

Decision 24-04-007 April 18, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Examine the Commission's Post-2008
Energy Efficiency Policies, Programs,
Evaluation, Measurement, and
Verification, and Related Issues

Rulemaking 09-11-014

**DECISION GRANTING CALIFORNIA CHOICE ENERGY AUTHORITY'S
PETITION FOR MODIFICATION OF DECISION 14-01-033**

Summary

This decision grants a California Choice Energy Authority (CalChoice) petition for modification (PFM) of Decision (D.) 14-01-033, which established the regulatory approach to allowing community choice aggregators (CCAs) to elect to administer energy efficiency funds for their retail customers. Senate Bill (SB) 790 (Stats. 2011, Ch. 599) established two pathways for CCAs to access energy efficiency funds, either electing to administer funds for their retail customers, or applying to administer funds on behalf of a larger set of customers in their geographic area. D.14-01-033 was the Commission's implementation of SB 790. This decision concerns only CCAs that elect to administer energy efficiency funds for program offerings to their retail customers.

CalChoice asks the Commission to reserve a minimum amount of funding for CCAs that elect to administer energy efficiency funding, asserting that the

availability of funding has been vastly reduced in recent years, threatening the viability of programs that CCAs may elect to administer.

SB 790 defined the funding available for CCAs that elect to administer energy efficiency programs as the residual amount of nonbypassable energy efficiency charges collected from the CCA's retail customers, after accounting for programs that are available on a statewide and regional basis. In recent years the statewide and regional funding levels have fluctuated somewhat unpredictably, leaving uncertainty with regard to the amount of funding available for CCAs that elect to administer programs. Thus, this decision establishes a minimum funding floor of four percent of the total funding being collected from the CCA's retail customers to be available to CCAs who elect to administer energy efficiency funds.

D.23-06-055 also already clarified that if/when the Commission authorizes new CCA programs in between portfolio application cycles, the funding authorized for the new CCAs is added to the relevant utility's revenue requirement. Therefore, the granting of this PFM will have no impact on the budgets of other energy efficiency portfolios and programs already authorized.

This proceeding is closed.

1. Background

Senate Bill 790 (Stats. 2011, Ch. 599) established two pathways for community choice aggregators (CCAs) to access energy efficiency funding to administer programs. First, CCAs may elect to administer energy efficiency programs on behalf of their retail customers. Second, CCAs may apply to administer energy efficiency programs, potentially to a broader group of customers within their geographic area or beyond, and at budget levels that are not limited by the amount of funding collected from their retail customers. SB

790 defined the funding available to CCAs that elect to administer energy efficiency programs as the energy efficiency funding collected from their retail customers that is residual, after accounting for required contributions to statewide and regional programs authorized by the Commission.

Decision (D.) 14-01-033 implemented SB 790, and based its definitions on a prior Administrative Law Judge (ALJ) ruling,¹ which was also referenced in Resolution E-4518 approving the first CCA's energy efficiency budget for Marin Clean Energy (MCE). The ALJ ruling, Resolution E-4518, and D.14-01-033 all defined statewide and regional programs as follows:

"Statewide programs" – Programs, as defined and designated by the Commission, that are offered throughout the four investor-owned utilities' (IOUs') service territories on a generally consistent basis. Evaluation, Measurement, and Verification budgets are included in statewide programs, as these budgets are overseen by Commission staff across all four IOUs on a consistent basis.

"Regional programs" – Programs offered to all eligible customers throughout an individual IOU's service territory in which a CCA is offering service, but not necessarily offered in other IOU service territories. This includes state and institutional government partnerships. This does not include any programs that are offered only in a geographic subset of an IOU territory.²

SB 790, as well as D.14-01-033, defined the funding available for CCAs that elect to administer energy efficiency programs as the residual amount collected from the CCA's retail customers, after accounting for funding for programs that

¹ See June 20, 2012 ALJ ruling in R.09-11-014, available at the following link: <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=62166>

² See June 20, 2012 ALJ Ruling in R.19-11-014 at 11. See also Resolution E-4518 at 9-10.

