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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

Rulemaking 17-06-026

**PHASE 2 SCOPING MEMO
AND RULING OF ASSIGNED COMMISSIONER**

Summary

This Scoping Memo and Ruling sets forth the category, issues, need for hearing, schedule, and other matters necessary to scope Phase 2 of this proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the California Public Utilities Commission’s (Commission’s) Rules of Practice and Procedure.¹

1. Background

The Power Charge Indifference Adjustment (PCIA) is a mechanism adopted by the Commission as part of a ratemaking methodology developed to ensure that when electric customers of an investor-owned utility (IOU) depart from IOU service and receive their electricity from a non-IOU provider, those customers remain responsible for costs previously incurred on their behalf by the IOUs — but only those costs.² The Commission opened this Rulemaking to review the PCIA methodology established shortly after the 2001 California energy crisis, as the methodology was subsequently revised in 2006. The initial September 25, 2017 Scoping Ruling and Ruling of the Assigned Commissioner (2017 Scoping Ruling) determined that the issues in what is now

¹ All references to Rules are to the Commission’s Rules of Practice and Procedure.

² The “IOUs” referenced in this Scoping Ruling are the three electric utilities named as Respondents to this Rulemaking: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

considered Phase 1 of this proceeding would be resolved through two concurrent tracks. Track 1 examined issues regarding exemptions from the PCIA for the IOUs' California Alternate Rates for Energy (CARE) and Medical Baseline customers. The Commission resolved these issues in Decision (D.) 18-07-009 and D.18-09-013. Track 2 examined the then-current PCIA methodology and considered alternatives to that mechanism. The Commission resolved those issues in D.18-10-019, thus concluding Phase 1.

D.18-10-019 also determined that a second phase of this proceeding would be opened in order to establish a "working group" process to enable parties to further develop a number of proposals for future consideration by the Commission.³ The Decision also directed the Commission and parties to further refine, in a future prehearing conference (PHC) and scoping memo, the number of working groups and the process for their formation.⁴

On November 29, 2018 the assigned Administrative Law Judges (ALJs) issued a ruling scheduling the PHC for December 19, 2018 and inviting parties to submit PHC statements addressing a number of substantive and procedural questions listed in the ruling. Parties were also asked to provide a table that indexed their Phase 1 pleadings to identify their existing recommendations for the scope of a future phase. The ruling also encouraged parties to meet and confer in order to develop and submit consensus recommendations where possible.

PHC statements were filed on December 12, 2018 by PG&E, SCE and SDG&E (jointly as the Joint Utilities), California Community Choice Association (CalCCA), Marin Clean Energy (MCE), Sonoma Clean Power (SCP), and Peninsula Clean Energy Authority (PCE) (jointly, as NorCal CCAs), the Alliance for Retail Energy Markets and the Direct Access Customer Coalition (jointly, as AReM/DACC), Commercial Energy

³ D.18-10-019 at 117.

⁴ D.18-10-019, Ordering Paragraph 14.

(Commercial), California Large Energy Consumers Association (CLECA), the Regents of the University of California (UC), the City of San Diego (San Diego), Protect Our Communities Foundation (POC), the Utility Consumers' Action Network (UCAN) and the Commission's independent Public Advocates Office (PAO).

On December 19, 2018, the PHC was held to determine parties, discuss the scope, the schedule, and other procedural matters.

2. Scope

As directed by the Commission in D.18-10-019, Phase 2 of this Rulemaking will primarily rely upon a working group process to further develop a number of PCIA-related proposals for consideration by the Commission.

The PHC ruling sought parties' suggestions regarding the number and scope of working groups, schedules and timelines for each group's deliverables, governance of the groups, ground rules that may be necessary, and other procedural items. Based on the OIR, directions provided in Sections 7.6 and 8.1 of D.18-10-019, party comments, and the discussion at the PHC, the following three sets of issues are determined to be within the scope of Phase 2 of this proceeding:

1. Issues with the highest priority: Benchmark True-Up and Other Benchmarking Issues;
2. Issues to be resolved in early 2020: Prepayment; and
3. Issues to be resolved by mid-2020: Portfolio Optimization and Cost Reduction, Allocation and Auction.

