

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

Agenda ID: 20367
RESOLUTION E-5134
March 17, 2022

R E S O L U T I O N

Resolution E-5134. Request by the Pacific Gas and Electric Company (PGE&), Southern California Edison (SCE), and San Diego Gas and Electric Company (SDG&E) for approval of advice letters establishing a prepayment framework for the Power Charge Indifference Adjustment (PCIA) in compliance with Decisions (D.) 18-10-019 and 20-08-004.

PROPOSED OUTCOME:

- Pursuant to Decision (D.) 20-08-004, this resolution approves with modifications protocols proposed by PG&E, SCE, and SDG&E to administer, process, and negotiate requests to prepay Power Charge Indifference Adjustment ("PCIA") obligations.

SAFETY CONSIDERATIONS:

- There are no safety considerations associated with this resolution

ESTIMATED COST:

- Costs are unknown; however the terms of the prepayment agreement must not violate P.U. Code 366.1(d) and 366.2 which prohibits cost shifting between bundled and unbundled customers.

By Advice Letters Pacific Gas and Electric Corporation (PG&E) AL 5973-E and 5973-E-A, Southern California Edison (SCE) AL 4309-E and 4309-E-A, and San

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

Diego Gas & Electric (SDG&E) AL 3631-E and 3631-E-A, filed on October 12, 2020.

SUMMARY

This Resolution approves proposals to administer prepayment applications, put forward by the PG&E, SCE, and SDG&E (jointly, the "Utilities") with the following modifications:

1. SDG&E is ordered to adopt a lottery to determine which customers will be allowed to apply for prepayment in the event the number of prepayment applicants exceeds the annual cap.
2. SCE and SDG&E are ordered to adopt PG&E's viability screen proposal for prepayment applicants as put forward in AL 5973-E-A.

BACKGROUND

In D.18-10-019 the Commission committed to adopting a prepayment option whereby Direct Access ("DA") customers and Community Choice Aggregators ("CCAs") would be permitted to pre-pay their Power Charge Indifference Adjustment ("PCIA") obligation. D.18-10-019 also adopted the following framework for PCIA prepayment:

- a. The prepayment shall be based on a mutually acceptable forecast of that customer's future PCIA obligation.
- b. The prepayment may shall take the form of either (1) a one-time payment; or (2) a series of levelized payments over 2-5 years.
- c. The prepayment shall not be trued-up.

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- d. Once the prepayment has been made, the customer shall not receive any refunds if it returns to bundled service; and
- e. After prepayment is finalized, the customer may switch among competitive retail sellers without incurring any new PCIA obligation.¹

In adopting PCIA prepayment, the Commission acknowledged that an option to prepay would provide “simplicity and predictability for departing load customers.”² The decision assigned a working group to further develop the framework for PCIA prepayments in the next proceeding phase.

D.20-08-004 (“Prepayment Decision”), adopts many of the working group’s recommendations regarding a prepayment framework. Based on the recommendations provided by a working group³, the Prepayment Decision adopted, in part, (1) the consensus framework for PCIA prepayment agreements; (2) the consensus guiding principles, with the exception of one principle regarding partial payments⁴; and (3) evaluation criteria for prepayment agreements. The Prepayment Decision also clarified that risk should be incorporated into the prepayment calculations by using mutually acceptable terms and conditions that adequately mitigate pre-payment risks identified by the working group.

¹ Decision (D.) 18-10-019 (OP 11), p. 163.

² D.18-10-019 (FoF 25), p. 156.

³ The Scoping Memo and Ruling of the Assigned Commissioner (February 1, 2019) for Track 2 of R. 17-06-026 designated SDG&E and the Alliance for Retail Energy Markets and the Direct Access Customer Coalition (jointly, as AReM/DACC) as co-chairs of Working Group Two.

⁴ D.20-08-004 adopted a set of prepayment principles agreed upon by working group co-chairs but declined to adopt the proposal that parties could agree for just a segment of the PCIA obligation to be prepaid.

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

Ordering Paragraph (OP) 6 of the Decision directed the investor-owned utilities (“IOUs”) to each file a Tier 2 Advice Letter within 60 days of issuance of the Decision to establish protocols to administer prepayment requests and negotiations.

The Decision required the Advice Letters to address the following issues:

- (a) How many prepayment requests will be processed annually, and justifications for the limitations.
- (b) How prepayment requests will be prioritized by the IOU;
- (c) What steps can parties take to reduce the total number of separate applications to the Commission to make the process more efficient, such as filing multiple requests for prepayment in a single application to the Commission.
- (d) How the party seeking to prepay its PCIA obligation will be allocated the cost responsibility of prepayment negotiations that do not result in an application for prepayment approval and how the associated cost will be calculated.
- (e) The criteria and metrics by which the party seeking to prepay its PCIA obligation will be evaluated by the IOU under a viability screen.

On October 12, 2020, the Pacific Gas & Electric Company (PG&E) filed Advice Letter 5973-E, Southern California Edison (SCE) filed Advice Letter 4309-E, and San Diego Gas & Electric Company (SDG&E) filed Advice Letter 3631-E. These advice letters contain each IOU's proposals for protocols administering prepayment requests and negotiations.