are available on a statewide and regional basis. Specifically, D.14-01-033 includes the following funding formula:

CCA maximum funding = Total electricity energy efficiency nonbypassable charge collections from the CCA's customers – (total electricity EE nonbypassable charge collections from the CCA's customers * % of the applicable IOU portfolio budget that was dedicated to statewide and regional programs in the most recently authorized program cycle).³

At the time that the first CCA elected to administer energy efficiency funding in 2012 (MCE), the PFM asserts that the residual funding available after accounting for statewide and regional programs was approximately 14 percent of the total energy efficiency budget. Since that time, there have been numerous changes and pressures on the energy efficiency budgets, including the Commission encouraging more statewide programs.⁴ In 2023, according to the PFM, the residual funding available for local programs was under one percent of the total budgets.

2. CalChoice Petition for Modification of D.14-01-033

On May 15, 2023, California Choice Energy Authority (CalChoice) filed a PFM of D.14-01-033 proposing that the Commission establish a funding floor of no less than four percent of the total funding collected from the CCAs' customers to be made available for programs for CCAs that elect to administer energy efficiency funds.

CalChoice bases this proposal on its calculations of a historical average of funds that have been available over the past decade. CalChoice also argues that the landscape has changed over the past five years and that the funding formula

³ D.14-11-033 at 22.

⁴ See, for example, D.16-08-019.

in D.14-01-033 is no longer meaningful or equitable for CCAs that elect to administer funds, nor does it meet the intent of SB 790 to allow a simpler way for CCAs to access funds and offer programs to their retail customers.

CalChoice also provides, in its PFM, a number of examples of budgets that would result from the currently-available funding for particular small CCAs, to demonstrate that the funding levels that would result from the formula for individual CCAs are so small as to be meaningless and impractical. For example, their calculation of the available budget for the city of Pomona in 2022 would have been \$11,172 over three years, which CalChoice states would not support a meaningful program deployment budget.

CalChoice also argues that its PFM could not have been filed within one year of the adoption of D.14-01-033 because sufficient funding was still available then, and it has only been with the passage of time, particularly in the past five years, that the funding formula has been rendered inequitable by trends in statewide and regional budgets that are outside of the CCAs' control. Thus, CalChoice argues this PFM meets the criteria to be considered by the Commission.

3. Responses to CalChoice PFM

Several parties filed responses in support of the PFM. Supporters include Western Riverside Council of Governments (WRCOG), on behalf of the Inland Regional Energy Network (I-REN), Orange County Power Authority (OCPA), and San Diego Community Power (SDCP). OCPA and SDCP generally state their support. I-REN argues, in addition, that the granting of the CalChoice PFM has the potential to bring reinvestment and energy efficiency benefits to the I-REN region because there are three small CCAs located within its geographic area that could bring energy efficiency programs to the communities. I-REN represents

that this would bring meaningful opportunities to areas that have suffered historical underinvestment in energy efficiency.

Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) filed a joint response in opposition to the PFM. They argue that the current budgets are sufficient, because several CCAs have taken advantage of the option to elect to administer energy efficiency programs between program years 2022 and 2025, including Redwood Coast Energy Authority, San Jose Clean Energy, CleanPowerSF, Peninsula Clean Energy, Sonoma Clean Power Authority, and East Bay Community Energy.

PG&E and SCE also argue that there is an established pathway for CCAs to request additional program funding if they feel the budget available through the “elect to administer” option is insufficient: CCAs can file an application with the Commission to administer energy efficiency funds as a program administrator.

Finally, PG&E and SCE argue that any changes to the CCA funding formula should be taken up in the current energy efficiency rulemaking (R.13-11-005), because this issue is connected to several other issues described within the most recent scoping memo in that proceeding from May 11, 2023,⁵ specifically accounting and funding issues for program administrators.

