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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ITEM#11 I.D.#7175
ENERGY DIVISION **RESOLUTION E-4133**
December 20, 2007

R E S O L U T I O N

Resolution E-4133: The California Public Utilities Commission (Commission) hereby finds that an interim bond of $100,000 is sufficient for SJVPA to post with the Commission as part of its Community Choice Aggregation (CCA) registration packet pursuant to Decision 05-12-041. The methodology for calculating the amount of this bond will be revisited by the Commission in the near future.

No Advice Letters were submitted concerning this issue. This Resolution was initiated by the Commission's Energy Division Staff.

SUMMARY

San Joaquin Valley Power Authority (SJVPA)[1] is the first Community Choice Aggregation (CCA) provider in California to have its Implementation Plan (IP) certified by the Commission. Pursuant to Commission Orders, SJVPA also must register with the Commission, which entails submitting evidence of insurance, or a bond, along with a CCA/Utility Service Agreement.

In the CCA Rulemaking (R.03-10-003), the Commission did not set an amount for a bond nor a methodology for calculating a bond that could be applied to SJVPA. The Commission's Energy Division staff requested that PG&E and SCE (herein "the utilities") and SJVPA cooperate in calculating, and agreeing upon, a bond

[1] As of the latest Implementation Plan filed by SJVPA with the Commission, the SJVPA consists of the following cities – Clovis, Corcoran, Dinuba, Reedley, Selma, Kingsburg, Lemoore, Parlier, Hanford, Kerman, Sanger – in addition to Kings County and Tulare County. However, per an October 31, 2007 e-mail from SJVPA's counsel, Tulare County has decided to terminate its participation in the program.

amount.[2] The parties' efforts did not result in an agreed-upon bond amount, but their efforts did result in two proposals.

PG&E proposed that the total applicable bond requirement for SJVPA to provide service in PG&E's service territory should be in excess of $140 million. SCE did not make a specific bond proposal, but generally agrees with PG&E's bond calculation methodology. SJVPA proposed that its bond requirement should be equivalent to the security deposit requirement that currently applies to an Energy Service Provider's (ESP) registration with the Commission - currently between $25,000 and $100,000, depending on how many customer accounts are served by the ESP. SJVPA calls for the $100,000 bond to be accepted on an interim basis, until the Commission revisits this deposit issue, pursuant to D. 03-12-015.

BACKGROUND

Members of SJVPA have passed city or county ordinances enabling them to be part of a CCA program, pursuant to the relevant Public Utility (P.U.) Code Sections which were codified by the adoption of Assembly Bill (AB) 117 (2002).

Pursuant to Decision (D.) 05-12-041, a CCA must file an IP with the Commission and register with the Commission. SJVPA submitted its IP for Commission review on January 29, 2007. The Commission certified SJVPA's IP on April 30, 2007. As part of its registration requirement, SJVPA now needs to provide "evidence of insurance, self-insurance or a bond" in order to be registered by the Commission. The Commission determined in D. 05-12-041 that this bond "will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting."[3] Once registered, SJVPA plans to begin providing service to municipal accounts in February of 2008, followed

[2] SJVPA member cities and counties are located in the PG&E and SCE service territories.

[3] D. 05-12-041, Section IV: "The CCA Implementation Plan and the Process for CCA Registration (Utility Tariff Section F)"

by large commercial and industrial accounts in May of 2008, medium commercial accounts in August of 2008, and residential, agricultural, and all remaining accounts in November of 2008.

Over the past few months Commission staff has been in communication with the utilities and SJVPA concerning what bond amount should be posted by SJVPA as part of its registration requirement with the Commission. Through phone conversations, e-mail exchanges, and a meeting with SJVPA and utility representatives, the Commission's staff has come to the following understanding of the aforementioned parties' recommendations concerning SJVPA's bond:

The Utilities' Bond Proposal

The utilities contend that in the event of another power crisis – in which the short term power costs would likely be very high – SJVPA might be unable to continue providing electric service to its customers. The utilities argue that SJVPA's bond should be sufficient to cover the increased procurement costs that the utilities might face during this type of stressed energy market condition; and, that this risk should be covered over the course of a year in order to insure against the risk that SJVPA suddenly ceases to provide generation service and returns all of its customers back to the utilities' bundled electric service portfolio.