SUMMARY OF ADVICE LETTERS

Advice Letters PG&E 5973-E, SCE 4309-E and SDG&E 3631-E propose approaches to address each of the issues directed by D.20-08-004.

1. Number of prepayment requests to be processed each year and how they will be prioritized

Ordering paragraph ("OP") 2(a) asked the IOUs to describe how many prepayment request will be processed annually, and what are the justifications for limitations.

OP2(b) asked the IOUs to describe how prepayment requests will be prioritized by the IOU if there are more applicants than the annual cap.

Pacific Gas and Electric AL 5973-E

PG&E proposes issuing a standard solicitation process for prepayment requests and limiting initial applications from prepaying parties to ten Direct Access ("DA") customers and two Community Choice Aggregators ("CCAs") during the first annual solicitation. PG&E's proposed limitations addressed the comments cited in D.20-08-04, that IOUs be allowed to establish limits on the number of applications accepted in each prepayment cycle to facilitate the administration of prepayment requests. PG&E noted that each application would likely represent hundreds of employee hours to review the request, respond to review the request, analyze the ratepayer impacts, negotiate prepayment terms, and help prepare and file an application with the Commission.⁵ Applicants would be put in a random queue to be processed.⁶ If PG&E determines after the first

⁵ PG&E Comments at 9-10, cited in D.20-08-04, p. 31.

⁶ PG&E AL 5973-E, pp.3-4

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

cycle of prepayment negotiations that processing a different number of prepayment requests is more appropriate for each annual solicitation, PG&E will submit a Tier 1 advice letter with the updated number and the justification for the change.

PG&E proposes a designated time window in which prepayment requests can be submitted. Prepayment requestors will then be assigned a random number and placed into a prioritization queue. To move forward, the selected DA and CCA customers would need to indicate an intent to move forward and provide a "Negotiating and Processing Deposit." Should parties fail to provide the Negotiating and Processing Deposit, PG&E will not enter negotiations with that party and will not select another party from the prioritization queue.

PG&E also states that it might further limit or delay the number of prepayment requests if resources become restricted or unforeseen circumstances occur that would hamper PG&E's ability to effectively manage negotiations.

Southern California Edison AL 4309-E

SCE proposes limiting prepayment applications to a maximum of ten prepayments from DA customers and one from a Community Choice Aggregator per year.⁷ Applicants would have two weeks to submit a notice of interest and will be placed in a lottery to determine whose applications are processed in each application window. The purpose of limiting the number of prepayment applications is to enable SCE to manage the workload. However, SCE points out that these limits also have the added benefit of limiting exposure of non-

⁷ AL 4309-E, pp. 2-3.

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

prepaying customers to cost-shifting risks associated with the prepayment process as SCE moves through the learning curve. Following the first cycle of prepayment negotiations, SCE will review its lessons learned and determine whether the quantity of prepayment requests that it can process in a cycle can be increased or if it needs to be decreased.

SCE generally plans for the payment cycle to be 12 months. While a new cycle could begin before the previous cycle had finished, SCE recommends that the second payment cycle begin 60 days after the Commission has issued all final decision on any prepayment applications SCE submits from the first cycle.⁸

SCE plans to begin the PCIA prepayment cycle with a two-week notification window. During this period, DA customers and CCAs (on behalf of their customers) interested in negotiating prepayment of the relevant full PCIA obligation will notify SCE of their interest. When the notification window closes, if more than ten DA customers request to negotiate a prepayment, SCE will conduct a lottery to randomly select a maximum of ten DA customers with which SCE will negotiate prepayment deals in that cycle. Similarly, if more than one CCA requests to negotiate a prepayment, SCE will conduct a lottery to randomly select one CCA with which SCE will negotiate prepayment in that cycle.

San Diego Gas & Electric AL 3631-E

SDG&E proposes limiting the first annual prepayment process to prepayment applications to five from DA customers and one CCA. SDG&E proposes holding an annual notification window just as Request for Offer (RFO)

⁸ SCE AL 4309-E, p. 4.

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solicitations are currently held. SDG&E proposes that applications will be processed in the order received.⁹

Following the first annual process, SDG&E will apply lessons learned and review the prepayment process for effectiveness and will make changes necessary to increase efficiency and/or improve the administration of prepayment requests and/or negotiations via a Tier 1 Advice Letter.

2. Reducing the number of separate applications to the CPUC

OP2 (c) asked the IOUs to describe what steps can parties take to reduce the total number of separate applications to the CPUC to make the process more efficient, such as filing multiple requests for prepayment in a single application to the CPUC.

Pacific Gas and Electric AL 5973-E

PG&E proposes to create a negotiating window and include multiple prepayment agreements in a single application to the CPUC, when possible.¹⁰ PG&E will establish a reasonable length of time, communicated in advance of the solicitation, in which negotiations will occur. By clearly defining a negotiating window, PG&E will be able to use a similar set of assumptions for all Prepayment Requestors and should be able to batch multiple negotiated prepayment agreements into a single application to the Commission. However, the consolidation of multiple prepayments into a single application may depend on

⁹ SDG&E AL 3631-E, p. 2.

¹⁰ PG&E AL 5973-E, pp. 6-7.

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whether market-sensitive and confidential information can be shared among the Prepayment Requestors.