4. CalChoice Reply to Responses

CalChoice was authorized by the ALJs to submit a reply to the responses to its PFM, which it did on June 26, 2023. In its reply, CalChoice points out that there is a distinct option for CCAs to elect to administer, separate from applying to administer, energy efficiency funding in SB 790 and D.14-01-033. They dispute

⁵ See the R.13-11-005 Scoping Memo available at the following link:
<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=508571227>

the PG&E/SCE position that CCAs that want “additional” funding should file an application for that purpose, and suggest that the large IOUs are conflating the two options for CCAs established in statute and D.14-01-033. In other words, CalChoice argues that CCAs should not be required to take the “apply to administer” path that is more administratively complex in order to be able to offer any meaningful programs to their customers.

In addition, CalChoice responds to the assertion by PG&E and SCE that the funds available for CCAs electing to administer energy efficiency programs are sufficient, because several CCAs have taken advantage of the funding in recent years. CalChoice points out that all of the recent CCAs that have elected to administer programs are in PG&E territory (where more funding has been available recently), and that the last year that any CCA requested to elect to administer programs was in 2021, at which time the amount of total electricity energy efficiency nonbypassable charges available for a CCA in PG&E’s territory was 3.37 percent. CalChoice represents that the percentage declined in PG&E’s territory to 2.82 percent in 2022 and 1.85 percent in 2023. CalChoice represents that some CCAs have declined to pursue the election option due to the low levels of funding available in subsequent years.

Finally, CalChoice opposes the PG&E and SCE suggestion that consideration of their minimum funding proposal be moved into R.13-11-005 for additional vetting, since their request is discrete and actionable in the current proceeding, without need for further process by the Commission or stakeholders.

5. Discussion

First, we address the question of venue. CalChoice chose to file the PFM in the original proceeding in which D.14-01-033 was rendered, because their proposal relates specifically to that decision’s provisions. CalChoice also filed a

concurrent Motion for Official Notice of the Petition for Modification of D.14-01-033 in the current energy efficiency rulemaking (R.13-11-005). This concurrent motion served the purpose of alerting parties in R.13-11-005 that the PFM was filed, and any interested party could have taken steps to comment on the PFM in R.09-11-014, even if they were not originally parties to R.09-11-014.

In addition, the modifications proposed by CalChoice are discrete and directly related to the provisions of D.14-01-033. Thus, we find that this rulemaking is an appropriate venue for consideration of the PFM. In addition, we will take the additional step of serving this proposed decision on the parties in R.13-11-005, out of an abundance of caution, to ensure that parties in that proceeding are aware of the Commission's consideration of this decision.

In addition, we find it reasonable that CalChoice did not file the PFM within one year of the adoption of D.14-01-033 because the trends pointed out in the PFM were not yet occurring within one year of the adoption of the decision. CalChoice appropriately justified the changed circumstances that led to their filing of the PFM much later than the normal one-year deadline.

As to the merits of CalChoice's proposal, we also find those to be reasonable. We agree with CalChoice that SB 790 is clear in its intent to provide two different pathways for CCAs to access energy efficiency funding. The fluctuating and downward trend in available funding in the past few years, based on the original formula adopted in D.14-01-033, has rendered the potential budgets too small to be meaningful for many CCAs that may wish to pursue the option to elect to administer energy efficiency programs. Having a stable funding mechanism is both reasonable and equitable, while still emphasizing the importance of statewide and regional coverage and consistency for many programs, as the Commission has in recent years.

CalChoice's proposal for a minimum of four percent of the funding collected from their retail customers be made available for CCAs that wish to elect to administer energy efficiency programs still preserves the vast majority (96 percent) of the energy efficiency funding for statewide and regional purposes. Since CalChoice's proposal is a modest amount while still allowing for meaningful budgets for programs for even small CCAs, we find it reasonable and we adopt it in this decision. Thus, CalChoice's PFM is granted.

The funding formula for CCAs that elect to administer energy efficiency programs for their retail customers originally adopted in D.14-01-033 is revised to read as follows:

CCA maximum funding = Total electricity energy efficiency nonbypassable charge collections from the CCA's customers – (total electricity energy efficiency nonbypassable charge collections from the CCA's customers * % of the applicable IOU portfolio budget that was dedicated to statewide and regional programs in the most recently authorized program cycle). If the percentage of the applicable IOU portfolio budget dedicated to statewide and regional programs in the most recently authorized program cycle exceeds 96 percent, then the percentage shall be fixed at that 96 percent level and will not be allowed to exceed it, for purposes of this formula only.⁶

In addition, we take this opportunity to clarify certain aspects of our requirements for CCAs that elect to administer energy efficiency funding and programs.