While the first set of issues should be resolved in time to be implemented in the Joint Utilities' respective 2020 ERRRA Forecast Updates in early November 2019, the second set of issues should be resolved by early 2020. Due to complexity of the subject matter, the third set of issues are expected to be resolved in 2020 as detailed in Section 3. Scoping issues under each group are further described below.

2.1. Issues with the Highest Priority (Working Group One: Benchmark True-Up and Other Benchmarking Issues)

1. Which mechanism(s), procedural and/or methodological, should the Commission adopt to true up annually the Brown Power component, the Resource Adequacy (RA) adder and the Renewable Portfolio Standard (RPS) adder of the Market Price Benchmark?
2. Are new data and/or transaction reporting requirements needed for the purposes of performing the true-up? If so, what are those data/reporting requirements and how should they be considered by the Commission?
3. Should the true up process be addressed as part of the annual Energy Resource Recovery Account proceedings? If not, where should the true up process be addressed?
4. Which mechanism(s), procedural and/or methodological, should the Commission adopt to develop annually the RA adder and the RPS adder of the Market Price Benchmark?
5. Should the Commission modify, or create new, transaction reporting for the purposes of deriving forecasts of next year's RA and RPS adders, including expansion and refinement of the Energy Division's annual RA Report, and if so, how?
6. How should the Commission clarify/define forecasting amounts of unsold RA?
7. D.18-10-019 specified that "a zero or *de minimis* price shall be assigned for [RA] capacity expected to remain unsold for purposes of calculating the MPB."⁵ Are further parameters needed to define a *de minimis* price, and if so, what are these parameters?
8. Which methodologies, probabilistic or scenario-based, should the Commission adopt to forecast departing load?
9. What are the barriers for the IOUs to obtain the information they need to adequately forecast future CCA departing load and

⁵ D.18-10-019 at Ordering Paragraph 1.

- mitigate future forecasting inaccuracies, and how can they overcome those barriers?
10. What mechanisms would help minimize future deviations between announced and actual load departure dates, thereby improving the fidelity of departing load forecasts?
 11. Should the Commission clarify the definition of billing determinants and their proper usage for calculating the PCIA, and if so, how?
 12. Should the Commission require any changes in the presentation of the PCIA in tariffs and on customer bills, and if so, what should those changes be?

**2.2. Issues to be Resolved in Early 2020
(Working Group Two: Prepayment)**

1. Which criteria should the Commission adopt for evaluating and approving prepayments?
2. Should the Commission require any utility accounting treatments to reflect prepayments, and if so, what are these utility accounting treatments?
3. What should be the time periods over which the prepayment can be made?
4. What should be the regulatory approval process and dispute resolution process governing the prepayment option?

**2.3. Issues to Be Resolved by Mid- 2020
(Working Group Three: Portfolio
Optimization and Cost Reduction;
Allocation and Auction)**

1. What are the structures, processes, and rules governing portfolio optimization that the Commission should consider in order to address excess resources in utility portfolios? How should these processes and rules be structured so as to be compatible with the Commission's ongoing Integrated Resource Planning and RA program modifications in other proceedings?
2. What are the standards the Commission should adopt for more active management of the utilities' portfolios in response to departing load in the future in order to minimize further accumulation of uneconomic costs?

3. If the Commission were to adopt standards for more active management of the utility portfolios, how should the transition to new standards occur (*e.g.* timeframe, process, etc.)?; and
4. Should the Commission consider new or modified shareholder responsibility for future portfolio mismanagement, if any, so that neither bundled nor departing customers bear full cost responsibility if utilities do not meet established portfolio management standards? If so, are ERRA or General Rate Case proceedings the appropriate forums to address prudent management of portfolios?

