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SAN FRANCISCO, CA 94102-3298

May 22, 2020

**Agenda ID #18463
Ratesetting**

TO PARTIES OF RECORD IN RULEMAKING 17-06-026:

This is the proposed decision of Administrative Law Judge Nilgun Atamturk. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's June 25, 2020 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON

Anne E. Simon
Chief Administrative Law Judge

AES:avs
Attachment

Decision PROPOSED DECISION OF ALJ ATAMTURK (Mailed 5/22/2020)

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

**DECISION DENYING PETITION
FOR MODIFICATION OF DECISION 18-07-009**

Summary

This decision denies the Joint Petition for Modification (Joint Petition) of Decision (D.) 18-07-009 filed by California Choice Energy Authority and the Center for Accessible Technology on October 26, 2018. Consistent with Rule 16.4 of the Commission's Rules of Practice and Procedure, the Commission finds that the Joint Petition provides insufficient justification for the request that the Commission modify D.18-07-009 to provide a four-year phase-out of the exemption from paying the Power Charge Indifference Adjustment previously provided for customers of Community Choice Aggregators in the service territories of Southern California Edison Company and San Diego Gas & Electric Company who receive a Medical Baseline allowance from either utility.

This proceeding remains open.

1. Background

The Commission opened this Order Instituting Rulemaking (Rulemaking) in June 2017 in order to review, revise, and consider alternatives to the Power Charge Indifference Adjustment (PCIA). The PCIA is a ratemaking mechanism the Commission adopted after the 2001 California energy crisis in order to ensure that when electric customers of the investor-owned utilities (IOUs) 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.¹ Very generally, when an IOU customer begins to pay for electricity supplied by a Direct Access (DA) provider or a Community Choice Aggregator (CCA), instead of the IOU, that customer is also required to pay the PCIA to compensate the IOU that formerly provided its electricity, if the IOU had made prior commitments to purchase electricity on behalf of that customer.

The September 2017 scoping memo of the assigned Commissioner established two concurrent tracks for this proceeding. Track 1 addressed exemptions from the PCIA provided to DA and CCA customers who participate in the California Alternative Rates for Energy (CARE) program or who receive an additional daily Medical Baseline (MB) usage allowance due to a qualifying medical condition.² Customers are eligible for the CARE program if they participate in certain public assistance programs or if their annual household

¹ The “IOUs” referenced in this decision 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).

² Track 2 examined the PCIA calculation methodology in place in 2017 and considered alternatives to that mechanism. The Petition for Modification reviewed in this decision concerns only issues within the scope of Track 1.

income is below a certain threshold. The CARE and MB programs provide a reduction in energy bills to participating customers.

When the PCIA was first established, the Commission provided exemptions for CARE and MB customers who departed from utility service, so they did not have to pay this charge. These exemptions were reviewed in this Rulemaking because over time, differences emerged in how the eligibility rules for the exemptions were applied between the three utilities. In PG&E service territory in 2017, only CCA customers who participated in the MB program were exempt from paying the PCIA. In SCE and SDG&E service territories, both CARE customers and MB customers of CCAs were exempt from paying the PCIA.

After receiving a number of exhibits into evidence and the filing of briefs and reply briefs, the Commission adopted two decisions that resolved all the Track 1 issues in the scope of this proceeding. In Decision (D.) 18-09-013 the Commission approved a settlement agreement entered into by PG&E and the active parties in its service territory.³ Pursuant to the settlement, MB customers of CCAs that begin to serve residential customers subsequent to the decision would not receive the PCIA exemption. For existing MB customers of CCAs, the full PCIA amount would be phased in over a period of four years. For simplicity, we will refer to D.18-09-013 as the “NorCal decision.”

In D.18-07-009, issued two months prior to the NorCal decision, the Commission addressed the outstanding MB and CARE issues in SCE and SDG&E service territories. The Commission eliminated both exemptions, to take

³ In addition to PG&E, the settling parties were the Center for Accessible Technology, Marin Clean Energy, the Commission’s Public Advocates Office, The Utility Reform Network, and Brightline Defense.

full effect as soon as logistically feasible, and required SCE and SDG&E to initiate a collaborative effort with stakeholders and policymakers to conduct outreach to the CARE and MB customers of CCAs who would be impacted by the elimination of the exemptions. For simplicity, we will refer to D.18-07-009 as the “SoCal decision.”

