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Decision 24-04-009 April 18, 2024

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to
Implement Senate Bill 520 and
Address Other Matters Related to
Provider of Last Resort.

Rulemaking 21-03-011

**DECISION IMPLEMENTING SENATE BILL 520 REGARDING
STANDARDS FOR PROVIDER OF LAST RESORT**

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Attachment A – Deregistration Process

DECISION IMPLEMENTING SENATE BILL 520 REGARDING STANDARDS FOR PROVIDER OF LAST RESORT

Summary

Consistent with Senate Bill (SB) 520 (Stats. 2019, Ch. 408), this decision considers whether updates are needed to the existing framework, cost recovery mechanisms, and processes governing Provider of Last Resort (POLR) service during a mass involuntary return of customers. This decision adopts several updates to improve the accuracy of the existing Financial Security Requirement and re-entry fee calculations; authorizes the electric investor-owned utilities as the POLR to track actual incremental administrative and/or procurement costs during a mass involuntary return of customers from Community Choice Aggregation (CCA) or Electric Service Provider (ESP) service; establishes a financial monitoring process to provide early notice of a potential mass involuntary return of CCA customers to POLR service; and clarifies and/or enhances the existing rules and requirements concerning CCA and ESP registration and deregistration. Together, these changes are intended to ensure POLR cost recovery and compliance with SB 520, promote continuity of electric service, and prevent cost shifts between customers during a mass involuntary return of CCA or ESP customers to POLR service.

This proceeding remains open.

1. Background

1.1. Senate Bill 520 and the Requirement to Develop Standards for a Provider of Last Resort

On March 18, 2021, the California Public Utilities Commission (Commission) opened the instant rulemaking to implement the Provider of Last Resort (POLR) requirements and framework directed by Senate Bill (SB) 520 (Stats. 2019, Ch. 408). A POLR is the utility or other entity that has the obligation

to serve all customers. This concept exists in many contexts beyond electric service; for example, in telecommunications, the “carrier of last resort” is required by law to provide universal service access and meet other requirements developed in the 1990s. To fulfill this role, the POLR cannot discriminate between customers and must maintain facilities to provide adequate service.¹

Prior to the restructuring of California’s electricity market, the large investor-owned utilities (IOUs)² provided all aspects of electric service throughout most of the state – including customer billing, electricity generation and delivery. In the late 1990s, California restructured its electricity markets to introduce competition into electric generation services. While the IOUs continue to be responsible for the delivery of electricity through maintenance and operation of utility distribution and transmission systems, as well as customer billing functions, customers may now receive generation service from an entity other than the IOU. Customers that continue to receive generation service through an IOU are referred to as “bundled customers,” while those that obtain energy through another provider are referred to as “unbundled customers.”³

Today, California law allows for the operation of two types of non-utility entities to provide generation services to retail customers: community choice aggregation (CCA) and direct access (DA) service providers, also known as electric service providers (ESPs). CCAs are governmental entities formed by cities and counties to serve the energy requirements of their local residents and

¹ See March 18, 2021 Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort (OIR) in this proceeding.

² The large electric IOUs are Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.

³ OIR at 3-4.

businesses, while ESPs are private companies that provide similar generation services typically to large commercial and industrial customers.⁴ There are no restrictions on the formation of new CCAs, provided certain requirements are met; however, DA service is currently capped at a maximum total statewide annual limit of approximately 28,800 gigawatt hours.⁵

Although the obligation to serve customers is unchanged, the proliferation of new CCAs has increased the complexity of what it would mean if one or more CCAs were to cease operations, resulting in a mass involuntary return of customers to POLR service. In 2010, there was one CCA accounting for less than 1% of load among the three IOUs; by 2022, CCAs served approximately 32%, and ESPs served 15%, of the electricity load within the Commission's jurisdiction.⁶

In light of the rapidly evolving energy landscape, in 2017 and 2018 the Commission, working in collaboration with the California Energy Commission (CEC) and the California Independent System Operator (CAISO), undertook a detailed examination of the challenges presented by retail choice.⁷ In 2019, the Legislature passed SB 520, which defines a POLR for the first time in statute:

[A] load-serving entity that the commission determines meets the minimum requirements of this article and designates to provide electrical service to any retail customer whose service is transferred to the designated load-serving entity because the customer's load-

⁴ Decision (D.) 95-12-063, as modified by D.96-01-009; also, D.04-12-046.