Southern California Edison AL 4309-E

SCE states that it expects that the first prepayment application cycle will involve learning about the prepayment forecasting and negotiating process.¹¹ This will include discovering which issues are unique to different negotiations versus those that are common across negotiations. Therefore, initially it may be challenging to include multiple PCIA prepayment requests in a single application.

However, SCE will consider ways to streamline the application process both in the first cycle and in future cycles. For example, SCE may include several DA prepayment agreements in a single application if the negotiations are concluded at a similar time. SCE also plans to use lessons learned from the first cycle to develop a standard DA PCIA prepayment pro forma that it will offer to DA customers in future cycles

San Diego Gas & Electric AL 3631-E

SDG&E proposes establishing a defined period for a predesignated number of DA customers and CCAs to submit prepayment requests.¹² It also proposes establishing a reasonable time limit within which negotiations will occur so that, to the extent possible, prepayment agreements may be submitted to the CPUC in a single application.

3. Calculating and recovering administrative costs

¹¹ SCE AL 4309-E, pp. 5-6

¹² SDG&E AL 3631-E, p. 3

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

OP2 (d) asked the IOUs to describe how they will recover administrative and negotiating costs and how parties seeking to prepay their PCIA obligation will be allocated the cost responsibility of prepayment negotiations that do not result in an application for prepayment approval. It also asks the IOUs to describe how those costs will be calculated.

In lieu of a viability screen, the IOUs each propose to require a deposit from prepayment applicants against which the IOU's negotiating and administrative costs will be deducted. Each IOU proposes that the size of the negotiating deposit is equivalent to two years of PCIA payments, although they differ in the details of how this would be calculated.

PG&E and SCE state that they will require a deposit based on the prior 24 months of PCIA obligation but PG&E specifies that it would be "based on the uncapped PCIA rate for that particular period."¹³ SDG&E proposes a "processing deposit" equivalent to two times the prepaying entity's PCIA obligation from the previous year based on the uncapped PCIA rate.¹⁴ Should negotiations fail to result in an agreement, each IOU plans to return the remaining deposit amount less the administrative costs incurred during the process of negotiations, which will be deducted.

In addition to the "Negotiating and Processing Deposit", PG&E proposes charging pre-payment applicants a one-time \$3500 application fee before

¹³ PG&E AL 5973-E (October 12, 2020), p. 6, SCE 4309-E (October 12, 2020), p. 4.

¹⁴ SDG&E AL 3631-E, pp. 4-5.

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negotiations commence.¹⁵ If the requestor is not processed in the first request cycle, they will not have to provide another application fee.

PG&E anticipates expenses will be incurred for establishing the protocols and processes to be followed in order to implement PG&E's prepayment request processing framework. Moreover, PG&E expects that each prepayment request will likely incur some incremental costs that are specific to each Prepayment Requestor. For example, PG&E expects to incur costs associated with: (1) using an Independent Evaluator (IE) to oversee the prepayment process, (2) reviewing requests for prepayment, (3) developing and administering the solicitation protocols, and (4) administering a lottery process in order to prioritize requests. SCE and SDG&E do not propose any application fees.

4. Viability Screens

OP2 (e) asked the IOUs to describe what criteria and metrics the utilities will use to evaluate the viability of the party seeking to prepay its PCIA obligation.

As described in the discussion of Issue (d), above, the IOUs propose deposits equivalent to either two times the Prepayer's last year of PCIA payments or to the last two years of PCIA payments (SDG&E). While negotiating expenses would be collected against these deposits, they are also intended to act as a viability screen and demonstrate the Prepayer's seriousness and ability to pay off their PCIA obligation in one to five years.

NOTICE

¹⁵ PG&E AL 5973-E, p. 5.

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

Notice of AL 4617-E was made by publication in the Commission's Daily

Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS AND REPLIES

On November 2, 2020, the Alliance for Retail Energy Markets (AReM), Direct Access Customer Coalition (DACC), and the California Community Choice Association (CalCCA) jointly the "Prepayment Parties", filed timely protest to Advice Letters 5973-E, 4309-E, and 3631-E. On November 9, 2020, PG&E, SCE, and SDG&E each filed timely replies to AReM/CalCCA/DACC's protest.

1. Number of prepayment requests to be processed each year and how they will be prioritized

The Prepayment Parties make the following arguments in protest regarding issues (a) and (b), the number and prioritization of prepayment requests:¹⁶

First, SDG&E should be required to utilize a lottery in the event of excess prepayment requests, rather than processing applications in the order received.

Second, the Prepayment Parties question whether an annual application window is needed and recommend that the application process be open all year so that a customer/CCA that misses it does not have to wait a year to reapply. However, the Prepayment Parties accept that the implementation of a year-round window could be considered for later years after the utilities have gained experience with the application process and reevaluate their prepayment programs in view of their respective first year experiences.

¹⁶ Protest of Prepayment Parties (Nov 2, 2020), p. 2.

IOU's Reply to Protests:

SDG&E states that it has no objection to adopting a lottery system for processing applications, but it cannot support the Prepayment Parties' proposal for a rolling application process, which would impose significant burden and undermined efficiencies related to submitting a single application for Commission approval.¹⁷

SDG&E states that requiring two application windows per year, while not optimal, could be workable as a compromise solution; however the annual limits on total number of applications identified in AL 3631-E would remain in place.

