

PROPOSED DECISION

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Ratesetting

11/18/2021 Item #11

Decision PROPOSED DECISION OF ALJ WATTS-ZAGHA
(Mailed 10/15/2021)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Address Energy Utility Customer Bill
Debt Accumulated During the
COVID-19 Pandemic.

Rulemaking 21-02-014

**DECISION DIRECTING ALLOCATION OF PAYMENT ON
PAST-DUE BILLS BETWEEN INVESTOR-OWNED UTILITIES
AND COMMUNITY CHOICE AGGREGATORS**

Summary

This decision orders Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company to allocate all types of payments made on past-due electric utility bills proportionally between utilities and Community Choice Aggregators, through September 2024.

Relief payments to customers previously unable to pay their utility bills during the COVID-19 pandemic are imminent. Some relief programs make payments directly to the utility on behalf of customers who are in arrears. Other relief programs such as the automatic “COVID-19 Payment Plans” ordered in Decision 21-06-036 allow customers up to two years (or more for small business customers) over which to pay off remaining debt after other program payments are applied. During the pandemic, the Commission and Legislature directed electric utilities to suspend their standard practice of prioritizing payments

first for the utility charges. Today's decision extends the same direction to encompass all payments on outstanding bills through September 2024, the period equivalent to the duration of the "COVID-19 Payment Plans."

This proceeding remains open.

1. Procedural Background

On February 11, 2021, the California Public Utilities Commission (Commission or CPUC) adopted this *Order Instituting Rulemaking (OIR) to Address Energy Utility Customer Bill Debt Accumulated During the COVID-19 Pandemic*. Phase 1 of the proceeding concluded with the issuance of Decision (D.) 21-06-036 on June 30, 2021. Ordering Paragraph (OP) 10 of that decision required Pacific Gas and Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company (SCE) to continue the proportional allocation of payments between electric utilities and Consumer Choice Aggregators (CCAs) approved in Resolution M-4849 until September 30, 2021, stating that:

We find it is appropriate to require PG&E, SCE and SDG&E to continue allocating partial payments on a pro rata basis through September 30, 2021, as they have done throughout the Commission's disconnection moratorium. A permanent determination requires further consideration. We slate allocation after September 30, 2021 for consideration in the immediate next phase of this proceeding.¹

Assigned Commissioner Guzman Aceves' Amended Scoping Memo, as well as an assigned Administrative Law Judge's Ruling Setting Joint Status Conference and Ordering Comments, were issued July 29, 2021, offering parties an opportunity to brief the issue of allocation of payments between CCAs and

¹ D.21-06-036 at 32-33.

utilities. At a Status Conference on August 16, 2021, California Community Choice Association (CalCCA) addressed the issue. On August 24, 2021, CalCCA formally filed a motion to modify the scope of Phase 2 to exclude arrearage relief funded through the California Arrearage Payment Program (CAPP). On August 27, 2021, PG&E, SDG&E, SCE, Southern California Gas Company, CalCCA, the Public Advocates Office, and the Utility Consumers' Action Network filed briefs.

2. Background

CCAs are a municipal electric generation option for cities or counties that wish to provide a public alternative for the electric generation portion of electric service.

CCAs operate only in areas served by private, investor-owned utilities (IOUs) and are prohibited from operating in areas served by municipal, or publicly owned electric utilities. Customers served by CCAs remain IOU customers for electric transmission and distribution service. IOUs also provide customer service to CCA customers, including metering, billing and collection, and CCA customers remain eligible for many IOU programs such as energy efficiency and low-income assistance programs. Customers that continue to receive from the IOU all components of electric service; generation, transmission and distribution, are termed "bundled customers," while customers utilizing other companies for the electric generation component of service are termed "unbundled customers."²

² California created Community Choice Aggregation in 2002 through Assembly Bill (AB) 117, which also set the terms of the partnership between CCAs and IOUs. In 2011, Senate Bill (SB) 790 set additional terms and guidance. The Commission has established guidance and rules for the utility-CCA partnership in, among others, D.05-12-041, D.12-12-038 and D.18-05-022. More background on the establishment and growth of CCAs in California is on the CPUC website.

