

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
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November 9, 2023

Agenda ID #22061
Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 20-05-003:

This is the proposed decision of Administrative Law Judge Julie A. Fitch. 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 December 14, 2023 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).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:smt

Attachment

Decision **PROPOSED DECISION OF ALJ FITCH** (Mailed 11/9/2023)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to
Continue Electric Integrated Resource
Planning and Related Procurement
Processes.

Rulemaking 20-05-003

**DECISION GRANTING PETITION FOR MODIFICATION
ON MODIFIED COST ALLOCATION MECHANISM****Summary**

This decision grants a petition for modification (PFM) of Decision (D.) 22-05-015 filed jointly by San Diego Community Power and the Clean Energy Alliance on October 28, 2022. D.22-05-015 adopted the Modified Cost Allocation Mechanism, which allocates costs for electricity procurement by investor-owned utilities on behalf of non-utility load-serving entities. The PFM asks the Commission to use the year-ahead load forecast instead of the actual load being served as the basis for the one-time provision in D.22-05-015 for purchase of resource adequacy capacity. This proceeding remains open.

1. Procedural Background

This section summarizes the procedural background surrounding the filing of the petition for modification (PFM) and the responses to it.

On October 28, 2022, San Diego Community Power (SDCP) and Clean Energy Alliance (CEA) timely filed a joint PFM of Decision (D.) 22-05-015, which is the decision that adopted the Modified Cost Allocation Mechanism (MCAM).

The PFM seeks to establish the year-ahead load forecast as the basis for the one-time provision in D.22-05-015 for sale of resource adequacy capacity, instead of the actual load served at the time of D.22-05-015.

Responses to the SDCP/CEA PFM were filed on November 28, 2022 by the following parties: San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SCE); and California Choice Energy Authority (CalChoice).

SDCP and CEA filed a joint reply to the responses on December 8, 2022.

2. San Diego Community Power and Clean Energy Alliance Petition for Modification of D.22-05-015

D.22-05-015 adopted an MCAM cost recovery process for each investor-owned utility (IOU) that conducted procurement on behalf of load-serving entities (LSE) that opted out of their specific procurement obligations under D.19-11-016, as well as for any future backstop procurement pursuant to D.21-06-035 or later IRP procurement orders. Unlike the traditional cost allocation mechanism, where all customers in an IOU's service territory cover procurement costs, under the MCAM the resource costs are recovered only from customers whose LSEs opted out of procurement or are found to be deficient in their procurement. D.22-05-015 also adopted a one-time provision allowing non-IOU LSEs to negotiate purchasing the portion of D.19-11-016 capacity that the IOU had procured on behalf of customers who, after 2019, departed IOU service for the purchasing LSE's service. Specifically, Ordering Paragraph (OP) 4 of D.22-05-015 states as follows:

For procurement conducted on behalf of bundled customers of the investor-owned utilities (IOU) in 2019 in accordance with D.19-11-016, where the load has subsequently migrated to service by another load-serving entity (LSE), the LSE with

new load shall have the option to enter into an agreement with the relevant IOU to purchase the system resource adequacy capacity at the Market Price Benchmark calculated in accordance with the provisions of D.19-10-001. This is a one-time provision that shall be based on the load of the non-IOU LSE, as mutually agreed between the IOU and the non-IOU LSE, as of the effective date of this decision and shall not include any charges for time periods prior to the effective date of this decision. Any above-market costs that remain shall be assigned a 2019 vintage in the Power Charge Indifference Amount [sic] process for recovery from all customers of the non-IOU LSEs on a non-bypassable basis. Once executed, the IOU(s) shall file Tier 1 Advice Letters with all such agreements (one advice letter may contain more than one agreement) by no later than October 1, 2022.

