes on to cite 12 requirements.

As demonstrated in the plain language of P.U. Code Section 454.5, the language found in the noted footnote does not limit the utilities requirements in sound resource planning. Therefore, the CCA parties proposed revision would be superfluous and is therefore rejected.

The Energy Division concludes that the inclusion of the utilities' recommended clarification to this section clarifies the intent of this tariff requirement, consistent with State law. The Energy Division therefore agrees that the revised language proposed by PG&E and SDG&E should be approved and included in the utilities' tariffs, including SCE's tariffs. This modification is hereby adopted but should not be underlined.

The CCA Parties protest the reference and the applicability of the net energy metering (NEM) tariff to CCA customers.

The CCA Parties note that the utilities included language explaining the applicability of the net metering tariff to CCA customers. The CCA Parties feel that the inclusion of CCAs and CCA customers in the NEM tariff contradicts the Phase Two Decision, specifically Conclusion of Law 11 (the correct reference is actually Ordering Paragraph 11), which deferred all aspects of net metering for CCA customers to the Distributed Generation (DG) Rulemaking R. 04-03-017 (now R. 06-03-004). The CCA Parties protest the reference of CCA matters into the NEM tariff until the Commission resolves the issues of CCA net metering in the DG proceeding.

SCE indicates that OP 11 does not require it to modify the provisions of Schedule NEM that have already been approved by the Commission, and states that nothing in the Phase Two Decision requires SCE to change its NEM policy or treat CCA customers differently than DA customers.

PG&E shares a similar opinion as SCE in reference to this issue. PG&E states that its rate schedule NEM allows the CCA customers to participate in NEM on an

interim basis until the Commission considers this matter further. PG&E, however, indicates the following in footnote 11 of its Reply Comments:

> "Should the Commission ultimately determine that the IOUs have misinterpreted the intent with respect to CCA customers and NEM, we are agreeable to removing the proposed language from our filed tariffs; however, we request that the Commission adopt the following language to be inserted in the appropriate NEM rate schedules: "Service under this schedule shall not be permitted in combination with CCA service until such time as the Commission establishes the terms and conditions applicable to a CCA and its customers participating in Net Energy Metering service."

SDG&E also shares similar opinions as SCE. And, as with PG&E, it indicates it is willing to remove the proposed language from the NEM tariff if the Commission does not envisioned CCA customer participation as described in the NEM rate schedules, until a final decision was made in the DG proceeding. Like PG&E, SDG&E requests that the insertion of the following language be adopted by the Commission, to be inserted in the appropriate NEM rate schedules:

> "Service under this schedule shall not be permitted in combination with CCA service until such time as the Commission establishes the terms and conditions applicable to a CCA and its customers participating in Net Energy Metering service."

The Energy Division notes that in Section 19, "Net Metering," the Phase Two Decision indicated the following:

> "We have recently addressed this issue in R.04-03-017, where we are developing policies for distributed generation in general and our Self-Generation Incentive Program (SGIP) in particular. **We believe that proceeding is the appropriate venue for deciding issues relating to renewable project net metering and decline to make any decision here about whether CCAs and their customers would qualify for net metering.** In that regard we would consider whether it is appropriate for utility bundled customers to pay for the high cost of net metered power produced by CCA customers." *(Emphasis added)*

Because the Commission, in the Phase Two Decision, declined **"to make any decision here about whether CCAs and their customers would qualify for net metering"** the NEM option for CCA customers is not authorized and cannot be applied to a CCA and its customers until the Commission formally addresses this issue in R. 06-03-004.

The Energy Division therefore concludes that the following language, as proposed by PG&E and SDG&E, should be inserted by the utilities in the appropriate rate schedules:

> "Service under this schedule shall not be permitted in combination with CCA service until such time as the Commission establishes the terms and conditions applicable to a CCA and its customers participating in Net Energy Metering service."

Issues Raised In Local Power's Protest

Local Power believes that the utilities should include procedures in their tariffs that would enable CCAs to administer funds paid by their ratepayers in order to support their local energy efficiency program.

Local Power calls for procedures to be included in the utilities' tariffs which would enable a CCA Program to administer energy efficiency funds paid by its ratepayers in order to support local energy efficiency programs.

Local Power believes that CCAs wishing to administer energy efficiency programs as part of their service should be able to do so by informing the utility in writing of this intent. When a CCA cuts-over customers, Local Power calls for these CCA customers to be exempt from paying into the utilities' Energy Efficiency fund and to create an identical surcharge paid to the CCA on the same schedule as its procurement funds transfer.