California Choice Energy Authority and the Center for Accessible Technology (hereinafter, Petitioners) filed and served their “Joint Petition for Modification of Decision 18-07-009” (Joint Petition) on October 26, 2018. On the same day, Petitioners also filed a joint motion to shorten time for responding to the Joint Petition, and a joint motion to stay the implementation activities that D.18-07-009 required SCE to undertake. SCE filed and served separate responses to each motion on November 2, 2018. The assigned ALJ denied the joint motion to stay SCE’s implementation activities in a ruling issued on November 8, 2018.

SCE and SDG&E filed and served separate responses to the Joint Petition on November 26, 2018. Petitioners filed and served a joint reply to SCE’s response on December 8, 2018.

2. Petitions for Modification of Commission Decisions

Rule 16.4 of the Commission’s Rules of Practice and Procedure govern Petitions for Modification of Commission decisions.⁴ Rule 16.4(a) defines a petition for modification as a request to the Commission to make changes to an issued decision.⁵

⁴ All subsequent references in this decision to “Rules” are to the Commission’s Rules of Practice and Procedure, California Code of Regulations Title 20, Division 1, Chapter 1.

⁵ Petitions for Modification differ from Applications for Rehearing of a Commission decision (Rule 16.1). Pursuant to Rule 16.1(c) “[t]he purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.” Petitioners did not assert the Commission committed legal error in D.18-07-009.

Rule 16.4(b) establishes the required content of a Petition for Modification:

- A Petition for Modification must concisely state the justification for the requested relief and must propose specific wording to carry out all requested modifications to the decision.
- Any factual allegations must be supported with specific citations to the record in the proceeding or to matters that may be officially noticed.
- Allegations of new or changed facts must be supported by an appropriate declaration or affidavit.

Rule 16.4(h) provides that unless otherwise ordered by the Commission, the filing of a petition for modification does not stay or excuse compliance with the order of the decision proposed to be modified. The decision remains in effect until the effective date of any decision modifying the decision.

3. Issues Before the Commission

Petitioners request that the Commission modify D.18-07-009 to remove the full elimination of the MB exemption, and instead provide that the exemption would be phased out over a four-year period in a manner comparable to the four-year phase-out for existing MB customers in PG&E's service territory.⁶ As directed by Rule 16.4(a), Petitioners provide two reasons for their requested modification.

First, Petitioners contend that all similarly situated MB customers should have the same protections against the "rate shock" they contend will result from the elimination of the PCIA exemption.⁷ Petitioners support their position by

⁶ Petitioners note that "[i]mportantly, this Petition does not seek to eliminate the phase-out of the PCIA Exemption for CARE customers of the Southern California utilities, since the PG&E Decision did not address CARE customers, only MB customers." Joint Petition at 2.

⁷ Joint Petition at 3.

citing Article 12 of the Commission's Rules, which govern how parties may make a motion for adoption of settlements in Commission proceedings, including required contents and required procedural steps. In pertinent part, Rule 12.1(d) states "[t]he Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." Petitioners cite the Commission's approval of the settlement in the NorCal decision and contend that since the settlement provided a four-year phase-in of the full PCIA amount for MB customers of CCAs in PG&E territory, and the Commission found the settlement to be "reasonable in light of the whole record" and "consistent with law," the Commission should provide MB customers of CCAs in SoCal and SDG&E territories with the same four-year phase-in of the full PCIA.⁸

Petitioners' second reason for requesting modification of D.18-07-009 is that the PCIA exemption for MB customers should remain consistent among SCE, SDG&E and PG&E.⁹ Petitioners cite R.17-06-026 and the September 2017 scoping memo to support their contention:

- The Order Instituting Rulemaking for this proceeding explicitly recognizes that an underlying issue to the proceeding is to examine the PCIA in a way as to *achieve* consistency of treatment of exemptions among IOUs.¹⁰
- The September 27, 2017 Scoping Memo and Ruling of the Assigned Commissioner implemented Track 1 of this proceeding to "include review and possible revision of

⁸ Joint Petition at 3-5.

⁹ Joint Petition at 5.