3. Schedule

Due to the complexity and number of issues, it is the Commission's intent to complete Phase 2 of this proceeding within 24 months of the date of this ruling. The following schedule is adopted here and may be modified by the assigned Commissioner or ALJ as required to promote the efficient and fair resolution of the issues scoped in this proceeding.

3.1. Schedule for Working Group One

This Scoping Ruling determines that the efforts of this group should take priority in 2019 to enable the Commission to adopt true-up and benchmark adjustment mechanisms before the end of the year. This prioritization is widely supported among parties. The Commissioner remarks upon adoption of D.18-10-019 also supported development and adoption of a methodology for annual true-ups of RA and RPS by the end of 2019.

The schedule below allows for two Working Group One Reports, thereby enabling the adopted recommendations to be timely implemented in the Joint Utilities' respective 2020 ERRA Forecast Updates, which each utility will submit in November 2019. While the first report will cover the issues 1 through 7 listed in Section 2.1, which are necessary for timely implementation of ERRA forecast updates, the second report will cover less time-sensitive issues, including issues 8 through 12, listed in Section 2.1. It is our intention that the first proposed decision to be issued in September will provide directions

for updating the ERRA template, so that the end-of-2019 ERRA decisions calculate all values accurately and transparently.

R.17-06-026, Phase 2 Schedule for Working Group One Benchmark True-up and other Benchmarking Issues	
Event	Date
Working Group One begins to meet	February 2019
Service of first progress report, including requests that working group be dissolved	3/20/2019
Service of second progress report, including requests that working group be dissolved	4/22/2019
Working Group report on Brown Power, RPS and RA true up (issues 1 through 7) filed and served	5/31/2019
Working Group report on issues 8 through 12 filed and served	7/1/2019
Motions requesting evidentiary hearings	10th working day after filing and service of the associated Working Group report
Proposed Decision on Brown Power, RPS and RA true up (issues 1 through 6) issued	September 2019
Commission Voting Meeting	30 days after PD
Proposed Decision on remaining Working Group One issues	Fall 2019
Commission Voting Meeting	30 days after PD

Working Group One shall follow the schedule shown above. The schedule includes two interim milestones that are intended to avoid excessive reporting or documentation. These milestones will allow parties to inform the assigned Commissioner and ALJs of any difficulties being encountered.

3.2. Schedule for Working Groups Two and Three

Regarding the schedule for Working Groups Two and Three, it is not necessary for the Commission to issue decisions on their recommendations before the end of 2019. Therefore, each of these groups should follow a schedule calibrated to the scope of the

group’s tasks. As noted above, if a group finishes all or part of its tasks quickly, the group should submit its report to the Commission without delay.

The schedules shown below are adopted for Working Group Two and Working Group Three.

R.17-06-026, Phase 2 Schedule for Working Group Two, Prepayment	
Event	Date
Working Group Two begins to meet	March 2019
Service of first progress report, including requests that working group be dissolved	5/24/2019
Service of second progress report, including requests that working group be dissolved	7/26/2019
Working Group reports on consensus and non-consensus items filed and served at Commission	12/9/2019
Motions requesting Evidentiary Hearings	10th working day after filing and service of the Working Group report
Proposed Decision(s) Issued	Q1 2020
Commission Voting Meeting	30 days after PD

R.17-06-026, Phase 2 Schedule for Working Group Three, Portfolio Optimization and Cost Reduction, and Allocation and Auction	
Event	Date
Working Group Three begins to meet	April 2019
Service of first progress report, including requests that working group be dissolved	6/24/2019
Service of second progress report, including requests that working group be dissolved	9/26/2019
Working Group reports on consensus and non-consensus items filed and served at Commission	1/30/2020
Motions requesting Evidentiary Hearings	10 th working day after filing and service of the Working Group report
Proposed Decision(s) Issued	Q2 2020

Commission Voting Meeting	30 days after PD
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4. Governance of Working Groups and Ground Rules for Phase 2

The PHC ruling sought input from parties regarding governance and ground rules for Phase 2. The purpose in doing so was to ensure that little time need be spent on these questions as the parties began their work in Phase 2.

