Decision **PROPOSED DECISION OF ALJ KLINE (Mailed 4/27/2022)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of The Regents of the University of California, the School Project for Utility Rate Reduction, and E&B Natural Resources Management Corporation to adopt, amend, or repeal a regulation pursuant to Public Utilities Code § 1708.5.	Petition 22-01-018

DECISION DENYING PETITION FOR RULEMAKING TO ADDRESS ALLEGED OVERBILLING DUE TO POWER CHARGE INDIFFERENCE ADJUSTMENT VINTAGING RULES FOR DIRECT ACCESS SERVICE ENROLLMENT

Summary

This order denies the petition of Regents of the University of California, School Project for Utility Rate Reduction, and E&B Natural Resources Management Corporation to open a rulemaking to consider the inequitable effects of the Commission's direct access rules and associated investor-owned utility tariffs and requested relief for overbilled Power Charge Indifference Adjustment surcharges. This proceeding is closed.

1. Factual Background

An overview of enrollment in direct access (DA) service is provided in Section 1.1. The petitioners are discussed in Section 1.2.

1.1. DA Service and Enrollment Procedure

DA service is a commercial arrangement whereby retail end-use customers receive distribution and transmission service from a utility, but they buy electricity on the wholesale market through transactions with electric service providers. The DA program was established in the mid-1990's and participation in the program increased to 16 percent of the investor-owned utilities' (IOU) combined retail load by 2000-2002, when the DA program was suspended as a result of the 2000-01 California Energy Crisis.[1] From 2001 to 2009, the California Public Utilities Commission (Commission) allowed new DA enrollment so long as the total DA load remained unchanged.[2] In 2010, the Commission raised the load allowed under the DA program to the total energy Service Provider (ESP) load in each IOU service territory.[3] In 2019, the Commission implemented a 4,000 Gigawatt-hour (GWh) DA Load Cap increase mandated by Senate Bill 237 (Stats. 2018, Ch. 600).[4] In 2021, the Commission recommended against increasing DA enrollment beyond the existing DA Load Cap.[5]

From 2012-2017, new DA customers were required to provide at least six months' notice to the IOU prior to participating in DA service by providing a Notice of Intent (NOI) to their serving IOU during an annual open enrollment window. Using a lottery process, the IOUs either accepted the applicant in the DA program or placed the applicant on a wait list, if the assigned kWh available under the DA program had already been met. The utilities set the providers'

[1] Decision (D.) 96-12-088; D.01-09-060.

[2] D.02-03-055; D.03-04-057; D.04-02-024.

[3] D.10-03-022.

[4] D.19-05-043; D.19-08-004.

[5] D.21-06-033.

departing load vintage for purpose of calculating the Power Charge Indifference Adjustment (PCIA) based on the NOI date, whether or not the applicant was enrolled in the DA program or placed on a wait list.

From 2019 to the present, the Commission allowed for special enrollment under a 4,000 GWh Load Cap increase on condition that DA providers would not begin service until January 2021. The Commission apportioned the 4,000 GWh evenly between the waitlists for 2019 and 2020. The IOUs could continue to process new DA applicants for available space under the pre-expansion Load Cap using the lottery process. As a result of the DA enrollment process, the assigned PCIA vintage of a DA customer could differ significantly from the date the entity departed from IOU bundled customer service.

1.2. Petitioners

Petitioners include the Regents of the University of California (UC), School Project for Utility Rate Reduction (SPURR), and E&B Natural Resources Management Corporation (E&B Natural Resources) (collectively, "the petitioners"). UC registered as an ESP with the Commission in 2014. As an ESP, UC provides DA service to portions of eight campuses and three medical centers, which accounts for 30 percent of UC's annual purchased energy. SPURR is a joint powers agency that operates procurement and consulting programs for California public education agencies. E&B Natural Resources is an independent oil and gas company headquartered in Bakersfield, California. UC, SPURR, and E&B Natural Resources all have at least one investor-owned utility IOU service account that was assigned a departing load vintage of 2017 and 2018 based on the timing of their NOI submission to provide DA service.

2. Procedural Background

On January 26, 2022, Petitioners filed a petition to open a rulemaking seeking relief from the "unintentionally inequitable effects of certain orders of the Commission and tariffs of PG&E, SCE, and SDG&E," resulting in duplicative PCIA surcharges for petitioners (Petition). On February 22, 2022, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively "the Joint IOUs") jointly filed a response to the petition. On March 7, 2022, the Petitioners filed a reply to the Joint IOUs' response.

3. Summary of Petition (P.) 22-01-018

Petitioners allege they were harmed by the Commission's DA vintaging rules when their accounts were overbilled for PCIA surcharges prior to petitioners' departing load in 2021. According to petitioners, the IOUs assigned their accounts a PCIA vintage date of either 2017 or 2018, based on the filing date of their NOI. However, the petitioners were only allowed to start DA service in 2021 due to the Commission's current policy of requiring enrollments under the DA lottery process. As a consequence, the petitioners argue that they were required to pay duplicative PCIA surcharges while still on bundled customer service.

Petitioners seek relief in the form of a refund of all duplicative PCIA surcharges assessed to 2017 and 2018 PCIA vintaged account customers after their accounts were transferred to DA service. Petitioners do not seek relief, but also do not oppose, the Commission's grant of the same relief for entities who filed an NOI in 2019 and did not start DA service until 2021.