SCE and PG&E assert that the negotiation windows and limitations proposed are reasonable to avoid undue burden on their finite internal resources and associated costs. SCE notes that the same staff resources are responsible for negotiating all of IOU's other procurement resource contracts.

PG&E asserts the Commission should maintain annual limitations and a negotiating window until PG&E has completed an evaluation of the prepayment request processing framework, following the first application cycle.¹⁸

2. Reducing the number of separate applications to the CPUC

The Prepayment Parties note that each IOU has indicated plans to possibly consolidate multiple prepayment agreements into a single application.¹⁹

¹⁷ Reply of SDG&E to protest of Advice Letter 3631-E, p. 2.

¹⁹ Protest of Prepayment Parties, pp. 2-3

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Furthermore, they note that, "Neither PG&E nor SDG&E address whether either plans to consolidate DA and CCA agreements into a single application. [The Prepayment Parties] do not oppose SCE's recommendation to have separate applications for DA and CCA prepayment agreements."²⁰

IOU Reply to Protests

SDG&E submits that consolidation of multiple prepayment agreements to the extent possible serves the public interest. However, filing a consolidated application requires that the prepayment agreements included in the application be negotiated contemporaneously. Having just one application window per year would facilitate the processing of multiple applications in a single application.²¹

D. Calculating and recovering administrative costs

The Prepaying Parties strongly object to the size of the deposits requested by the IOUs, which they characterize as "excessive."²² They point out that for a large commercial or industrial customer using 200,000 kWh/month, the deposit would be in the range of \$170,000. The customers of a moderate sized CCA, Sonoma Clean Power, incurred uncapped PCIA charges of \$103 Million, which would result in a deposit in excess of \$200 million were Sonoma Clean Power to apply to prepay their PCIA obligation.

Second, the Prepayment Parties state that the purpose of the deposit should be to ensure that the utility has sufficient funds on hand to reimburse itself for projected administrative expenses. They assert that asking for exorbitant

²⁰ Protest of Prepayment Parties, p.3.

²¹ SDG&E Protest Reply, p. 2.

²² Protest of Prepaying Parties, pp. 4-5.

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deposits will have the effect of deterring prepayment requests. They state that deposits should be capped at the upper limit of what negotiations would reasonably be expected to cost and suggest a number closer to \$50,000 would be reasonable.

The Prepayment Parties also ask that, should Energy Division be inclined to approve a deposit based on the applicant's estimated PCIA payments, the deposit should be based on the capped amount (as proposed by SCE) and not on the uncapped amount (as proposed by SDG&E). They also state that there is no need for the deposit to be tied to two full years of projected PCIA payments because a far shorter period would be more than sufficient to reimburse the utilities for their projected expenses.

Third, the Prepayment Parties ask that the utilities should be required to provide estimates of staff labor required at the outset of negotiations to inform the deposit amount and be required to substantiate their negotiation costs with the appropriate record and data at the time the refund is due. They point out that none of the utilities' respective advice letters have addressed how they plan to calculate the costs to be charged prepayment applicants, as required by D.18-08-004 OP 6(d) and argue that each should be required to amend their advice letters with detailed information on this topic.

Fourth, the Prepayment Parties also object to the IOUs' proposal that should a prepayment negotiation be unsuccessful, refunded amounts do not include interest. They ask that the refund include interest income that the utility has earned over the negotiation period and suggest that the individual utilities' weighted cost of capital would be an appropriate interest rate to apply to the held funds.

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Fifth, the Prepayment Parties object to the \$3,500 application fee proposed by PG&E and ask that it be eliminated. They claim that there is no justification of this fee when customers and CCAs will be required to make significant deposits to cover the IOU's negotiating expenses.

In their responses, PG&E, SCE, and SDG&E each state that the negotiating deposits they propose are reasonable.²³ They point out that in addition to covering administrative costs incurred by the utility during negotiations, the deposit may act as a viability screen, ensuring that the prepayment applicant is committed and has the financial resources to pay-off their full PCIA obligation. They contend that the \$50,000 deposit ceiling proposed by the Prepayment Parties' is inadequate to serve the purpose of demonstrating financial viability.

The IOUs object to the proposal that negotiating deposits be applied the weighted-average cost of capital rate for each IOU. SCE reasons that "the Protesting Parties' proposal... would simply act as an unjustified windfall to the potential prepayment counter-party that would have to be funded by other customers. That would be both inequitable and inconsistent with the statutory ban on cost-shifting."²⁴ PG&E states that it "will pay interest at the same 30-day average rate that PG&E earns on its cash holdings. For example, if the cash is deposited into an escrow account, the counterparty will retain any interest paid by the escrow agent, net of any fees due to the escrow agent."²⁵ SDG&E states

²³ PG&E reply to protest, p. 4; SCE reply to protest, p.2; SDG&E reply to protest, p.2

²⁴ SCE reply to protest, p.3

²⁵ PG&E reply to protest, p. 5

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that the deposits will not be used as fungible revenue and will be held in a balancing account where it will earn the commercial paper rate for interest.²⁶

The IOUs further ask that the Commission reject the Prepayment Parties' recommendation that each utility amend its advice letter to calculate the negotiation costs that applicants for prepayment are likely to incur. PG&E and SCE both point out that, given PCIA prepayment is a new process, they cannot reasonably determine an estimate of staff labor required during and after negotiations. They further argue that because negotiating deposit also serves as a viability screen, there is no need to accurately estimate labor costs in order to calculate the deposit amount.