The utilities argue that issues related to CCA energy efficiency administration were found to be outside the scope of the R. 03-10-003 proceeding in the Phase Two Decision, and that the ALJ ordered that they be addressed in the Energy Efficiency Rulemaking (R) 06-04-010. Moreover, SCE cites the May 25, 2005

transcript of evidentiary hearings in R. 03-10-003 that found energy efficiency issues to be outside the scope of the CCA proceeding and which granted the utilities' motion to strike all testimony on this topic. The utilities also note that these issues have already been addressed in the Energy Efficiency Decision 03-07-034 and that any concerns with this Decision should be raised in R. 06-04-010.

The Energy Division agrees with the utilities that Local Power's proposal on this issue is outside the scope of the CCA proceeding. Local Power should raise this issue in R. 06-04-010.

Local Power argues that the utilities' requirement of a six-month delay from the day a CCA makes a Binding Notice of Intent (BNI), to the date a CCA can begin providing service, makes CCA participation in the Open Season involuntary.

Local Power notes that a CCA's participation in the utility's Open Season is supposed to be voluntary. Local Power therefore questions why the utilities require a six-month delay in order to implement the CCA switchover for the first CCA that represents a Binding Notice of Intent (BNI) to the Commission. Local Power argues that this six-month requirement makes the open season involuntary for the CCA to commence service and calls for the tariffs to be changed so that the utilities are prepared to take customers from the first CCA either six months following its BNI, or upon the date on which the utility's tariffs are complete – which ever comes first.

PG&E and SDG&E point out that, read in its entirety, the Open Season language in their tariffs provides an alternative means of informing the utility of a CCA's intent to begin serving customers, thereby making the use of the BNI voluntary.

The Energy Division concludes that the current tariff language in PG&E's and SCE's Rule 23. F.3, and SDG&E Rule 27. F.3, respectively, allows each CCA to voluntarily use the BNI as a means to inform the utility of its intent to begin providing service.

We also address the CCA Parties' concern with a related BNI issue in an earlier section of this resolution, in which we permit the CCAs to use the submittal of their respective CCA Implementation Plans as representing an adequate

"binding notice of intent" to begin providing service in order for the utilities to make the necessary system adjustments within six months.

The Energy Division therefore concludes that no changes are necessary to the utilities' Open Season tariff sections.

Local Power believes that PG&E's tariffs unlawfully assume jurisdiction in determining a CCA's creditworthiness.

Section C. labeled "Utilities Unlawfully Assume Jurisdiction" in Local Power's protest states:

> "PG&E's tariff would allow a utility to determine a CCA's creditworthiness (p. 102376)."

PG&E and SDG&E state that reviewing a customer's creditworthiness is a standard business practice; moreover, this language has been part of the proposed tariffs throughout the proceeding. SDG&E and SCE point out the Phase Two Decision required no changes to this language.

The Energy Division agrees with PG&E and SDG&E that checking a customers' creditworthiness is a normal business practice for any business; this business practice should remain in place when utilities deal with CCAs as utility customers. Local Power's protest on this issue is rejected.

Local Power states that a mutually agreeable CCA implementation schedule with a respective utility is unlawful.

Local Power believes that it is unlawful for PG&E's tariffs to require that the CCA implementation schedule be based on a mutual agreement between the respective utility and a CCA.

PG&E indicates that this section deals with specialized service requests and not basic implementation of CCA, and that due to the specialized nature of a CCA's request, timing concerning the utility's system works and regulatory changes must be taken into account. PG&E states that this provision is therefore necessary in order to ensure that the reliability of its electric service is maintained.

SDG&E takes a similar stance on this issue as PG&E. SDG&E also states that the Commissions Decision did not require changes to this section of the tariff; therefore, SDG&E believes that this language is in compliance with Commission orders.

The Energy Division agrees with PG&E and SDG&E that the tariff language pertaining to a mutual agreeable implementation schedule is in compliance with Commission orders. Local Power's proposed changes are therefore not necessary.

Local Power believes that the "mutual agreement" requirement concerning the CCA's customer notification process is unlawful.

Local Power takes issue with the language in PG&E's and SCE's Rule 23, Section H.3.a (rule 27 for SDG&E) which states: "The CCA and utility must mutually agree on the date before the CCA's Customer Notification process can begin." Local Power feels that this language gives the utility the ability to unlawfully delay a CCA's notification in the middle of complying with a Binding Notice of Intent. Local Power states that such delay would interfere with a CCA's negotiation with suppliers, in violation of P.U. Code Section 366.2.

PG&E states that the mutually agreeable provision pertaining to the customer notification schedule is intended to insure a smooth program implementation. According to PG&E, the purpose of this concept was understood by the CCA community at various workshops and they were agreeable with this tariff language at that time.

SDG&E states that if a CCA decides to use SDG&E's notification services, SDG&E and CCA would necessarily have to agree on a time schedule.

