BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
05/03/21
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)

REPLY COMMENTS OF EAST BAY COMMUNITY ENERGY, PENINSULA CLEAN ENERGY AUTHORITY, SAN DIEGO COMMUNITY POWER, SILICON VALLEY CLEAN ENERGY AUTHORITY, AND SONOMA CLEAN POWER AUTHORITY ON JUDGE WANG'S PHASE II PROPOSED DECISION

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May 3, 2021

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Pursuant to Rule 14.3, East Bay Community Energy, Peninsula Clean Energy Authority, San Diego Community Power, Silicon Valley Clean Energy Authority, and Sonoma Clean Power Authority (collectively, the "Joint CCAs") respectfully submit this Reply to parties' Opening Comments to the *Proposed Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization* issued by Judge Wang on April 5, 2021 ("PD" or "Proposed Decision").

The Joint CCAs:

- Concur with California Community Choice Association ("CalCCA") that the PD commits a legal error and relies on an incomplete citation of D.02-11-022[1];
- Recommend adoption of the Voluntary Allocation Market Offer ("VAMO") for System and Flexible RA, as described by Co Chairs Southern California Edison Company ("SCE"), Commercial Energy, and CalCCA in the Working Group 3 Final Report,[2] or, at a minimum, an allocation of System and Flexible RA; and
- Recommend adoption of the RFI process as proposed in the WG 3 Final Report.

[1] *Comments of California Community Choice Association on the Proposed Decision*, April 26, 2021 ("CalCCA Opening Comments") at 4.

[2] *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U-338E), California Community Choice Association, and Commercial Energy*, February 21, 2020 ("WG 3 Final Report").

I. THE PD COMMITS A LEGAL ERROR AND RELIES ON AN INCOMPLETE CITATION OF D.02-01-022

The PD arrives at a dangerous and misinformed conclusion that departed customers are subject to the costs, but not the benefits, of resources they pay for, stating:

> "…our approach to PCIA solutions enable [sic] alternative providers to manage their own portfolios, rather than creating rights of alternative providers to resources in the utilities' PCIA portfolios."[3]

The PD incorrectly references D.02-11-022 to support this conclusion and cherry-picks language from a prior decision to arrive at a conclusion that is directly at odds with the intent of statute and prior Commission decisions. As CalCCA described in opening comments, the PD simply omits the second half of a sentence in D.02-11-022.[4] The complete sentence regarding claims of departed customers on utility attributes is as follows (underlined for emphasis):

> "Nothing in this order should be construed as creating any claim on low-cost URG by DA customers <u>beyond the period covered by the DA CRS</u> into perpetuity."[5]

Because the CRS did not allow for an infinite period of cost recovery, the Commission reasoned that DA customers should only be granted a claim on utility resources for *as long as they were paying for them*. This conclusion is clearly called for by statute: Public Utilities Code §366.2(g) establishes that all customers are entitled to portfolio benefits directly proportional to their cost responsibility for those resources unless the value of *any* benefit is subtracted from the "Estimated net unavoidable electricity costs."[6] Again, as CalCCA set out in detail in its opening comments,[7] the values bundled customers receive from GHG-free energy, guaranteed compliance attributes, and below-market PCIA resources are simply not currently accounted for

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3 PD at 13.
4 CalCCA Opening Comments at 4.
5 D.02-01-011 at 25, n. 24.
6 CAL. PUB. UTIL. CODE § 366.2(g).
7 CalCCA Opening Comments at 3.

in PCIA calculations. Thus, using this logic, departed customers have a claim to utility resources as long as "PCIA" is a line item on their bill and benefits are not subtracted from the net unavoidable costs.

Many parties called for a fair treatment of customers and equitable access to the products for which they are being charged.[8] In fact, even the IOUs have agreed with an allocation of resources to customers on whose behalf they were procured. As CalCCA noted, the IOUs originally proposed in Phase 1 of this proceeding to allocate PCIA portfolio attributes through a mechanism "whereby the benefits, attributes, value, and costs of the resources in the Joint Utilities' generation portfolios follow the customers for whom they were procured."[9] If the Commission wishes to single out departed customers as not entitled to benefits of resources procured on their behalf, the Joint CCAs welcome a discussion on the corresponding reduction in the costs which those customers are charged.

II. THE VAMO SHOULD BE ADOPTED, OR AT A MINIMUM, THE ALLOCATION OF SYSTEM AND FLEXIBLE RA SHOULD BE ADOPTED

In light of the above, the Commission should adopt the VAMO proposal jointly developed by the Working Group 3 Co-Chairs SCE, CalCCA, and Commercial Energy. That proposal relied on proportional allocation of capacity to supersede disagreements and complex litigation about the definition of "excess" or the valuation of all benefits to bring the PCIA into legal compliance. Instead, the WG 3 proposal to allocate all System and Flex RA based on load share was an elegant solution to ensure equitable and legal sharing of benefits and costs.

