

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**



**FILED**  
7-31-17  
04:59 PM

Order Instituting Rulemaking to Review,  
Revise, and Consider Alternatives to the  
Power Charge Indifference Adjustment.

Rulemaking 17-06-026  
(Filed June 29, 2017)

**JOINT COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY  
(U 338-E), PACIFIC GAS AND ELECTRIC COMPANY (U 39-E), AND SAN DIEGO  
GAS & ELECTRIC COMPANY (U 902-E) ON ORDER INSTITUTING  
RULEMAKING TO REVIEW, REVISE, AND CONSIDER ALTERNATIVES TO  
THE POWER CHARGE INDIFFERENCE ADJUSTMENT**

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July 31, 2017

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Pursuant to the California Public Utilities Commission’s (“Commission”) Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment, issued in this proceeding on July 10, 2017 (“PCIA Rulemaking”), Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (“Joint Utilities”)<sup>1</sup> submit these comments to address this rulemaking,<sup>2</sup> including, among other items, the Commission’s proposed “Guiding Principles,” preliminary scoping memo, schedule, and procedure.

**I. INTRODUCTION**

The Joint Utilities welcome this proceeding as an opportunity to revisit the current methodology for establishing the cost responsibilities of departing load customers, including the

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<sup>1</sup> Pursuant to Commission Rule of Practice and Procedure 1.8(d), counsel for Southern California Edison Company and Pacific Gas and Electric Company have authorized counsel for San Diego Gas & Electric Company to file these comments on behalf of all three Joint Utilities.

<sup>2</sup> The PCIA Rulemaking requires respondents (which include the Joint Utilities) to submit comments 20 days after the OIR issued. *Id.* at 12-13, 16, ordering paragraphs 6 and 7.

Power Charge Indifference Adjustment (“PCIA”) rate.<sup>3</sup> The current methodology is broken and must be fundamentally reformed to prevent cost increases to bundled customers due to actual and anticipated rising levels of departing load in the Joint Utilities’ service areas. There are two primary reasons why the current methodology must be reformed. First and foremost, the current methodology cannot satisfy statutory requirements. It estimates the above-market costs of a utility’s generation portfolio based on administratively-set market price benchmarks, using projections of portfolio costs and market revenues that are never “trued up.” Because estimates of costs and revenues are imprecise and will not match actual costs and revenues, the current methodology does not and cannot, even with updates to the benchmarks, prevent bundled-service and departing load customers from experiencing unlawful cost shifts. These cost shifts must be addressed without delay because they will substantially and unsustainably increase as departing load levels increase. Second, as far as the Joint Utilities can discern from filings at the Commission, not a single interested party believes the current methodology, in its current form, achieves fair or reasonable results. The current methodology has proven to be controversial, litigious, and fails to achieve the Legislature’s prohibitions against cost shifts.

The Joint Utilities support replacing the current methodology with a new one: the Portfolio Allocation Methodology or “PAM” proposal. The PAM would equitably allocate actual, verifiable portfolio net costs (*i.e.*, the difference between actual generation-portfolio costs and market revenues) and portfolio attributes among bundled-service and departing load

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<sup>3</sup> A cost responsibility surcharge (“CRS”) methodology for Direct Access (“DA”) and Municipal Departing Load (“MDL”) was first adopted in R.02-01-011 (2002 DA OIR) to address cost responsibility to maintain customer indifference. It was subsequently modified and adopted for CCA customers in R.03-10-003 (the CCA OIR). *See* D.07-01-025. The current PCIA methodology was last updated in D.11-12-018. The current methodology includes both the PCIA and the Competition Transition Charge (“CTC”) rates.

customers. The PAM was presented in Application (A.) 17-04-018, which has now been dismissed, without prejudice, in light of this rulemaking proceeding. The Joint Utilities look forward to presenting the PAM again in this forum.<sup>4</sup>

Time is of the essence. While well-intentioned at its inception, the current methodology is not fair, just, or reasonable. The consequences of the existing cost shifts will continue to worsen as Community Choice Aggregation (“CCA”) and potentially other retail-choice programs continue to expand. To mitigate the effects of the current methodology pending resolution of this proceeding, the Commission should expedite this proceeding so that it is resolved within 12 months. This is important because the longer this proceeding continues, the longer serious questions will remain regarding the scope of the Commission’s authority to certify new CCA implementation plans, the actual cost obligations that newly forming CCAs are undertaking, and whether utilities should procure new resources.

Resolving this proceeding within one year requires an appropriately expeditious schedule; the timing is urgent and the issues are not new. Reform of the current methodology is the critical and necessary prerequisite to any potential structural market changes in California energy procurement, such as expanding retail choice programs. It is also crucial to ensure that the current acceleration of customer choice takes place fairly and lawfully.

