REPLY COMMENTS OF THE MARIN ENERGY AUTHORITY
(ON ITS OWN AND ON BEHALF OF THE CCA ALLIANCE)
ON THE PROPOSED DECISION ADOPTING A CODE OF CONDUCT AND
ENFORCEMENT MECHANISMS RELATED TO UTILITY INTERACTIONS WITH
COMMUNITY CHOICE AGGREGATORS, PURSUANT TO SENATE BILL 790

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On behalf of
MARIN ENERGY AUTHORITY AND THE
CCA ALLIANCE

December 17, 2012
BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Pursuant to Senate Bill No. 790 to Consider and Adopt a Code of Conduct, Rules and Enforcement Procedures Governing the Conduct of Electrical Corporations Relative to the Consideration, Formation and Implementation of Community Choice Aggregation Programs.  

Rulemaking 12-02-009  
(Filed February 16, 2012)

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In accordance with Rule 14.3(d) of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure, the Marin Energy Authority (MEA),\(^1\) submits the following reply comments on the Proposed Decision Adopting a Code of Conduct and Enforcement Mechanisms Related to Utility Interactions with Community Choice Aggregators, Pursuant to Senate Bill 790 (“PD”). MEA submits these reply comments on its own and on behalf of the Community Choice Aggregator Alliance (“CCA Alliance”).\(^2\)

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\(^1\) MEA is the first community choice aggregator to serve customers in California. MEA currently serves customers in Marin County, and is beginning to serve customers in the City of Richmond. MEA provides generation services to upwards of 90,000 customers and anticipates expanding to approximately 125,000 customers once Richmond is fully enrolled in 2013. MEA’s customers receive generation service from MEA, and receive transmission, distribution, billing and other services from PG&E.

\(^2\) The CCA Alliance consists of the Marin Energy Authority, the since-dissolved San Joaquin Valley Power Authority, the South San Joaquin Irrigation District, the City of Santa Cruz, the Climate Protection Campaign, Direct Energy, LLC., Noble Americas Energy Solutions LLC, Constellation NewEnergy, Inc., the Alliance for Retail Energy Markets and the Direct Access Customer Coalition, and is supported by the fifteen supporting entities set forth in its opening comments.
I. INTRODUCTION

In their opening comments on the PD, the respondent investor-owned utilities (“IOUs”) recommend a number of modifications, most of which are unobjectionable, to the proposed Code of Conduct and Enforcement Procedures (“Code”). MEA is opposed, however, to three of the IOUs’ recommendations, namely:

- PG&E’s recommendation to eliminate the restrictions on the sharing and movement of utility employees between a utility’s “independent marketing division” and other divisions set forth in Rule 15 and Rule 16. These proposed restrictions, which neither SCE or SDG&E oppose, are reasonable and necessary to ensure the functional and physical separation of such divisions required under Section 707(a)(1).

- SCE’s recommendation to require a customer’s consent to release confidential customer information collected under Rule 21 to the customer’s CCA. SCE’s proposed customer consent requirement is redundant and inconsistent with the customer information privacy protection rules and requirements for CCAs recently adopted in Decision 12-08-045.

- SDG&E’s recommendation to limit the data collection requirements under Rule 21 to complaints submitted by CCAs concerning Commission-approved rates and services. To serve their intended purpose, the Rule 21 complaint logs should include complaints about any issue related to the utility’s conduct, whether submitted by a CCA or a CCA customer.

II. REPLY TO COMMENTS

A. The Commission Should Reject PG&E’s Recommendation to Delete the Proposed Restrictions on the Sharing and Movement of Employees.

PG&E objects to proposed Rule 15 and Rule 16 of the Code on the grounds that they are overly restrictive. Rule 15 provides that “Except as permitted in Rule 13 of this Code of Conduct, employees of an electrical corporation’s independent marketing division shall not otherwise be employed by the electrical corporation.” Rule 16 imposes basic restrictions on the movement of employees between a utility’s “independent marketing division” and other

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3 Pacific Gas and Electric Company (“PG&E”), Southern California Edison Company (“SCE”), and San Diego Gas & Electric Company (“SDG&E”)

4 All statutory references are to the Public Utilities Code.

5 PG&E Opening Comments, p. 5.

divisions. Notably, neither SCE nor SDG&E expressed any concerns about either rule in their comments on the PD.