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[8] *See, e.g.*, CalCCA Opening Comments; *Comments of Commercial Energy of California on the Proposed Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, April 26, 2021 ("Commercial Energy Opening Comments"); *Comments of the Protect our Communities Foundation on the Proposed Decision on Portfolio Optimization*, April 26, 2021.

[9] CalCCA Opening Comments at 3, fn 5, quoting R.17-06-026, *Opening Brief of Pacific Gas & Electric Company (U 39-E), Southern California Edison Company (U 338-E), and San Diego Gas & Electric Company (U 902-E) on Track 2 Issues*, June 1, 2018 at 43.

As Commercial Energy observes "[t]here is value in a comprehensive compromise agreed to by a wide range of stakeholder interests."[10] That comprehensive compromise was a thoughtful proposal ideal to none yet acceptable to all. This is precisely the type of balance the PD is lacking. While SCE is correct that the recent creation of a Central Procurement Entity *partially* alleviates the role of individual LSEs in fulfilling Local RA obligations,[11] that argument ignores that System and Flexible RA remain the sole responsibility of individual LSEs. As Local RA can also be used to fulfill System and/or Flexible RA requirements, LSEs will use the system and flexible RA attributes of local resources to meet their System and/or Flexible RA obligations. In addition, SCE fails to acknowledge that there is no Central Procurement Entity proposed for San Diego Gas and Electric territory.

The PD denies allocations of all types of RA based on the likelihood of bundled customers having to pay more for replacement capacity.[12] This acknowledgment merely highlights that existing market price benchmarks do not represent market prices such that – contrary to statute – bundled customers are not indifferent to departures, but in fact benefit from receiving the benefits from resources procured on behalf of departed customers. If the Commission declines to adopt the VAMO in its entirety, allocations of System and Flexible RA based on customer load share would alleviate a portion of the inequities contained in the PD.

III. THE REQUEST FOR INFORMATION PROCESS MUST NOT BE DERAILED BY SPECIOUS CONCERNS ABOUT CONFIDENTIALITY

The Commission must reject suggestions to curtail the Request for Interest Process ("RFI") grounded on specious concerns about confidentiality, since it represents the only

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10 Commercial Energy Opening Comments at 4.

11 *Opening Comments of Southern California Edison Company (U 338-E) on the Proposed Decision of Administrative Law Judge Wang on Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, April 26, 2021 at 1.

12 PD at 40-42.

mechanism to *reduce* costs for all ratepayers. As noted in the Joint CCAs' opening comments, the IOUs have no incentive to divest themselves of below-market PCIA resources. The Joint CCAs strongly disagree with parties' suggestion that IOU failures to respond to good faith proposals to reduce avoidable costs should remain unreported and unreviewable.[13] Furthermore, parties' concerns seem to misconstrue the Working Group 3 RFI proposal as threatening existing contracts even though the RFI process is entirely voluntary.[14] Concerns about confidentiality are also misplaced, as these parties and the Commission already have robust confidentiality protections in place in the review of contracts and their administration in the ERRA proceedings. Limiting the scope of the RFI process or leaving it in IOU control accomplishes little other than hindering transactions between willing sellers and willing buyers, to the detriment of all ratepayers.

IV. CONCLUSION

The Joint CCAs appreciate the opportunity to submit these comments and request adoption of the recommended changes proposed in Appendix A.

Respectfully submitted,

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Dated: May 3, 2021.

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[13] *American Clean Power- California Comments on Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization*, April 26, 2021 at 2-3.

[14] *See id*. at 2; *Comments of the Independent Energy Producers Association on the Proposed Phase 2 Decision* at 2, April 26, 202, ("These references to allocations or offers of resources under existing contracts could be interpreted as implying that that existing contracts would be reassigned to the LSEs providing service to unbundled customers." In fact, there is no reasonable reading of the Working Group 3 proposal of requests for interest and negotiations suggesting any mechanism of any reassignment absent the counterparties' consent.

APPENDIX A

Conclusions of Law

Proposed New Conclusion of Law (and renumbering of subsequent):

4. The Commission should approve the WG3 Proposal regarding Voluntary Allocations and Market Offers of System and Flexible RA resources.

Ordering Paragraphs

Proposed New Ordering Paragraph (and renumbering of subsequent):

1. The WG3 Proposal regarding Voluntary Allocations and Market Offers of System and Flexible RA resources is adopted in its entirety.