## **II. COMMENTS**

As set forth in detail below, the Joint Utilities seek: (1) a new “goal” for this proceeding that is elevated above the guiding principles, (2) a schedule not to exceed 12 months to adopt reforms to the current methodology, (3) a clarification to one of the

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<sup>4</sup> The Joint Utilities may revise the PAM before resubmitting it in this proceeding.

issues to be considered in this proceeding, and (4) a change in the categorization of this proceeding to ratesetting.

**A. Guiding Principles Should Explicitly Adopt Customer Protection as a Goal.**

The Joint Utilities support the guiding principles set forth by the Commission. It must be recognized, however, that the first “guiding principle” is not a principle at all; it is a shorthand description of the law. Guiding Principle No. 1 states,

1. Bundled IOU customers should be neither worse off nor better off as a result of customers departing the IOU for other energy providers (“bundled customer indifference”).<sup>5</sup>

This principle appears to track the language in Public Utilities Code Sections 365.2, 366.2, and 366.3, which prohibit bundled-service customers from bearing any increase in costs or cost shifting due to departing load. These sections also provide that departing load customers cannot be held responsible for costs that were not incurred on their behalf. This guiding principle should be modified to more closely reflect the precise statutory language governing customer indifference.

Moreover, the law must be elevated above the guiding principles. Every proposal made here must be assessed to determine whether it protects customers from unlawful cost increases, including how it protects against cost increases to bundled-service customers in disadvantaged communities. Accordingly, the Commission should add the following as the predicate “goal” of the proceeding:

- Bundled service IOU customers should bear no increase in costs or cost shifting as a result of customers departing the IOU for other energy providers and customers departing the IOU for other energy providers should not be allocated costs that were not incurred on their behalf.

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<sup>5</sup> PCIA Rulemaking at 8.

The Joint Utilities support the Commission’s other proposed guiding principles. In particular, the Joint Utilities wish to emphasize Guiding Principle No. 4, which seeks to ensure accuracy and stability if the number of departing load customers changes significantly. Guiding Principle No. 4 states,

4. Any methodology to ensure bundled customer indifference should be flexible enough to maintain its accuracy and stability if the number of departing customers changes significantly.<sup>6</sup>

This principle raises the important concept of “scalability.” The current methodology is unable to scale in a manner that achieves accuracy and stability as the amount of departing load increases. The methodology adopted by the Commission in this proceeding must ensure there are no cost increases to bundled-service customers regardless of the amount of departing load. This is a particularly significant concern at high levels of departing load where the utility will most likely need to reduce the size of its existing portfolio. With large volumes of Resource Adequacy (“RA”) capacity and Renewable Energy Credits for sale, market liquidity may be insufficient and/or market prices depressed, potentially exacerbating any cost increases to bundled-service customers as a result of departing load.

The Commission should also consider modifying Guiding Principle No. 4 to provide that any methodology adopted by the Commission should also be scalable such that it retains its accuracy and stability if customers return to the utility’s procurement service. It could read as follows:

4. Any methodology to ensure bundled customer indifference should be flexible enough to maintain its accuracy and stability if the number of departing customers changes significantly, and to maintain its accuracy and stability if customers return to bundled-customer service.

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<sup>6</sup> PCIA Rulemaking at 8.

**B. Schedule – The OIR Should Be Resolved Within One Year**

A speedy resolution to this proceeding is necessary to address the cost shifting occurring under the current methodology, to provide certainty about cost-recovery rules so that all energy providers can make informed procurement decisions, and to allow the Commission and the State to move forward (to the extent they so choose) with broader retail-choice options.

The Commission anticipates that this proceeding will be resolved within 18 months. The Joint Utilities urge the Commission to recognize that time is of the essence and, therefore, to establish a deadline of 12 months to adopt reforms to the current methodology.<sup>7</sup> Time is of the essence because the current methodology is no longer equitable, and CCA growth is accelerating. The law precludes any increases to bundled-service customers resulting from departing load. It also precludes an allocation of costs to departing load customers that were not incurred on their behalf. Specifically, Public Utilities Code Section 365.2 states:

The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

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<sup>7</sup> The Joint Utilities seek a schedule that would allow for the new methodology to be implemented in time for parties to plan and procure for meeting 2019 load. In any case, the Commission should make that revised methodology effective as of July 10, 2017. If the new methodology involves assigning attributes, and those can no longer be assigned due to a passage of time, such as RA, then an adjustment from the full new methodology might be required to determine charges for the historical period, including potentially applying the adjustment back to August 1, 2017, to account for the full-month application of RA. The Commission has made departing load ratemaking methodologies effective back to a ruling date before, including a prior revision to the current methodology. *See e.g.*, D.11-12-018 (R.07-05-025, Direct Access OIR) at pp. 95-97 and Ordering Paragraphs 38-41. The same treatment is important here to mitigate the unlawful and unfair results that are occurring under the current methodology. Moreover, all parties are on notice that the current methodology is undergoing review and is likely to change. For similar reasons, any changes to CARE PCIA exemptions adopted in this proceeding should be made effective as of July 10, 2017, or August 1, 2017 for monthly attributes.