3. San Diego Community Power and Clean Energy Alliance Requested Modifications

The SDCP and CEA PFM ask the California Public Utilities Commission (Commission) to clarify that the revised 2023 year-ahead resource adequacy load forecasts should be used as the basis for calculating the load at the time of the decision. Under the SDCP and CEA proposed clarification, these 2023 year-ahead resource adequacy forecasts would be the forecasts relied upon for the mutual agreement between the IOUs and the non-IOU LSEs in agreements for the one-time provision allowing for purchase of the resource adequacy capacity. In order to allow this modification to be implemented, SDCP and CEA also request that the Commission allow for the filing of Tier 1 advice letters within 30 days of the execution of any additional agreements entered into after the requested clarification of the basis for the load forecasts.

SDCP and CEA argue that their 2023 year-ahead forecasts were “mutually agreed upon,” as required by D.22-05-015, through the 2023 forecasting process,

and before the decision was adopted.¹ They also argue that the plain meaning of the language in OP 4 of D.22-05-015 allows the use of the non-IOU LSE's revised 2023 year-ahead forecasts, because the language allows for the use of any agreed-upon load forecast.² SDCP and CEA further argue that the language regarding a "mutually agreed upon load forecast" was added in response to their comments on the proposed decision prior to the adoption of D.22-05-015, and therefore their suggested clarification is what the Commission actually intended.³

SDCP and CEA further note that their 2023 year-ahead resource adequacy load forecasting process began in February 2022 and involved several discussions with SDG&E under the required meet-and-confer process, which is how their year-ahead forecasts finalized on May 16, 2022 became "mutually agreed upon." Finally, SDCP and CEA state that the year-ahead forecasts "comprise the most accurate representation of load share expected and approved by the Commission, to be served by each LSE in 2023."⁴ They argue that using the 2023 year-ahead resource adequacy forecasts would better align with the D.22-05-015 guiding cost causation principles and that recent changes to the electric sector, including increased demand, extreme weather, accelerated clean energy goals, and constrained capacity markets, warrant the Commission's clarification in favor of their request.

SDCP and CEA conclude that adoption of the proposed modification allows LSEs formed after the issuance of D.19-11-016 and with developed

¹ SDCP and CEA PFM at 6-8.

² SDCP and CEA PFM at 9.

³ SDCP and CEA PFM at 9.

⁴ SDCP and CEA PFM at 10.

forecasted expansions for 2023, prior to D.22-05-015's effective date, to have equitable access to their customers' share of D.19-11-016 procurement by allowing the LSEs to fulfill their resource adequacy obligations associated with those same customers in a straightforward manner.

4. Responses to San Diego Community Power and Clean Energy Alliance Petition for Modification

CalChoice's response to the PFM generally supports its requested relief. CalChoice argues that using the actual load forecast at the time of D.22-05-015, rather than the year-ahead forecast, represents an "artificial barrier" that was not intended by D.22-05-015.⁵ CalChoice argues that using the year-ahead forecast promotes the basic principle espoused in D.22-05-015, that of cost causation.⁶ In addition, CalChoice argues that LSEs relied on the language in D.19-11-016 promising that the MCAM would be different from the Power Charge Indifference Adjustment (PCIA) mechanism. Thus, CalChoice argues that the LSEs whose customers were already planned to depart in 2023 should be able to receive capacity procured on their behalf at the benchmark price. Finally, CalChoice argues that this clarification will have limited impacts, because only a small number of LSEs have new or expanded load during the period at issue.⁷

SDG&E and SCE oppose the PFM and argue that it should be rejected. SDG&E argues that the purpose of the MCAM is to address cost recovery for procurement conducted by IOUs on behalf of other LSEs, either op-out procurement or backstop procurement, and that generally cost recovery for

⁵ CalChoice Response at 3.

⁶ CalChoice Response at 3.

⁷ CalChoice Response at 3.

procurement on behalf of bundled service customers who later depart bundled service is to be addressed through the PCIA mechanism.⁸

SDG&E argues that the Commission could have applied the MCAM mechanism to customers who departed after 2019, but instead chose the “one-time” option for LSEs with new load since 2019, making it clear that the provision was for customers who “have now departed from IOU retail service as of the effective date of this decision.”⁹

SDG&E’s Response to the PFM further quotes D.22-05-015 language that states that “any load migration subsequent to this decision will be addressed through the regular PCIA process.”¹⁰ SDG&E argues that this means that D.22-05-015 was “crystal clear” that the exception applies based on the load share of the non-IOU LSE as of the effective date of the MCAM decision and that any subsequent migration will be handled through PCIA.

