

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



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Order Instituting Rulemaking to)
Continue Electric Integrated Resource) Rulemaking 20-05-003
Planning and Related Procurement Processes.) (Filed May 7, 2020)
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**CALIFORNIA CHOICE ENERGY AUTHORITY'S
REPLY COMMENTS ON THE PROPOSED DECISION
DENYING PETITION FOR MODIFICATION ON
MODIFIED COST ALLOCATION MECHANISM**

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In accordance with Rule 14.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the California Choice Energy Authority (“CalChoice”) submits the following reply comments on the *Proposed Decision Denying Petition for Modification on Modified Cost Allocation Mechanism*, issued by Administrative Law Judge Fitch on August 24, 2023 (“Proposed Decision”). CalChoice submits these reply comments to expound upon the error identified by San Diego Community Power (“SDCP”) and Clean Energy Alliance (“CEA”) (collectively “Joint CCAs”) in their opening comments on the Proposed Decision. As further described below, it is legal error, as affirmed by the Commission’s rehearing decision issued earlier this month, for the Commission to fail to square obvious “ongoing or future” cost shifting in the context of load migration.

I. INTRODUCTION

CalChoice is a California joint powers authority providing support services to small cities that have formed Community Choice Aggregation (“CCA”) programs under a single-city, enterprise model. The cities of Lancaster, Palmdale, Pico Rivera, Pomona, Rancho Mirage, San Jacinto, Santa Barbara, and the town of Apple Valley operate CCA programs in association with

CalChoice. As noted in the Proposed Decision, CalChoice previously filed a response in support of the Joint CCAs’ petition for modification (“PFM”) of Decision (“D.”)22-05-015.¹

II. REPLY COMMENTS

In their opening comments, the Joint CCAs point to CalChoice’s previous observation that “utilization of actual load share rather than the [year-ahead (“YA”)] forecasts represents an artificial barrier, unintended by OP 4.”² More than being an “artificial” barrier, the Commission recently affirmed that it is unlawful for ongoing or future cost shifting to be ignored or not squared in the context of load migration. As further described below, the Legislature’s cost-shift prohibition is reciprocal, and it is legal error for the Commission to not fully consider ongoing or future cost shifting incurred by “Now Departed Customers.”³ The Proposed Decision’s failure to analyze and mitigate the obvious long-term cost shift to Now Departed Customers is legal error.

Earlier this month, the Commission issued D.23-08-052. In D.23-08-052, the Commission described, among other things, the extent of its cost shift analysis. While the Commission’s historical focus has been more fixed on cost shifts from CCA programs to bundled customers, the Commission nevertheless acknowledged in D.23-08-052 that Senate Bill (“SB”) 350 (2015) demands *reciprocal* treatment, namely, the Commission must 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.”⁴ In D.23-08-052, the Commission made clear that its cost-shift analyses must “square” with the mandate found in SB 350.

¹ See Proposed Decision at 6.

² Joint CCAs’ Opening Comments at 10 (citing the CalChoice Response at 2).

³ See Joint CCAs’ Opening Comments at 1-2 for a definition of “Now Departed Customers.”

⁴ D.23-08-052 at 3.

The Proposed Decision errors by failing to square the requirement in SB 350 that cost increases borne by departed load must be equitably addressed and mitigated. Admittedly, as the Proposed Decision acknowledges, the facts surrounding the timing and sequence of the Joint CCAs' load migration are challenging to analyze due to "many changed circumstances" and "a great deal of load migration."⁵ However, as the Commission affirmed in D.23-08-052, SB 350 mandates that the full scope of facts must be analyzed by the Commission. As rightly observed by the Joint CCAs, the Proposed Decision commits legal error by truncating the Commission's cost-shift analysis.⁶

In addition to failing to fully consider "Now Departed Customers," the cost-shift analysis in the Proposed Decision is further truncated by erroneously limiting the duration of the cost shift. The Proposed Decision states that "[the Commission] did not intend for the purchase provision to *extend beyond the passage of D.22-05-015*."⁷ However, SB 350 requires a robust, full-orbed review of any cost shift. As the Commission recently stated:

Regardless, our responsibility to ensure that the implementation of a CCA program does not cause a cost shift is ongoing. If evidence demonstrates that the expansion...could result in a cost shift, the implementation violates section[] 366.3 [added by SB 350], and we are obligated to prevent such a possibility.⁸

Again, the cost-shift analysis required under SB 350 is reciprocal. The Commission must also examine cost shift on "Now Departed Customers." Here, the Joint CCAs have clearly provided evidence (both in the PFM and in their opening comments) demonstrating that the

⁵ See Proposed Decision at 11.

⁶ See Joint CCAs' Opening Comments at 5 ("Importantly, the PD does not address, or even consider, its impact to the 283,681 Now Departed Customers.")

⁷ Proposed Decision at 11 (*emphasis* added).

⁸ D.23-08-052 at 6.

outcome in the Proposed Decision will result in an unlawful cost shift to Now Departed Customers. Therefore, the Proposed Decision must be modified to adequately mitigate the cost shift.

According to D.23-08-052, the Commission’s actions must provide “adequate mitigation of the risk of *ongoing or future* cost shifting...”⁹ Here, “adequate mitigation” is not achieved by “[b]asing the one-time opportunity for [the] purchase of resource adequacy capacity on the load at the time of D.22-05-015...” nor is such mitigation “a reasonable outcome that accomplishes [the] Commission’s] objectives for reasonable equity between [load-serving entities],”¹⁰ because these actions do not mitigate ongoing or future cost shifting.

III. CONCLUSION

CalChoice thanks the Commission for the opportunity to submit these reply comments. Based on the error in the Proposed Decision, which is described in the Joint CCAs’ opening comments and expounded herein, CalChoice urges the Commission to modify the Proposed Decision as described in the Joint CCAs’ opening comments. In this way, the ongoing or future cost shift to Now Departed Customers will be lawfully addressed and mitigated.

Dated: September 18, 2023

Respectfully submitted,

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⁹ See D.23-08-052 at 10; *emphasis* added (citing Resolution E-5258 at 10).

¹⁰ Proposed Decision at 11-12.