CalCCA represents twenty-three CCAs in California.³ The IOUs produce reports of accumulated CCA customer debt. Two of these reports provide an accounting for the unpaid bills of bundled and unbundled customers separately. PG&E's March 30, 2021 reports showed nearly 40 percent of residential arrearages were from unbundled customers. Unbundled customers accounted for approximately 12 percent of SCE residential debt. SDG&E has not reported arrearages separately by bundled and unbundled customers and until recently had a small CCA presence in its territory. Until late spring 2021, less than 0.5 percent of SDG&E's service territory was served by a single CCA, the Solano Energy Alliance.

The default rule for allocating payments made on delinquent unbundled customer accounts is established and described in IOUs' Commission approved tariffs. Current electric utility tariffs mandate that payments be credited first to the utility portion of the bill until the customer account is no longer subject to disconnection for delinquency, and second to CCA or other non-utility portions of the bill.⁴ Prioritizing partial payments first to the IOU and secondly toward other billers is known as the "waterfall" payment method.

2.1. Legislative Background

In 2002, the legislature expressed the state's policy to permit and facilitate development of CCAs by enacting Assembly Bill (AB) 117. AB 117 added to the Public Utilities Code (Pub. Util. Code) section 366.2, including, "Customers shall be entitled to aggregate their electric loads as members of their local community

³ In February 2021, when the Commission opening Rulemaking 21-02-014 CalCCA represented twenty-four CCAs. Since then, on June 10, 2021, one CCA (Western Community Energy) submitted a notice of deregistration to the Commission's Executive Director.

⁴ PG&E Rule 23.R.2 and Rule 23.R.3; SDG&E Rule 27.R.2.

with community choice aggregators.”⁵ In 2011, the legislature enacted SB 790 in which it directed the Commission to develop rules and procedures that “facilitate the development of community choice aggregation programs, . . . foster fair competition, and . . . protect against cross-subsidization paid by ratepayers.”⁶

2.1.1. Legislation Addressing Allocation of Payments on Delinquent Accounts

AB 135 establishes the California Arrearage Payment Program (CAPP), which allocates state budget funding to assist customers with delinquent utility bills, including delinquent utility bill of unbundled customers. With regard to CCAs, AB 135 adds to Section 9 of Government Code Section 16429.5(g) the following:

An electrical corporation, as defined in Section 218 of the Public Utilities Code, shall use existing proportional payment processes adopted by the Public Utilities Commission in response to the COVID-19 pandemic to allocate any partial payments made by customers to the utility and other load serving entities in proportion to their respective shares of the outstanding customers charges.

An electrical corporation, as defined in Section 218 of the Public Utilities Code, shall credit funding received through CAPP against customer charges owing the utility and other load-servicing entities serving the customer in proportion to their respective shares of the customer arrearages.⁷

⁵ Pub. Util. Code § 366.2(a)(1).

⁶ SB 790, § 2(h), and § 707(a)(4)(A). For a more extensive discussion of legislation and Commissions decisions governing the treatment of CCAs by electric utilities, see D.12-12-036.

⁷ Government Code Section 16429.5(f)(4) and (g).

2.1.2. Public Utilities Code Section (Pub. Util. Code §) 779.2

Pub. Util. Code § 779.2(a) was enacted in 1984, and states:

No electrical, gas, heat, telephone, or water corporation may terminate residential service for nonpayment of any delinquent account or other indebtedness owed by the customer or subscriber to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, telephone, or water corporation demanding payment therefor.

CCAs were created in 2002 by AB 117. As public entities providing only the generation portion of electricity, CCAs are not defined as electrical corporations. Therefore, IOUs may not terminate residential service for nonpayment of delinquent CCA charges.