SDG&E also argues that the 2023 year-ahead load forecast for resource adequacy was “non-final” at the time of D.22-05-015 and that the decision never refers to any forecasts because its intent was to use the actual load at the time of the decision.¹¹ Finally, SDG&E argues that practically speaking, any change to the allocation process for resource adequacy capacity at this point would be disruptive and not in the public interest, given that LSEs have already submitted their final 2023 year-ahead showings and re-allocation of resource adequacy

⁸ SDG&E Response at 2-3.

⁹ SDG&E Response at 4, citing D.22-05-015 at 41.

¹⁰ SDG&E Response at 4, citing D.22-05-015 at 41.

¹¹ SDG&E Response at 5-6.

capacity now could result in other LSEs being found non-compliant.¹² SDG&E argues that this could be discriminatory.

Further, SDG&E argues that SDCP and CEA do not meet the requirement for the filing of a PFM¹³ that there are changed circumstances compared to the adoption of D.22-05-015. SDG&E suggests that the changed circumstances that the PFM relies upon are with respect to D.19-11-016 and D.21-06-035, and not D.22-05-015. Thus, SDG&E argues that SDCP and CEA are attempting to relitigate a resolved issued in D.22-05-015.

SCE's Response to the PFM largely focuses on the fact that SCE has already implemented the "one-time" requirement in D.22-05-015. SCE thus argues that the PFM, if granted, would give non-IOU LSEs a second opportunity to purchase resource adequacy capacity at the benchmark price. SCE agrees with SDG&E that the one-time provision was for load that had migrated at the time of D.22-05-015, and allowing a second opportunity now would result in changes to IOU 2023 year-ahead resource adequacy filings that have already been made.¹⁴

SCE also argues that although D.22-05-015 allows for an IOU and a non-IOU to mutually agree to use a different load forecast, SCE objects to the unilateral imposition of the 2023 year-ahead forecast as the basis, and points out that it does not agree to it.¹⁵

Further, SCE argues that there is no evidence that allowing non-IOUs to buy resource adequacy capacity from D.19-11-016 contracts purchased by IOUs is more equitable or more in line with cost causation principles than using actual

¹² SDG&E Response at 6.

¹³ See Rule 16.4.

¹⁴ SCE Response at 2-3.

¹⁵ SCE Response at 3.

load at the time of the adoption of D.22-05-015.¹⁶ SCE also argues that the PFM makes no provision for load migration in both directions, only focusing on load migration away from IOU service.¹⁷

On the question of whether SDCP and CEA have met the requirement for “changed circumstances,” SCE points out that the petitioners point to a severely constrained resource adequacy market, resource delays, and recent regulatory changes. While SCE does not dispute that these factors exist, SCE argues that these factors existed before the adoption of D.22-05-015. Thus, SCE argues that SDCP and CEA have not demonstrated changed circumstances that justify the PFM.¹⁸

Finally, SCE requests that if the Commission does decide to accept the SDCP and CEA request, the modifications should be limited to SDG&E territory since that is where the load changes have primarily occurred.¹⁹

5. San Diego Community Power and Clean Energy Alliance Reply

In reply to SCE and SDG&E responses to the PFM, SDCP and CEA jointly argue primarily that granting the PFM will have a limited impact and will not have an adverse impact on compliance with resource adequacy requirements by other LSEs.

SDCP and CEA point out that there are only three community choice aggregators that had planned expansions of load in 2023 that were included in their Implementation Plan filings in 2021: SDCP, CEA, and Orange County

¹⁶ SCE Response at 5.

¹⁷ SCE Response at 6.

¹⁸ SCE Response at 7.