Should a party believe the process is not proceeding efficiently, written contact with the assigned ALJ should be made via email with a copy concurrently sent to the service list.

4.1. Governance of Working Groups

Based on discussion of parties’ recommendations at the PHC, each Working Group shall be co-chaired by two representatives of parties in this proceeding. Working Group Three may form a sub-group to develop a voluntary allocation and auction proposal and that sub-group shall be chaired by a representative of Commercial Energy. Commercial’s representative may select a co-chair but any disputes over that selection shall be immediately brought to the attention of the assigned ALJs for resolution.

The Commission’s Energy Division staff shall not have any facilitation or logistical responsibilities for the Working Groups, but are authorized to provide guidance, as necessary, regarding the format and content of the final Working Group reports, with particular attention to ensure the documentation of different viewpoints is fair and accurate. The Energy Division staff will attend Working Group sessions in order to understand each group’s work.

Parties agreed on the following co-chairs for each Working Group:

Working Group One: Benchmark True-up and other Benchmarking Issues

Utility Co-Chair:	PG&E
Non-utility Co-Chair:	CalCCA

Working Group Two: Prepayment

Utility Co-Chair:	SDG&E
Non-utility Co-Chair:	AReM/DACC

Working Group Three: Portfolio Optimization and Cost Reduction, and Allocation and Auction

Utility Co-Chair:	SCE
Non-utility Co-Chairs:	CalCCA
Allocation and Auction Subgroup Chair:	Commercial Energy

The designated co-chairs or chair shall be responsible for the following tasks:

1. Scheduling the Working Group's meetings, along with handling associated logistics;
 - a. Pursuant to the Rules of Practice and Procedure 8.1(b)(3), meeting times, locations, and online access information, if applicable, should be noticed to the entire service list.
 - b. Service list notification should include language to inform the service list that decisionmakers may be present at the meeting.
2. Leading each of the Working Group's meetings; and
3. Ensuring that the final report, or reports, of each Working Group is finalized and subsequently filed and served at the Commission according to the schedule for that working group adopted in this Scoping Ruling.

Beyond these preliminary and logistical tasks, the participants in each Working Group should be left to develop more detailed agreements on how they will approach their responsibilities. The PHC statement of AReM/DACC provides an example of the level of detail that each group may wish to consider in order to ensure that its work proceeds openly and efficiently.⁶

⁶ AReM/DACC PHC statement at 7-8.

Although not discussed at the PHC, this Scoping Ruling also directs the Joint Utilities to prepare informational material intended to create a common knowledge base for all parties, as well as Commission staff and decision-makers, at the outset of this phase. In D.18-10-019 the Commission generally directed that Phase 2 should provide parties the opportunity to develop proposals regarding portfolio optimization and cost reduction. In order to work most efficiently, the Working Groups themselves should not devote meetings to educating each other regarding the Commission's procurement processes. It will be more efficient if all participants are provided with a common reference guide to those requirements and processes, and how the IOU portfolios have developed over time as the IOUs complied with statutory and Commission requirements.

Therefore, the Joint Utilities are directed to schedule a meet-and-confer session with all interested parties to this proceeding within 10 days of the issuance of this Scoping Ruling. During the session, all participants shall develop an outline for a "Procurement Process Reference Guide" document that shall include, but is not limited to, the following information:

1. Statutory authorities;
2. Authority for the Commission's Procurement Review Group (PRG) and Independent Evaluator (IE) structure;
3. Timelines showing how procurement forecasts are developed and how and when they are used to make procurement decisions, specifically for:
 - a. Bundled load
 - b. Departing load, completely disaggregated by types of departing load
4. Timelines showing development of Bundled Procurement Plans, and any subsequent modifications of those Plans; and
5. Identification of any existing "challenge-points":
Commission-established opportunities for non-utility stakeholders to express disagreement with IOU procurement plans or decisions, including detailed procedural timelines that govern those opportunities.