⁵ D.19-05-043, Table 1 at 6.

⁶ See Commission's 2023 California Renewables Portfolio Standard Annual Report, dated November 2023. The report is available here: <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2023/2023-rps-annual-report-to-the-legislature.pdf> (last accessed January 3, 2024).

⁷ See, *California Customer Choice, an Evaluation of Regulatory Framework Options for an Evolving Electricity Market*, published August 2018.

serving entity failed to provide, or denied, service to the customer or otherwise failed to meet its obligations.⁸

Public Utilities Code Section 387(b) also confirms that each electrical corporation is the default POLR in its service territory.⁹ While there are six electrical corporations operating in California, including the three large electric IOUs and three small and multi-jurisdictional IOUs,¹⁰ there are currently no ESPs or CCAs operating in the service territories of the small and multi-jurisdictional utilities.¹¹

In addition to codifying the IOUs as the current default POLRs, Section 387 requires the Commission to ensure “continued achievement of California’s greenhouse gas emission reduction and air quality goals,” to ensure the POLR for each service territory “receives reasonable cost recovery,” and to establish a framework to allow other non-IOU entities to apply and become the POLR for a specific area (*i.e.*, the ‘Designated POLR’).¹² The process and procedure for non-IOU entities to become a Designated POLR will be addressed in a subsequent phase of this proceeding.

1.2. Policy Background

While SB 520 codifies the IOUs as the current default POLRs in their respective service areas, POLR service was necessitated by the advent of DA in the 1990s, and numerous Commission decisions have already established and

⁸ Section 387(a)(3).

⁹ All subsequent references to Section or Sections are to the Public Utilities Code, unless otherwise specified.

¹⁰ The three small and multi-jurisdictional IOUs are Bear Valley Electric Service, Inc., Liberty Utilities (CalPeco Electric) LLC, and PacifiCorp, d.b.a. Pacific Power.

¹¹ See April 26, 2021 California Association of Small and Multi-Jurisdictional Utilities Joint Opening Comments at 3-4.

¹² Section 387(h), Section 387(g), and Section 387(d), respectively.

evolved the rules and tariffs governing IOU POLR service for DA and CCA customers. The legal and factual framework underpinning many of the current requirements is briefly summarized below.

In March 1998, the Commission adopted initial requirements for the registration of new ESPs, including preliminary requirements to furnish security deposits with the Commission.¹³ The Commission, in this decision, also required ESPs to post security with the Commission as proof of financial viability, based on the number of customers served, ranging from a minimum deposit of \$25,000 to \$100,000.¹⁴

In D.03-12-015, the Commission expanded the applicable ESP registration and security requirements to include all entities offering electric service to customers within the service territory of an electric corporation. Prior to this decision, only ESPs serving residential and small commercial customers were subject to these requirements.

Assembly Bill (AB) 117 (Stats. 2002, Ch. 838) provides that if a customer of an ESP is involuntarily returned to utility bundled service due to the fault of the ESP, any re-entry fee imposed by the IOU as deemed necessary by the Commission to avoid imposing costs on other customers of the utility must be paid for by the ESP. AB 117 further requires ESPs to post a bond or demonstrate insurance sufficient to cover the re-entry fees as a condition of registration.¹⁵ In D.03-12-015, the Commission asked parties to comment on whether the maximum \$100,000 security deposit was sufficient to cover the re-entry fees

¹³ See D.98-03-072.

¹⁴ *Ibid.*

¹⁵ See Section 394.25(e).

required by AB 117. Responsive comments indicated it was difficult to address the issue without an adopted means of calculating re-entry fees.¹⁶

The Commission subsequently addressed this issue in D.11-12-018, concluding that residential and small commercial customers subscribing to DA service likely do not possess the same degree of business sophistication as large commercial and industrial customers to protect themselves in the event of a breach of service obligation by their ESP. Accordingly, D.11-12-018 requires residential and small commercial ESP customers to be placed on the IOUs' bundled procurement service (BPS) rate in the event of an involuntary return. Pursuant to Section 394.25(e), and in order to prevent cost shifts to bundled customers, this decision also determined that ESPs were financially responsible for all re-entry fees, including incremental procurement and administrative costs, stemming from a mass involuntary return of its residential and small commercial DA customers to the IOU. Any incremental procurement and administrative cost risks for these customers must be covered by the ESP through the posting of a financial security requirement (FSR) instrument in the form of a bond, letter of credit, cash security deposit, or equivalent evidence of insurance or parental guarantee from an investment grade rated institution or corporate parent.¹⁷

As sophisticated businesses with experience in obtaining goods and services via contracts, however, the Commission concluded that involuntarily returned large DA customers should not return directly to a BPS rate schedule, but should instead be placed on the Transitional Bundled Service (TBS) rate schedule during the transitional period before either returning to DA service

¹⁶ D.03-12-015 at 26-27; also, D.13-01-021 at 7.

