

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

**ENERGY DIVISION**

**RESOLUTION E-5095**

**August 27, 2020**

**R E S O L U T I O N**

Resolution E-5095. Request of Southern California Edison and Clean Power Alliance of Southern California for an Interim Mechanism for Voluntary Allocations of Greenhouse Gas Free Energy.

**PROPOSED OUTCOME:**

- This Resolution approves the request of Southern California Edison and Clean Power Alliance of Southern California to modify Southern California Edison’s 2014 Conformed Bundled Procurement Plan.

**SAFETY CONSIDERATIONS:**

- There are no safety considerations associated with this resolution.

**ESTIMATED COST:**

- There are no costs associated with this resolution.

By Advice Letter 4194-E, Filed on April 17, 2020.

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**SUMMARY**

This Resolution adds a Tariff Sheet to Southern California Edison’s (SCE) 2014 Conformed Bundled Procurement Plan (“2014 BPP”) that enables load serving entities (LSE) operating in SCE’s service territory, and whose customers pay cost responsibility

surcharges (CRS),<sup>1</sup> to receive allocations of greenhouse gas (GHG) Free Energy<sup>2</sup> from SCE's bundled portfolio. In turn, LSEs would be able to include the allocations in their Power Content Label (PCL) reporting under the California Energy Commission's (CEC) Power Source Disclosure Program (PSDP). The proposal is an interim mechanism that would be in effect until the Commission adopts a permanent allocation mechanism in Rulemaking (R.)17-06-026. The interim mechanism is similar to one that Pacific Gas and Electric Company proposed for its service territory in AL 5705-E, which the Commission approved via Resolution E-5046 on May 7, 2020.

## **BACKGROUND**

SCE and Clean Power Alliance of Southern California (CPA) (collectively, SCE/CPA) filed Advice Letter (AL) 4194-E on April 17, 2020. SCE/CPA describe their proposal as follows:

The Proposal and Term Sheet are the result of bilateral negotiations and an agreement between SCE and CPA on terms and conditions of service. However, all LSEs and their customers in SCE's service area are third party beneficiaries of the SCE-CPA agreement. ...This is equitable, because all customers that pay CRS (or pay bundled service rates) should be entitled to receive their fair share of the benefits of the GHG-Free Energy of SCE's CRS-eligible portfolio.<sup>3</sup>

SCE/CPA propose to offer allocations to "Eligible Parties," which include SCE and all Community Choice Aggregators (CCA), Community Aggregators, and Energy Service Providers (ESP) that operate in SCE's territory and whose customers pay CRS.<sup>4</sup> SCE will divide its CRS-eligible portfolio into two separate pools of nuclear and hydroelectric

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<sup>1</sup> Cost responsibility surcharges include the Power Charge Indifference Adjustment (PCIA) and the Competition Transition Charge (CTC).

<sup>2</sup> Although SCE/CPA refer to these allocations as allocations of "GHG Free Energy," the Commission's understanding is that they are essentially the same as those we approved for Pacific Gas and Electric Company in Resolution E-5046. That is, they are allocations of the GHG free attributes of energy sold into the CAISO market, which recipients may take credit for on their Power Content Labels when they buy the equivalent amount of energy from the CAISO market.

<sup>3</sup> Advice Letter 4194-E at 3.

<sup>4</sup> Ibid., Exhibit A at 1.

resources, respectively, and Eligible Parties may select allocations in one or both pools.<sup>5</sup> Given that Eligible Parties' customers already pay the net costs for SCE's CRS-eligible portfolio, there will be no additional costs associated with receipt or acceptance of allocations.<sup>6</sup>

SCE/CPA propose that:

[t]he interim allocations under this Proposal will continue until the earlier of (1) December 31, 2022; or (2) three full calendar months following the effective date of a Decision issued in the PCIA [Order Instituting Rulemaking] that denies an ongoing GHG-Free Energy allocation mechanism materially similar to that permanent GHG-free energy allocation proposal put forth in [Working Group] 3 of the PCIA OIR; or (3) the effective date upon which an ongoing allocation of GHG-Free Energy generated from SCE's CRS-eligible portfolio shall commence pursuant to a Decision issued in the PCIA OIR.<sup>7</sup>