4. Response to P.22-01-018

The Joint IOUs oppose the petition to open a rulemaking. They argue that the Petition should be denied for the following reasons: (1) the Petition does not meet the requirements of Rule 6.3 of the Commission's Rules of Practice of Procedure,[6] (2) there is no wrong to be remedied, (3) the Petition seeks an award of damages the Commission does not have jurisdiction to award, and (4) the Petition is untimely. First, the Joint IOUs state that the Petition fails to meet the requirements of Rule 6.3 because it does not concisely state what regulation it seeks to adopt, amend, or repeal; to propose specific wording for the regulation; and to limit its application to future conduct. Second, the Joint IOUs argue that assigning the PCIA vintage by the NOI benefits the DA providers in the long-term, even if there are short-term cost impacts, since the DA providers bypass substantial cost responsibility from generation costs incurred after the NOI date. Third, the Joint IOUs argue that Petitioners are seeking recovery for damages, which the Commission has no jurisdiction to award. Finally, the Joint IOUs argue that the petition is untimely since the Petitioners waited almost four years after their assignment to a PCIA vintage before bringing this Petition for relief.

The Joint IOUs further state that, should the Commission decide to grant the petition, the rulemaking should consider modifications to the existing DA regulations on a prospective basis. The Joint IOUs propose eliminating the use of NOIs to determine DA service provider PCIA vintaging as the outcome of any potential rulemaking arising from this Petition.

[6] All references to "Rule" or "Rules" herein shall refer to the Commission's Rules of Practice and Procedure.

5. Discussion

In determining whether to grant the petition of UC Regents, SPURR, and E&B Natural Resources, we first ask whether the petition applies to future conduct for a class of entities pursuant to Rule 6.3(a). We find that it does not.

Petitioner's request is a retrospective request for relief from overbilling rather than for future conduct. This petition also fails to meet Rule 6.3(a)'s requirement to address a class of entities, focusing instead on a narrow subset of DA customers with 2017 and 2018 departing load vintages. Furthermore, the Commission currently has open Rulemaking (R.) 17-06-026, in which the matter of PCIA vintaging can be addressed, should the Commission choose to revisit PCIA vintaging for DA customers on a prospective basis. Accordingly, this petition for rulemaking should be denied.

6. Comments on Proposed Decision

The proposed decision of ALJ Zita Kline in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by petitioners UC, SPURR, and E&B Natural Resources, jointly, on May 17, 2022. Reply comments were filed by PG&E, SCE, and SDG&E, jointly, on May 23, 2022.

According to petitioners, the proposed decision's numerous factual and legal errors invalidate its basis for denying the petition. First, petitioners argue that they were harmed by the Commission's DA rules, which obligated the petitioners to pay for PCIA undercollections to which they did not contribute, rather than by the proposed decision's conclusion that the IOUs caused harm to the petitioners through their own misconduct. We agree that certain references to

alleged harm by the IOUs should be changed to references of alleged harm caused by the Commission's rules, and have adjusted the language accordingly.

Second, petitioners contend that the proposed decision errs by focusing solely on the petitioners' request for retrospective relief when petitioners request both ongoing as well as retrospective relief from the Commission's DA rules through a rulemaking. We disagree. The proposed decision correctly identified the petitioners' request as retrospective in nature because the incongruity between the petitioners' vintage date and its load departure date ended on January 1, 2021. The impacts of previous PCIA undercollections in the 2017-2020 timeframe affecting bundled service customers who are vintaged in 2017 or 2018 and departed load in 2021 are already known and addressed by the Commission, even if the impact of payment for the PCIA undercollections is ongoing as a result of extended amortization periods.[7]

Also, the petitioners' requested class refers to DA customers vintaged in 2017 and 2018. However, there are no new DA customers who will be vintaged into 2017 and 2018 to address on a prospective basis in a rulemaking.

Third, petitioners argue that the proposed decision confuses PCIA surcharges with previously collected generation charges. We disagree. The proposed decision addressed the PCIA-element of generation charges, which are embedded in bundled service customer rates, as well as PCIA charges paid by departed load customers as a separate surcharge on unbundled customers' bills.

Fourth, petitioners cite to D.12-02-024 as an *example* of an analogous Commission decision where the DA provider was granted a partial refund of previously collected cost responsibility surcharges. However, D.12-02-024

[7] *See e.g.* D.12-12-038; D.20-12-035; and D.20-12-028.

resulted from a petition for modification of an existing decision rather than a petition for rulemaking, and was therefore not subject to Rule 6.3(a)'s requirement to address future action.

Fifth, petitioners and the Joint IOUs dispute the harm caused to petitioner by the Commission's DA vintaging rules. As this petition is denied on procedural grounds, we do not reach the merits of this disputed issue.

Finally, petitioners argue that they cannot pursue their claims through the R.17-06-026 rulemaking because it is not yet within the scope of that proceeding. However, the Commission has discretion to refer related issues to an open rulemaking to conserve Commission and party resources, rather than opening a new rulemaking. As with any rulemaking, the issues would be addressed on a prospective basis.

7. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Zita Kline is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The petition seeks relief for three named ESPs whose accounts were assigned a PCIA vintage of either 2017 or 2018 and who started DA service in 2021; and potentially for other unidentified entities who may be similarly situated.

2. The petition requests retroactive relief for alleged overbilling of PCIA surcharges.

Conclusions of Law

1. Petition 22-01-018's request for relief for three identified ESPs who filed NOIs in 2017 and 2018 fails to comply with Rule 6.3's requirement to request a

proposed regulation for an entire class of entities over which the Commission has jurisdiction.

2. Petition 22-01-018's request for relief from prior overbilling fails to comply with Rule 6.3's requirement to request regulation over future conduct.

3. The Commission already has an open Rulemaking (R.17-06-026) wherein DA customer vintaging issues can be addressed, should the Commission decide to revisit the matter.

4. Petition 22-01-018 should be denied.

5. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Petition 22-01-018 is denied.
2. Petition 22-01-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.