¹⁰ Joint Petition at 5, citing R.17-06-026 at 10, emphasis added.

exemptions and the consistency of treatment of exemptions between SCE, PG&E, and SDG&E.”¹¹

3.1. Responses to the Joint Petition

In their responses to the Joint Petition, SCE and SDG&E disagree with the logic and conclusions reached by Petitioners. First, regarding whether the Commission’s consideration of the impacts on MB customers in PG&E’s territory must be carried over to SCE and SDG&E MB customers, both SCE and SDG&E note that the Commission did consider this question in the SoCal decision, and resolved it in Conclusion of Law 5: “[p]roposals to phase in the PCIA for affected CARE and MB customers would result in inconsistent treatment of otherwise similar departing load and bundled utility customers.”¹²

Second, regarding the need for consistency among the three utilities, SCE and SDG&E contend that requiring them to phase-in the PCIA would “impede rather than promote consistency” by exacerbating existing disparities in treatment between customers, as well as creating new disparities. SDG&E lists inconsistencies in treatment between (i) bundled service MB customers versus existing CCA MB customers; (ii) new CCA MB customers versus existing CCA MB customers; (iii) DA MB customers versus existing CCA MB customers; and (iv) bundled service/CCA/DA CARE customers versus existing CCA MB customers.¹³ Both SDG&E and SCE note that the Commission, by issuing the SoCal decision while the uncontested PG&E settlement was still pending before

¹¹ Joint Petition at 5, citing Scoping Memo at 16.

¹² SCE Response at 4; SDG&E Response at 6.

¹³ SDG&E Response at 5-6.

it, essentially communicated that it did not find it necessary to enforce literal consistency across all service territories.¹⁴

3.2. Discussion

Based on our review of the Joint Petition and the responses by SCE and SDG&E, we find that the Joint Petition should be denied. With reference to Rule 16.4(a), the justifications offered by Petitioners do not convince us that the SCE decision should be modified so that (1) all similarly situated MB customers have the same protections against possible “rate shock” that may result from the elimination of the PCIA exemption, or (2) the PCIA exemption for MB customers remains consistent among SCE, SDG&E and PG&E.

Regarding Petitioners’ first issue, the need for protections for similarly situated MB customers, we find Petitioners’ deconstruction of the Commission’s language in the NorCal decision to be unavailing: Petitioners create and then rely upon non-existent connections between our references to Rule 12.1(d) and their preferred outcomes. For example, Petitioners’ statement below is not accurate:

In the PG&E Decision, the Commission concluded that the PG&E Settlement’s 4-year phase-in period is reasonable in light of the settling parties’ consensus view that “the increase to MB customer bills would be substantial and, therefore, it made sense to phase in the PCIA in order to alleviate these increases.”¹⁵

¹⁴ SCE Response at 4 and SDG&E Response at 6. Both SCE and SDG&E cite the statement in the Joint Petition (at 2) that “Cal Choice’s Opening Brief on Track 1 requested that any decision on Track 1 issues relating to SCE and SDG&E be deferred in order to include, or at least be informed by, the PG&E Settlement to ensure consistency.”

¹⁵ Joint Petition at 2.

Petitioners create a Commission “conclusion” by attributing the quoted text above to the Commission, when in fact the text is quoted from the NorCal settlement motion itself.¹⁶ The Commission’s actual statement in the NorCal decision cannot reasonably be construed as Petitioners would wish:

We find that the Proposed Settlement is reasonable in light of the whole record. As noted above, the exhibits that constitute the record in this proceeding were submitted jointly by active parties, including some of the Settling Parties. The Settling Parties relied on that record in order to make the consensus-based proposal before us. Therefore, we find that the Proposed Settlement reasonably resolves the contested issue in Track 1 of this proceeding, specifically with respect to affected customers of CCAs in PG&E’s service territory.¹⁷

In this statement, the Commission acknowledges that the *NorCal* settling parties do not dispute the import of the factual record. This contrasts with the SCE decision, where parties did not agree, and litigated this issue. The Commission also states above that the Proposed Settlement resolves the contested issue *specifically* with respect to affected customers of CCAs in *PG&E’s* service territory. In short, the Commission never stated that a four-year phase-in was necessary because removing the MB exemption would result in a “substantial” increase to MB customer bills. Thus, this aspect of Petitioners’ first justification for the Joint Petition is not convincing.