¹⁷ D.11-12-018 at 67-76.

(through another ESP) or entering into a BPS commitment.¹⁸ The TBS rate is based on market pricing, and reflects the incremental costs in excess of the BPS rate incurred to provide procurement service to returning DA customers during the transitional period. Accordingly, D.11-12-018 limited the re-entry fee for involuntarily returned large DA customers to the administrative costs of switching customers to bundled service.¹⁹

In D.13-01-021, the Commission defined residential and small commercial DA customers as having load demand below 20 kilowatts (kW); adopted a methodology to derive incremental procurement costs for the FSR and re-entry fees; determined that the FSRs are to be recalculated twice a year, in November and May, with any adjustments to the security amount implemented on the following January 1 or July 1, respectively;²⁰ and required any demand for re-entry fees be made not later than 60 calendar days after the start of the involuntary return of DA customers to IOU procurement service.

In D.18-05-022, the Commission established re-entry fees and FSRs applicable to CCAs. Consistent with the requirements applicable to residential and small commercial DA customers, the Commission determined CCA re-entry fees and FSRs must cover the incremental administrative and procurement costs incurred to serve returning customers; adopted a per-customer re-entry fee for administrative costs based on the IOU's authorized service fee rate for

¹⁸ Voluntarily and involuntarily returned DA customers have a 60-day safe harbor period to switch to a different ESP (during which they are placed on the IOU TBS rate), and then must continue to pay the TBS rate for a period of six months following the end of the safe harbor period before returning to BPS. (See D.11-12-018 at 52-53 and 92-93.)

¹⁹ D.11-12-018 at 61.

²⁰ D.13-01-021 also adopted a 10 percent deadband for purposes of requiring any adjustments to the ESP posted amounts (i.e., the FSR amount would only need to be updated if it were less than 90 percent or more than 110 percent of the recalculated amount). (See D.13-01-021 at 24-25.)

voluntarily returning customers; calculated the incremental procurement costs based on six months of incremental procurement; allowed negative procurement costs to offset incremental administrative costs (with a minimum CCA FSR amount of \$147,000); and required CCA FSRs to be recalculated twice a year, following the schedule and terms adopted for ESPs. D.18-05-022 also clarified the specific FSR instruments that may be used in compliance with Section 394.25(e).

Lastly, in Commission Resolution E-5059, approving the IOU advice letters implementing D.18-05-022, the Commission clarified that CCA customers bear cost responsibility for any residual re-entry fees the Commission deems necessary to avoid cost shifting, and further specified the conditions and processes by which a CCA FSR instrument may be drawn upon, among other issues. This resolution also adopted the current IOU tariffs governing mass involuntary returns when a CCA or DA provider terminates its program and returns all its customers to POLR service. Mass involuntary returns have been a primary focus in Phase 1 of this proceeding since they can involve substantial load, can occur with little to no advance notice to the POLR, and may occur under stressed (e.g., high priced) market conditions; therefore, they tend to involve greater risk than other POLR services.

1.3. Procedural Background

On March 25, 2021, the Commission issued the instant Order Instituting Rulemaking (OIR) to implement the POLR requirements and framework directed by SB 520. The OIR named all electrical corporations, CCAs, and ESPs as respondents to this proceeding.²¹

²¹ See Appendix C of the OIR.