PG&E's methodology for calculating the monetary value of this risk begins by looking at the current year-ahead average market price of electricity. Next, PG&E considers a range of potential year-ahead market conditions using confidence intervals that give PG&E two probability scenarios, one with a 95% probability that the calculated bond amount would cover PG&E's procurement costs for those returned customers and another with 99% probability. At a meeting on September 26, 2007, PG&E informed the Commission's staff and SJVPA representatives that a bond amount of $70 million would cover these potential risks of SJVPA becoming a CCA in PG&E's service territory based on a 95% confidence level. At a 99% confidence level, PG&E calculated a SJVPA bond amount of $100 million. Commission staff understood that these figures represented the procurement costs that PG&E would incur that would not be covered by PG&E's electric procurement rates.

In a post-meeting follow-up e-mail dated October 8, 2007 PG&E increased its bond calculation estimate to more than $140 million, stating:

> "… in PG&E's service territory alone SJVPA is expected to serve approximately 2100 GWh of customer load annually. Even at a non-stressed market price of $67/MWh, which is currently an approximate price for power delivery in 2008 and 2009, the cost for PG&E to procure power to serve the returning CCA customers for a year is more than $140 million."

PG&E also stated in this October 8, 2007 e-mail that the utilities propose that the bond amount be adjusted annually in order "to reflect the most recent forward curves for electricity purchases and any changes in SJVPA's load, which could result in the bond amount moving either up or down to cover the next year of the program."

Unlike PG&E, SCE did not provide a dollar estimate of what it believes SJVPA's bond requirement should be. SCE generally agrees with PG&E's "stressed market forecast approach" for calculating SJVPA's bond amount, but is unaware of the details of how PG&E stressed its forward market curve. In short, SCE has not yet decided on a "stressed market" method for calculating the CCA bond amount.

In response to an Energy Division follow-up e-mail inquiring about the status of SCE's bond calculation applicable to SJVPA, on November 6th SCE stated:

> "SCE has not yet calculated a bond amount for SJVPA. SCE believes the Commission needs to consider this matter after providing parties with a full and fair opportunity to be heard and developing an adequate record on the issues. For SCE to calculate the SJVPA bond amount in a manner consistent with PG&E . . . we estimate would take about two weeks to complete."

<u>SJVPA's Proposal</u>

SJVPA proposes that, on an interim basis, it should be required to post a bond that is equivalent to the bond that has been adopted for ESPs as part of their registration requirement with the CPUC, pursuant to Commission Decision (D.) 03-12-015.

We note that D.03-12-015 implemented the provisions of AB 117 (2002), which revised certain requirements for ESPs. Among other things, D.03-12-015

extended the registration requirement to all ESPs and set the amount of the security deposit or bond that an ESP is required to post as proof of "financial viability" in a range from $25,000 to $100,000 based on the number of customer accounts that ESP serves. D.03-12-015 also addressed P.U. Code Section 394.25 (e), which states:

> "If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers."

We further note that in regards to P.U. Code Section 394.25 (e), D.03-12-015 did not determine what, if anything, should be covered by "reentry fees" nor the amount of the bond that should be required. Rather, D.03-12-015 solicited comment on these issues, including "the use of the security deposit [already posted as proof of financial viability] to cover reentry fees (if ever required) (Sec. 394.25 (e))." Although comments were received from the interested parties, the Commission has not yet resolved the outstanding issues from D.03-12-015. Thus, the only security posted by ESPs that might cover potential reentry fees is the security deposit that ranges up to $100,000.