SCE intends to offer allocations to Eligible Parties within 30 days of the effective date of AL 4194-E, after which Eligible Parties will have 30 days to confirm their allocation elections for the first Term Year.<sup>8</sup> SCE will also offer allocations in the fall prior to each subsequent Term Year, and Eligible Parties will have 30 days to confirm their elections.<sup>9</sup> SCE will retain the proportional allocation for its bundled customers, as well as any allocations that Eligible Parties do not accept within the 30-day confirmation window.<sup>10</sup> SCE/CPA propose to calculate allocations for each Eligible Party in each resource pool based on customer vintage, which "will permit each Eligible Party that affirmatively opts-in to [its] allocation to report its vintaged, pro-rata share of the GHG-Free Energy on its Power Content Label, its Integrated Resource Plans, and for Clean Net Short and similar reporting."<sup>11</sup> Specifically, because SCE renewed a contract for output from

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<sup>5</sup> Ibid. at 3.

<sup>6</sup> Ibid. at 3-4.

<sup>7</sup> Ibid. at 5.

<sup>8</sup> Ibid. at 4. A Term Year is all (or a portion) of a calendar year, and the first Term Year will begin on the first calendar day of the month after the 30-day allocation election deadline.

<sup>9</sup> Ibid. at 5.

<sup>10</sup> Ibid., Exhibit A at 2-3.

<sup>11</sup> Ibid., Exhibit A at 1.

Hoover Dam in 2016, SCE will only allocate output from the Hoover Dam to customer vintages of 2016 or later.<sup>12</sup> Within 20 days of the end of each calendar month, SCE will provide electronic updates of actual generation for each vintage in each resource pool.<sup>13</sup> By May 15 of each year, SCE will provide each “Participant” (that is, each Eligible Party that elected to receive an allocation) with the final allocation for each vintage and each resource pool that the Participant elected in the previous Term Year.<sup>14</sup> This allocation will be calculated as:

the sum of the quantities of GHG-Free Energy (in MWh) from each resource vintage for which the Participant is eligible, that is equal to (1) the percentage corresponding to (a) the Participant’s actual load during the Term Year divided by (b) the sum of all Eligible Parties’ loads during the Term Year in that vintage, multiplied by (2) the actual GHG-Free Energy realized during the Term Year from the Product pools in that vintage, subject to the Participant’s election to accept neither, either, or both Product pools.<sup>15</sup>

Exhibit A (the Term Sheet) of AL 4194-E contains a list of CRS-eligible resources and the reporting templates that SCE will use to confirm Eligible Parties’ elections and to report final allocations.

SCE will also provide periodic forecasts so that Participants may estimate their final allocations. On an annual basis, SCE will provide Participants with year-ahead forecasts of generation by hydroelectric resources in each vintage and all CRS-eligible resources in each vintage, depending on which resource pool(s) each Participant selected. SCE will update these forecasts for the remainder of the Term Year on a quarterly basis.<sup>16</sup> SCE will require that Participants maintain the confidentiality of these forecasts.<sup>17</sup>

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<sup>12</sup> Ibid. at 4, Footnote 9.

<sup>13</sup> Ibid., Exhibit A at 5.

<sup>14</sup> Ibid., Exhibit A at 5 and C-1 to C-2.

<sup>15</sup> Ibid., Exhibit A at 3.

<sup>16</sup> Ibid., Exhibit A at 4.

<sup>17</sup> Ibid., Exhibit A at 5.

Finally, although AL 4194-E is a Tier 3 advice letter that requires a Commission Resolution, SCE/CPA propose to implement it immediately, pursuant to General Rule 9.2.3 of General Order 96-B. General Rule 9.2.3 states, in part, that:

[a]t all times, a utility other than a telephone corporation may provide service (other than resale service) to a government agency for free, or at reduced rates and charges, or under terms and conditions otherwise deviating from its tariffs then in effect. The utility may begin such service without prior Commission approval, but the utility shall promptly submit an advice letter to the appropriate Industry Division to notify the Commission of the utility's provision of such service and of the rates, charges, terms and conditions under which the service is provided.<sup>18</sup>

SCE/CPA argue that their agreement falls under General Rule 9.2.3 and that the General Rule does not prohibit applying the agreement to all “third party beneficiaries” in SCE’s service territory.<sup>19</sup> However, SCE/CPA request that the Commission notify them within 21 days of submittal if the Commission determines that immediate implementation under Rule 9.2.3 is not appropriate.