Similarly, Petitioners’ representation of the Commission’s legal analysis and conclusion is also inaccurate:

¹⁶ March 28, 2018 Joint Motion of Pacific Gas and Electric Company, Center for Accessible Technology, Marin Clean Energy, the Office of Ratepayer Advocates, The Utility Reform Network, and Brightline Defense requesting approval of Settlement Agreement, at 5.

¹⁷ D.18-09-013 at 9.

... in the PG&E Decision the Commission concluded that the PG&E Settlement, *including the 4-year phase-in period*, was consistent with applicable law, including prohibitions in Public Utilities Code Sections 365.2 and 366.3 against cost-shifting between bundled and unbundled customers.¹⁸

Once again, the Commission's actual discussion in the NorCal decision of whether the proposed settlement was consistent with the law cannot reasonably be construed as Petitioners suggest. First, there is no language in the cited statutes that "prohibits" "cost-shifting." Rather, Sections 365.2 and 366.3 direct the Commission to ensure that neither bundled customers nor departing load customers experience cost increases when some utility customers elect to receive service from other providers, or when a CCA is formed. This language speaks for itself, and we see no need to reinterpret the Legislature's intent as Petitioners suggest. Second, the PG&E decision simply finds that the settlement is consistent with Sections 365.2 and 366.3, and makes no specific reference to the 4-year phase-in period being "consistent with applicable law" as suggested by Petitioners. Thus, we also find Petitioners' legal reasoning in support of their first justification for the Joint Petition to be unconvincing.

In sum, Petitioners have not convinced us of the need for identical "phase-in" protections for similarly situated MB customers across PG&E, SCE and SDG&E service territories.

Turning to Petitioners' second justification for the Joint Motion, that the PCIA exemption for MB customers should remain consistent among SCE, SDG&E and PG&E, we find that Petitioners' reliance upon Rulemaking 17-06-026

¹⁸ Joint Petition at 3-4, emphasis in the original. All statutory references in this decision are to the Public Utilities Code.

and the September 2017 scoping memo requires inferences about the Commission's intent that are not supportable.

First, we agree with Petitioners that the Order Instituting Rulemaking did include, albeit in a list of "examples of topics that may be considered" in the Rulemaking, "[c]onsistency of treatment of exemptions among IOUs."¹⁹ We also agree with Petitioners that the scoping memo did subsequently state that the scope of Track 1 "will include review and possible revision of exemptions and the consistency of treatment of exemptions between SCE, PG&E and SDG&E." However, neither statement can reasonably be interpreted as a determination that the *outcome* of this proceeding would be identical or "consistent" treatment of exemptions, only that this question was within the scope of the Rulemaking. As events in Track 1 unfolded, the parties in PG&E territory settled on a phase-in of the PCIA "[i]n order to avoid the risks and costs of litigation"²⁰ while the same issue in SoCal was fully litigated, with all the attendant risks and costs. Given that SCE and SDG&E both opposed a phase-in, and given that the Commission based the SoCal decision on pleadings unique to the issues presented in those utilities' service territories, it is neither logical nor reasonable for Petitioners to argue that the Commission's decision should match the settled result, which addressed altogether different circumstances in a different utility's service territory. The Commission addressed the need for consistency as part of its SoCal decision, and explained how its decision balanced that goal with other goals. In doing so, the Commission determined that "there are no legal or

¹⁹ R.17-06-026 at 9 and 10, respectively.

²⁰ March 28, 2018 Settlement Agreement among Pacific Gas and Electric Company, Center for Accessible Technology, Marin Clean Energy, the Office of Ratepayer Advocates, The Utility Reform Network, and Brightline Defense requesting approval of Settlement Agreement, at 5.

policy-based reasons” that a CARE or MB customer of SCE or SDG&E should pay a larger monthly bill than a CARE or MB customer of a CCA with the same usage, but which is also exempt from the PCIA.²¹

In sum, Petitioners have not convinced us that the PCIA exemption for MB customers should remain consistent among PG&E, SCE and SDG&E: neither the Commission Rulemaking nor the scoping memo identified this as an intended outcome of this proceeding.