Finally, PG&E disagrees with the assertion made by the Prepaying Parties that the \$3,500 application fee it proposed is not justified.²⁷ PG&E states that it expects to incur administrative costs prior to the negotiation phase, including activities associated with: (1) developing and administering solicitation protocols, (2) overseeing the prepayment process. PG&E states that if it receives prepayment requests in excess of the twelve Prepayment Requestors that PG&E has proposed to negotiate with on an annual basis, these costs will have been incurred, in part, by requesting parties who will not provide a Negotiating and Processing Deposit. The one-time Application Fee PG&E proposes is to ensure that the administrative costs associated with activities prior to the negotiation phase are equitably allocated and do not result in a cost shift either to

²⁶ SDG&E reply to protest, p.2

²⁷ PG&E Reply to Protest, pp. 2-3

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

counterparties who are selected to move forward into the negotiation process, or to PG&E's bundled service customers.

E. Viability Screens

As described in the discussion of issue (d), above, the Prepayment Parties object to the size of the required deposit and argue that the purpose of the deposit should be to ensure that the utility has sufficient funds on hand to reimburse itself for projected administrative expenses, and not to demonstrate viability.

SUPPLEMENTAL ADVICE LETTERS

On May 5 and June 9, 2021, Energy Division staff hosted workshops to discuss the protesting parties' concerns regarding the IOUs' proposed approach to (1) ensure seriousness and financial viability of Prepayment Requestors and (2) provide for cost recovery and the actual administrative and negotiating costs incurred by the utilities in prepayment negotiations. The parties discussed alternative approaches to the IOUs' proposed cash deposit to demonstrate seriousness and financial viability, to determine whether the IOUs and parties could find an agreement.

Following the workshops, Energy Division staff requested the IOUs to supplement their originally submitted advice letters in order to:

- (1) provide an estimate of costs the IOUs expect to incur during prepayment negotiations; and
- (2) provide additional details on the proposed financial viability screening for Prepayment Requestors to prepay their entire PCIA obligation.

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

In response to the request by Energy Division staff, on August 13, 2021, PG&E filed supplemental advice letter 5973-E-A, SCE filed supplemental advice letter 3631-E-A, and SDG&E filed supplemental advice letter 4309-E-A.

1. IOU Estimates of Negotiating Effort and Cost

Per the direction of the Energy Division, the IOUs' supplemental advice letters provide more information concerning the types of labor that would be required to conduct the prepayment negotiation as well as estimates of the amount of time that would be required to conduct the negotiations.

PG&E provides an estimate that divides labor costs into 3 stages -- pre-negotiation, negotiation, and application development – and estimates that each application will require between 2,447 and 2,809 hours of labor. Billed at the estimated fully loaded employee rate of \$114 per hour, PG&E's costs for each prepayment negotiation would fall between \$278,958 and \$320,226.

SCE provides a range of estimates for the various components of the negotiation and application process as follows:

- Initial discussions, NDA and Deposit Agreement negotiation and processing – 5 hours.
- SCE forecast of PCIA obligation – 75 to 500 hours, depending, in part, on the number of customers seeking prepayment.
- SCE calculation of prepayment obligation (liability plus risk premium) – 25 to 150 hours, depending on the number of customers seeking prepayment.
- Time spent negotiating initial term sheet – 5 to 10 hours.
- Time spent facilitating prepaying customer due diligence of forecast and portfolio details – will depend on pre-paying customer's needs.
- Time spent negotiating prepayment agreement – 50-500 hours, depending on deal complexity and negotiation dynamics.
- If negotiations are successful, time to prepare and prosecute a joint Application for CPUC approval – 500-1,000 hours.

PG&E AL 5973-E, SCE AL 4309-E, and SDGE AL 3631-E

However, SCE warns that as the PCIA negotiation paradigm is entirely new and that the cost estimates provided are an approximation; it is reasonable to expect that SCE will carry out unexpected tasks, and/or incur additional incremental costs, that are not currently anticipated.²⁸

SDG&E provides a table listing the various tasks and job functions that will be required to administer and negotiate prepayment agreements.²⁹ SDG&E also provides a "general, non-binding estimate" that it would be reasonable for the prepayment applicant to "expect approximately 1000 hours of labor to progress from "pre-negotiation" through execution of the agreement." SDG&E continues that, "[d]epending on the size and complexity of the of the transaction, approximately 1200 additional hours can be expected for the regulatory approval process and implementation of the prepayment agreement."³⁰

2. Payment of IOU Negotiation Costs

In ALs 5973-E, 4309-E, and 3631-E the IOUs each propose to deduct administrative and negotiating costs from a deposit equal to two times the Prepayer's most recent PCIA obligations at the conclusion of the prepayment negotiation process. The supplemental advice letters change this proposal so that pre-payers are billed for utility expenses at regular intervals. PG&E and SDG&E propose that the prepayer pay the IOU for negotiating costs on a "pay-as-you-go" basis, while SCE proposes that payments be taken out of a one-time,

²⁸ SCE supplemental advice letter 4309-E-A, p.5

²⁹ SDG&E supplemental AL 3631-E-A, Table 1, p.3

³⁰ SDG&E supplemental AL 3631-E-A, p. 4.