Public Utilities Code Section 366.3 reads the same, in the context of departing load due to CCAs. *See also* Section 366.2 (d)(1). The bottom line is that the law does not allow any increase in costs or cost shifts to remaining bundled service customers as a result of customers choosing to buy their power from other providers. The law also precludes allocating costs to departing load customers that were not incurred on their behalf. The current methodology does not and cannot meet these statutory requirements, and its inequities will only grow with substantial departing load. The current methodology results in cost shifts in one direction or the other because it employs administratively set market-price benchmarks that are based not on actual current market prices, but rather on forecasts of market conditions and portfolio costs with no true up.<sup>8</sup> The current methodology thus does not lawfully or equitably allocate costs among bundled service and departing load customers.

Moreover, the current methodology is controversial and widely criticized, albeit for different reasons. It appears that not a single party believes the current PCIA is fair and reasonable.

Timely resolution is also needed to allow communities considering CCA formation to understand their actual cost responsibility, customers to make informed retail-program choices, and load-serving entities to make informed portfolio decisions. Uncertainty regarding the current methodology could lead to long-term uneconomic decisions by communities considering CCA formation. CCA development could be artificially incited if potential CCAs perceive a window of opportunity exists to avoid costs under the current methodology, presenting the

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<sup>8</sup> For example, the 2016 benchmark under PCIA for RA is \$58/kW-year compared to a 2015-2019 average weighted system price of \$29/kW-year from 2015 CPUC Resource Adequacy report. Similarly, the 2016 benchmark for RECs is \$46/MWh compared to an \$18/MWh market estimate for PCC 1 RECs based on a blend of market indices and broker quotes.

Commission with difficult legal issues about certifying that development. Under Section 366.2 of the Public Utilities Code, the Commission cannot certify an implementation plan for any new CCA until the Commission is satisfied that a cost-allocation methodology is in place to prevent a shifting of costs to bundled-service customers.<sup>9</sup> The current cost-allocation methodology does not prevent cost shifts, thus calling into question whether any new CCA can be certified until this proceeding is resolved.

Uncertain cost allocation also complicates current and future procurement planning. The Joint Utilities, for example, have significant concern with taking on new long-term commitments for policy objectives that are likely to be above market in the future while it is unclear how bundled-service customers will be adequately protected from cost shifts. Long-term commitments for individual types of resources, *e.g.*, BioEnergy RAM, as distinct from least-cost or reliability-driven needs, are of particular concern. Parties also need certainty and time to prepare for their 2019 RA showings. Otherwise, implementation of the new methodology could be delayed another year.

In light of these pressing issues, the Commission should resolve this proceeding within a year. Although aggressive, a one-year timeline is realistic and appropriate. The current methodology's deficiencies have been well-vetted in Commission proceedings and were recently addressed in workshops for about six months. Additionally, interested parties already have had

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<sup>9</sup> See Section 366.2(c) (7) and (8); also 366.2(i), (j)(1). The following costs must be resolved before a new CCA may commence CCA services: DWR costs, unrecovered past undercollections for electricity purchases, and net unavoidable, electricity-purchase-contract costs. See Section 366.2 subdivisions (d), (e), and (f).

three or more months to consider the Joint Utilities’ PAM proposal to replace the current methodology.<sup>10</sup>

To complete this proceeding within 12 months, the Joint Utilities propose the following schedule, which assumes that the CARE PCIA Exemption will be addressed concurrently with reforms to the current methodology:

| <b>Event</b>   | <b>Proposed Date</b>  |
|--|-----------------------|
| Prehearing Conference  | August 15, 2017       |
| Commissioner’s Scoping Ruling Issued   | August 31, 2017       |
| Concurrent Opening Briefs on CARE/MB PCIA Exemption  | September 15, 2017    |
| Concurrent Reply Briefs on CARE/MB PCIA Exemption  | September 30, 2017    |
| Direct Testimony (Methodology Proposals, including alternatives, transparency, stability and certainty issues) | October 30, 2017      |
| Concurrent Rebuttal Testimony  | December 15, 2017     |
| Evidentiary Hearings   | January 8-12, 2018    |
| Opening Briefs   | February 20, 2018     |
| Reply Briefs   | March 9, 2018         |
| Proposed Decision Issued   | May 2018              |
| Final Decision Issued  | June 2018             |
| Implementation Advice Letters  | July – September 2018 |