We also note that the implementation of D.18-07-009 is complete. SCE and SDG&E have removed the exemption for Medical Baseline customers from paying the PCIA in their respective service territories, beginning January 1, 2019, more than a year ago. Moreover, Ordering Paragraph 5 of D.18-07-009 directed SCE and SDG&E to initiate and jointly fund a collaborative effort with stakeholders and policymakers to implement an appropriate outreach plan to provide effective notice and education to customers who will be impacted by the elimination of the PCIA exemption. Towards this end, and in compliance with Ordering Paragraph 6 of D.18-07-009, SCE filed Advice Letter 3843-E on August 9, 2018 and established Preliminary Statement Part N.18, Power Charge Indifference Adjustment Memorandum Account (PCIAMA), to record the costs associated with the education and outreach effort for CARE and MB program customers impacted by the elimination of the exemption from paying the PCIA. Similarly, SDG&E filed Advice Letter 3261-E on August 10, 2018 and established the PCIA Customer Outreach Memorandum Account (PCIACOMA) for the same purpose. Approval of the advice letters by Energy Division on September 14, 2018 finalized the implementation of D.19-07-009.

²¹ D.18-07-009 at 28.

Therefore, for the reasons discussed above, the October 26, 2018 Joint Petition for Modification of D.18-07-009 should be denied.

4. Comments on Proposed Decision

The ALJ's proposed decision was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by _____. Reply comments were filed by _____.

5. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Nilgun Atamturk is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. At the time this Rulemaking began, California Alternative Rates for Energy (CARE) and Medical Baseline (MB) customers of CCAs in the SCE and SDG&E service territories were exempt from paying the PCIA. MB customers of CCAs in the PG&E service territory were exempt from paying the PCIA, but CARE customers were not exempt.

2. In D.18-07-009 the Commission found that exempting departing load CARE and MB customers from the PCIA is inequitable because all CARE and MB customers of SCE and SDG&E should receive the same level of discounts, regardless of where they live or whether they are served by a CCA.

3. In D.18-07-009 the Commission fully eliminated the PCIA exemptions for CARE and MB customers of CCAs in the SCE and SDG&E service territories, to take effect as soon as logistically feasible.

4. In D.18-09-013 the Commission approved a settlement that eliminated the PCIA exemption for MB customers of CCAs in the PG&E service territory, to be phased out over four years instead of all at once.

5. In D.18-07-009 the Commission considered the concerns expressed by some parties that “rate shock” might result from elimination of the PCIA exemption all at once, but decided not to adopt a phase-out because it would cause the inconsistent treatment of otherwise similar departing load and bundled utility customers to continue.

6. In compliance with Ordering Paragraph 6 of D.18-07-009, SCE filed Advice Letter 3843-E on August 9, 2018, and established Preliminary Statement Part N.18, Power Charge Indifference Adjustment Memorandum Account, to record the costs associated with the education and outreach effort for CARE and MB program customers impacted by the elimination of the exemption from paying the PCIA.

7. In compliance with Ordering Paragraph 7 of D.18-07-009, SDG&E filed Advice Letter 3261-E on August 10, 2018, and established the PCIA Customer Outreach Memorandum Account to record the costs associated with the education and outreach effort for CARE and MB program customers impacted by the elimination of the exemption from paying the PCIA.

8. Advice Letters 3843-E and 3261-E were approved by Energy Division on September 14, 2018.

9. The implementation of D.18-07-009 is complete.

Conclusions of Law

1. In D.18-07-009 the Commission concluded that the exemptions from the PCIA for CARE and MB customers of CCAs in SCE and SDG&E service territories were inconsistent with Public Utilities Code Sections 365 and 366.3.

2. Although the Commission approved a four-year phase-out of the PCIA exemption for MB customers of CCAs in the PG&E service territory in

D.18-09-013, Public Utilities Code Sections 365.2 and 366.3 do not require the Commission to take the same approach to phase-out for SCE and SDG&E.

3. Neither the Commission Rulemaking nor the scoping memo of the assigned Commissioner in this proceeding identified identical or consistent treatment of PCIA exemptions across PG&E, SCE and SDG&E service territories as an intended outcome of this proceeding.

4. The October 26, 2018 Joint Petition for Modification of D.18-07-009 should be denied.

O R D E R

IT IS ORDERED that:

1. The October 26, 2018 Joint Petition for Modification of Decision 18-07-009 filed by California Choice Energy Authority and the Center for Accessible Technology is denied.

2. Rulemaking 17-06-026 remains open.

This order is effective today.

Dated _____, at San Francisco, California.