SJVPA provided a further follow-up clarification to its bond calculation proposal through an October 9, 2007 e-mail, stating:

> "SJVPA is not saying that a bond in the amount of $100,000 is sufficient…SJVPA is saying: (1) since the same provisions of AB 117 dealing with the security bond apply to ESPs, SJVPA ought to be treated comparably to ESPs in this regard and (2) so that service to SJVPA's first phases (SJVPA's own members' electric accounts and then other commercial/industrial accounts) is not delayed by this dispute, SJVPA is

> willing to accept, on an interim basis for the first phases, a bond amount in the range of what the ESPs have been required to post for their entire load."

SJVPA has additionally stated that, currently, several ESPs serve more load throughout California than SJVPA plans to ultimately serve, yet none of these ESPs have deposited more than $100,000 as part of their registration requirement, pursuant to 394.25 (e) (which also applies to CCAs). Therefore, SJVPA believes that an interim $100,000 bond should also satisfy SJVPA's registration requirement.

NOTICE

This resolution is being issued on the Commission's own motion. Notice of this draft resolution is being provided by distributing it to the R.03-10-003 service list (which includes SCE, PG&E, and SJVPA).

DISCUSSION

Pursuant to D.05-12-041 in the CCA rulemaking, a bond should cover three types of risks: 1) penalties for failing to meet operational deadlines, 2) errors in forecasting, and 3) potential reentry fees.

With regard to the failure to meet operational deadlines, we note the following. A CCA has the option to sign a Binding Notice of Intent (BNI) with the utility at any time throughout the year. A BNI allows a utility take into account a CCA's commencement date when planning to meet the utility's load and resource adequacy (RA) requirement.[4] By signing a BNI, the CCA can also mitigate its customers' Cost Responsibility Surcharge (CRS) obligation; therefore, an incentive exists for a CCA to sign a BNI with the serving utility. However, if the CCA does not begin providing service on its mutually agreed upon BNI date, the

[4] A firm commitment (through a BNI) from a CCA to begin to serving load can aid a utility in forecasting and meeting its RA requirement, particularly during a utility's "Open Season" process.

utility must procure additional electricity to serve the load that did not depart to the CCA as expected, which may impose increased costs on the utility (e.g. as a result of last-minute spot market purchases) that would be a CCA responsibility if a CCA failed to meet its operational deadline. Alternatively, the CCA can choose *not* to sign a BNI, in which case it does not have a binding commitment to commence CCA service and any stranded costs for electric procurement made by the utility on behalf of the CCA's customers prior to their cut-over date would be fully recovered by the utility – after those customers begin receiving service from the CCA – through the CCA customers' applicable CRS.

SJVPA has notified the Energy Division that it does not intend to sign a BNI with the utilities before the commencement of its CCA service. Given that SJVPA does not plan to sign a BNI, there are currently no "operational deadlines" for SJVPA to meet when moving forward with its CCA program's registration. If, after registering with the Commission, SJVPA chooses to sign a BNI for any of its CCA customer phase-ins, there may be such financial risk. In that event, the Commission will need to revisit how such a change in SJVPA's plan should affect the interim bond that SJVPA will have filed as part of its registration. SJVPA is aware of the potential outcome associated with signing a BNI after it has registered with the Commission and has acknowledged the following:

> "If material facts change, then the Commission could condition the ongoing effectiveness of SJVPA's registration on the requirement that SJVPA must satisfy any new bond/deposit level established by the Commission IF SJVPA subsequently submits a BNI and thereby potentially exposes the utilities to additional risks."

Based on these facts, there is no risk of loss to the utilities from a SJVPA failure to meet operational deadlines; and therefore, SJVPA's bond does not now have to cover this type of liability.[5]

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[5] In its Comments SCE argues that it faces certain risks if SJVPA fails to meet "operational deadlines." Our review of SCE's argument, however, shows that SCE is actually concerned with the potential failure by SJVPA to pay certain costs that SJVPA may have to pay pursuant to its Service Agreement, which are not costs incurred due to any failure by SJVPA to meet an operational deadline.

With regard to errors in forecasting, the Phase II decision stated: "The utility should assume responsibility for the final forecast of its total load, just as it assumes that responsibility today. Under this policy, the CCA retains responsibility to forecast its own load and assumes all risk and costs where the forecast and demand vary for its own customers."[6]

It appears to the Energy Division that even though the bond amount could cover such costs as "errors in forecasting", in actuality, there are no circumstances where a bond would need to cover a risk of errors in forecasting. Our reasoning is based on the fact that, pursuant to the language quoted above, the utilities make their own load forecasts, and are responsible for any errors they make, and the CCA forecasts its own load, and is responsible only to itself and its own customers for any forecasting errors it makes. Thus, the CCA is never liable to the utility for the CCA's forecasting errors. Therefore, the SJVPA bond does not need to cover this risk.

As a result, the only one of the three items enumerated in D.05-12-041 from the CCA proceeding that SJVPA will need to cover through a bond at this time is the risk associated with potential reentry fees. It is within this context that the Commission has reviewed the parties' respective proposals concerning the bond that is applicable to SJVPA in order for SJVPA to meet its registration requirement with the Commission.

As explained below, on an interim basis, SJVPA should post a $100,000 bond with the Commission. This bond will be revisited by the Commission through a formal Commission proceeding.

We come to this conclusion in light of fact that there are ESPs currently serving load in California that is of a magnitude comparable to that which SJVPA plans to serve. The bond requirement for these ESPs ranges from $25,000 to $100,000, depending on how many customer accounts that ESP serves.

P.U. Code Section 394.25 (e) calls for reentry fees to apply to ESPs and CCAs. Pursuant to that statutory requirement, the Commission approved D.03-12-015, which stated:

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[6] Section VIII "Open Season" language from D.05-12-041.

> *"Since we already require the posting of a minimum of a $25,000 cash security deposit or a financial guarantee bond as part of the small ESP registration requirement, the issue we need to address is whether the current schedule for deposits could be used to cover any reentry fee that might be imposed on the large ESP…. In addition to comments on whether maintaining the current fee schedule of security deposits for larger ESP's is an adequate means of consumer protection, interested persons are invited to file written comments on the use of the security deposit to cover reentry fees (if ever required) (§ 394.25[e]).*"

In response to the Commission's directives in D.03-12-015, interested parties provided these comments to the Commission, but no formal action has been taken by the Commission on this matter. We expect to consider the reentry fee issue in one or more formal proceedings in the near future, taking care to coordinate the consideration of that issue for ESPs and CCAs.

When the Commission revisits this bond requirement, which will be applicable to SJVPA and all other CCAs, the Commission will have an opportunity to address all the relevant concerns that have been raised by the utilities in regards to SJVPA. At this juncture, the Commission lacks a factual Commission record from which to conclude that the bond applicable to SJVPA should be larger than the bond which is currently required of ESPs that register with the Commission. Furthermore, the term "reentry fee" has not been defined by the Commission. Consequently, the utilities' argument – that the bond must cover the incremental procurement costs that a utility might face as a result of a CCA involuntarily returning its bundled service – is premature.

One issue the Commission may want to consider – in connection with the utilities' argument that the bond should cover incremental procurement costs the utility would face if the CCA suddenly returns all of its customers back onto utility bundled service – is whether it is likely that CCAs will suddenly cease providing service in the event of an "energy crisis." The likelihood of this happening may be reduced by changes in California energy markets and the institution of Resource Adequacy (RA) requirements since the last energy crisis. Additionally, the nature of a CCA's long term supply contracts and/or whether it owns generation facilities may impact the likelihood of a particular CCA ceasing service. Another issue the Commission may wish to consider is whether there are methods other than, or in addition to, a bond for dealing with the risk

of increased utility procurement costs in the event a CCA suddenly ceases service.

Moreover, calculating a larger bond amount for SJVPA than is currently required of ESPs that serve a load of a magnitude similar to SJVPA's load without first establishing a record for doing so would not only be unfair to SJVPA, it would also set a precedent the would be based on assumptions that have not been thoroughly investigated by the Commission. It would also be unfair to SJVPA to delay its ability to operate as a CCA pending resolution of the underlying, and generic, issues about the proper sizing of the bond, while similarly situated ESPs are serving customers having posted only a $100,000 bond. It is not our desire to delay the formation and operation of CCAs.

The scope of the issues raised by the parties in their respective opening and reply comments to this resolution underscore the need to consider each of these issues carefully in a formal Commission proceeding. The parties raised various issues regarding the particular, and some generic, issues that should be taken into account when calculating SJVPA's bond amount. Some of the issues raised did not shed new light on the bond amount issue that the Commission must now decide; as such, they do not merit summarization herein. However, we address three issues raised by some of the parties in their respective comments, as follows.

SDG&E suggests that the Commission should consider the provision in PG&E's CCA tariff – Schedule E-CCA 5. b. – governing "Customer Re-entry" in order to calculate a minimum interim bond amount that would cover SJVPA's exposure to liabilities associated with customer re-entry fees. The PG&E tariff that SDG&E cites (and SCE's similar tariff), however, establish charges imposed *on the customer* [not the CCA] when there is a *customer* – and hence voluntary – request to switch back to bundled service. The situation we address through this resolution, however, does not involve a customer request to return to utility bundled service; rather, it involves a potential cessation of service by the CCA that would result in an involuntary, and en masse, customer return to bundled service.

Indeed, the reentry fees mentioned in P.U. Code Section 394.25 (e) are not meant to cover those fees associated with an individual end-use customer's requested (i.e. voluntary) switch back to bundled service. Rather, they are meant to avoid imposing costs on *other customers* of the electrical corporation, which may only

result if an en masse, and involuntary, return of customers to bundled service occurs.

Moreover, the fee that a CCA must pay when it suddenly returns all of its customers to bundled service is already covered by PG&E's Schedule E-CCA 10. b.[7] Thus, SDG&E has not cited the correct provision of PG&E's tariff in its attempt to calculate SJVPA's reentry fee-related bond coverage. Furthermore, the applicable provision that *does apply* to this matter does not provide any basis for a particular bond amount.

The second issue we address in regards to the parties' respective opening and reply comments is the appropriate timing for, and proceeding in which, the Commission should consider the sizing of a bond in order to cover CCA customer re-entry fees.

However, this resolution is not the appropriate procedural forum in which to address the scheduling and scoping of formal proceedings at the Commission. Rather, we recommend that parties directly address the dockets in which they believe the outstanding matters that were described in the comments need to be addressed.

Finally, in its reply comments SCE states that it is a legal obligation of the Commission and the CCA to comply with the statutory requirements for a bond. However, P.U. Code Section 394.25(e) does not require the Commission to set reentry fees. Rather, it authorizes the Commission to set them, and provides that *if* the Commission does so, the reentry fees shall be the obligation of the CCA and covered by a bond. It is no more improper for SJVPA to register as a CCA before the reentry fee has been set than it is for the large ESPs to continue to provide service before the reentry fee has been set.

For these reasons, we conclude that an interim bond in the amount of $100,000 is sufficient to allow SJVPA to register as a CCA with the Commission.

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[7] Schedule E-CCA 10. b states that "labor and material" costs would need to be covered by a termination service fee associated with involuntary CCA cessation, but does not provide any formula for calculating the amount of those costs.

COMMENTS

Public Utilities Code section 311(g) (1) generally requires resolutions to be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Accordingly, this draft resolution was placed on the Commission's agenda no earlier than 30 days after its distribution to the service list in R.03-10-003.