The Energy Division concludes that the language in question does not allow the utility to take unlawful jurisdiction of the Customer Notification Requirement. In fact, cooperation with the utility can better insure that customers are properly notified of the automatic enrollment to CCA service. Moreover, as SDG&E points out, CCA/utility cooperation would be necessary if a CCA chooses to have the utility send out the notification as a bill insert, pursuant to P.U. Code Section 366.2 (c) (13) (A) and Section 366.2 (c) (13) (B). As such, this language is adequately described in the utilities' tariffs and should remain unchanged.

Local Power believes that the tariffs provide the utilities with the unlawful ability to deny a CCA service it requests through a CCASR.

A Community Choice Aggregation Service Request (CCASR) is used to implement various changes to a customer's choice of services and service providers, such as customer CCA elections, customer-initiated returns to bundled service, and CCS-initiated customer returns to bundled service.

Local Power believes that the tariffs, as written, would provide the utility with the unlawful ability to deny a CCA service requested in a CCASR and give the ISO authority to interfere with a CCA's CCASR. The tariff language that Local Power takes issue with appears to be the language found in PG&E's Rule 23. M. 13., "CCA Service Request (CCASR) After Mass Enrollment," which states:

> "In the event the Commission or the ISO governing board declares an emergency and institutes a moratorium of PG&E processing of CCA requests, PG&E shall comply with such moratoriums and inform CCAs or customers of the details of emergency plans."

PG&E and SDG&E state that this section is consistent with the existing DA rules and the overall operation in the energy market. PG&E and SDG&E also state that the CCA community was agreeable with this provision during the Phase Two Proceeding and question why the ability for a CCA to switch bundled customers to CCA service is necessary during a state of emergency.

The Energy Division notes that the Phase Two Decision states the following:

> "Utility tariffs should not permit the utility to terminate a CCA's service without the express approval of the CCA unless the utility has an order of a court, the Commission or the FERC. Where continued CCA service would constitute an emergency or may substantially compromise utility operations or service to bundled customers, the utility should seek an emergency order from the Commission. In such cases, the assigned ALJ, in consultation with the assigned Commissioner, should be authorized to issue a ruling providing interim authority for the utility to terminate a CCA's service." (COL 55)

Given the language in COL 55, the Energy Division does not agree that the language cited by Local Power is unlawful. The tariff language accurately states

that the Commission, and The Federal Energy Regulatory Commission, which regulates the California ISO, have the authority to direct the utilities to comply with emergency plans, including a moratorium on processing CCA requests. We therefore reject Local Power's claim that this tariff language is unlawful.

Local Power believes that PG&E's tariff requirement of a three-day response for "customer discontinuance requests" is too short.

Local Power believes that PG&E's tariff requirement of a three-day response on customer discontinuance request is too short, and that a one-month response period would be more reasonable.

PG&E indicates that the intent of this language is to prevent undesirable impacts, such as over-scheduling of power that could potentially happen due to a slower response time. SG&E provides a similar response as the one provided by PG&E and indicates that this issue was not disputed during the proceeding.

The Energy Division finds that this issue is outside the scope of the CCA proceeding. The Advice Letter process does not offer parties with an opportunity to re-create rules or policies that have already been addressed in the proceeding. Therefore, the change sought by Local Power concerning the CCA timeline is hereby rejected.

Local Power believes that CCA customers' protection regarding meter change requests will not be ensured.

Local Power states: "PG&E's tariff would provide that a utility 'shall endeavour' to answer a meter change request, but no provision is made for the event in which it fails to provide the service."

It appears that Local Power is referring to section M. 12 of PG&E's Rule 23, which states:

> "If an accepted CCASR requires a meter change (i.e., the existing meter is incompatible with the Utility's meter reading system), PG&E shall install a new meter and switch the account over to CCA on the date of installation. PG&E shall endeavor to complete the meter change request within fifteen (15) days after acceptance of the CCASR in the absence of a meter installation backlog or other circumstances beyond PG&E's control such

> as, but not limited to, delays in the installation of a communication line to the meter. PG&E may require Direct Access customers with meters that are incompatible with the utility systems to be replaced with a compatible meter prior to the acceptance of a CCASR. PG&E shall provide notice of any current meter service backlog or the next available installation date. Such metering services are subject to fees in accordance with Schedule E-ESP and E-EUS."

PG&E and SDG&E note that this provision mirrors the switching exemption rules for DA as required by AB 117, Section 366.2 (c) (11), so they included the same language in the CCA tariffs to address this issue. PG&E and SDG&E also state that they do not anticipate a significant number of meter changes and that the goal of changing a meter within 15 days should not be a rigid requirement.