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upfront \$50,000, but become “pay-as-you-go” once the initial deposit has been used up.³¹

PG&E proposes to calculate the actual costs on a regular basis and invoice the Prepayment Requestor with payment being due the following month until negotiations are complete or the Prepayment Requestor elects to terminate the prepayment negotiations.³² SDG&E also proposes that administrative fees will be calculated monthly and billed to the prepayment applicant, with payment being due the following month.³³

SCE's proposal differs slightly in that it would require the prepaying applicant to make a one-time \$50,000 initial deposit against which it would charge its negotiating expenses.³⁴ If the negotiation costs exceeded the deposit, SCE would then invoice the excess monthly negotiating expenses to the Prepayer with payment being due the following month. The deposit would be separate and additional to the deposit SCE would require to demonstrate financial viability.

Viability Screens

The supplemental advice letters each modify the IOU's original proposal for financial viability screens. The revised proposals reduce the size of the proposed deposits and/or allow prepaying applicants to substitute part of the required cash

³¹ 4309-E-A p.

³² 5973-E-A, p. 3.

³³ 3631-E-A, p. 4.

³⁴ 3631-E-A, p. 4

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deposit by showing a line of credit or otherwise demonstrating that they have sufficient funds to pay-off their PCIA obligation should an agreement be reached.

PG&E proposes that prepayers be required to deposit an equivalent of 12 months of a Prepayer's historical PCIA obligation, which could be made either with a cash deposit or an acceptable letter of credit.³⁵

SDG&E and SCE propose that the deposit amount be equivalent to 24 months of the Prepayer's PCIA obligation,³⁶ but would reduce this amount if the Prepayer can demonstrate to the IOU's satisfaction sufficient funds to pay for at least ten times their annual historical PCIA obligation, by either (i) sufficient funds on its balance sheet, or (ii) available undrawn capacity on existing credit facilities or other loan commitment with a U.S. commercial bank or foreign bank.³⁷

DACC's Protest of Supplemental Advice Filings:

On September 2, 2021, DACC filed a timely protest to these supplemental advice letters.

Payment of IOU Negotiating Costs.

DACC states that it supports the pay-as-you-go structure for reimbursing the IOU for its negotiating costs and does not object to SCE's proposed initial deposit structure.³⁸

³⁵ AL 5983-E-A, p. 5.

³⁶ SDG&E would require an amount equal two times the total PCIA amount from the previous twelve months, while SCE would require an amount equal to the prior 24 months of PCIA.

³⁷ AL 4309-E-A, p. 6.

³⁸ DACC protest of supplemental advice letters, pp. 1-2.

IOU Estimates of Negotiating Efforts and Costs

DACC notes a large variation between each IOU's estimates of the number of hours need to conduct the negotiations and file applications and expresses concern that transaction costs of this magnitude would prohibit all but CCAs and very large DA customers from engaging in negotiations. DACC suspects that costs such as preparing a forecast of the PCIA and preparing the first application for approval account for a significant portion of the costs, creating a first mover problem, as the first applicant will bear large fixed-costs if the application process is not fully subscribed.

These "first mover" costs arise from activities such as preparing a model to forecast the PCIA and preparing the first application for approval that do not need to be repeated for each new prepayment negotiation. If many customers apply, these costs will be spread among many customers. However, the first applicants face a risk that they will have to bear the entire cost for these activities on their own.

DACC requests that the Commission direct:

1. PG&E to issue a revised advice letter that revisits its estimates in light of the other IOU's estimates.
2. SCE and SDG&E to issue a revised advice letter that provides a weighted average hourly rate so that the commission and PrePAYERS can review estimates of the potential total cost of negotiation.
3. All three IOUs to issue a revised advice letter that separates out its estimated common costs of negotiations (e.g., development of a PCIA

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forecasting model), identifies those costs in a revised advice letter, and collects no more than 10% of those common negotiating costs from any preprayer.

Financial Viability Demonstration

DACC protests that SCE and SDG&E's proposals for a financial viability demonstration are overly complex, burdensome, and unneeded. DACC points out that SCE's and SDG&E's supplemental proposals for collateral is similar to PG&E's proposal, but significantly harder to meet. DACC states that, "A rational DA customer contemplating prepayment would not enter into prepayment negotiations knowing that it will be paying \$100,000 or more of IOU costs without the ability to follow through on the transaction. A DA customer's willingness to expend its own negotiation costs plus six figures of IOU negotiation costs sufficiently demonstrate the potential Prepayer's "seriousness."³⁹ They conclude that additional collateral is unnecessary.

IOU Responses to DACC's Protest of Supplemental Advice Filings

On September 10, 2021, PG&E, SCE, and SDG&E each filed responses to DACC's protest.