## **NOTICE**

Notice of AL 4194-E was made by publication in the Commission’s Daily Calendar. SCE/CPA state that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

Advice Letter 4194-E was not protested. The Alliance for Retail Energy Markets (AReM) and the California Choice Energy Authority (CalChoice) timely responded to AL 4194-E on May 7, 2020. AReM does not object to the advice letter but requests certain modifications.<sup>20</sup> First, AReM requests that the Commission confirm that LSEs other than CPA can be “third party beneficiaries” to the agreement.<sup>21</sup> Second, AReM

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<sup>18</sup> General Order 96-B, General Order 9.2.3, available at <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M023/K381/23381302.PDF>.

<sup>19</sup> AL 4194-E at 6.

<sup>20</sup> AReM Response at 1.

<sup>21</sup> Ibid. at 1.

notes that LSEs will value allocations differently and recommends that the Commission modify the proposal to permit trading of allocations.<sup>22</sup> AReM proposes that trading parties submit joint attestations (without a requirement to disclose prices) to SCE, Energy Division, and the CEC.<sup>23</sup> AReM also notes that Resolution E-5046 does not prevent trading of similar allocations by PG&E and argues that the Commission should treat PG&E and SCE consistently.<sup>24</sup> Finally, to facilitate trading, AReM recommends that the Commission modify the confidentiality requirements of AL 4194-E to enable parties to share forecasting information through confidentiality agreements.<sup>25</sup>

CalChoice supports the proposal.<sup>26</sup> However, CalChoice argues that SCE's exclusion of output from Hoover Dam for customers with a pre-2016 vintage is inappropriate and states that "the Commission has set forth the principle that renewals, extensions and even amendments should not alter the cost-recovery and vintage associated with the underlying resource."<sup>27</sup> CalChoice proposes that SCE revise AL 4194-E, accordingly, through a supplemental advice letter.<sup>28</sup>

On May 8, 2020, Energy Division issued a determination that General Rule 9.2.3 of General Order 96-B applies to CCAs, which fit the definition of "government agencies" in the General Rule, but that the General Rule does not apply to ESPs. As a result, Energy Division concluded that SCE could only offer allocations of GHG free energy to community choice aggregators prior to Commission approval of AL 4194-E through a Resolution.<sup>29</sup> SCE served Energy Division's determination on the Service Lists for AL 4194-E on May 11, 2020.

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<sup>22</sup> Ibid. at 1-2.

<sup>23</sup> Ibid. at 1.

<sup>24</sup> Ibid. at 2.

<sup>25</sup> Ibid. at 2.

<sup>26</sup> CalChoice Response at 1.

<sup>27</sup> Ibid. at 2. CalChoice cites D.05-01-031 at 37-39 and Resolution E-4841 at 9-10 in support of its argument.

<sup>28</sup> Ibid. at 2.

<sup>29</sup> Energy Division Determination Regarding Applicability of GO 96-B, General Rule 9.2.3, at 2.

SCE/CPA timely responded to the replies of AReM and CalChoice on May 14, 2020. In response to Energy Division’s determination on the applicability of General Rule 9.2.3, SCE/CPA state that SCE will begin providing allocations to CCAs and to one Community Aggregator (the City of Cerritos) on May 15 but that SCE will not provide allocations to ESPs until Commission approval of AL 4194-E through a Resolution.<sup>30</sup> SCE/CPA argue that AReM’s proposed modification to enable trading is unnecessary because “[t]he Proposal and Term sheet make no representation or warranty as to the tradability of the allocated products, but they do not prohibit trading.”<sup>31</sup> SCE/CPA also argue that SCE “should not be required to manage any secondary trading, including receiving sales attestations from LSEs or recalculating allocations after trades occur,” as the interim proposal “is intended to be a relatively simple process for SCE to administer.”<sup>32</sup> In addition, SCE/CPA suggest that trades may not be eligible for PCL reporting, given the PSDP requirement that agreements be in place before sales or allocations occur.<sup>33</sup> SCE/CPA argue that the Commission should not allow LSEs to share SCE’s confidential forecasts, which SCE/CPA do not believe are critical to enabling trades.<sup>34</sup> SCE/CPA also assert that it would be overly burdensome for SCE to review and approve such disclosures.<sup>35</sup> Finally, SCE/CPA argue that the Commission should deny CalChoice’s request to modify the vintage of SCE’s 2016 contract with Hoover Dam, noting that “[f]or the same reason SCE would not put a new solar contract into an earlier vintage even if SCE previously had a contract with the facility that expired, the new Hoover contract is not appropriate for an earlier vintage even though SCE had a previous contract for Hoover power that expired.”<sup>36</sup>

