PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Agenda ID: 18652

ENERGY DIVISION RESOLUTION E-5059

October 8, 2020

R E S O L U T I O N

Resolution E-5059 Approves, with modifications, Pacific Gas and Electric Company Advice Letter 5354-E, Southern California Edison Advice Letter 3840-E, and San Diego Gas & Electric Company Advice Letter 3257-E.

PROPOSED OUTCOME:

- This resolution would partially approve with modifications Pacific Gas and Electric (PG&E) Advice Letter 5354-E, Southern California Edison (SCE) Advice Letter 3840-E, and San Diego Gas and Electric (SDG&E) Advice Letter 3257-E, implementation of changes to the Investor Own Utilities (IOUs) tariffs for Reentry Fees and Financial Security Requirements for Community Choice Aggregators.

ESTIMATED COST:

- This resolution will not increase IOU bundled ratepayer costs and may provide additional financial protections. Community Choice Aggregation customers may be affected.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution.

By Advice Letters PG&E 5354-E, SCE 3840-E, and SDG&E 3257-E, filed on August 15, 2018.

SUMMARY

The California Public Utilities Commission (CPUC) through this Resolution adopts with modification proposed tariff revisions by Pacific Gas and Electric Company (PG&E) Advice Letter 5354-E, Southern California Edison Company (SCE) Advice Letter 3840-E, and San Diego Gas & Electric Company (SDG&E) Advice Letter 3257-E (collectively, the IOUs) to implement Reentry Fees and Financial Security Requirements for Community Choice Aggregators. Reentry fees include investor owned utility (IOU) administrative costs and procurement costs resulting from a mass involuntary return of CCA customers to IOU service, and the financial security requirements must cover those potential costs.

This resolution adopts the proposed tariff revisions that were specifically directed in Decision (D.) 18-05-022 and rejects proposed revisions that do not comply with the decision. The tariffs shall be revised to clarify that the IOU may ~~not~~ only withhold CCA funds or customer payments to the CCA for any unpaid costs to the IOU, including reentry fees demanded of the CCA ~~without CPUC approval.~~in the event of an involuntary return of CCA customers. We decline to adopt the option to submit a cash deposit directly to the IOU with interest paid as a form of or in lieu of the financial security instruments, and the requirement that DA-eligible customers must return to IOU service in the event of an involuntary return.

Additionally, the definition of events that give rise to involuntary return should be modified to be consistent with the IOUs' own rules for ESPs, and we may choose to revisit this definition of the POLR proceeding. We direct the IOUs to refile the tariff sheets pursuant to this resolution via a Tier 1 advice letter within 30 days of this resolution.

We direct the CCAs to post new financial security instruments within 30 days of this resolution.

BACKGROUND

The legislature in Assembly Bill (AB) 117 (2002, Migden) enacted requirements for ensuring that bundled service customers of the investor owned utilities (IOUs) are indifferent to the costs of electricity customers migration to and from Community Choice Aggregation (CCA) programs. Among those requirements, Public Utilities (P.U.) Code Section 394.25(e) established consumer protections that require CCAs to post financial security to cover the reentry fees that would be imposed on CCA customers in the event these customers are involuntarily returned to IOU procurement service. Section 394.25(e) states:

> If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

In 2003, the CPUC ~~ordered~~ instituted Rulemaking (R.) 03-10-003 to implement portions of Assembly Bill 117 concerning Community Choice Aggregation. An interim financial security amount for CCAs was implemented in Resolution E-4133 on December 20, 2007, requiring CCAs to post $100,000 in financial security with the CPUC as part of the CCA registration packet. Resolution E-4133 concluded that the CCA financial security requirement should be revised in a more formal proceeding in the future.

D.18-05-022

On June 7, 2018, the CPUC issued Decision (D.) 18-05-022. The decision found that Public Utilities Code Section 394.25(e) requires the implementation of both a reentry fee and a corresponding financial security requirement (FSR) to address the costs of a potential mass involuntary return of CCA customers to utility service. The reentry fees are the costs that would be incurred in the event of an involuntary return. The FSR is the estimated amount that would be required for CCA customers to return to IOU service under conditions that would necessitate an involuntary return. While D.18-05-022 concluded that reentry fees and requirements for CCAs should generally be similar to those implemented for ESPs, it made several specific determinations regarding FSRs for CCAs.

D.18-05-022 ordered that the calculation of CCA FSR and reentry fees shall include both utility administrative costs and incremental procurement costs. The decision determined that FSR amount shall be calculated as follows:

FSR amount = (per-customer administrative costs for returning customers to IOU service) + (costs for six months of incremental procurement)[1] ** (number customers)*

The administrative costs shall be set at the same level as established for the per-customer reentry fee for customers that voluntarily return to IOU service[2]. The FSR amount uses the current number of customers enrolled in the CCA.

D.18-05-022 determined that letters of credit, surety bonds, or cash held by a third-party are acceptable instruments to satisfy the FSR. The decision, therefore,

[1] As established in Decision 13-01-021.

[2] D.05-12-041 established reentry fees for customers that elect to voluntarily return to customer service. The reentry fee for voluntary returns is found in SCE and SDG&E Schedule CCA-SF and PG&E Schedule E–CCA.

ordered the amount of the FSR to be updated twice per year to reflect the change to forecasted procurement and administrative costs if the change in the amount of the reentry fees is greater than 10 percent, consistent with the treatment for ESPs. Finally, D.18-05-022 ordered a minimum CCA FSR amount of $147,000.