Opening comments (OC) on the OIR were filed by the following parties: California Community Choice Association (CalCCA); California Choice Energy Authority, the Town of Apple Valley, and the cities of Baldwin Park, Commerce, Lancaster, Palmdale, Pico Rivera, Pomona, Rancho Mirage and Santa Barbara (collectively, CalChoice CCAs); California Association of Small and Multi-Jurisdictional Utilities (CASMU);²² California Energy Storage Alliance (CESA); Clean Coalition; Direct Access Customer Coalition, The Regents of the University of California, and Alliance for Retail Energy Markets filing jointly (collectively, DACC/UC/AREM); Golden State Power Cooperative (GSPC); Pacific Gas and Electric Company (PG&E); Public Advocates Office at the California Public Utilities Commission (Cal Advocates); Small Business Utility Advocates (SBUA); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SCE); Shell Energy North America (US), L.P. (Shell Energy); and Utility Consumers' Action Network (UCAN).

Reply comments (RC) on the OIR were filed by the following parties: CalCCA, CalChoice CCAs, City of Cerritos (Cerritos), PG&E, SCE, SDG&E, and The Utility Reform Network (TURN).

On April 29 and 30, 2021, the assigned Administrative Law Judge (ALJ) issued email rulings granting motions for party status by Large-scale Solar Association (LSA) and Solar Energy Industries Association (SEIA), respectively.

A prehearing conference (PHC) was held on June 11, 2021, to address the scope of issues, categorization, schedule of the proceeding, and other procedural matters.

²² CASMU includes Bear Valley Electric Service, Inc.; Liberty Utilities (CalPeco Electric) LLC; and PacifiCorp, d.b.a. Pacific Power.

On September 16, 2021, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo) dividing the procedural schedule into three phases: Phase 1, which is the subject of this decision, examines the existing framework under which the IOUs serve as the default POLRs, and addresses minimum POLR service requirements and changes to the existing framework. Upon the adoption of a Phase 1 decision, Phase 2 will address the relevant provisions of SB 520 regarding conditions for determining POLR designations for non-IOU entities. Phase 3 is intended to address all other outstanding issues not addressed in Phases 1 and 2 including, but not limited to, potential recommendations to the Legislature.

An initial workshop was held on October 29, 2021 (Workshop 1) to review existing responsibilities and tasks the IOUs currently perform as part of their traditional roles functioning as POLRs. Workshop 1 also reviewed the current framework and processes for ESP and CCA registration and deregistration, re-entry fees, and the FSR.

On November 23, 2021, the assigned ALJ issued a ruling for comments on issues raised during Workshop 1 and requested comment and proposals on potential updates or changes to existing POLR practices and rules.

On December 17, 2021, opening comments in response to the ALJ ruling and Workshop 1 (December 2021 OC) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/AReM, PG&E, SBUA, SEIA/LSA, SCE, SDG&E, Solana Energy Alliance (SEA), and UCAN.

On January 12, 2022, the proceeding was reassigned from ALJ Zita Kline to ALJ Jessica T. Hecht.

On February 24, 2022, the assigned ALJ issued a ruling noticing a second workshop (Workshop 2) for Energy Division (ED) Staff to present a proposed

POLR framework and to expand upon the issues and recommendations raised in party comments (Proposed POLR Framework Ruling). In addition, the ruling invited parties to submit written comments and reply comments.

On March 28, 2022, opening comments in response to the Proposed POLR Framework Ruling and Workshop 2 (March 2022 OC) were filed by the following parties: Cal Advocates, CalCCA, CESA, DACC/UC/AReM, PG&E, SBUA, SCE, San Diego Community Power and Clean Energy Alliance (collectively, SDCP/CEA), SDG&E, SEIA/LSA, TURN, and UCAN.

On April 11, 2022, the proceeding was reassigned from ALJ Jessica T. Hecht to ALJ Ehren D. Seybert.

On April 15, 2022, reply comments on the Proposed POLR Framework Ruling and Workshop 2 (April 2022 RC) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/AReM, PG&E, SCE, SDG&E, SEIA/LSA, TURN, and UCAN.

On May 2, 2022, the assigned Commissioner and ALJ issued a ruling requesting party comments on FSRs and re-entry fees, and modifying the proceeding schedule (FSR Ruling).

On May 20, 2022, the assigned ALJ issued an e-mail ruling removing electric cooperatives as respondents to the proceeding.²³

On July 5, 2022, opening comments in response to the FSR Ruling (July 2022 OC) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/AReM, PG&E, SBUA, SCE, SDG&E, SEA, and UCAN.

²³ The electric cooperatives are Anza Electric Cooperative, Plumas Sierra Rural Electric Cooperative, Surprise Valley Electrification Corporation, and Valley Electric Association.