Furthermore, PG&E and SDG&E point out that this issue has not been controversial for DA customers, it was not disputed during the proceeding, and, the Phase Two Decision did not direct them to modify this language. Therefore, PG&E and SDG&E state that this tariff language is in compliance with the Phase Two Decision.

The Energy Division notes that CCA customers are to be treated similar to DA customers, pursuant to Section 366.2 (c) (11) of the P.U. Code, which states:

> "Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission."

Since the language that the Energy Division believes Local Power has concerns with mirrors the switching exemption rules for DA customers, pursuant to P.U. Code Section 366.2 (c) (11), and given that no controversy has occurred in the utilities' dealings with switching bundled customers to DA service, the Energy Division concludes that customer switching to CCA service will not be controversial. The language in Section M. 12 therefore does not need to be modified, as requested by Local Power.

Issues Raised In The Protest Of Energy Choice Inc.

Energy Choice Inc. (ECI) requests that the utilities develop a stand-alone T&D service rate for customer requiring only T&D service from the utility. If one rate is not acceptable, ECI proposes language that it requests be included in each utility tariff.

Energy Choice Inc. (ECI) states that it is unclear why so many tariffs are necessary when T&D costs could be included in one or a small number of tariffs applicable to CCAs. ECI claims that the commodity related terms in these tariffs could impose inappropriate restrictions over the commodity transactions between a CCA and its customers and would effectively regulate a CCA's product design and pricing policies. ECI believes that the utility tariffs should be revised so that they impose no condition or rules on the services provided by the CCA.

ECI's preference is for the utilities to develop a stand alone T&D service rate for customers requiring only T&D service from the utility. If one stand alone T&D service rate is not acceptable, ECI proposes that the following language be included in each utility tariff:

> *"For CCA customers, the costs, terms and conditions pertaining to (utility)'s provision of transmission & distribution services shall be the only portion of this tariff that applies. Notwithstanding any language or rates in this or any other (utility) tariff, the CCA shall be solely responsible for specifying the customer qualifications, product design, costs, and terms of service pertaining to the commodity portion of a CCA customer's electric service."*

SCE states that having one T&D service rate is not possible under the Commission's and the Federal Energy Regulatory Commission's (FERC) rate design methodologies since T&D service rates are designed based on cost causation principles adopted by the Commission and FERC. SCE claims that ECI underestimates the complexity associated with what it refers to as "T&D service" since these tariffs include charges for different services and each charge often varies by customer class. Setting a common rate for divergent customer groups, SCE notes, would significantly undercharge some customers and overcharge other customers. Moreover, SCE states that ECI's proposed alternate language

(above) is contrary to the Commission's stated role that utility tariffs are not the appropriate place to govern relationships between CCAs and their customers.

PG&E makes similar arguments as SCE.

SDG&E disagrees with ECI that implementation of the CCA Program somehow requires the utilities to limit rate offering for T&D service or that backup and standby services should become a province of the CCA. SDG&E believes that ECI's proposal concerning T&D offerings and backup and standby services are beyond the scope of this proceeding and should be rejected. SDG&E also believes that ECI's proposed alternate language is not entirely accurate and that it is superfluous since the rate schedules already set forth CCA customers' obligations.

As the utilities note, T&D service rates are designed based on cost-causation principles that would be violated if one rate was charged to all customer types. Moreover, the current tariff language has been, in large part, derived from tariff language associated to DA service, which have adequately described the utilities' and DA customers' responsibilities associated with this service. Therefore, the Energy Division has no reason to believe that such language is not adequate for those customers that receive CCA service, or, that an additional explanation is needed in the tariffs. ECI's proposal is on the T&D issue is therefore rejected.

ECI requests that the applicability of demand response programs be canceled upon receipt of notice by the utility that a CCA will be offering their own replacement program.

ECI calls for a provision to cancel demand response programs upon receipt of notice by the utility that the CCA will be offering its own replacement program. ECI feels that these programs, as they are currently in place, will provide the utility with an inappropriate opportunity to interfere with the commodity transactions between a CCA and its customers. ECI feels that a CCA must have sole authority to blend supply-side and demand-side strategies in formulating its energy supply portfolio.

SCE believes that this request should be denied because ECI fails to demonstrate that the Phase Two Decision in this proceeding authorizes such request. SCE points out that many of the demand response programs the ECI wants to deprive CCA customers of participating in are reliability-based programs funded

through the utilities' distribution rates – not the commodity-base programs that ECI claims they are. Lastly, SCE feels that if DA customers are eligible to participate in day-ahead demand response programs, CCA customers should be eligible to participate in this program as well.

PG&E claims that the arguments that ECI makes on this issues are beyond the scope of this compliance filing.