D.18-05-022 ordered that a CCA shall submit a compliance advice letter to Energy Division, providing notice of compliance with the FSR and requesting the return of any interim financial security posted with the Commission. Any interim financial security bond posted with the CPUC should be returned to the posting CCA when the CCA complies with the financial security requirements of D.18-05-022 and this resolution.[3]

Advice Letter PG&E 5354-E, SCE 3840-E, SDG&E 3257-E

On August 15, 2018, PG&E filed AL 5354-E, SCE filed AL 3840-E, and SDG&E filed AL 3257-E (collectively, the ALs) pursuant to D.18-05-022 seeking CPUC approval for proposed revisions to the three IOUs tariffs establishing requirements for CCAs: PG&E Rule 23, SCE Rule 23 and SDG&E Rule 27 (CCA Rules). The proposed tariff revisions in the ALs were mostly identical across the three IOUs. They implemented the requirements set in D.18-05-022 to define and calculate the CCA financial security requirements and reentry fees.

As directed in the decision, the ALs add tariff provisions to establish the following:

1. The calculation of administrative cost and incremental procurement cost for the purpose of calculating the amount of the FSR;

[3] Resolution E-4133 provided for CCAs to post an interim financial security requirement of $100,000 with the Commission.

2. The FSR amount is required to be updated twice annually if the change in the calculated amount is greater than 10 percent;
3. If an IOU adds new load due to returned customers, they may benefit from "negative incremental procurement costs." In this situation, any negative procurement costs are counted to offset the FSR's administrative cost component of the reentry fees;[4]
4. The minimum FSR amount is set at $147,000; and
5. The use of letters of credit, surety bonds, and cash held by a third-party will be accepted to satisfy the FSR.

The IOUs added the following provisions to Rule 23 (PG&E and SCE) and Rule 27 (SDG&E) that were not directed in D.18-05-022:

1. A CCA shall be subject to reentry fees in the event of any involuntary return, which can be calculated based on the actual administrative and procurement costs of returning customers to IOU service, which may be greater than the calculated FSR amount.
2. To the extent the CCA fails to pay the reentry fees, any reentry fees not recovered from the CCA will be recovered from the involuntarily returned CCA customers.
3. DA eligible customers enrolled in CCA service must return to the IOU in the event of an involuntary return before switching to DA service.[5]

[4] Consistent with the methodology adopted for ESPs in D.11-12-018.

[5] The tariffs removed existing provisions specifying that Direct Access eligible customers enrolled in CCA service do not need to return to Bundled Service before taking DA service.

4. The definition of CCA customers' Involuntary Return is revised to be consistent with the definition set in SCE's Rule 24 for ESPs, listing the conditions under which CCA customers may be involuntarily returned to IOU service.
5. The terms of the financial security instrument must be deemed satisfactory by the IOU and include a satisfactory rating of the issuer of the financial security instrument based on a list of criteria. If the issuer of a security deposit fails to meet the criteria, the CCA must replace the security deposit with one that meets the listed requirements within ten business days.
6. The IOU has the right to withhold customer payments to the CCA for any unpaid costs to the IOU, including reentry fees demanded of the CCA.
7. If a CCA fails to post its financial security instrument within the stated deadline, the IOU may terminate CCA service.
8. A cash deposit provided directly to the IOU with interest paid may serve as a form of in lieu of the financial security instruments authorized by D.18-05-022.
9. ~~The period for which the IOUs must collect procurement costs adds an additional two months to calculate and collect the reentry fees.~~
10. The CCA must replace their financial security instrument if any conditions make the issuer unable to meet the obligations of the financial security requirements.

NOTICE

Notice of ALs 5354-E, 3840-E, 3257-E was made by publication in the CPUC's Daily Calendar. PG&E, SCE, and SDG&E all state that a copy of each Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS AND DISCUSSION

PG&E's AL 5354-E, SCE's AL 3840-E, and SDG&E's AL 3257-E were timely protested by California Community Choice Association (CalCCA), PG&E's AL

5354-E was also timely protested by Alliance for Retail Energy Markets (AReM), and SDG&E's AL 3257-E was protested by Solana Energy Alliance (SEA).

SCE provided replies to the protest of CalCCA on behalf of PG&E, SDG&E, and itself (collectively, the Joint Utilities) on September 11, 2018. Additionally, PG&E responded to the Protest of AReM, and SDG&E responded to the protests of SEA, both on September 11, 2018.

1. Collection of Reentry Fees in the Event of Involuntary Return

CalCCA protested the proposed collection of reentry fees in the IOU Advice Letters' proposed modifications.

CalCCA argues that Section 394.25(e) does not permit reentry fees to be collected from returned customers if the reentry fees exceed the amount of the FSR and CCA's ability to pay. CalCCA states that legislation only requires reentry fees to be allocated to returning customers of Electric Service Providers and that the CPUC has determined that the posting of an FSR fully covers all reentry fees. CalCCA concludes that involuntarily returned CCA customers are absolved of any cost-responsibility, and the proposed language would foster customer confusion and potentially anticompetitive effects among actual and prospective CCA customers.