In general, because in recent years there has been a proliferation of entities administering energy efficiency funding in overlapping geographic areas, the

⁶ Note that the Commission may approve a portfolio for an IOU where the budget percentage for statewide and regional programs exceeds 96 percent, but in that event, the four percent amount will still be reserved for CCA use, and any approved CCA budgets will simply be added to the total budget for that IOU's area, without diminishing the IOU's energy efficiency program budget.

Commission has required Joint Cooperation Memoranda (JCMs) to be signed annually by two administrators whose areas and programs overlap.⁷ However, the Commission has not required JCMs from all CCAs who elect to administer energy efficiency programs, and has only addressed this requirement to certain CCAs on a case-by-case basis.⁸

In general, this decision continues the approach of requiring JCMs in all instances where geography and programs overlap for two different administrators, including a CCA who elects to administer energy efficiency programs. However, when a CCA files its advice letter seeking Commission approval for its election to administer energy efficiency, a CCA may seek, and Commission staff may grant in the Resolution brought before the Commission, an exemption from the JCM requirement, if the CCA makes a showing in its advice letter that the requirement is either:

1. burdensome from an administrative standpoint (such as when the budget requested is extremely small and the administrative cost of negotiating a JCM would outweigh any potential benefit); or
2. unnecessary, due to there being no programmatic overlap with any other existing program administrator.

Funding for CCAs that elect to administer energy efficiency programs is planned and budgeted for a three-year period, but in the past there has been some confusion about when that funding period begins. CCAs shall, when they file their advice letters, include a clear proposal for the starting and ending dates for the funding, subject to Commission approval. Finally, we clarify that CCAs

⁷ See D.18-05-041 at 122-123, as well as Ordering Paragraphs 38 and 39. See also D.21-05-031, which revised the process for submitting the JCMs in Ordering Paragraph 7.

⁸ See, for example, Resolutions E-5166 (for San Jose Clean Energy) and E-5215 (for East Bay Community Energy).

are not limited to a single three-year period, and may make proposals in advice letters for subsequent three-year periods. Any unspent and uncommitted funding held by the CCA from a previous three-year period will be returned to ratepayers or used to offset new funding for a subsequent three-year period, if the Commission approves the CCA's advice letter. In addition, if the CCA electing to administer funding wishes to avoid gaps in funding, the CCA should file its next advice letter with enough time for the Commission to consider and address its request prior to the expiration of the current three-year cycle (at least six months in advance of the requested start date for additional funding is recommended).

Finally, D.23-06-055 already clarified that if/when the Commission authorizes new CCA programs in between portfolio application cycles, the funding authorized for the new CCAs is added to the relevant utility's revenue requirement. Therefore, the granting of this PFM will have no impact on the budgets of other energy efficiency portfolios and programs already authorized.

6. Summary of Public Comment

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding. There were no public comments submitted on this topic in the proceeding.

7. Comments on Proposed Decision

The proposed decision of ALJ Julie A. Fitch 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 timely filed by March 20, 2024 by WRCOG on behalf of I-REN and PG&E. Reply comments were filed on March 25, 2024 by CalChoice.

I-REN's comments generally supported the proposed decision as drafted. I-REN supported setting aside a minimum percentage of funding available to CCAs who elect to administer energy efficiency programs. I-REN also supported the guidance regarding JCMs where programs and geography overlap, to allow exemptions if the Commission agrees the process is burdensome or unnecessary in particular instances. Finally, I-REN supported the clarification of when three-year periods start and end, along with the possibility of renewing funding for additional three-year periods, with Commission approval.

PG&E's comments recommended several modifications to the proposed decision. First, PG&E requested that JCMs be required by CCAs with a budget of \$3 million or more if there is potential program overlap. CalChoice, in its reply comments, opposed this recommendation because it has not been thoroughly vetted by parties. In general, we agree with PG&E that JCMs should be required as a matter of course, but will retain the provision allowing CCAs to seek an exemption with justification, allowing the Commission to decide whether the JCMs are ultimately required.

PG&E also recommended that the Commission require CCAs to provide information regarding portfolio performance metrics through a budget filing, in addition to an advice letter filing, if they choose to request renewal of their budgets for an additional three-year period. CalChoice, in its reply comments, opposed this proposal arguing that it is not a request to modify or change the proposed decision, but rather represents a policy change that should be vetted more broadly. On this, we agree with CalChoice. Additional changes to

governance policy for CCAs electing to administer energy efficiency programs should be considered in the energy efficiency rulemaking (R.13-11-005) and not in this proposed decision.

In addition, PG&E recommended that the IOU serving as the fiscal agent and the CCA administering funds be allowed to mutually determine the mechanics of how funding flows between them, similar to how D.19-12-021 specifies this for Regional Energy Networks. CalChoice, in its reply comments, opposed this recommendation, arguing that it is a policy change that should be made in a different venue, and/or that PG&E could raise this in response to specific advice letters filed by the CCAs. We agree with CalChoice that this issue has not been fully vetted and this decision is not the proper venue to make any change or clarification.

PG&E's final recommendation in comments was to suggest a clarification to the treatment of unspent and uncommitted funds for any CCA that seeks to renew its programs for additional three-year periods. PG&E suggested that unspent and uncommitted funds from one three-year period be used to offset budget and cost recovery for the new three-year period. CalChoice also opposed this request as a policy change. We agree with PG&E that utilizing unspent and uncommitted funds first is consistent with Commission policy in general and consistent with the mechanics of how funding and collections already work for energy efficiency. Therefore, we have made this clarification in the text of this decision. We also clarified that if a CCA does not renew its budget request for a subsequent three-year period, any unspent and uncommitted funding should be returned to ratepayers.

8. Assignment of Proceeding

Genevieve Shiroma was the assigned Commissioner and Julie A. Fitch and Valerie U. Kao are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. SB 790 (Stats. 2011, Ch.599) provides CCAs two options for accessing energy efficiency funding, either by electing to administer programs or applying to administer programs.
2. The Commission is required by SB 790 to make funding available to CCAs that take the path of electing to administer energy efficiency programs for their retail customers, in addition to those that apply to administer programs as full program administrators.
3. D.14-01-033 represents the Commission's implementation of SB 790 requirements.
4. SB 790 and D.14-01-033 define the funding available to CCAs that elect to administer energy efficiency programs as the total electricity energy efficiency nonbypassable charges collected from their retail customers after accounting for statewide and regional programs.
5. D.14-01-033 defines both statewide and regional energy efficiency programs.
6. The percentage of funding available to CCAs that elect to administer energy efficiency programs has been trending downward since the approval of the first election of a CCA in 2012. These trends were not visible within one year of the adoption of D.14-01-033.
7. CalChoice provided a reasonable justification for the filing of its PFM more than one year after the adoption of D.14-01-033, because of the declining funding amounts related to trends not within the control of the CCAs.

8. The percentage of funding available to a CCA electing to administer energy efficiency programs in SCE territory in 2023 was under one percent.

9. One percent of energy efficiency funding from a CCA's retail customers is not sufficient to deploy meaningful energy efficiency programs.

10. D.18-05-041 and D.21-05-031 contain requirements for entities administering energy efficiency programs to negotiate and submit Joint Cooperation Memoranda.

11. In the past, the Commission has required JCMs from CCAs that elect to administer energy efficiency programs on a case-by-case basis.

12. D.23-06-055 clarified that if/when the Commission authorizes new CCA programs in between portfolio application cycles, the funding authorized for the new CCAs is added to the relevant utility's revenue requirement.

Conclusions of Law

1. SB 790 (Stats. 2011, Ch.599) provides CCAs two options for accessing energy efficiency funding, either by electing to administer programs or applying to administer programs.