SDG&E states that this proposal was not considered during the course of the proceeding and therefore, SDG&E feels that it is inappropriate to consider this issue in a compliance filing. Moreover, SDG&E disagrees with any requirement that would prohibit utilities from pursuing commodity related programs.

The Phase Two Decision did not address this issue, nor was this issue addressed during the other phases of the CCA proceeding. Given the compliance nature of these advice letters, we reject ECI's proposal on this matter and remind ECI that the appropriate means in which to address this issues is through a Petition to Modify D. 05-12-041 or in the Demand Response dockets.

ECI claims that economic development rates should not be available to CCA customers for three years in order to ensure that they are not used as a tool to entice customers to opt-out of the CCA Program.

ECI calls to modify the utility tariffs so that economic development rates do not apply to an existing CCA customer for three years in order prevent the utilities from soliciting customers to opt-out of the CCA program by offering them economic development rates. ECI notes that AB 117 was clear in its intent for utilities to not interfere with the development of the CCA Program and ECI believes that the law would frown upon de facto competition between CCAs and utilities through such tariff options.

SCE states that the Commission directed the utilities to offer CCA customers equivalent economic development incentives as are offered to DA customers. SCE notes that in D. 05-09-018, the Commission found that not offering equivalent Economic Development (ED) incentives to CCA and DA customers may actually provide an incentive to customers to opt-out of CCA service, or return to Bundled Service if they are already CCA customers. SCE believes that the proper action for ECI to take in order to pursue it proposed modifications is to submit a Petition to Modify D. 05-09-018 pertaining to this issue.

PG&E and SDG&E state that ECI's argument is outside the scope of this compliance filing and should therefore be rejected. Also, PG&E states that ECI misunderstands the purpose of the ED rates. PG&E explains that ED rates have specific qualifying criteria as established in D. 05-09-018 and are not freely available to all customers, as ECI suggests. Moreover, customers on EC rates are also eligible for DA and CCA service.

Even though AB 117 seeks to limit any unintended utility interference in the CCA Program, AB 117 did not intend to limit customer options, which would occur under ECI's request to limit the applicability of the ED rate to CCA customers. Moreover, as SCE points out, not offering CCA customers an ED rate could provide an incentive to customers to opt-out of the CCA Program. As such, the Energy Division believes that ECI does not make a convincing argument that the utilities would use the ED rate to retain customers or woo them back from CCA service. ECI's proposal is therefore rejected.

ECI believes that the utility tariffs overstep their boundaries by limiting a CCA's discretion to phase-in its customers and by proposing higher costs for CCAs with longer phase-ins.

ECI claims that the utilities propose to limit CCA customers' class phase-ins to one year and that the utilities propose higher costs for CCAs with longer phase-ins. ECI claims that both of these proposals should be rejected.

The utilities explain that section E.1.h. of its tariffs would not limit phase-ins, but rather, provide the CCA with two cost options for phase-ins: a Standard phase-in option and a Specialized Service Request phase-in option. The latter of which, like the standard phase-in option, would be charged according to cost, which could be the lower, about the same, or higher than the standard option cost, depending on a respective CCA implementation requirements.

The Energy Division concludes that the utilities tariffs do not limit CCA customer phase-ins and that these tariffs are in compliance with the Commission's orders to base phase-in charges according to cost. ECI's claims on this matter are without merit and hereby rejected.

ECI states that the utilities have been unable to consistently interpret the Commission's decision regarding the CRS for CCA customers.

ECI states that that the utilities appear to reach their own determination of what falls within the 2 cents/kWh CCA CRS and that they make no effort to determine whether this 2-cent cap is too high. ECI takes issues with the fact that PG&E and SCE do not have similar CTC and DWR Power charges. Moreover, ECI also takes issue with the fact that SDG&E made no attempt to support the CRS calculation and includes its procurement costs under the CRS, creating, in ECI's view, confusion concerning the CCA CRS. Nevertheless, ECI believes SDG&E's approach is correct.

ECI also requests that SCE's one-cent HPC be omitted form the CRS table. ECI believes that the explanation of the applicability of the HPC, and its amount, would be appropriately shown elsewhere in the tariffs, or in a footnote. ECI also takes issue with PG&E's Energy Cost Recovery Amount Charge and with the fact that PG&E does not provide conditions to indicate that the charge would not be universally applied.

ECI offers three recommendations to remedy its concerns. First, it urges the Commission to cap the CRS at 2 cents, or less, and that any other incremental charges for stranded costs should not be included in the CRS. Secondly, ECI recommends that charges that are paid by both CCA and bundled customers and which are part of the CRS should be clearly identified, while charges external to the CRS should be shown elsewhere. Thirdly, ECI recommends that the CCA CRS be reviewed every six months during the first 2 years of the CCA Program in order to avoid significant under/over collections.