Reply

The Joint Utilities reply that CalCCA's interpretation of statute regarding residual reentry fees from returned CCA customers is incorrect. They state that Section 394.25(e) is clear that involuntarily returned CCA customers are responsible for reentry fees, and both the statute and D.18-05-022 indicate that reentry fees must cover the costs of involuntary return to avoid imposing costs on the Joint Utilities' other customers.

The Joint Utilities also argue that, while D.18-05-022 does not address residual reentry fees directly, it does conclude that reentry fees and FSRs for CCAs should generally be similar to those implemented for Energy Service Providers (ESPs) in D.11-12-018, where such a provision was approved. They argue that D.11-12-018 did not provide returned customers with an exemption from residual reentry fees, as CalCCA has asserted.

Regarding CalCCA's assertion that bundled customers are entirely protected with the posting of an FSR, the Joint Utilities argue that the FSR is set only twice a year, and market conditions are continually changing. They state that the FSR is not designed to cover any and all reentry fees irrespective of market conditions at the time an involuntary return occurs. Further, the joint utilities argue that CalCCA has advocated to minimize CCAs' FSR and thus maximizes risk to CCA customers.

Discussion

We find CalCCA's arguments that cost responsibility for returned customers should be limited to the financial security requirement amounts is not consistent with P.U. Code Section 394.25(e). The statute is explicit: ~~states that~~ "If a customer of a CCA is involuntarily returned to service provided by an IOU, any reentry fee imposed on that customer that the [CPUC] deems necessary to avoid imposing costs on other customers of the IOU shall be the obligation of the [ESP or CCA]." ~~This indicates that~~ CCAs bear the cost responsibility regardless of whether the costs of returning customers are in excess of the FSR, which protects bundled utility customers from cost shifting. ~~to establish protection for bundled utility customers from cost-shifting that might otherwise occur due to the costs from involuntarily returned customers.~~ While D.18-05-022 does not address residual reentry fees directly, it does conclude that reentry fees and FSRs for CCAs should

generally be similar to those implemented for ESPs in D.11-12-018.[6] In that decision, residual ESP reentry fees are allocated to returned customers.

P.U. Code Section 366.2(a)(4) supports this interpretation: "The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation." If returning CCA customers avoid residual reentry costs above the financial security requirement, this could shift costs to bundled customers in violation of Section 366.2(a)(4). Therefore, we conclude that P.U. Code Sections 366.2(a)(4), 394.25(e) and D.18-05-022 do not absolve involuntarily returned CCA customers from reentry fees. CCA customers bear cost responsibility for reentry fees that the CPUC deems necessary to avoid cost shifting. The collection and dispute of reentry fees is discussed in greater detail below.

~~However, neither the statute nor D.18-05-022 makes a determination on CCA customers' cost obligation should a CCA become insolvent and unable to discharge its obligation through its financial security. P.U. Code Section 394.25(e) only states that the fees shall be allocated to the returning customers for ESPs, not for CCAs. While D.18-05-022 determines that "Reentry fees and FSRs for CCAs should at this time generally be similar to those implemented for ESPs,"7 it does not address the topic of residual reentry fees under the conditions of insolvency. Under these potential conditions, there may be a reason to treat CCA and Direct Access customers differently, since CCAs consist primarily of residential and small commercial customers that were defaulted into CCA service. This issue requires further consideration in a future rulemaking the CPUC intends to open regarding Provider of Last Resort (POLR) policies and rules. Until the~~

[6] D.18-05-022, Conclusion of Law 5.

~~[7] See D.18-05-022, COL 5~~

~~CPUC can consider this issue fully, we will reject the proposed treatment and direct the IOUs to track costs for returning CCA customers in a memorandum account in the event that an involuntary return is triggered prior to additional CPUC guidance.~~

2. Modification of Provisions of DA-eligible customers

In the tariff sections addressing the involuntary return of CCA customers to an IOU, the modifications proposed to remove language relating to DA-Eligible customers. Specifically, the existing provision allows DA-eligible customers to transfer to DA service or IOU service during the involuntary return of a CCA and are not required to be returned to IOU bundled service.

CalCCA protests these proposed modifications in all of the IOU ALs, arguing that they are unjustified and go beyond the scope of D.18-05-022. AReM protests PG&E AL 5354-E, arguing that these provisions provide this exception for DA-eligible customers.

AReM contests the proposed removal of provisions regarding DA-eligible customers, which would require these customers to return to IOU bundled service upon involuntary return. AReM recommends PG&E's revisions be modified to move the provision to the end of the section rather than deleting the language altogether.

Reply

In the Joint Utilities reply to CalCCA's protest, the Joint Utilities state that the revisions only provide a modest cleanup of the Rule. The AReM protest is addressed by PG&E separately.

PG&E filed a reply in response to the AReM protest of AL 5354-E. PG&E states that it will adopt the recommendations made by AReM through the submission

of a supplemental AL, which it filed on October 2, 2018. The supplement reflected the modifications proposed by AReM to its AL 5354-E.

Discussion

We find there to be validity to CalCCA and AReM's protest, specifically ~~on the grounds~~ that D.18-05-022 does not involve DA customers or suppliers. PG&E has already provided the supplement AL 5354-E-A in response to the protest, which adopted AReM's recommendations. The ~~p~~revisions proposed by ~~AL 5354-E-A~~ the supplement are approved, and we order the resubmission by SCE and SDG&E's of tariff sheets reflecting revisions similar to those in PG&E AL 5354-E-A.

3. Conditions under which FSR instruments are activated

CalCCA argues that the revised tariffs should be clearer and more specific with respect to the limited conditions under which the financial security instruments may be activated and drawn on. CalCCA argues that the tariffs should include details of the discrete actions and specific events, triggering the activation of the financial security instrument. CalCCA requests activation of the FSR to occur by mutual written agreement between the IOU and the CCA or by order of the CPUC.

Reply

The Joint Utilities respond that requiring CPUC action to activate the FSR would be unnecessary, procedurally improper, and would nullify the protections of the FSR. They contend that the CalCCA's recommendation seeks to modify D.18-05-022 by imposing new restrictions on the ability of the IOU to call on the CCA's financial security instrument. The Joint Utilities argue that the proposals are consistent with the way the ESP FSR and reentry fees are administered, and the rights and obligations of the parties of the CCA FSR will be governed by the commercial terms of the financial security instrument itself, which will be subject to mutual agreement.

Discussion

~~D.18-05-015 found that accurately predicting the timing and manner of a mass involuntary return of CCA customers to IOU service is not feasible. The decision did not provide specific conditions by which FSR instruments are activated. Nevertheless, we agree that the activation of the FSR should not be unilateral action by the IOU; it requires a mutual written agreement between the IOU and the CCA or approval of the CPUC. The IOUs should resubmit tariffs to clarify that activation of the FSR requires CPUC approval through a Tier 1 AL.~~

P.U. Code 394.25(e) specifically requires the CCA "to post a bond or demonstrate insurance sufficient to cover those reentry fees" to avoid imposing costs on other customers in the event that the customers are involuntarily returned.

Therefore, the sole purpose of the FSR is to cover reentry fees in the event of an involuntary return CCA customers. As such, the CCA FSR instrument may only be drawn upon in the event of an involuntary return, or as mutually agreed upon in the terms of the FSR instrument. The proposed definitions and lists of events that give rise to "involuntary return" are discussed in more detail below.

4. Provisions considered unreasonable or unauthorized

CalCCA states that the following provisions were not authorized by D.18-05-022, and are otherwise unjust, unreasonable, or discriminatory.

1. The definition and list of events that give rise to an "involuntary return" for CCA are inconsistent with the definition used for DA customers and has been modified to be more open-ended for CCAs.

In reply, the Joint Utilities state that the list and proceeding language are what is currently approved in SCE Electric Rule No. 22 for Direct Access customers and has been carried forward for consistency purposes.[8]

2. Provisions requiring the financial security issuer or bank to meet the subjective requirements of being acceptable and satisfactory to the IOU, which risk IOU manipulation and ignores the fact that such instruments must be mutually acceptable to all parties.

   In reply, the Joint Utilities assert that form agreements were not submitted for CPUC approval but intended to set forth the commercial terms that have previously been approved by the CPUC and used by the Joint Utilities for other commercial transactions.

3. Allowing the IOUs to dictate the terms of the FSR by approving the IOUs submitted Letter of Credit, Surety Bond, and Escrow Agreement as a standard set of forms.

   In reply, the Joint Utilities state that the CPUC should not direct the CCAs to provide their own form agreements as CalCCA proposes. They argue that the time to litigate the form of the CCA financial security instruments for the CPUC's approval was in the underlying proceeding, and the terms and conditions should remain negotiable, as issuers are not parties to these proceedings.

4. The IOUs' declaration of their right to withhold CCA customer payment remittances from the CCA for unpaid Reentry Fees.

   In reply, the Joint IOUs state that the current tariffs already provide the right to withhold and offset CCA customer payment remittances until the CCA pays an IOU for all costs associated with a voluntary or involuntary service termination. The Joint Utilities contend that the ALs add language

[8] *See* definition of "Involuntary Return" in: PG&E Rule 22, Direct Access, page 11; SCE Rule 23, Direct Access, page 10; SDG&E Rule 27, Direct Access, page 9.

making this expressly clear and reiterate that the FSR is not equivalent to the entire reentry fee obligation.

5. The IOUs' declaration of their right to terminate a CCA's service should it fail to timely post an FSR.

   In reply, the Joint Utilities argue that the process sets forth requirements that must be met for the CPUC to order an involuntary service termination, and provides notice, an opportunity to be heard, and other reasonable due process that ensure any remedy granted thereunder would be reasonable and proportionate to the CCA failure at hand.

6. The IOUs proposed the use of the actual incremental administrative costs rather than forecasted costs for purposes of calculating the reentry fee for voluntary returns.[9]

   In reply, the Joint Utilities state that the provision is based on the Joint Utilities' proposed method for calculating reentry fees in the underlying litigation in Rulemaking 03-10-003.[10] The Joint Utilities further argue that reentry fees arising from an involuntary return are, by their nature, open-ended due to the time of the involuntary return, number of service accounts, and the market conditions. The Joint Utilities contend that the statute and underlying CPUC decisions all make clear that cost-shifting to bundled service customers as a result of a CCA's involuntary return of CCA customers to the IOU is prohibited. The Joint Utilities state that if the IOU believes the use of the proxy amount is insufficient to cover the actual

[9] Calculation of the FSR's administrative costs is based on the per-customer reentry fee for utility reentry fee for voluntary returns. See:
PG&E Schedule E-CCA
SCE Schedule CCA-SF
SDG&E Schedule CCA

[10] *See* Exhibit JU-01, July 28, 2017, at p. 35 (lines 29-34) (R.03-10-003).

costs and can track and demonstrate the actual costs caused by the involuntary return, the IOU should be entitled to recovery for them.

7. The establishment of an eight-month incremental procurement cost period instead of the six-month incremental procurement period required by D.18-05-022.

   In reply, the Joint Utilities explains that "[t]he 60 days during which the IOU calculates and demands the reentry fees is not additive to the six-month incremental procurement cost calculation..."[11]

8. The CCAs state that the reentry fee liability is open-ended, which is contrary to the statutory directive and CPUC findings.

   In reply, the Joint Utilities disagree that the CCA has no other liability exposure in an involuntary return of CCA customers to the IOU's procurement service and that existing tariff provisions state that the CCA is responsible for all costs to the IOU caused by a CCA's voluntary or involuntary service termination, such as system, administrative, customer communications and legal costs.

9. IOU entitlement to the security interest on interest income generated by the cash deposit made by CCAs.

   In reply, the Joint Utilities state that the provision is commercially reasonable when a CCA's FSR may not be sufficient to cover the reentry fees in an involuntary return of the CCA customers.

10. Although not objected to, the additional option for a CCA to post cash directly with the IOU in lieu of using a third-party escrow account, it observes that it has not been authorized by the CPUC and the conditions under which the deposit may be used by the IOU lack clarity.

[11] Joint Utilities Reply, Page 13.

In reply, the Joint Utilities state that the conditions under which a CCA may use a cash deposit with the IOU for its FSR do not lack clarity and will be covered by Rule 23 provisions implementing D.18-05-022 and the financial security instrument.

Discussion

With the exception of issues 1, 9 and, 10, we find that the IOUs' replies reasonably addressed CalCCA's protests. We, therefore, approve the IOUs' tariff revisions but require the following clarifications to be added. The terms of the FSR are subject to mutual agreement by the parties. The IOU may not terminate CCA service ~~or withhold CCA funds~~ without an order from the CPUC.[12] The IOU may only draw upon CCA FSR instrument in the event of an involuntary return, as mutually agreed, or pursuant to the terms of the FSR instrument. If an involuntary return occurs, the IOU shall file a Tier 1 advice letter informing the CPUC of the occurrence and outlining the calculation of the reentry fees and that it needs to draw upon the FSR instrument. That advice letter shall provide the calculation of reentry fees to the extent possible at the time. Undisputed reentry fees may be collected upon approval of the advice letter. The IOU must refund any CCA funds that it has retained that are greater than the costs incurred, or at the time that the FSR instrument is replaced.

Should the IOU seek to recover the actual administrative costs of an involuntary return, or if the calculation of the reentry fee is disputed through protest of the advice letter, the IOU shall file a separate Tier 1 advice letter creating a memorandum account to track those costs of returned customers. Reentry fees that are calculated correctly and in compliance with D.18-05-022 should not be

[12] Section T of PG&E and SCE Rule 23 and SDG&E Rule 27 set the requirements in the event the IOU seeks to terminate service to a CCA. Among these requirements is the specification that to terminate of CCA service, the IOU will seek an emergency order from the Commission Pursuant to D.05-12-041.

subject to dispute. Any disputed reentry fees will be evaluated and approved in the POLR proceeding. The IOU may only withhold CCA customer payments if they are undisputed. The IOUs' procurement costs will continue to be recovered in rates through the operation of their applicable balancing accounts. ~~if the reentry fees are undisputed, or with the approval of the CPUC.~~[13]

As previously discussed, the CCAs bear the cost responsibility regardless of whether the reentry fees ~~costs of returning customers~~ are in excess of the FSR. We require the IOUs to revise their tariff sheets to reflect these clarifications through a Tier 1 Advice Letter.

~~We acknowledge that there may be circumstances where an involuntary return occurs, or costs are incurred prior to Commission order authorizing the IOU to collect reentry fees. In the event that an involuntary return is triggered and fees are incurred, the utility shall file a Tier 1 AL to create a memorandum account to track the actual costs of returning customers and launching the involuntary return process.~~

Regarding protest issue 1, the definition of events that trigger involuntary return, we note that PG&E and SDG&E applied the list of events that give rise to an involuntary return used in SCE's Rule 22 for ESPs. Thus, there is currently inconsistent treatment on the definition of involuntary return between their CCA and DA rules, which needs to be addressed in the upcoming POLR rulemaking. In the interim, each IOU shall modify its definition to be consistent with its own DA ~~ESP~~ rule.

Regarding protest issues 9-10, D.18-05-022 did not authorize the option for a CCA to post cash directly with the IOU, so these provisions are rejected.

[13] Disputed charges are subject to the IOU's Rule 10.

5. Compliance with the CPUC's Advice Letter rules

CalCCA argues the ALs are inappropriately classified as Tier 2 and should have been designated as Tier 3 filings, due to complexity, controversy, and policy implications. It recommends Energy Division reject without prejudice portions of the advice letter that it finds inappropriate and allow the IOUs to file their proposals in a formal proceeding.

Reply

The Joint Utilities argue that the ALs were properly designated as Tier 2. The CCA FSR should be consistent except as expressly modified by D.18-05-022.

Protest that the ALs were inappropriately classified as Tier 2 AL is moot given, we have escalated the ALs to Tier 3 and disposed of them through this resolution.

Discussion

The protest that the ALs were inappropriately classified as Tier 2 AL is moot, as we have escalated the ALs to Tier 3 and disposed of them through this resolution.

6. Definition of an FSR posting

SEA contends that SDG&E improperly describes the posting of financial security as an action that must be undertaken with the IOU rather than with a third-party. SEA asserts that D.18-05-022 provides otherwise and that the ALs should be corrected to reflect this.

Reply

SDG&E states that SEA has misinterpreted Ordering Paragraph (OP) 7 of D.18-05-022, which indicates that cash held by a third party, e.g., a bank, is an acceptable form of security. SDG&E argues that the AL correctly states that financial security is a requirement by the IOU and, therefore, CCAs must post and maintain financial security with the IOU.

Discussion

SEA is correct that the proposed language in the ~~ALs~~ advice letters do~~es~~ not appropriately reflect the role assigned to IOUs as the beneficiary or recipient of the CCA FSR instrument~~s~~. D.18-05-022 determined that it is most appropriate for the FSR to be held a third party independent financial institution. If CCAs hold cash in an escrow account, an independent financial institution may serve as a third-party. For surety bonds, the independent third-party will have the role of surety. For letter(s) of credit, the Issuing Bank is an independent third-party. The IOUs are directed to refile all relevant tariff sheets to reflect the new IOU role as ~~beneficiary~~ recipient of the CCA FSR and remove reference to the FSR instrument being posted with the IOU.

7. CCA eligibility to resume service after termination of CCA service rights

SEA argues SDG&E does not have the authority to dictate the period of time that must pass before a CCA program can resume service after an involuntary return of customers

Reply

In response to SEA's protest, SDG&E indicates that the three-year and six-month timeline language cited in SEA's protest was approved on August 16, 2005, in SDG&E's AL 1667-E and is therefore out of scope.

Discussion

SDG&E is correct that the three-year and six-month period of time was previously established by the approval of SDG&E's AL 1667-E. The protest is dismissed as out of scope.

8. Sharing of proprietary information used to calculate FSR

SEA argues that third-party proprietary information used to calculate financial security requirements should be shared with the CCA program, subject to a confidentiality agreement, rather than withheld. SEA argues that CCA programs

have a right to know the basics of the FSR calculation and that sensitive or confidential information can be disclosed to CCA programs under a confidentiality agreement, protective order, or similar agreement.

Reply

In response to the SEA protest, SDG&E states that it agrees that the establishment of CCA FSRs should be transparent. SDG&E states it will continue to first attempt to secure permission to release the price forecast information necessary to calculate FSRs for CCAs within its service area. However, SDG&E states it must reserve the right to mark information as confidential should third-party vendors not provide permission to release such information to other parties.

SDG&E also notes that only information pertaining to the energy usage of SEA's customers was withheld from public disclosure in AL 3259-E, and an unredacted version of AL 3259-E was directly provided to SEA and the CPUC.

Discussion

We agree that the establishment of CCA FSRs should be transparent. The IOU should release the information to CCAs through nondisclosure agreements, or if that is not possible, it should endeavor to secure permission to release the price forecast information necessary to calculate FSRs for CCAs within their service areas. The proprietary data not owned by the IOU that are necessary to calculate the FSR are publicly available and can be acquired through a subscription with the Intercontinental Exchange (ICE).

9. Proposed revisions missing from SDG&E's AL 3257-E

SEA notes that it appears that content is missing from the AL and that the AL has inconsistent sections and numbering of sheets.

Reply

SDG&E states that the sheets cited as missing in the protest were not included in the submitted AL, because SDG&E did not propose any modifications to the sections, and it is therefore out of scope.

Discussion

SDG&E has sufficiently explained that the sheets not shown have not been revised. The protest is thus moot.

DISCUSSION

Advice Letters PG&E 5354-E, SCE 3840-E, and SDG&E 3257-E are approved with modifications as discussed above.

The IOUs shall file Tier 1 ALs to revise PG&E and SCE Rule 23, and SDG&E Rule 27 within 30 days of this resolution to revise tariff as discussed above. All CCAs shall post a financial security instrument within 30 days of this resolution.

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.

Upon review of comments on the draft resolution, the resolution was substantively modified and is reissued for another comment period according to the CPUC's Rules of Practice and Procedure. Please note that comments are due 20 days from the mailing date of this resolution. 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.

On August 13, 2020, the CPUC received comments from CalCCA and SCE, PG&E, and SDG&E (collectively, the IOUs).