Shell Energy North America (Shell) and AReM (collectively, Shell/AReM) submitted a joint response to SCE/CPA’s reply on May 19, 2020. Shell/AReM oppose SCE’s plan to provide allocations to CCAs and the City of Cerritos prior to providing allocations to ESPs on two grounds. First, Shell/AReM argue that “[t]here is nothing about SCE and

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<sup>30</sup> SCE/CPA Reply at 1.

<sup>31</sup> Ibid. at 2.

<sup>32</sup> Ibid. at 2.

<sup>33</sup> Ibid. at 2.

<sup>34</sup> Ibid. at 2.

<sup>35</sup> Ibid. at 2.

<sup>36</sup> Ibid. at 3.

CPA’s proposal that suggests that this allocation of GHG-free energy is a ‘service’ to which Section 9.2.3 applies.”<sup>37</sup> Shell/AReM therefore assert that SCE/CPA cannot apply General Rule 9.2.3 to the allocations that AL 4194-E contemplates. Second, Shell/AReM state that “[d]ifferential treatment of CCAs and ESPs as described by SCE and CPA would be unduly discriminatory in violation of P.U. Code Section 453(a) and (c).”<sup>38</sup> Specifically, they claim that “differential treatment of CCAs and ESPs...would subject ESPs and their customers to a ‘prejudice or disadvantage’ that is prohibited under Section 453(a).”<sup>39</sup> Shell/AReM also note that SCE/CPA did not propose early allocation to CCAs and the City of Cerritos in AL 4194-E and that parties did not have the opportunity to comment on this aspect of the advice letter.<sup>40</sup> SCE/AReM conclude that there is no legal basis for SCE to provide allocations to different LSEs at different times.<sup>41</sup>

Commercial Energy of California (Commercial Energy) submitted a response to SCE/CPA’s reply on May 21, 2020. Commercial Energy supports the response of Shell/AReM and opposes SCE/CPA’s plan to provide allocations to CCAs and the City of Cerritos prior to providing allocations to ESPs.<sup>42</sup> Commercial Energy also asserts that “[a]s this issue is already before the Commission both in the SCE Advice Letter 4194-E and the recommendations in the [PCIA] Working Group #3 Final Report there is no urgency to implement an unsatisfactory partial allocation process.”<sup>43</sup>

On May 26, 2020, CalChoice withdrew its response to AL 4194-E. CalChoice notes that SCE provided additional information to CalChoice regarding approval of the renewed Hoover Dam contract.<sup>44</sup> CalChoice also states that it “appreciates and accepts SCE’s reply” that SCE would not place a new contract in an earlier vintage, even if SCE had

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<sup>37</sup> Joint Response of Shell Energy and AReM to SCE/CPA at 3.

<sup>38</sup> Ibid. at 3.

<sup>39</sup> Ibid. at 4.

<sup>40</sup> Ibid. at 4.

<sup>41</sup> Ibid. at 4-5.

<sup>42</sup> Response of Commercial Energy at 1.

<sup>43</sup> Ibid. at 2.