SCE argues that it has followed the Commission's orders in adopting a 2 cents/kWh CRS CCA customers and notes that it is in compliance with the Phase One Decision in including only the DWR Power Charge and the Competitive Transition Charge (CTC) components into the CRS. SCE believes that it has made this fact sufficiently clear in the Rates section of its Schedule CCA-CRS.

However, SCE agrees to remove the HPC from the CRS table and add the following language to add more clarity to its tariff:

> "The HPC provisions of Schedule DA-CRS apply to CCA Customers who, as former Direct Access Customers, remain responsible for payment of an HPC obligation."

PG&E believes that its tariffs, including the CRS applicability, are in compliance with the Phase Two Decision. In response to ECI's claim that PG&E and SCE CRS exceeds the 2-cent-per kWh cap, PG&E notes that this capped CRS was simply an interim rate which was not comprised of specified levels of unbundled components and that the Phase One Decision allowed for differences in these components. PG&E states that it includes the DWR Power Charge and its Energy Cost Recovery Amount into its CCA CRS.

As for ECI's concern with the format and clarity of the CRS rate components in the tariffs, PG&E states that it has addressed this concern after March 28th workshop through discussions with CCSF and that it has proposed clarifying language in its response to the parties' protests. Lastly, PG&E disagrees with ECI's request that the CRS be reviewed and possibly adjusted every six months, since these costs, PG&E points out, are to be determined in the utilities open season and through the CCA CRS vintaging process.

SDG&E make similar arguments as PG&E, mentioning the interim status of the 2 cent cap, the fact that it is not comprised of specified levels of unbundled components, and the finding of the Phase One Decision which recognized that each component of the CRS would, in all likelihood, be different for each utility. SDG&E states that it is somewhat confused by ECI's contention that stranded procurement costs be rejected if they are incremental to the CRS. SDG&E believes that its tariffs are in compliance with Commission orders and states that no additional changes to them are needed concerning this CRS issues.

TURN states that ECI errs in suggesting the PG&E's Energy Cost Recovery Amount (ECRA) should be counted as part of the 2 cents/kWh CRS. TURN notes that the PG&E's ECRA and SCE's HPC should be collected separately, and in addition to, the CCA CRS. TURN recommends that the new methodology for calculating the CRS for DA customers in R. 02-01-011 should apply to the CCA CRS calculation.

The Energy Division notes that in the Phase Two Decision, the Commission found the following:

> "We generally agree that the technical work in R.02-01-011 should be applied to CCAs to the extent it would reflect utility losses associated with CCA load migration. Section 1708 requires notice and opportunity to be heard prior to modify as a Commission order. We must, therefore first

> consider the matter formally as it applies to CCAs and intend to do so following a decision in R.02-01-011."

In July 2006, the Commission adopted Decision 06-07-030 in Rulemaking (R.) 02-01-011 that updated the DA CRS calculations. The assigned ALJ in R. 03-10-003 will soon address the CCA CRS issues in light of this recent development in R.02-01-011 through a Decision. The utilities should make the necessary changes to their tariffs as ordered by this pending Decision.

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments, and will be placed on the Commission's agenda no earlier than 30 days from today.

Comments to this draft resolution were submitted by the "utilities," (PG&E, SDG&E and SCE), and "the CCA Parties" – collectively The City and County of San Francisco, The City of Chula Vista, The Community Environmental Council, and Energy Choice Inc.

In their opening comments, the utilities expressed support for the Draft Resolution and requested that it be adopted by the Commission, as written.

The CCA Parties agreed with all but one item in the Draft Resolution. The CCA Parties' remaining disagreement centers around a footnote dealing with the utilities' responsibility to engage in sound resource planning that was initially deleted, but that the draft resolution orders to be re-included, as modified, in the

tariffs. In their comments, the CCA Parties submit language that they would like the Commission to adopted in the tariffs, in place of the referenced footnote.

Joint reply comments were submitted by the utilities. In their reply comments, the utilities made further clarifications to three issues they deemed were still unclear or warranted further comment. These three issues are: 1) the six-month advanced notice requirement, 2) payment of CCA charges during the opt-out notification period, 3) sound resource planning footnote.

The Energy Division clarifies and resolves the issues dealing with the six-month notification period and the footnote dealing with sound resource planning in the relevant sections of this Resolution. The Energy Division does not deem necessary to further address the issue dealing with the payment of CCA charges during the opt-out notification period, as neither party raised an issue that is substantive to the outcome of this Resolution.