PG&E argues that these restrictions on the sharing and movement of employees between divisions are unnecessary as “existing and proposed controls and initiatives already ensure that utility marketing activities are functionally separated from utility ratepayer funded activities.” In making this argument, PG&E focuses on existing cost-accounting rules intended to ensure that ratepayers do not fund anti-CCA marketing activities, the proposed restriction on access to commercially sensitive information (Rule 5), the proposed requirement to provide equal access to utility information, rates and services (Rule 7), the proposed restriction on access to utility market analysis reports and information (Rule 8), and the requirement to keep separate books and records (Rule 10).

While the proposed rules that PG&E cites are certainly necessary to prevent the inappropriate sharing of costs and information between utility divisions, in and of themselves they are insufficient to ensure the degree of separation required by Section 707. Conspicuously absent from PG&E’s protests against the restrictions imposed by Rule 15 and Rule 16 is any acknowledgement of the “human element” that the rules are intended to address. Absent the restrictions imposed by Rule 15 and Rule 16, the very real possibility exists that, in the course of working for other divisions, employees might “pick up” the very types of sensitive information that the rules prohibit from being shared, and would then carry that information with them when transfer back and forth to the utility’s anti-CCA marketing division.

PG&E complains that the proposed restrictions on employee sharing and movement are akin to those imposed on the utilities with respect to their affiliates, arguing that such restrictions are not specifically required by Section 707. Here PG&E misses the point. Given that Section 707 does not require the creation of an affiliate to conduct anti-CCA marketing, it is imperative that the Commission establish clearly defined, effective and enforceable restrictions on a utility’s sharing and movement of employees between its “independent marketing division” and other divisions. The cost-accounting rules and proposed information restrictions that PG&E deems to be sufficient are only part of the picture. It is imperative that the Commission also establish rules that protect against

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8 PG&E Opening Comments, p. 6.
9 PG&E Opening Comments, p. 6.
the utilities misusing their “human capital” to circumvent the functional and physical separation required by Section 707 but only partially effected by cost-accounting and information sharing restrictions. As the Commission unquestionably has the authority under Section 707 to adopt the employee restrictions set forth in Rule 15 and Rule 16, the only question is whether they are reasonably necessary. For the reasons discussed in the PD and above, they clearly are.


SCE recommends that Rule 21 be modified to, among other things, provide that “Confidential customer information contained in the log should not be subject to review by the CCA absent customer consent.”10 MEA fails to see why this additional restriction on a CCA’s access to customer information is needed. Indeed, restricting a CCA’s access to customer information in the complaint log a utility is required to maintain under Rule 21 would undermine the log’s intended informational value to the CCA.11 Moreover, under the privacy protection rules extended to CCAs in D.12-08-045, the utilities are required to grant CCAs access to customer usage information without the need for customer consent, provided the CCA signs an appropriate non-disclosure agreement.12 As the only “confidential” information collected by a utility in its Rule 21 complaint log would be the same information that a CCA is already entitled to access under the privacy protection rules, there is no reason for adopting a customer consent requirement specific to Rule 21 information.


SDG&E recommends that Rule 21 be modified such that the utilities are only required to log information related to complaints submitted by a CCA concerning Commission-approved services provided by the utility to the CCA or the CCA’s customers.13 SDG&E’s stated reason for so limiting the scope of the information to be included in the Rule 21 complaints logs is to

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10 SCE Opening Comments, Attachment A.
11 See PD, p. 17.
12 See D.12-08-045, Conclusion of Law 29.
13 SDG&E Opening Comments, p. 4.
reduce the associated administrative burden for the utility.\textsuperscript{14} While MEA is sympathetic to SDG&E’s administrative concern, adopting SDG&E’s modifications to Rule 21 would frustrate the intended purpose of the complaint log, which as explained in the PD is to “ensure both that customers receive neutral and accurate information about their electric service options and that specific issues identified by customers or CCAs are tracked over time, providing parties with information about outstanding issues and documenting the responsiveness of both parties.”\textsuperscript{15} To that end, it is necessary for the Rule 21 complaint logs to include not only information about complaints lodged by CCAs but also any complaints or other service-related issues raised by their customers. Accordingly, the Commission should reject SDG&E’s proposed modifications to Rule 21.\textsuperscript{16}

III. CONCLUSION

For the above reasons, the Commission should reject PG&E’s recommendation to eliminate the employee sharing and movement restrictions set forth in proposed Rule 15 and Rule 16, and should reject SCE’s and SDG&E’s recommended modifications to Rule 21.

Respectfully submitted,

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\textsuperscript{14} Id.
\textsuperscript{15} PD, p. 17.
\textsuperscript{16} For the same reason, the Commission should reject SCE’s recommendation on page 3 of its opening comments to modify Rule 21 so that the information collection and logging requirement is limited to “escalated” complaints.