2.2. Exceptions to the Status Quo During COVID-19

Since the onset of COVID, the Commission has, several times, directed the utilities to suspend tariff rules and allocate payments on outstanding utility bills proportionally between utility and CCA charges. Such direction applies to more than the arrearages associated with COVID-19, as the Commission also directed a proportional allocation scheme for the accounting of Arrearage Management Plans (AMP).

In compliance with the COVID-19 consumer protections ordered by Resolution M-4842, and extended in Resolution M-4849, the Commission's Energy Division approved PG&E Advice Letters (AL) 4244-G-B/5816-E-B and 4388-G/6092-E, which suspended until July 1, 2021 the tariff rules establishing the waterfall payment method in favor of the pro rata payment method. The Energy Division approved SDG&E AL 2961-G/3716-E, which suspended until

July 1, 2021 the tariff rules establishing the waterfall payment method in favor of the pro rata payment method. The Energy Division approved SCE AL 233-G/4205-E, which implements, to the CCAs' satisfaction, proportional allocation of payments on delinquent bills between SCE and CCAs until the unbundled customer receives a final disconnection notice, at which time SCE implements the waterfall payment mechanism until the customer is no longer at risk of disconnection.⁸ These approved compliance AL apply to allocation of payments made only until September 30, 2021. Similarly, D.21-06-036 directed the utilities to continue proportional allocation of payments on delinquent accounts between utilities and CCAs until September 30, 2021.⁹

On December 17, 2020, the Commission issued Resolution E-5114 approving the AMP for Large Investor-Owned Electric and Gas Utilities.

Resolution E-5114 states:

. . . and OP 87 of D.20-06-003 tasked the AMP Working Group with evaluating potential options for cost recovery that would resolve concerns over potentially disproportionate costs allocated to certain CCAs resulting from arrearage forgiveness before IOUs would submit their Tier 2 ALs implementing AMP.¹⁰

The AMP program provides customers a means to earn credits, amounting to partial payments, on their outstanding utility bills. For each on-time, complete payment of a current utility bill, a customer enrolled in AMP earns a credit worth 1/12 of their outstanding debt which is then applied to their account. The Commission first determined that CCA customers and CCA charges would be

⁸ CCA Motion of August 24, 2021 at 6.

⁹ D.21-06-036, OP 10 and at 52.

¹⁰ Resolution E-5114 at 4.

eligible for the AMP program in D.20-06-003,¹¹ and in Resolution E-5114 determined that the credits earned and payments applied would be proportionally allocated between utilities and CCAs, albeit with a processing delay due to the accounting mechanisms.

3. Issues Before the Commission

This decision resolves the issue of whether and how arrearage relief will be applied to CCA customers. To the extent it is not already resolved by statute or Commission directive, the instant decision also resolves how payments on arrearages shall be allocated between the utilities and CCAs through September 2024. This issue was identified broadly in Scoping Memo question 7,¹² and resolved only temporarily in D.21-06-036. The Amended Scoping Memo identified question 7 issues for more permanent resolution and also introduced to the scope of the proceeding

Implementation issues, if any, relating to the new legislation affecting COVID-19 arrearage relief, including but not limited to the Budget Act, the Trailer Bill, and AB 832 enacted since D.21-06-036 was issued in June.¹³

As indicated above in Section 2.1.1., the Trailer Bill (AB 135) is indeed pertinent to the issue of proportional allocation between utilities and CCAs.

3.1. Arrearage Relief Payments Provided through the CAPP and AMP

While utilities have offered alternatives to customers who cannot pay a utility bill on time and in full, some of the newest bill payment assistance programs specifically require utilities to proportionally allocate the payments on

¹¹ D.20-06-003 at 86 – 87.

¹² Assigned Commissioner Guzman Aceves' Scoping Memo of March 11, 2021.

¹³ Amended Scoping Memo at 8.

outstanding utility bill debt. The Trailer Bill, AB 135 described above in Section 2.1.1, explicitly directs allocation of CAPP payments proportionally between CCAs and utilities. Parties agree that Government Code Section 16429.5 prevails for COVID-19 arrearage relief paid by CAPP.