FINDINGS

1. The Commission adopted D. 04-12-046, referred to as the "Phase One" Decision, in Rulemaking (R.) 03-10-003 on December 16, 2004, which addressed costs and other related matters relevant to Community Choice Aggregators (CCAs) pursuant to Assembly Bill (AB) 117.

2. The Commission adopted D. 05-12-041, the "Phase Two" Decision, on December 15, 2005, which resolved outstanding issues in R. 03-10-003, namely, those issues concerning transactions between the CCAs, the utilities, and their customers.

3. The Phase Two Decision ordered the utilities to file revised tariffs in compliance with that decision no later than 60 days from its effective date. The utilities complied with this order by filling the advice letters containing these revised tariffs, which are the subject of this resolution, on February 14, 2006.

4. Protests were filed on May 5, 2006.

5. Responses to the protests were filed on May 17, 2006.

6. In July 2006, the Commission adopted Decision 06-07-030 in Rulemaking (R.) 02-01-011 which updated the DA CRS calculations. The assigned ALJ in R. 03-10-003 will soon address the CCA CRS parties' request that specific language be added to the CCA Implementation tariffs in order to clarify what charges CCA customers will pay and how those charges will differ from the charges that bundled customers pay, in light of this recent development in R.02-01-011 through a Decision. The utilities should make the necessary changes to their tariffs as ordered by this pending Decision.

7. The CCA Parties' proposal to allow the CCA Implementation Plan submittal to the Commission for the purpose of serving as the commitment necessary for the utilities to begin making the system adjustments to serve the CCA is adopted.

8. In response to the parties' comments and reply comments, the Energy Division herein clarifies that the utilities have the sole responsibility for ensuring that their respective systems are ready for CCA implementation within six months from the date the first CCA files its Implementation Plan with the CPUC or a mutually agreed upon date between the utility and the CCA. The CCAs cannot determine which changes will be required – this is the utilities' responsibility.

9. The first CCA does not have the discretion to provide a six-month notice if it believes that utility system changes are not required; the first CCAs must provide a six-month notice to the utilities either through its submittal of its Implementation Plan with the CPUC or by means of a mutually agreed upon date between the utility and the CCA, regardless of whether or not system changes are necessary.

10. If the CCA Parties' request concerning language addressing the requirement of customers' obligation to pay to the CCA for those cost that the CCA incurred to serve these customers during these customers' temporary stay on CCA service is adopted, it would incorporate language into the utility tariffs that addresses the service relationship between a CCA and its customers. Such language would run counter to the Commission directive cited form Section V. of the Phase Two Decision. The CCA Parties' proposed language shall therefore not be included in Section I. 5.

11. In light of he CCA Parties' request for the removal of the language which calls for the elimination of future communication between a CCA and customers who have opted-out of the CCA Program, Section J. 8. of the utilities' tariffs shall be modified as follows:

    "The CCA shall update its records within three (3) working days from the date of receiving a customer's opt-out notification from the Utility to remove the opt-out customer from CCA Service and eliminate future **CCA Customer Notification <u>concerning a customer's option to opt-out of the CCA Program,</u> as defined in Section H of this Rule** from the CCA. (Note: this language shall not be bolded or underlined)

12. CCSF's contention that PG&E's existing billing service will not enable a CCA to provide a clear price comparison to residential customers is beyond the scope of this proceeding, and hereby rejected. The Energy Division's resolution dispute process cannot be used as an avenue to create new Commission policy.

13. CCSF should file a Petition to Modify the Phase Two Decision if it seeks to clarify Commission directives on issues related to billing service option and rate ready billing.

14. The text regarding the utilities' obligation to cooperate in the open season shall be reinserted in the open season tariffs, modified as follows:

    "Nonparticipation in this rule by a CCA in no way relieves (utility) of its obligation to engage in sound resource planning <u>as required by P.U. Code Section 454.5 and the directives of the Commission as adopted in each utility's procurement plans</u>, and to cooperate fully with any potential CCA program implementation." (Note: this text should not be underlined in the tariffs.)

15. The CCA Parties proposed revision to Finding # 14 is hereby rejected. Contrary to the CCA Parties' claim, the plain language of P.U. Code Section 454.5 does not limit the utilities' requirements in sound resource planning.

16. Service under rate Schedule NEM shall not be permitted in combination with CCA service until such time as the Commission establishes the terms and conditions applicable to a CCA and its customers participating in Net Energy Metering service.

17. Local Power's proposal to include procedures in the utilities' tariffs that would enable CCAs to administer funds paid by their ratepayers in order to support their local energy efficiency program is outside the scope of this proceeding and is hereby rejected. Local Power should raise this issue in R. 06-04-010.

18. Local Power's claim that the utilities' requirement of a six-month delay from the day a CCA makes a Binding Notice of Intent (BNI), to the date a CCA can begin providing service, makes CCA participation in the Open Season involuntary is hereby rejected. No changes are necessary to the utilities' tariff Section F. 3.