¹⁹ SCE Response at 7.

Power Authority. SDCP and CEA state that granting the PFM would allow SDCP to purchase 36 megawatts (MW) of system resource adequacy capacity, with CEA being allowed to purchase 13 MW.²⁰ SDCP and CEA argue that any deficiency this may create for the IOUs can be handled during the contracting process if the PFM is granted.²¹

In sum, SDCP and CEA argue that SCE and SDG&E fail to address the inherent ambiguity in D.22-05-015, OP 4, which allows the IOU and non-IOU to agree upon a load forecast that incorporates accurate load share figures but does not specify which load forecast.²² Thus, SDCP and CEA argue that it is reasonable for the Commission to clarify this question. Finally, in their reply, SDCP and CEA provided declarations in support of their PFM.

6. Discussion

First, we address the question of whether SDCP and CEA have met the burden of “changed circumstances” required to be shown for the filing of PFM, according to Rule 16.4 of the Commission’s Rules of Practice and Procedure (Rules). While SCE and SDG&E point out that the conditions cited in the PFM were all in place prior to and during the pendency of D.22-05-015, we ultimately find that what SDCP and CEA are seeking is simply a clarification of the meaning of D.22-05-015, OP 4. This request is reasonable, and therefore we will not reject the PFM on procedural grounds.

On the substance of the PFM request, we focus on the question of the purpose of the “one-time” provision for the purchase of resource adequacy capacity at the benchmark price, provided for in D.22-05-015. This “one-time”

²⁰ SDCP and CEA Reply at 3.

²¹ SDCP and CEA Reply at 3-4.

²² SDCP and CEA Reply at 4.

provision was designed to account for the fact that D.19-11-016 stated that the cost recovery mechanism would be addressed by something other than the PCIA mechanism. Thus, all LSEs reasonably expected that the MCAM decision would address this load migration situation in some way that had yet to be designed at the time of the adoption of D.19-11-016.

Between the passage of D.19-11-016 and D.22-05-015 many circumstances changed, including a great deal of load migration, particularly in Southern California, and a great deal of procurement activity by all LSEs. Thus, because of the passage of time between D.19-11-016 and D.22-05-015, the “one-time” provision was generally designed to address the inequity created by the fact that the cost recovery issues were not entirely clear at the time of the passage of D.19-11-016. The “one-time” provision was not designed to address all known forecasted load migration, but rather to balance the inequity created by the uncertainty of the cost recovery mechanism between the passage of D.19-11-016 and D.22-05-015.

Thus, it was entirely reasonable for SDCP and CEA to seek clarification of the meaning of D.22-05-015, and their proposed solution is a reasonable one. The community choice aggregators with load migration during 2023 were required to adhere to a binding load forecast and to be prepared to serve that load. Thus, it is reasonable to base the volume of resource adequacy capacity available to them for purchase on a one-time basis, according to D.22-05-015, on the load that was expected to be served in 2023. For this purpose, we will use the final resource adequacy year-ahead forecast for 2023, that was finalized in August 2022.

Making this change does not open up the potential for additional opportunities to change the load forecasts associated with the one-time provisions for purchase of resource adequacy capacity. Instead, making this

clarification will allow for the voluntary purchase of resource adequacy capacity procured by IOUs on behalf of customers who migrated in 2023, with the capacity being available to the purchasing LSE through the life of the contracts serving that load. Any load migration after 2023, however, will still be handled through the PCIA mechanism.

As pointed out by SCE and SDG&E, the 2023 resource adequacy showings have already been made. As of the publication of this proposed decision, that is also now true for 2024. Thus, the change made in this decision will not and should not affect resource adequacy requirements for 2023 or 2024. However, we will allow any LSE impacted by the change in this decision to purchase additional resource adequacy capacity with the same provisions as detailed in D.22-05-015 for load being served based on the 2023 resource adequacy year-ahead load forecast, beginning for the 2025 resource adequacy showings and continuing through the life of the contracts.