San Diego Gas & Electric (SDG&E), The Utility Reform Network (TURN), Community Environmental Council (CE Council), SJVPA, PG&E, and SCE filed comments regarding this draft resolution. SJPVA, PG&E, SCE, and the Alliance for Retail Energy Markets (AReM) provided reply comments. They have been considered, and discussed to the extent necessary, in the body of this resolution.

FINDINGS

1. San Joaquin Valley Power Authority (SJVPA) is the first Community Choice Aggregation (CCA) provider in California to have its Implementation Plan (IP) certified by the Commission.

2. Pursuant to Commission Orders, SJVPA also must register with the Commission, which entails submitting evidence of insurance, or a bond, along with a CCA/Utility Service Agreement.

3. Once registered, SJVPA plans to begin providing service to municipal accounts in February of 2008, followed by large commercial and industrial accounts in May of 2008, medium commercial customers in August of 2008, and residential, agricultural, and all remaining customers in November of 2008.

4. This draft Resolution has been prepared by the Commission's Energy Division staff in order to resolve a dispute between SJVPA and the utilities (PG&E and SCE) as to the amount of the bond that SJVPA must post.

5. In the CCA Rulemaking (R.03-10-003), the Commission did not set an amount for a bond nor a methodology for calculating a bond that could be applied to SJVPA.

6. Pursuant to D.05-12-041 in the CCA rulemaking, a bond amount should cover such costs as: 1) penalties for failing to meet operational deadlines, 2) errors in forecasting, and 3) potential reentry fees.

7. Given that SJVPA has not signed a Binding Notice of Intent (BNI), nor does SJVPA plan to sign a BNI before the commencement of its CCA service, there are no "operational deadlines" for SJVPA to meet when moving forward with its CCA program. Therefore, there is no risk of loss to the utilities from a SJVPA failure to meet operational deadlines; and therefore, a SJVPA bond does not have to cover this type of liability.

8. Pursuant to the discussion of forecasting errors in D.05-12-041, SJVPA will not have any liability to the utilities for any SJVPA forecasting errors. Therefore, the SJVPA bond amount does not need to cover this risk.

9. The only one of the three items enumerated in D.05-12-041 in the CCA proceeding that SJVPA will need to cover through a bond is the risk associated with potential reentry fees.

10. The utilities contend that in the event of another power crisis – in which short term power costs would likely be very high – SJVPA might be unable to continue providing electric service to its customers. The utilities argue that SJVPA's bond should be sufficient to cover the increased procurement costs that the utilities might face during this type of stressed energy market condition; and, that this risk should be covered over the course of a year in order to insure against the risk that SJVPA suddenly ceases to provide generation service and dumps customers back to the utilities' bundled electric service portfolio.

11. PG&E proposed that the total applicable bond requirement for SJVPA should be in well in excess of $140 million.

12. SCE generally agrees with PG&E's "stressed market forecast approach" for calculating SJVPA's bond. However, SCE is unaware of the details of how PG&E stressed its forward market curve and has not yet settled on a "stressed market" method for calculating the CCA bond amount.

13. SCE is not prepared to provide the Energy Division with its bond calculation. SCE states that if it were to calculate a bond applicable to SJVPA, SCE would

need about two more weeks to complete a bond calculation in a manner consistent with PG&E.

14. SJVPA proposed that in order to register it post a bond equivalent to the security deposit requirement that currently applies to an ESP's registration with the Commission. ESPs currently post or a bond between $25,000 and $100,000, depending on how many customer accounts are served by the ESP. SJVPA calls for the $100,000 bond amount to be accepted on an interim basis, until the Commission revisits this deposit issue, pursuant to D.03-12-015.