19. Checking a customers' creditworthiness is a normal business practice for any business; this business practice should remain in place when utilities deal with CCAs as utility customers. Local Power's protest on this issue is rejected.

20. The tariff language pertaining to a mutual agreeable implementation schedule is in compliance with Commission orders. Local Power's proposed changes to this tariff language are therefore not necessary.

21. The "mutual agreement" requirement concerning the CCA's customer notification process does not allow the utility to take unlawful jurisdiction of the Customer Notification Requirement. This language is adequately described in the utilities' tariffs and should remain unchanged.

22. The Commission, and The Federal Energy Regulatory Commission, which regulates the California ISO, have the authority to direct the utilities to comply with emergency plans, including a moratorium on processing CCA requests. Local Power's claim that the utilities' tariffs give the utilities the unlawful ability to deny a CCA service request through a CCASR is hereby rejected.

23. Local Power's belief that PG&E's tariff requirement of a three-day response for "customer discontinuance requests" is too short is outside the scope of the

CCA proceeding. The change sought by Local Power concerning the CCA timeline is hereby rejected.

24. Since the language that the Energy Division believes Local Power has concerns with mirrors the switching exemption rules for DA customers, pursuant to P.U. Code Section 366.2 (c) (11), and given that no controversy has occurred in the utilities' dealings with switching bundled customers to DA service, the Energy Division concludes that customer switching to CCA service will not be controversial. The language in Section M. 12. therefore does not need to be modified, as requested by Local Power.

25. T&D service rates are designed based on cost-causation principles that would be violated if one rate was charged to all customer types. Moreover, the current tariff language has been, in large part, derived from tariff language associated to DA service, which have adequately described the utilities' and DA customers' responsibilities associated with this service. Therefore, the Energy Division has no reason to believe that such language is not adequate for those customers that receive CCA service, or, that an additional explanation is needed in the tariffs. ECI's proposal is on the T&D issue is therefore rejected.

26. Given the compliance nature of these advice letters, we reject ECI's proposal that the applicability of demand response programs be canceled upon receipt of notice by the utility that a CCA will be offering their own replacement program, and remind ECI that the appropriate means in which to address this issues is through a Petition to Modify D. 05-12-041 or in the Demand Response dockets.

27. Even though AB 117 seeks to limit any unintended utility interference in the CCA Program, AB 117 did not intend to limit customer options, which would occur under ECI's request to limit the applicability of the Economic Developement rate to CCA customers. Moreover, as SCE points out, <u>not</u> offering CCA customers an ED rate could provide an incentive to customers to opt-out of the CCA Program. As such, the Energy Division believes that ECI does not make a convincing argument that the utilities would use the ED rate to retain customers or woo them back from CCA service. ECI's proposal is therefore rejected.

28. The utilities' tariffs do not limit CCA customer phase-ins. Moreover, the tariffs are in compliance with the Commission's orders to base phase-in charges according to cost. ECI's claims that the utilities' tariffs overstep their boundaries by limiting a CCA's discretion to phase-in its customers and by proposing higher costs for CCAs with longer phase-ins are without merit.

29. The assigned ALJ in R. 03-10-003 will soon address the CCA CRS issues through a Decision. ECI's concerns regarding the CRS for CCA customers can better be addressed when this decision is finalized.

30. Comments to this draft resolution were submitted by the "utilities," (PG&E, SDG&E and SCE), and "the CCA Parties" – collectively The City and County of San Francisco, The City of Chula Vista, The Community Environmental Council, and Energy Choice Inc.

31. The utilities expressed support for the Draft Resolution in their opening comments and requested that it be adopted by the Commission, as written.

32. The Energy Division clarifies and resolves the issues raised by parties in their respective comments and reply comments dealing with the six-month notification period and the footnote dealing with sound resource planning in the relevant sections of this Resolution. The Energy Division does not deem necessary to further address the issue dealing with the payment of CCA charges during the opt-out notification period, as neither party raised an issue that is substantive to the outcome of this Resolution.

THEREFORE IT IS ORDERED THAT:

1. The Commission approves, as modified, PG&E Advice Letter 2784-E, SCE Advice Letter 1965-E, and SDG&E Advice Letter 1773-E, filed on February 14, 2006, which implement CCA service in their respective service territories, in compliance with Decision 05-12-041.

2. The utilities must file revised tariffs containing the modifications directed in this resolution within 20 days of the effective date of this resolution.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on November 9, 2006; the following Commissioners voting favorably thereon:

_____
STEVE LARSON
Executive Director

MICHAEL R. PEEVEY
PRESIDENT
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners