

Decision 07-01-025 January 25, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Portions of AB 117 Concerning Community
Choice Aggregation.

Rulemaking 03-10-003
(Filed October 2, 2003)

**ORDER ADOPTING MODIFICATIONS TO THE COST RESPONSIBILITY
SURCHARGE APPLICABLE TO COMMUNITY CHOICE AGGREGATORS**

This order adopts certain modifications to the Cost Responsibility Surcharge (CRS) applied to former customers of jurisdictional electrical utilities whose energy procurement services are provided by Community Choice Aggregators (CCAs). These changes are consistent with those adopted in Decision (D.) 06-07-030 for the CRS applied to direct access customers and municipal departing load customers.

I. Background

D.06-07-030 issued in Rulemaking (R.) 02-01-011 adopted modifications to the method for calculating the CRS applicable to direct access customers and “municipal departing load” customers. D.05-12-041, which implements the CCA program legislated by Assembly Bill (AB) 117, states the Commission’s intent to consider whether to conform such methodological modifications to the CRS as it applies to CCAs. Ordering Paragraph 12 of that decision stated “The ALJ assigned to this proceeding shall provide an opportunity for parties to comment on whether the Commission should adopt refinements to the CCA CRS methodology that are adopted for DA/DL customers in R.02-01-011 or any

successor proceeding.” Following issuance of D.06-07-030, the assigned Administrative Law Judge (ALJ) established a process for considering changes to the CRS, consistent with D.05-12-041, by convening a workshop on August 23, 2006 for the purpose of discussing whether the Commission should conform the methodology for calculating the CCA CRS. Navigant Consulting Inc. attended the workshop and gave a presentation on recent changes to the CRS and how they might be applied to the CCA CRS.

Following the workshop, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E), (Utilities) jointly filed a response to the CCA Proponents reply comments. The City and County of San Francisco, the City of Chula Vista, the City of Moreno Valley, and Energy Choice (CCA Proponents) also filed comments and reply comments. No party sought evidentiary hearings on this matter.

II. Discussion

In the Commission’s first policy order in this proceeding, D.04-12-046, the Commission found that “Section 366.2(d)(1) of AB 117 provides that the costs associated with CCA’s procurement of power for local residents and businesses must not require remaining utility customers to assume additional costs.” AB 117 anticipates “ratepayer indifference” to the CCA program. It found the CRS would be the ratemaking vehicle for assuring former utility procurement customers assumed their fair share of utility investments that would otherwise be stranded with the initiation of CCA service. It also recognized that the development of the CCA CRS should follow “the lessons learned and the policies adopted” in proceedings that developed calculations and models for the CRS that applies to direct access and departing load customers (DA/DL).

In their joint comments, the utilities state that some of the modifications to the DA/DL CRS adopted in D.06-07-030 would or should apply to CCAs and that other modifications are specific to DA/DL customers. The utilities propose the following methodological changes adopted in D.06-07-030 be applied equally to CCAs:

- For all CCA CRS calculations, including “vintaged” CRS calculations, replace the CCA “in and out” total portfolio calculation methods described in D.04-12-046 with a calculation that relies on market benchmarks compared to projected utility power costs, eliminating the true-up process;
- Use the adopted procedure for deriving the market price benchmark;
- Update the CCA CRS in the same Commission proceedings that would be used for the DA/DL calculations;
- For PG&E, include a franchise fee “addder”;
- Confirm that the CRS should not be negative, should not result in any net payment to customers who leave utility service, and should not be applied against other non-bypassable charges; and
- CCA CRS modifications would not affect other non-bypassable charges.

CCA Proponents’ comments generally agree with the application to CCAs of the modifications to the CRS adopted in D.06-07-030, but they have several questions about the meaning of D.06-07-030. The following sets forth the question posed by CCA Proponents and the responses presented by the utilities in their joint reply comments, which are paraphrased here:

1. Does the calculation of the CCA CRS involve two steps or three? The CCA CRS is calculated in two steps. First, the Competition Transition Charge (CTC) is calculated according to Section 367(a) and is reviewed and approved in each utility's annual Energy Resource Recovery Account (ERRA) proceeding. The "indifference rate" is then calculated by estimating the difference between the average cost of the utility's total portfolio compared to a market price benchmark. The deduction of the CTC from the indifference rate leaves as a residual the Power Charge Indifference Adjustment (PCIA) which is a component of the CRS. For example, if the indifference rate is zero and the CTC rate is 1 cent/kWh then the PCIA rate is a negative 1 cent/kWh, which, when added to the CTC rate, results in a zero indifference rate.¹

2. What data sets are used in the calculation of the CRS for CCAs? To calculate the CRS, the utilities must have data about utility retained generation, market prices, and California Department of Water Resources (DWR) costs.

3. In which proceedings will the CRS be calculated for CCAs? The CTC and utility-retained generation (URG) forecasts are to be set in each utility's ERRA proceeding. The URG forecast may be modified for PG&E in its annual electric true-up. DWR costs are established in the annual DWR revenue requirement proceeding. The utilities propose to submit the CRS calculation for CCAs and direct access customers in the same advice letter filing, which would incorporate the calculations and forecasts adopted in the related proceedings.

4. What happens to any positive CRS balances (from a negative Indifference Rate) as a result of CCA formation; will such balances be tracked

¹ As set forth in D.06-07-030 (page 25 and page 35), calculation of the "indifference rate" only applies when the customer pays the DWR Power Charge.

and be available for use, e.g., to offset any future positive CRS liabilities of CCAs? The utilities state that the requirement that each CCA has its own “vintaged” CRS makes tracking negative balances very difficult and should not be required.

In their comments to the ALJ’s proposed decision, the City and County of San Francisco and the City of Chula Vista (CCSF/CCV) argue that the Commission does not have a record to make any findings here about the wisdom of carrying forward negative CRS balances, a practice which they strongly support. CCSF/CCV observe that the Commission is addressing this issue in R.02-01-011 and the Commission should defer to the outcome of this issue in that proceeding. Joint comments filed by the utilities express strong opposition to carrying forward negative CRS balances but agree with CCSF/CCV that the Commission’s orders in R.02-01-011 should be dispositive of this issue.

D.06-07-030 addressed whether negative balances should be carried forward in the calculation of the CRS applicable to municipal departing load and direct access customers. Arguably, D.06-07-030 is not completely clear in its resolution of the issue and the order is the subject of petitions to modify. However, an interpretation of D.06-07-030 that is favorable to CCAs would not cause a negative balance to be carried forward at this time if, as the utilities claim, there is no current undercollection. In the interim, the filing of a petition to modify a Commission order does not stay that order. The Commission has stated its intent to conform the CCA’s CRS to the CRS applied to direct access and departing load customers. Accordingly, the utilities’ CCA CRS tariffs should reflect the Commission’s findings in D.06-07-030 and any future orders modifying it on the subject of whether negative CRS balances should be carried forward.

We herein adopt the modifications to the CRS that are founded in D.06-07-030 and as set forth herein.

Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. The City and County of San Francisco and the City of Chula Vista filed joint comments on January 2, 2007. SCE, PG&E and SDG&E also filed joint comments on that date and filed reply comments on January 8, 2007. This order makes minor editing changes and incorporates the comments of the parties, which focus on the proposed decision's treatment of negative CRS balances.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

Findings of Fact

1. D.06-07-030 adopted modifications to the DA CRS, some of which could be applied to the CCA CRS, as anticipated by D.05-12-041 issued in this docket.
2. The CCA CRS would be calculated in two steps using the utility model.
3. The Commission has addressed whether to carry-over the negative CRS balances from year-to-year in R.02-01-011 and is reviewing related petitions to modify D.06-07-030 on that subject.

Conclusions of Law

1. The Commission should modify the CCA CRS to make it consistent with the DA CRS modifications adopted in D.06-07-030, to the extent the modifications are logically applicable to the CCA CRS.

2. A Commission order is not affected solely by the filing of a petition to modify that order.

3. The Commission should adopt the modifications to the CCA CRS proposed by the utilities as set forth herein.

IT IS ORDERED that:

1. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (Utilities) shall, no later than 45 days from the effective date of this order, file tariffs to modify the cost responsibility surcharge (CRS) applicable to Community Choice Aggregators' (CCA) customers, as set forth herein.

2. The tariff changes ordered above shall include the following:

- For all CCA CRS calculations, including “vintaged” CRS calculations, replace the CCA “in and out” total portfolio calculation methods described in Decision 04-12-046 with a calculation that relies on market benchmarks compared to projected utility power costs, eliminating the true-up process;
- Use the adopted procedure for deriving the market price benchmark;
- Update the CCA CRS in the same Commission proceedings that would be used for the direct access and departing load customers calculations;
- For PG&E, include a franchise fee “add”;;
- Confirm that the CRS should not be negative, should not result in any net payment to customers who leave utility service, and should not be applied against other non-bypassable charges;

- CCA CRS modifications would not affect other non-bypassable charges.

3. The utilities' CRS tariffs applicable to CCAs shall conform to the Commission's decisions in Rulemaking (R.) 02-01-011 with regard to whether negative CRS balances are carried over.

4. R.03-10-003 is closed.

This order is effective today.

Dated January 25, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

Commissioners