<sup>44</sup> CalChoice Withdrawal of Response at 1.



previously held a contract with the associated counterparty.<sup>45</sup> However, CalChoice recommends that the Commission “include within its resolution on AL 4194-E a clear statement to the effect that extended, renewed or amended contracts will not retain the original contracts’ respective vintage, but rather will have a vintage associated with the new effective date for the contract.”<sup>46</sup>

On June 1, 2020, Energy Division issued a suspension notice for AL 4194-E. This notice stated, in part, that “[a]ny authority previously asserted pursuant to General Order 96-B, General Rule 9.2.3 is expressly suspended. The Advice Letter presents potential novel legal questions.”<sup>47</sup>

## **DISCUSSION**

The Commission has reviewed AL 4194-E, the responses to AL 4194-E, the reply of SCE/CPA, and subsequent responses. We find that the modifications to SCE’s 2014 BPP described in AL 5194-E are reasonable, and we address the responses below.

### **General Rule 9.2.3 and Third Party Beneficiaries**

The suspension of AL 4194-E prohibited SCE from offering allocations to some LSEs (under General Rule 9.2.3 of General Order 96-B) before offering them to all LSEs. As a result, the suspension addressed the immediate concerns raised by Shell/AReM and Commercial Energy. There is no need to comment further on the legal questions raised by SCE/CPA’s proposed approach. Given that the question of “third party beneficiaries” was related to the timing of when this AL became effective and the that the AL was suspended, there is also no need to clarify which LSEs are “third party beneficiaries.” Advice Letter 4194-E clearly states that SCE will provide allocations to all CCAs, ESPs, and Community Aggregators in SCE’s service territory whose customers pay CRS if and when the AL is approved.<sup>48</sup>

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<sup>45</sup> Ibid. at 1. Also see SCE Reply at 3.

<sup>46</sup> Ibid. at 1.

<sup>47</sup> Suspension Notice for SCE AL 4194-E at 1.

<sup>48</sup> AL 4194-E, Exhibit A at 1.

### **Trading**

SCE/CPA's proposal in AL 4194-E addresses the same topic as a similar proposal by Pacific Gas and Electric Company, which we approved in Resolution E-5046. It is reasonable to address similar questions on both proposals in the same way. As we stated in Resolution E-5046,<sup>49</sup> we see no reason to prevent LSEs from trading the allocations they receive. We acknowledge SCE/CPA's assertion that trades may not be eligible for PCL reporting, but we note that this regulatory question is under the jurisdiction of the CEC. We also agree with SCE/CPA that requiring SCE to receive attestations and to manage any aspects of trades is unnecessary. As a result, we will not require AReM's proposed modifications regarding trading.

### **Confidentiality**

We are not convinced that trading would be impossible without the ability to share confidential forecast information, and we agree with SCE/CPA that requiring SCE to consent to numerous confidentiality disclosures would be unnecessarily burdensome. We will not require AReM's proposed modification regarding confidentiality.

### **Vintaging**

We acknowledge CalChoice's withdrawal of their response to AL 4194-E. However, we do not believe it is necessary to make the clarification that CalChoice recommends in their withdrawal letter. We expect that SCE will treat new and renewed contracts consistently with SCE/CPA's explanation in their reply and with SCE's historical approach.

### **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review. Section 311(g)(2) provides that this 30-day review period and 20-day comment period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day review and 20-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on July 21, 2020. The Commission did not receive any comments on the draft resolution.

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<sup>49</sup> See Resolution E-5046 at 13.

**FINDINGS**

1. Energy Division's suspension of AL 4194-E prohibited Southern California Edison from offering allocations to some load serving entities before offering them to all load serving entities.
2. Requiring Southern California Edison to receive attestations regarding trades or to manage any aspects of trades is unnecessary.
3. Requiring SCE to consent to confidentiality disclosures associated with trading would be unnecessarily burdensome.
4. It is unnecessary to provide further clarification of the treatment of new or renewed contracts than Southern California Edison and Clean Power Alliance of Southern California Edison have already provided.
5. The modifications to Southern California Edison's 2014 Conformed Bundled Procurement Plan identified in Advice Letter 4194-E are reasonable.

**THEREFORE IT IS ORDERED THAT:**

1. The request of the Southern California Edison and Clean Power Alliance of Southern California to amend Southern California Edison's 2014 Conformed Bundled Procurement Plan as requested in Advice Letter 4194-E is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on August 27, 2020; the following Commissioners voting favorably thereon:

/s/ Alice Stebbins  
ALICE STEBBINS  
Executive Director

MARYBEL BATJER  
President

LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
GENEVIEVE SHIROMA  
Commissioners