The Commission's Resolution E-5114 authorizing the AMP establishes CCA customers as included in the AMP and funds the debt forgiveness through the same surcharge mechanism as the utility portion of the bill. Additionally, through September 30, 2021, customer payments on delinquent bills must also be applied proportionally between utility bills and CCA bills. Today's decision does not alter existing directives and is exclusive of payments through AMP, CAPP, or made prior to September 30, 2021.

4. Pub. Util. Code § 779.2 Does Not Bear Directly on Payment Allocation

The electric utility standard practice of prioritization of payments first to utility charges and secondly to non-utility charges is not legislatively required. The mandate in Pub. Util. Code § 779.2 prohibits utilities from disconnecting service on residential accounts for delinquencies or indebtedness owed to any other person or corporation other than the utility. SDG&E argues that Pub. Util. Code § 779.2, in context with other Commission direction to minimize disconnection, may be read to indicate a general policy preference for allocating partial payments first toward disconnectable charges.¹⁴ In comments on the Proposed Decision, SCE asserts proportionally allocating payments conflicts with Pub. Util. Code § 779.2.

Interpreting Pub. Util. Code § 779.2 beyond the express prohibition to disconnect residential service for indebtedness owed to an entity other than the

¹⁴ SDG&E Brief of August 27, 2021 at 7.

electrical corporation is not persuasive. Pub. Util. Code § 779.2 is not a signal to prioritize partial payments toward disconnectable charges. Nor is allocating payments on indebtedness between the distinct billers a conversion of the CCA charges to disconnectable charges, as SCE argues. The Commission and the utilities have developed multiple protections against disconnection, none of which include paying the utility before the CCA. To utilize Pub. Util. Code § 779.2 as a disconnection protection would be unfair to customers without a CCA serving their location. Customers of CCAs would enjoy reduced risk of disconnection for nonpayment of the generation portion of the bill, something not available to other customers. The express language of the statute pertains to disconnection and no extrapolation to allocation of partial payments between utility and non-utility charges on the bill need be assumed. As necessary, the state and the Commission exercise other means to minimize or prohibit disconnections uniformly for customers regardless of the availability of CCAs serving their location. For example, the CPUC imposed the state's disconnection moratorium between March 2020 through September 2021 during COVID-19.¹⁵

Furthermore, AB 117 states, "The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers."¹⁶

5. Proportional Allocation of Payments Between Utility and CCA Charges Should Continue

Not only does statute not bar proportional allocation of payments between utility and CCA charges, there is a statutory requirement for proportional

¹⁵ See Executive Order N-42-20, Commission Resolutions M-4842 and M-4849 and Commission D.21-06-036 and D.21-07-029.

¹⁶ Pub. Util. Code § 366.2(a)(9).

allocation of CAPP payments between utility and CCA charges. In light of the relevant statutes, Pub. Util. Code § 779.2 and Government Code Section 16429.5, we will similarly require proportional allocation of payments between utility and CCA charges through the duration of the relief directed by D.21-06-036.

PG&E and SCE assert that prioritizing payments toward the utility charges is more beneficial to the customer. PG&E states “. . . PG&E’s standard practice (sic) supports customers better than a pro rata allocation because it minimizes disconnection risk.”¹⁷ As SCE puts it, “Public Utilities Code Section 779.2 does not require SCE to prioritize partial payments to disconnectable charges. However, should the customer be at imminent risk of disconnection, in order to alleviate that risk it is in the best interest of the customer to have any partial payments applied to disconnectable charges first.”¹⁸

When the utility prioritizes the payment to the utility, the risk shifts from the individual customers facing disconnection to the CCA, who continues to serve that customer without collecting revenue. While it is correct that prioritizing any payments toward utility charges is better for the individual customer, shifting the risk onto the CCA is not in the interest of customers as a whole. As argued by the Public Advocates Office and CalCCA, leaving the CCA with unpaid bills leaves the CCA bearing a disproportionate amount of the financial risk of unpaid utility bills.