2. The Commission is required by SB 790 to make funding available to CCAs that take the path of electing to administer energy efficiency programs for their retail customers, in addition to those that apply to administer programs as full program administrators.

3. The definitions of statewide and regional energy efficiency programs included in D.14-01-033 are still appropriate.

4. The formula for funding availability for CCAs electing to administer energy efficiency programs is still appropriate, but the Commission should specify a maximum percentage that can be dedicated to statewide and regional

programs, to ensure a reasonable and equitable amount of funding availability for “elect to administer” CCAs in every IOU territory.

5. It is reasonable for the Commission to address the PFM in this proceeding and not the more recent energy efficiency rulemaking, since this proceeding is where D.14-01-033 was adopted and the PFM request is discrete and not related to other issues currently being addressed in R.13-11-005.

6. Reserving a maximum of 96 percent of the funding collected from CCA retail customers for use in statewide and regional programs still emphasizes the importance of statewide and regional coverage and consistency while allowing for meaningful funding for CCAs that elect to administer.

7. The CalChoice PFM should be granted.

8. JCMs from CCAs that elect to administer energy efficiency programs should be required annually, unless the CCA makes a showing in its advice letter seeking an exemption, either because the requirement would be burdensome or unnecessary.

9. CCAs that elect to administer energy efficiency funding should propose, in their advice letters, clear start and end dates for the three-year budget period, subject to approval of the Commission.

10. CCAs that have been approved by the Commission to elect to administer energy efficiency funding may renew their requests for subsequent three-year funding periods. Any unspent and uncommitted funds from the previous three-year program period should be returned to ratepayers or used to offset new proposed funding for a subsequent program period. If the CCAs wish to avoid gaps in funding, they should file their advice letters with sufficient time for Commission consideration, at least six months in advance of the start date requested for the next three-year funding period.

11. The CalChoice PFM should be granted.
12. Granting the CalChoice PFM will have no impact on the budgets of other energy efficiency portfolios and programs already authorized by the Commission.
13. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The May 15, 2023 California Choice Energy Authority Petition for Modification of Decision 14-01-033 is granted.
2. The formula originally adopted in Decision 14-01-033 which defines the funding available for community choice aggregators that elect to administer energy efficiency programs for their retail customers is revised to read as follows:

CCA maximum funding = Total electricity energy efficiency nonbypassable charge collections from the CCA's customers - (total electricity energy efficiency nonbypassable charge collections from the CCA's customers * % of the applicable IOU portfolio budget that was dedicated to statewide and regional programs in the most recently authorized program cycle). If the percentage of the applicable IOU portfolio budget dedicated to statewide and regional programs in the most recently authorized program cycle exceeds 96 percent, then the percentage shall be fixed at that 96 percent level and will not be allowed to exceed it, for purposes of this formula.
3. Community choice aggregators (CCAs) that wish to elect to administer energy efficiency funds shall include in their advice letters a clear proposed start and end date for funding, for a maximum of a three-year period. CCAs may also include in their advice letters a request for an exemption from the requirements for filing annual Joint Cooperation Memoranda (JCMs) with other energy efficiency portfolio administrators if the requirements are either administratively

burdensome or unnecessary. The Commission will consider requests for exemption from JCM requirements on a case-by-case basis.

4. Community choice aggregators (CCAs) that have had their election to administer energy efficiency funding proposals approved by the Commission may submit a subsequent advice letter to have funding renewed for an additional three-year period. Any unspent and uncommitted funds available from the preceding three-year period shall be returned to ratepayers or used to offset funding collections for any subsequent three-year period approved by the Commission. There is no limit on the number of times the CCA may propose to renew funding, but the maximum time period for funding that will be approved each time an advice letter is submitted is three years. Such renewal advice letters should be submitted at least six months prior to the end of the funding period previously approved by the Commission.

5. Rulemaking 09-11-014 is closed.

This order is effective today.

Dated April 18, 2024, at Sacramento, California

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

MATTHEW BAKER

Commissioners