To effectuate this clarification, the affected LSEs shall enter into agreements for the transfer of the resource adequacy capacity for the additional load amounts at the price included in D.22-05-015. Once executed, each IOU with relevant agreements shall file one Tier 1 Advice Letter including all such agreements within 60 days of the adoption of this decision.

In summary, the SDCP and CEA PFM is granted.

7. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the “Public Comment” tab of the online Docket Card for that proceeding on the Commission’s website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

While this is not the final decision expected to be issued in this proceeding, for purposes of this decision, no public comments were received that are related to the issues raised in the SDCP/CEA PFM discussed in this decision.

8. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Julie A. Fitch in this matter was mailed to the parties in accordance with Pub. Util. Code Section 311 and comments were allowed under Rule 14.3. Comments were filed on _____, and reply comments were filed on _____ by _____.

9. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Julie A. Fitch is the assigned ALJ in this proceeding.

Findings of Fact

1. D.22-05-015 determines the cost allocation policy for IOUs that conducted procurement on behalf of LSEs that opted out of their specific procurement obligations under D.19-11-016, as well as for any future backstop procurement pursuant to D.21-06-035 or any later IRP procurement orders.

2. The PCIA is generally the cost allocation method adopted by the Commission to address load migration from IOU service to another LSE's service.

3. To address any uncertainty and potential inequity caused by statements in D.19-11-016, D.22-05-015 adopted a one-time provision that allowed non-IOU LSEs to negotiate to purchase the portion of D.19-11-016 capacity that the IOU had procured on behalf of customers who, after 2019, departed IOU service for the purchasing LSE's retail service.

Conclusions of Law

1. It was reasonable of SDCP and CEA to file a PFM to seek clarification of the appropriate load forecast to be used as the basis for the one-time resource adequacy capacity purchase option in D.22-05-015.

2. The “one-time” provision for purchase of resource adequacy capacity from IOUs by non-IOU LSEs was not designed to address all eventual load migration, but rather represented a point in time determined by the Commission to address any uncertainty and inequity created between the adoption of D.19-11-016 and D.22-05-015.

3. The basis for the one-time provision for non-IOUs to purchase resource adequacy capacity in D.22-05-015 should be the final 2023 resource adequacy year-ahead forecast for load served by each LSE, which was in draft form at the time of adoption of D.22-05-015 and subsequently finalized in August 2022.

4. The resource adequacy year ahead forecasts are binding on non-IOU LSEs and they are required to serve the load expected in these forecasts.

5. Any load migration subsequent to the 2023 resource adequacy year-ahead load forecasts should continue to be accounted for through the PCIA mechanism.

6. The 2023 and 2024 resource adequacy year-ahead showings should not be impacted by this decision. Instead, any agreements entered into as a result of this decision should affect the 2025 resource adequacy year and any subsequent years, through the life of the contracts purchased by the IOUs.

7. The October 28, 2022 PFM of D.22-05-015 filed by SDCP and CEA should be granted.

8. The IOUs entering into agreements for the sale of additional resource adequacy capacity on the basis of this decision should be required to file a Tier 1

Advice Letter containing any such agreements within 60 days of the adoption of this decision.

9. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. The October 28, 2022 San Diego Community Power and Clean Energy Alliance Petition for Modification of the D.22-05-015 on Modified Cost Allocation Mechanism for Opt-Out and Backstop Procurement Obligations is granted.

2. The basis for the load forecast for the “one-time” provisions for purchase of resource adequacy capacity in Decision 22-05-015 shall be based on the 2023 resource adequacy year-ahead forecast, but shall not impact the 2023 or 2024 resource adequacy showings, and shall only apply prospectively beginning for 2025 resource adequacy requirements and continuing throughout the life of the resource adequacy contracts.

3. Each investor-owned utility impacted by this decision shall file one Tier 1 advice letter within 60 days of the adoption of this decision including all agreements executed under the provisions of this decision.

4. This proceeding remains open.

This decision is effective today.

Dated _____, 2023, at San Francisco, California.