The Commission has determined that CCAs are in the public interest, in that CCAs allow for a publicly-managed alternative to private utility procurement of resources. Resources have been devoted to the establishment,

¹⁷ PG&E Brief of August 27, 2021 at 6.

¹⁸ SCE Brief of August 27, 2021 at 5.

integration, and growth of CCAs within the IOU service territories. Transferring customer load incurs costs of service that will potentially be recovered from customers. The Public Advocates Office provides the example of Western Community Energy, in the SCE service territory, going bankrupt in June 2021, and the mass involuntary return of their customers to SCE.

SCE identifies fundamental principles of fairness and equity in deciding how to allocate its customers' partial payments, pointing to fairness and equity between

- 1) Bundled and unbundled customers
- 2) Utilities and CCAs¹⁹

Not all customers have the option to unbundle. If no CCA serves their community, bundled customers will not have access to the extra disconnection protection that unbundled customer may enjoy. SDG&E pointed out that until recently, less than 0.5% of its customers had an option to choose a CCA. While utilities argue that prioritizing payments toward the utility (or disconnectable) charges is more supportive of customers, it is a practice that can only be applied unevenly. This arbitrarily provides some customers extra support by virtue of the presence of a CCA serving their community.

Because of legislative preference for proportional allocation of payments, the extra customer support of the waterfall method is not consistently available. We have determined that the shift of financial risk from individual customer to CCA is not in the interest of customers as a whole, therefore, we will continue proportional allocation of payments during the time relief ordered in this proceeding is directed to be available.

¹⁹ SCE Brief of August 27, 2021 at 5.

6. SCE Payment Allocation Scheme

PG&E, SDG&E and SCE shall apply payments proportionally regardless of the disconnection status of the customer.

SCE's method of proportional allocation was reasonable while the disconnection moratorium was in effect but is no longer reasonable now that disconnections may resume. PG&E and SDG&E's proportional allocation schemes divide each payment proportionally between the utility and the CCA regardless of a customer's disconnection status. SCE's method takes the customer disconnection status into account. When a customer falls behind, SCE employs what it calls a zig zag payment allocation, alternately applying each payment received between the utility and the CCA. Once a customer enters "Final Call" status, SCE's payment scheme reverts to the waterfall method until the customer is no longer at risk of disconnection. While SCE is not explicit about how they would allocate payments made to reconnect service,²⁰ based on the logic of diverting payments to the utility to avert disconnection, one may presume SCE would also demand payment on only utility charges as a condition of reconnection. During the disconnection moratorium SCE's allocation method was acceptable because no customer would enter Final Call Status. Now, though disconnection is still months away for customers, SCE's return to the waterfall payment method is inconsistent with the legislative preferences and negative impacts on customers as a whole that we identify previously in Section 5.

SCE may continue its zig zag method of payment allocation, which equates to proportional allocation over an extended period, but SCE may not

²⁰ None of the utilities are explicit about how they intend to allocate payments required as a condition of reconnecting service, should the customer be disconnected for nonpayment.

revert to the waterfall payment method even when customer disconnection is imminent.

7. Duration over Which Proportional Allocation Shall Continue

It is clear that the proportional allocation must continue, regardless of customer disconnection status, and the next question is for how long. The requirement to apply payments proportionally between utilities and CCAs should match the time over which we directed relief be implemented in this proceeding.

In D.21-06-036, energy utilities are directed to automatically enroll eligible customers in “COVID-19 Payment Plans” at least once and only once between July 2021 and September 2022.²¹ According to the terms of the “COVID-19 Payment Plans” outlined in the decision, a customer becomes eligible for the payment plan at any time their outstanding bill debt is at least 60 days past due and not covered by other programs. Unlike CAPP, or other state COVID-19 utility bill relief programs, all arrearages are included in the “COVID-19 Payment Plan” at the time the customer is automatically enrolled, regardless of the date the customer accrued those arrearages. According to the terms, the latest a customer may be automatically enrolled in a 24-month payment plan is September 2022. The payment plans extend through September 2024.