IOU Estimates of Negotiating Effort and Cost

PG&E argues that the Commission should ignore DACC's request that it require PG&E to revise its advice letter and specifically revisit its cost estimates to

³⁹ DACC Protest, pp. 3-4

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bring them into line with the analysis provided by SCE and SDG&E.⁴⁰ PG&E notes that the estimate was not developed or shared in order to provide cost certainty and should not be used for that purpose. Each IOU has a different portfolio composition of PCIA-eligible contracts and a different mix of potential prepaying customers. Therefore, it is reasonable that the estimate of work hours varies among the IOUs. Moreover, directing PG&E to lower its estimate will have no effect on actual costs that the prepaying customers is obligated to pay.

Payment of IOU Negotiation Costs

All three IOUs ask that the Commission reject DACC's proposal regarding the treatment of common costs.⁴¹ PG&E points out that DACC's proposal that no single applicant be required to pay more than 10% of common costs shifts the cost risk onto non-Prepayers and therefore threatens the indifference of these customers. SCE notes that these common costs can and will be distributed equitably among Prepayers, but that creating a cap risk shifting the costs onto non-Prepayers.

Financial Viability Demonstration

SDG&E argues that the modified financial viability screen is reasonable, as it is intended to assess commercial risks that go beyond a prepayment applicant's credit profile. SDG&E further notes that the current proposal represents a compromise from SDG&E's original proposal and that it reduces the collateral

⁴⁰ PG&E's reply to DACC's protest, p. 2

⁴¹ PG&E's reply to DACC's protest, p. 3; SCE reply to DACC's protest, pp.1-2 ; SDG&E reply to DACC's protest, pp. 4-5.

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requirement from twice to one time the previous year's PCIA obligation if the prepayment applicant demonstrates sufficient funds to pay at least 10 times the relevant annual historical PCIA obligation through a showing.

DISCUSSION

A. Number Prepayment Requests Processed Annually

The caps proposed by each IOU on the number of prepayment requests it will negotiate each year are reasonable. These limitations may be changed in future application cycles if experience demonstrates that they are either too high, and are creating an unmanageable workload, or that more applications could be accommodated without creating an unreasonable workload.

We agree with the IOUs that adopting an open application process would likely increase workloads for both IOU and CPUC staff and therefore we reject the Prepayment Parties' recommendation that the IOUs be ordered to adopt an open application process.

B. Prioritization of Prepayment Requests

We determine that putting applicants in a lottery is an appropriate way to select which applicants are allowed to continue with negotiations if the number of applicants exceeds the IOU's limits for a given program cycle. In reply to the Prepayment Parties' protest, SDG&E stated that it does not object to adopting a lottery in the event there are excess requests. Should the number of applicants exceed the cap set by SDG&E, SDG&E should determine which applicants can pass to the negotiation stage using a lottery.

C. Steps to Reduce Separate Applications to the Commission

Each IOU proposes that it can reduce the total number of applications by creating a negotiating window and consolidating multiple applications to the CPUC into a single application, when possible. We agree with SCE that the first prepayment cycle will involve learning about the prepayment forecasting and negotiating cycle, and therefore there may be a period of discovering which issues are unique to different negotiations versus those that are common across negotiations.

We approve the IOU's proposal to consolidate multiple prepayment agreements into a single application to the Commission where possible. Further, we agree with SCE that the first application cycle is likely to provide ample opportunity to learn where efficiencies in the process can be found. We therefore direct the IOUs to revisit this issue when they review their respective experiences following the first application cycle to address further ways to make the application process more efficient.

D. Cost Allocation of Prepayment Negotiations

To ensure the indifference of non-prepaying customers to any prepayment agreement, the prepaying parties must pay any IOU costs that are associated with the prepayment negotiation and application process. We agree that the proposal put forth in the supplemental advice letters that pre-paying applicants pay for the IOU negotiating costs on a "pay-as-you-go" basis is reasonable. We also agree with a one-time, up-front fee of \$50,000 to act as a collateral payment towards actual administrative costs. These proposals are adopted.

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However, to ensure that Prepaying parties are not unduly assigned costs by the IOU, the IOUs must provide prepaying applicants an invoice with a clear accounting of the time spent on the Prepayer's specific application and the share of common costs that are being assigned to the Prepayer with each bill.

Regarding DACC's proposal that no more than 10% of the IOUs fixed or shared costs for negotiations be assigned to any single prepayment party, we agree with DACC that there is the potential for a first-mover dilemma among potential PrePAYERS if they are unsure what their share of the fixed or shared portion of the IOU negotiating costs is likely to be. However, the IOUs are also correct in noting that DACC's proposal that each IOU collect no more than 10% of its fixed costs related to prepayment negotiations from any one customer could leave a portion of these costs, which would represent an illegal cost shift to bundled customers. Therefore, DACC's proposal cannot be adopted.

PG&E may also implement the one-time \$3500 application fee. However, PG&E must provide applicants an invoice that accounts for the costs that the fee is covering to applicants, with any excess being applied towards the applicant's share of PG&E's future negotiation costs.

We agree with the IOUs that the Joint Prepayment Parties' request that deposits made by prepayment applicants earn the individual utility's average weighted cost of capital is not reasonable and would create a windfall for PrePAYERS. As the funds deposited will not be invested and will be held in a balancing account, the appropriate interest rate for fund held as deposit is the standard commercial paper interest rate.