Following the meet-and-confer session, the Joint Utilities shall distribute to the Service List for this proceeding the agreed-upon outline for the requested document, and their timeline for preparing and distributing the document. The Commission's Energy Division staff will provide guidance and input, as necessary, to ensure the accuracy of this document's content.

4.2. Ground Rules for Phase 2

Parties are expected to avail themselves of the information provided in the "Procurement Process Reference Guide" as a condition of participation in the working group process. Parties should strive assiduously to avoid mischaracterizing any facts regarding the Commission's current procurement processes.

Parties are expected to work collaboratively in the Working Groups, and to report any difficulties immediately to the assigned ALJs. Parties are also expected to ensure that discovery proceeds smoothly and professionally: first, parties propounding discovery are expected to submit precisely structured and targeted requests; second, parties are expected to seek only data that can be justified as necessary within the scope of the relevant Working Group. The parties are expected to respond to data requests within mutually agreed-upon time frames, just as they would in any other Commission proceeding. As discussed in the next section of this Scoping Ruling, parties should attempt to resolve discovery disputes pursuant to Rule 11.3. If they fail to do so, the dispute should be brought to the attention of the assigned ALJs immediately.

5. Alternative Dispute Resolution

The Commission offers Alternative Dispute Resolution (ADR) services consisting of mediation, facilitation, or early neutral evaluation. Use of ADR services is voluntary, confidential, and at no cost to the parties. Trained Administrative Law Judges serve as neutrals. The parties are encouraged to visit the Commissioner's ADR webpage at <http://www.cpuc.ca.gov/adr>, for more information.

If requested, the assigned Administrative Law Judge will refer this proceeding, or a portion of it, to the Commission's ADR Coordinator. Alternatively, the parties may

contact the ADR Coordinator directly at adr_program@cpuc.ca.gov. The parties will be notified as soon as a neutral has been assigned; thereafter, the neutral will contact the parties to make pertinent scheduling and process arrangements. Alternatively, and at their own expense, the parties may agree to use outside ADR services.

6. Discovery and Law and Motion Matters

The PHC ruling asked parties to identify and discuss any anticipated discovery issues. That discussion continued at the PHC.

The Joint Utilities ask the Commission to “issue guidance strictly limiting further discovery in Phase 2 to information material to structures and processes, [because] broader discovery concerning the composition of the PCIA portfolio is simply not necessary.”⁷ Further discovery, to the extent necessary to more precisely analyze the issues listed in this scoping memo, is allowed.

As Phase 1 parties are aware, the Commission adopted a modified non-disclosure agreement (Modified NDA) for use solely for the purposes of participating more fully in this proceeding. The Modified NDA maintains the Commission's existing framework for sharing confidential procurement data, while permitting greater access to such data by employees of CCAs, Community Aggregators (CAs), Electric Service Providers (ESPs), and trade associations and regulatory alliances comprised of such entities or customers of such entities.⁸

Commercial recommends that this Scoping Ruling confirm that the NDAs between parties negotiated in Phase 1 should continue in effect in Phase 2. Commercial also recommends that the protocols for aggregation of historical generation and pricing data,

⁷ Joint Utilities PHC statement at 12.

⁸ *See*, December 20, 2017 Assigned Commissioner and Assigned ALJ Ruling Granting Relief Sought in December 8, 2017 Supplemental Joint Report on Data Issues, at 4.

also approved in the December 20, 2017 ruling for use within the NDA process, remain in effect as well.⁹

Commercial's requests are reasonable. This Scoping Ruling affirms that the Modified NDA approved in Phase 1 shall continue to be used in Phase 2, and that the associated data aggregation protocols shall also remain in effect.