It is appropriate for the determination in today’s decision to be consistent with the time period of the relief ordered in D.21-06-036. We therefore require proportional allocation of payments between utilities and CCAs through September 2024.

²¹ D.21-06-036, OPs 2 and 3.

8. Motion to Amend the Scope of the Proceeding Denied

On August 24, 2021, CalCCA formally filed a motion to modify the scope of Phase 2 of this proceeding to exclude arrearage relief funded through CAPP. This decision is legally consistent with AB 135, which adds to Section 9 of Government Code Section 16429.5(g) direction for utilities to proportionally allocate CAPP payments between utility and CCA charges. There is no need to exclude from the scope of this proceeding payments made through CAPP. We deny CalCCA's motion.

9. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Watts-Zagha in this matter was mailed to the parties in accordance with Pub. Util. Code § 311 and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by PG&E, SCE and CalCCA on November 4, 2021, and reply comments were filed by CalCCA on November 9, 2021.

10. Assignment of Proceeding

Martha Guzman Aceves is the assigned Commissioner and Camille Watts-Zagha is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Electric utility tariffs approved by the Commission indicate utilities should apply payments on outstanding bills first to the utility charges on the bill and secondly to non-utility charges on the bill.

2. The Commission-approved electric utility AL filed in compliance with Resolutions M-4842 and M-4849 suspends, through September 30, 2021, the

utility policy of prioritizing payments on outstanding bills first to the utility charges on the bill and secondly to non-utility charges on the bill.

3. Commission Resolution E-5114 requires payments made through the AMP program to apply proportionally to utility and CCA outstanding billed amounts.

4. Customers are subject to disconnection for nonpayment of the utility charges on the bill but are not subject to disconnection for nonpayment of non-utility charges on the bill.

5. Applying payments first to the outstanding utility charges on the bill before applying payment to the outstanding non-utility charges on the bill reduces the customer's risk of disconnection for nonpayment.

6. Not all customers have the option to become CCA customers.

7. Shifting risk away from customers at risk of disconnection for nonpayment is available only for customers residing in locations served by CCAs.

8. Applying payments first to the outstanding utility charges on the bill before applying payment to the outstanding non-utility charges on the bill increases the CCA's financial risk.

9. Financially sound CCAs benefit customers as a whole.

Conclusions of Law

1. Pub. Util. Code § 366.2 entitles customers to aggregate their electric loads as members of their local community with community choice aggregators.

2. Pub. Util. Code § 779.2 does not require utilities to apply payments on outstanding residential utility bills first to utility charges before non-utility charges.

3. Pub. Util. Code § 779.2 does not prohibit utilities from allocating payments on outstanding residential utility bills proportionally between utility and non-utility charges.

4. Government Code Section 16429.5(g) directs electric utilities to proportionally allocate CAPP payments between utility and CCA charges.

5. Approved tariffs of PG&E, SCE and SDG&E prioritizing payments first to utility charges and second to non-utility charges are not changed by today's decision.

6. Continuing to require PG&E, SCE and SDG&E to allocate payments on outstanding utility bills proportionally between utility and CCA charges is consistent with statutory direction requiring electric utilities to allocate CAPP payments on outstanding utility bills proportionally between utility and CCA charges.

7. This decision should be effective immediately.

8. Rulemaking 21-02-014 should remain open.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, shall allocate payments received on outstanding customer accounts proportionally between utility charges and Community Choice Aggregator charges through September 2024, regardless of customer disconnection status.

2. The motion of the California Community Choice Association dated August 24, 2021 is denied.

3. Rulemaking 21-02-014 remains open.

This order is effective today.

Dated _____, at San Francisco, California.