To help keep to this schedule, the Joint Utilities propose to meet with interested parties in workshops to consider transparency issues. Prior workshops have resulted in stakeholders identifying problems and priorities, and the Joint Utilities have been assessing this information and working on ideas about how to make cost data more readily available. The Joint Utilities believe that progress can be made, and that it is possible to reach some reasonable level of

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<sup>10</sup> Substantial discovery concerning the PAM was provided to interested parties during the pendency of A.17-04-018. The PAM was also raised and discussed during the workshops in advance of A.17-04-018.

agreement among the parties in this area. Accordingly, the Commission should establish workshops and a concurrent data-access track to allow parties to work cooperatively and report back to the Commission on their progress.

**C. Issues – Clarify that Consideration of Portfolio Management Is Prospective**

The Joint Utilities support the Commission’s proposed list of issues and, in particular, the Commission’s decision to consider alternative methodologies, including the PAM, in this proceeding.

gHowever, the Commission should clarify one issue: Issue No. 4.c., which states:

- Optimization of IOU portfolio management (*e.g.*, contract extensions and contract renegotiation) to minimize stranded costs.<sup>11</sup>

The purpose of this topic is unclear given that the Commission regularly and diligently reviews the utilities’ portfolio-management activity through existing regulatory processes.

The Commission, therefore, should clarify that the purpose of this topic is to consider whether (as some parties have suggested) utilities should seek to assign contracts to other providers or otherwise renegotiate, liquidate, or terminate contracts in their portfolios to address departing load on a going-forward basis. Absent clarification, this topic could be misconstrued as an invitation to revisit issues that already have been decided in various Commission proceedings (such as Joint Utilities’ administration of their portfolios and Least Cost Dispatch, which are considered in their respective ERRA proceedings). It also could be misused to try to challenge the reasonableness of the Joint Utilities’ past management decisions, or existing contracts and extensions, which would be directly contrary to the State’s foundational post-

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<sup>11</sup> PCIA Rulemaking at 9.

Energy Crisis AB 57 procurement policy regime, as codified in Section 454.5 of the Public Utilities Code.

Accordingly, the Commission should revise this issue to read as follows:

- Considerations associated with altering contractual arrangements on a prospective basis (*e.g.*, contract extensions and contract renegotiation) to minimize stranded costs.<sup>12</sup>

**D. This Proceeding Should Be Categorized as Ratesetting**

The Commission has preliminarily determined that this proceeding should be categorized as quasi-legislative.<sup>13</sup> This determination is based on the idea that the Commission will be establishing policy and rules on a generic basis.<sup>14</sup> The Joint Utilities urge the Commission to reassess this determination and change this proceeding to “ratesetting.” The parties in this proceeding will delve into specific rate questions and analyses to determine the impacts of various cost-allocation proposals. These questions inevitably involve ratesetting. Once a methodology is adopted in this proceeding, the Joint Utilities expect simply to implement that methodology through compliance advice letters to establish new rates. Accordingly, the decision in this proceeding will result in rate changes. Notably, past proceedings addressing the current methodology have been ratesetting.<sup>15</sup>

Because rate issues necessarily will be considered here, it does not make sense to proceed with a quasi-legislative designation now, only to make a change to the categorization later when

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<sup>12</sup> This topic is relevant regardless of which methodology the Commission ultimately adopts and, therefore, it could be numbered on its own, as Issue No. 7. The current Issue No. 7 could become Issue No. 8.

<sup>13</sup> PCIA Rulemaking at 11.

<sup>14</sup> *Id.*

<sup>15</sup> The Direct Access OIR in R.02-01-011 and the CCA OIR in R.03-10-003, both of which addressed cost allocation, were ultimately categorized as ratesetting proceedings. The CCA Bond proceeding, R.03-10-003, which involves similar issues (benchmark valuation, for example) is also ratesetting.

rate issues are considered. Also, phasing this proceeding -- or otherwise deferring consideration of rate issues until later -- would likely delay resolution of this proceeding. To avoid delay, the Commission should categorize this proceeding as ratesetting from the outset.

### **III. CONCLUSION**

The current methodology is broken. The Joint Utilities welcome this opportunity to revisit the current methodology, and to move to a new approach that is lawful, fair, and reasonable. The Joint Utilities urge the Commission to act expeditiously to adopt a new methodology so that all customers are protected from unlawful and inequitable cost shifts.

Respectfully submitted,

*/s/ Stacy Van Goor*

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