The discovery guidance provided above does not remove parties' obligations to conduct discovery pursuant to the provisions of Article 10 of the Rules and Rule 11.3. Rule 11.3 requires parties to meet and confer before bringing a motion to compel or limit discovery. Parties are expected to engage in timely discovery well before deadlines and are expected to bring discovery issues to the attention of the assigned ALJs in a timely fashion to avoid adverse impacts on the schedule.

7. Need for Hearings

The PHC ruling sought parties' input regarding whether EHs are necessary in Phase 2. Earlier in this Scoping Ruling, the three separate schedules established for Working Groups reflect a determination that hearings are not required at this time, as indicated by the lack of a schedule for those hearings.

Pursuant to Rule 11.1, any party may make a motion to request EHs on matters within the scope of this proceeding. However, the Commission has discretion whether to grant such a request. In the context of this proceeding, the Commission could instead decide to either (1) leave in place the benchmark true-up process adopted in D.18-10-019, (2) adopt a non-consensus recommendation submitted by one or more parties, or (3) adopt a true-up process of its own design. In short, the best opportunity for parties to materially influence the outcome of this working group process is to provide a consensus proposal in their final reports to the Commission.

⁹ Commercial PHC statement at 12. CalCCA makes the same recommendation. CalCCA PHC statement at 6.

8. Categorization of the Proceeding

The initial Scoping Ruling determined the category of Phase 1 of this proceeding to be ratesetting. Based upon the input of the parties and discussion at the December 19, 2018 PHC, the category of Phase 2 of this proceeding is also determined to be ratesetting. This ruling as to category is appealable pursuant to Rule 7.6.

9. Rules Governing *Ex Parte* Communications

In ratesetting proceedings such as this one, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules.

10. Final Oral Argument

Unless comment is waived pursuant to Rule 14.6(c)(2) for granting the uncontested relief requested, motion for oral argument shall be by no later than the time for filing comments on the PD. The motion shall state the request, the subjects to be addressed at oral argument, the amount of time requested, any recommended procedure and order of presentations, and all other relevant matters. The motion shall contain all the information necessary for the Commission to make an informed ruling on the motion and to provide an efficient, fair, equitable, and reasonable final oral argument. If more than one party seeks the opportunity for final oral argument, parties shall use their best efforts to present a joint motion, including a joint recommendation on procedure, order of presentations, and anything else relevant to the motion. Responses to the motion may be filed.

11. Intervenor Compensation

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 must file and serve a notice of intent to claim compensation no later than 30 days after the December 19, 2018 PHC.¹⁰ Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

¹⁰ Pub. Util. Code § 1804(a)(1).

12. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the Commission's electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYT), or send an e-mail to public.advisor@cpuc.ca.gov.

13. Service of Documents

Rule 1.10 requires only electronic service on any person on the official service list, other than the assigned ALJs, who must also be served a paper copy of all filed or served documents.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties shall provide only electronic service. Parties shall not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: R.17-06-026 – PCIA Rulemaking. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "Comments."

14. Assignment of Proceeding

Michael Picker is the assigned Commissioner and Stephen C. Roscow and Nilgun Atamturk are the assigned ALJs. Pursuant to Rule 7.3, because no EAs are required at this time, no presiding officer is designated in this Scoping Ruling.

IT IS RULED that:

1. The scope and schedule of this proceeding are set forth in Section 2 and Section 3 of this ruling.

2. The assigned Commissioner or Administrative Law Judges may adjust the proceeding schedule as necessary for efficient management and fair resolution of this proceeding.
3. Evidentiary hearings are not required at this time.
4. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this ruling.
5. The Modified Non-Disclosure Agreement approved in Phase 1 of this proceeding shall continue to be used in Phase 2, and the associated data aggregation protocols shall also remain in effect.

Dated February 1, 2019, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker
Assigned Commissioner