15. D.03-12-015 implemented the provisions of AB 117, which revised the requirements for ESPs. Among other things, D.03-12-015 set the amount of the security deposit or bond that an ESP is required to post as proof of "financial viability" in a range from $25,000 to $100,000 based on the number of customer accounts that ESP serves.

16. P.U. Code Section 394.25 (e) provides:

> "If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electric corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers."

17. In regards to P.U. Code Section 394.25 (e), D.03-12-015 did not determine what, if anything, should be covered by "reentry fees" nor the amount of the bond that should be required. Rather, D.03-12-015 solicited comment on these issues, including "the use of the security deposit [already posted as proof of financial viability] to cover reentry fees (if ever required) (Sec. 394.25 (e))." Although comments were received from the interested parties, the Commission has not yet resolved these issues. Thus, the only security posted by ESPs that might cover potential reentry fees is the security deposit that ranges up to $100,000.

18. SJVPA has stated that, currently, several ESPs serve more California load than SJVPA plans to ultimately serve, yet none of these ESPs have deposited more than $100,000 as part of their registration requirement, pursuant to 394.25 (e) (which also applies to CCAs). Therefore, SJVPA believes that an interim $100,000 bond should also satisfy SJVPA's registration requirement.

19. At this juncture, the Commission lacks a factual Commission record from which to conclude that the bond amount applicable to SJVPA should be larger than the bond amount which is currently required of ESPs that register with the Commission.

20. The term "reentry fee" has not been defined by the Commission. Accordingly, the utilities' argument – that the bond must cover the "reentry fee" associated with the incremental procurement costs that a utility might face as a result of a CCA involuntarily returning its bundled service – is premature.

21. SDG&E suggests that the Commission should consider the provision in PG&E's CCA tariff – Schedule E-CCA 5. b. – governing voluntary "Customer Re-entry" to bundled service in order to calculate a minimum interim bond amount that would cover SJVPA's potential re-entry fees. However, the reentry fees mentioned in P.U. Code Section 394.25 (e) are not meant to cover those fees associated with an individual end-use customer's requested – and hence voluntary – switch back to bundled service. Rather, they are meant to avoid imposing costs on *other customers* of the electrical corporation, which may result if an en masse, and involuntary, return of customers to bundled service occurs.

22. One issue the Commission may want to consider – in connection with the utilities' argument that the bond should cover incremental procurement costs the utility would face if the CCA suddenly returns all of its customers back onto utility bundled service – is whether it is likely that CCAs will suddenly cease providing service in the event of an "energy crisis." The likelihood of this happening may be reduced by changes in California energy markets and the institution of Resource Adequacy (RA) requirements since the last energy crisis. Additionally, the nature of a CCA's long term supply contracts

and/or whether it owns generation facilities may impact the likelihood of a particular CCA ceasing service.

23. It would be unfair to SJVPA to delay its ability to operate as a CCA pending resolution of the underlying, and generic, issues about the proper sizing of the bond, while similarly situated ESPs are serving customers having posted only a $100,000 bond. It is not our desire to delay the formation and operation of CCAs.

24. In order to complete it registration, and on an interim basis, SJVPA should post a $100,000 bond with the Commission.

25. We plan, in one or more formal proceedings in the near future, to revisit this bond requirement, on a generic basis. At that time, the Commission will have an opportunity to address all the relevant concerns that have been raised by the utilities in regards to SJVPA.

26. This resolution is not the appropriate procedural forum in which to address the scheduling and scoping of formal proceedings at the Commission.

27. Consideration of the "reentry fee" issue for ESPs and CCAs should be coordinated.

THEREFORE IT IS ORDERED THAT:

1. The Commission hereby finds that an interim bond of $100,000 is sufficient for SJVPA to post with the Commission as part of its registration packet pursuant to Decision 05-12-041. The Commission may change this bond amount based on changed circumstances or the outcome of formal proceedings.

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 December 20, 2007; the following Commissioners voting favorably thereon:

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Paul Clanon
Executive Director