In comments, the IOUs state that some issues are being improperly relitigated without the benefit of the record that was gathered in support of the decision. Specifically, they argue that P.U. Code Section 394.25(e) is clear that reentry fees are to be imposed on involuntarily returned customers. Furthermore, the IOUs state that requiring CPUC approval to activate the FSR is unnecessary and jeopardizes the ability of the IOU to collect the FSR amount in the event of an involuntary return. The IOUs request that the requirement to submit a Tier 1 advice letter to collect the CCA FSR be eliminated, and the resolution should instead direct the IOUs to submit Tier 1 advice letters advising the CPUC that a mass involuntary return of CCA customers has occurred and set forth the reentry fees calculation.

Upon review, we agree that the statute is clear regarding reentry fee cost responsibility. The resolution now clarifies that activation of an FSR instrument may only occur due to either an involuntary return of CCA customers or based on the mutually agreed to terms and conditions in the FSR instrument. CCA service may only be terminated by order of the CPUC, and thus CPUC approval to activate the FSR is unnecessary. We revise the requirement for the IOU to submit a Tier 1 advice letter, as recommended by the IOUs.

CalCCA requests further clarifications on the details of the activation of the FSR instrument and the rules involving resolving disputed reentry fees and the FSR instruments. Any party that disputes the calculation of the reentry fees can do so through the advice letter process when the IOU advises the CPUC of a mass involuntary return. As noted above, we revise the resolution to clarify the limited conditions upon which the FSR instrument can be activated and drawn upon. The process for activating the FSR is detailed in Appendix A.

CalCCA requests that the resolution provides CCAs additional time to implement and update the FSR instruments, stating that replacing an issuer may require a competitive solicitation and a vote of the CCA's Board of Directors, which could

take 30-60 days. We agree that more than thirty-days to initially implement the terms of the FSR instruments may be needed, but also anticipate that the approval of this resolution will cause CCAs to expediently initiate such processes. We, therefore, extend this time to sixty days.

The resolution has been revised to remove other factual inaccuracies, specifically regarding the period for which IOUs collect procurement costs identified in the advice letter, on page 7. Other minor changes have been made to the proposed decision to clarify implementation details.

The parties raise additional comments that reargue the issues in this resolution, which are addressed in the discussion of protested issues.

FINDINGS

1. D.18-05-022 directed the implementation of Reentry Fees and Financial Security Instruments, which are made effective through IOUs' Rules. PG&E, SCE, and SDG&E filed an Advice Letters 5354-E, 3840-E, 3257-E pursuant to Ordering Paragraphs of D.18-05-022.
2. The following tariff changes were directed by D.18-05-022:
    a. The calculation of administrative cost and incremental procurement cost for the purpose of calculating the amount of the FSR.
    b. The FSR amount is required to be updated twice annually if the change in the calculated amount is greater than 10 percent.
    c. If the benefit of adding new load due to returned customers creates "negative incremental procurement costs,"[14] those negative

[14] Consistent with the methodology adopted for ESPs in D.11-12-018.

procurement costs will offset the FSR's administrative cost component of the reentry fees.

d. The minimum FSR amount is set at $147,000.
e. The use of letters of credit, surety bonds, and cash held by a third-party will be accepted to satisfy the FSR.

3. ~~The issue of reentry fee amounts in excess of the FSR was not directly addressed by D.18-05-022 or~~ Public Utilities Code Section 394.25(e) states that any reentry fees that the CPUC deems necessary to avoid imposing costs on other customers are the obligation of the ESP or CCA.
4. The lists of events that cause an involuntary return in SCE DA Rule 22 are not consistent with the list in PG&E's Rule 22 and SDG&E's Rule 25.
5. The formation process of an FSR instrument should provide all parties the opportunity to reach mutually agreeable terms, including those related to the specific condition under which the FSR is activated.
6. The Joint Utilities' submission of Acceptable Standard Forms was not submitted for CPUC approval and are only intended to serve as a helpful starting point from which parties of the instrument may collaborate on to reach equitable solutions.
7. CCA payment remittance by the IOU was previously established in the IOUs' tariffs, and revisions to include failure to pay reentry fees are reasonable to be included as a potential cause of payment remittance.
8. The CPUC may order an involuntary service termination of a CCA that fails to meet its obligations under the IOU's CCA rules, including its failure to repay reentry fees.
9. CCA customers bear cost responsibility for reentry fees that the CPUC deems necessary to avoid cost shifting.
10. D.18-05-022 determined that incremental administrative costs are a component of reentry fees and are reviewed and approved in the IOUs' General Rate Case.

11. D.18-05-022 did not authorize the option for a CCA to post cash directly with the IOU.

~~12. The AL proposed revisions~~ A two-month safe harbor period ~~ALs~~ is not additive to the six-month incremental procurement cost calculation. ~~and has been appropriately revised.~~

13. Reasonably assessed reentry fees have not been limited in amount by the CPUC.

14. Forms and terms of financial security should be mutually agreeable.

15. A utility may not terminate CCA service without an order of the CPUC. ~~The launch of the termination of CCA service and involuntary return is subject to CPUC approval~~.

16. ~~In~~ D.18-05-022 rejected ~~parties argued the merits of allowing~~ the posting of cash by the CCA with the IOU as another form of FSR. ~~and it was not approved.~~

17. The posting of the FSR refers to the demonstration of the financial instrument having been formed, and the IOU made its obligee, recipient ~~beneficiary~~, or equivalent.

18. The establishment of CCA FSRs should be transparent. Therefore, the IOUs should make efforts to secure permission to release the price forecast information necessary to calculate FSRs for CCAs within their service areas to the extent that is possible.