E. Criteria for Viability Evaluation

D.20-08-004 stated that "the Commission does not require but allows the use of a viability screen."⁴² However, D.20-08-004 does not determine that *any* viability screen is appropriate; it requires that the IOUs include the details of the viability screen they propose in their Tier 2 Advice Letter for CPUC approval.

In considering the appropriateness of SCE and SDG&E's stricter viability screen, we weigh the additional benefits against the additional burden these stricter viability screens would impose on Prepayers. The benefits are that a stricter viability screen could reduce the risk that a customer or CCA engages the IOU in a lengthy and costly prepayment negotiation when it lacks the financial capacity for the prepayment. However, SDG&E and SCE have not demonstrated that the above risk is significant, and given the high cost of negotiations and the fact that prepaying customers will be responsible for the IOU's negotiation costs, it seems unlikely that potential Prepayers will engage in negotiations if they are financially incapable of paying-off their PCIA obligation. We therefore agree with DACC that the additional deposit required by SCE and SCE are overly complex and unnecessary.

We therefore require SCE and SDG&E to modify their proposed financial viability screens to bring them into alignment with the screen proposed by PG&E in AL 5973-E-A. Should evidence emerge that customers are engaging in prepayment process who do not have the financial resources to make the agreed

⁴² D.20-08-004, p. 19.

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upon payments, either utility may file a Tier 2 advice letter to modify the financial viability screen.

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. 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.

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, and will be placed on the Commission's agenda no earlier than 30 days from today.

FINDINGS

1. It is reasonable for PG&E to limit prepayment applications to 10 DA customers and 2 CCA per yearly cycle.
2. It is reasonable for SCE to limit prepayment applications to 10 DA customers and 1 CCA per yearly cycle.
3. It is reasonable for SDG&E to limit prepayment applications to 5 DA customers and 1 CCA customers per yearly cycle.
4. Each IOU should use a lottery to prioritize prepayment negotiations in the event the demand for prepayment agreements exceeds an IOU's limit.

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5. PG&E's proposed \$3,500 application fee is reasonable, provided that PG&E applies any residual in excess of its expenses towards the Prepayer's share of negotiation costs.
6. Grouping multiple prepayment agreements into a single application to the CPUC will make the prepayment process more efficient.
7. Billing prepayment applicants for the costs incurred by an IOU on a monthly basis is a reasonable way to ensure that the IOU's negotiation costs are recovered and that the indifference of non-prepaying customers is maintained.
8. SCE's proposal to require a one-time, up-front \$50,000 fee prior to negotiations against which actual costs will be deducted is reasonable.
9. PG&E, SCE, and SDG&E's estimations of the labor prepayment applicants will be financially responsible for are sufficiently detailed, given the lack of actual data at this time.
10. It is reasonable that PG&E, SCE, and SDG&E be required to update their estimates of their labor requirements for the prepayment negotiation process with actual data when such data becomes available.
11. Requiring PG&E, SCE, and SDG&E to limit a prepaying applicant's exposure to just 10 % of the common costs involved in negotiations would create the risk that these costs are shifted to non-prepaying customers.
12. D.20-08-004 allows but does not require the IOUs to create a viability screen for Prepayers.
13. The viability screen proposed by PG&E consisting of a deposit or letter of credit equivalent to 12 months of the Prepayer's PCIA obligation is reasonable.

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14. The viability screens proposed by SCE and SDG&E, which would require the Prepayer to deposit the equivalent of 24 months of the Prepayer's obligation but would give SCE and SDG&E the ability to reduce the deposit to just 12 months if the Prepayer makes certain financial showings, are overly complex and unnecessary.

15.

THEREFORE, IT IS ORDERED THAT:

1. Pacific Gas and Electric Company Advice Letter (AL) 5973-E-A, Southern California Edison AL 4309-E-A, and San Diego Gas and Electric Company AL 3631-E-A are approved regarding (a) the number of applicants permitted each cycle, (b) the prioritization of prepayment requests, and (c) steps to make the application process to the Commission more efficient, with the following exception:
 - a. SDG&E shall file a new Tier 1 AL containing a lottery process to determine which customers will be allowed to apply for prepayment in the event the number of prepayment applicants exceeds the annual cap.
2. PG&E AL 5973-E-A, SCE AL 4309-E-A, and SDG&E AL 3631-E-A are approved regarding the allocation of cost responsibility for prepayment negotiations.
3. PG&E AL 5973-E-A is approved with regard to issue (e) the criteria used for a viability screen.
4. SCE and SDG&E shall file a Tier 1 AL to amend their viability screen criteria to be consistent with PG&E's viability screen.

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5. After the utilities have completed the first negotiation cycle and submitted those prepayment agreements for Commission approval, SCE should host a workshop on how the prepayment process can be made more transparent and streamlined. Following that workshop, SCE, PG&E, and SDG&E should each submit a Tier 3 AL to propose modifications to the approved Prepayment Application Process based on lessons learned from the first cycle.

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 March 17, 2022; the following Commissioners voting favorably thereon:

RACHEL PETERSON

Executive Director