THEREFORE IT IS ORDERED THAT:

1. The IOUs' request to modify respective CCA Rules as requested in Advice Letters PG&E 5354-E, SCE 3840-E, SDG&E 3257-E is approved with modification.
2. Tariff revisions authorized in D.18-05-022 are adopted.

3. PG&E and SDG&E's revisions to language defining an involuntary return are rejected. PG&E and SDG&E are ordered to refile tariff sheets with language that is consistent with the lists provided in SDG&E Electric Rule 25 and PG&E Electric Rule 22. The proposed additional subsections to the list defining an involuntary return to include Voluntary Service Termination and Involuntary Service Termination, however, are approved.
4. The IOUs shall refile their tariff sheets via Tier 1 advice letter to clarify the following:
   a. The terms of the FSR are subject to mutual agreement by the IOU, the CCA, and the third-party issuer of the FSR instrument. The FSR instrument will govern the rights and obligations of the parties and shall be based on commercially reasonable and accepted terms and conditions and consistent with D.18-05-022 and the IOUs' tariffs. No party may unreasonably withhold its agreement to commercially reasonable terms and conditions of the FSR instrument.
   b. Failure of the CCA to post the FSR instrument using the acceptable instruments of a letter of credit, surety bond, or cash in a third-party escrow within the sixty-days shall be grounds for the CCA's involuntary service suspension by the CPUC.
   c. The IOU may not terminate CCA service without approval from the CPUC.
   ~~a. The IOUs shall refile their tariff sheets via Tier 1 advice letter to clarify the following:~~
   ~~b. The terms of the FSR are subject to mutual agreement by the IOU and CCA.~~
   ~~c. The IOU may not terminate CCA service or withhold CCA funds without approval from the CPUC.~~
   ~~d. The IOU may only withhold CCA customer payments if the charges are undisputed.~~
   ~~e. The recovery of reentry fees from involuntarily returned customers in the event that the CCA is unable to recover the fees shall be deferred to the POLR proceeding.~~
5. The following provisions are rejected:

a. The option to submit a cash deposit provided directly to the IOU with interest paid as a form of or in lieu of the financial security instruments;
b. The IOU's right to terminate CCA service if a CCA fails to post its financial security instrument within the stated deadline; and
c. The requirement that DA-eligible customers must return to IOU service in the event of an involuntary return

6. The CCA FSR instrument may only be drawn upon in the event of an involuntary return, or as mutually agreed upon in or pursuant to the terms of the FSR instrument.
7. In the event that an involuntary return ~~is triggered prior to further Commission guidance on reentry fee liability~~ occurs, the utility shall file a Tier 1 advice letter to notify the Commission that an involuntary return has commenced or occurred and to set forth the reentry fee calculation.
8. Reentry fees that are calculated in compliance with D.18-05-022 and IOU tariffs should not be subject to dispute. If there is a dispute that is not directly addressed by D.18-05-022 or this resolution, the IOU shall submit a Tier 1 Advice Letter to create a memorandum account to track the costs.
9. If the IOU seeks recovery of actual administrative costs of the involuntary return in lieu of the adopted proxy CCA service fee amount, it shall submit a Tier 1 Advice Letter to create a memorandum account to track the costs. The IOUs' procurement costs shall continue to be recovered in rates through the operation of their applicable balancing accounts.
10. Any disputed reentry fees will be evaluated and approved in the POLR proceeding.
11. ~~In the event an involuntary return is triggered prior to further Commission guidance on reentry fee liability, the utility shall file a Tier 1 advice letter to create a memorandum account to track the actual costs of returning customers and to launching the involuntary return process.~~
12. ~~PG&E and SCE shall file Tier 2 advice letters to revise their respective Rule 23, and SDG&E shall file a Tier 2 advice letter to revise its Rule 27 within 30 days of this resolution.~~
13. All CCAs shall post a financial security instrument within ~~30~~ sixty-days of this resolution

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities CPUC of the State of California held on October 8, 2020; the following Commissioners voting favorably thereon:

_____

Rachel Peterson
Acting Executive Director

APPENDIX A:
Involuntary Return Process

1. When the involuntary return process is initiated, the utility will file a Tier 1 Advice Letter to notify the Commission of the involuntary return and provide the reentry fee calculation, which serves notice to the CCA that they must pay the calculated reentry fees.
    - Any party may file a protest to this AL disputing aspects of the reentry fees and whether they are compliant with D.18-05-022 or the IOU tariff.
    - However, the IOU can continue to move forward with drawing upon the FSR instrument, even if the CCA files a protest.
2. If the CCA fails to pay reentry fees, the FSR will be drawn upon to cover them.
3. If the CCA protests the calculated reentry or the IOU tracks and plans to recover the actual administrative costs of returning customers, it shall file another Tier 1 AL creating a memorandum account.
    - Any disputed costs will be deferred to the Provider of Last Resort (POLR) proceeding for review.
4. If the CCA payments and the FSR amount are together inadequate to cover reentry fees, the residual costs will be allocated to returned CCA customers.
    - If the reentry fees are not disputed, they may be collected upon approval of the AL.
    - If the reentry fees are disputed, the costs will be reviewed and a determination will be made in the POLR proceeding.