On August 5, 2022, reply comments on the FSR Ruling (August 2022 RC) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/ AReM, PG&E, SBUA, SCE, SDG&E, and UCAN.

On January 6, 2023, the assigned ALJ issued a ruling entering into the record of the proceeding an ED Staff Proposal (ED Staff Proposal) addressing additional options and expanded POLR proposals for consideration in Phase 1 of the proceeding, and noticing two additional public workshops: (1) a workshop for Energy Division to present the ED Staff Proposal (Workshop 3), and (2) a workshop for interested parties to walk through example FSR calculations and the associated cost amounts (Workshop 4). In addition, the ruling invited parties to submit opening and reply comments on the ED Staff Proposal and public workshops.

On January 26, 2023, Energy Division Staff held Workshop 3 to walk through the ED Staff Proposal and answer any questions.

On April 4, 2023, the IOUs and CalCCA hosted Workshop 4 to walk through example FSR calculations.

On April 18, 2023, opening comments on the ED Staff Proposal and example FSR calculations workshop (April 2023 OC) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/ AReM, PG&E, SCE, SDCP/CEA, SEIA/LSA, SDG&E, and UCAN.

On May 5, 2023, reply comments on the ED Staff Proposal and example FSR calculations workshop (May 2023 RC) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/ AReM, PG&E, SBUA, SCE, SDG&E, SEIA/LSA, and UCAN.

On May 26, 2023, SDG&E, on behalf of itself and the Joint Parties,²⁴ filed a Joint Case Management Statement on the issues in dispute and those subject to stipulation, as well as the need for prepared testimony, evidentiary hearings, and briefs.

On June 16, 2023, the assigned Commissioner issued an Amended Scoping Memo modifying the need for evidentiary hearing, setting a schedule for filing briefs, and extending the statutory deadline.

On July 10, 2023, opening briefs (OB) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/AReM, PG&E, SBUA, SCE, SDG&E, SEIA/LSA, and UCAN.

On July 31, 2023, reply briefs (RB) were filed by the following parties: Cal Advocates, CalCCA, DACC/UC/AReM, PG&E, SCE, SDG&E, SEIA/LSA, and UCAN.

2. Submission Date

This matter was submitted on July 31, 2023, upon the filing of reply briefs.

3. Issues Before the Commission

The Scoping Memo sets forth the following issues to be considered in Phase 1 of this proceeding:

- A. As required by Section 387(j), develop and implement a framework for POLR service requirements, including minimum procurement requirements to ensure no disruption in service; including the following:
 - Examine the standard and duration of POLR service (including for example, criteria for determining at what point POLR service is deemed a return to bundled service).

²⁴ The Joint Parties are DACC/UC/AReM; CalCCA; PG&E; Cal Advocates; SDG&E; SDCP/CEA; SBUA; SEIA/LSA; SCE; and UCAN.

- Identification of services/actions and costs involved in POLR service before and after an unplanned migration of customers.
 - Determine minimum procurement requirements to ensure no disruption in service.
- B. As required by Section 387(g), develop and implement a framework for recovery of POLR costs.
- C. Assess whether the financial security requirement established in D.18-05-022 fulfills statutory directives.
- D. Examine whether any modifications or additions to the requirements set forth in D.18-05-022 are needed, including what modifications, if any, are needed to the re-entry fees and financial security requirements to better reflect market prices to ensure continuity of service.
- E. Assess whether existing CCA registration and deregistration processes are adequate to manage load migration and ensure continuity of service.
- F. Identification of any additional registration or deregistration requirements that would improve continuity of service, including whether any ongoing financial reporting requirements are necessary for registered CCAs.²⁵

4. Limited Changes to Electric Service Provider Requirements

Most parties agree the ESP requirements set forth in D.11-12-018 and D.13-10-001 are working well, and do not recommend any revisions or additions to existing ESP rules as a result of SB 520.²⁶ DACC/UC/AReM argue that: (1) ESPs are multi-state/national companies with many sources of cash flow; (2) DA customers can select a different ESP in the event of a failure by their incumbent

²⁵ Scoping Memo at 4-5.

²⁶ Joint Case Management Statement at 5.

ESP, without the use of a POLR; and (3) unlike CCA customers, when commercial and industrial DA customers return to utility service there is a transition period during which they must pay current market prices through the TBS rate, which ensures bundled customers are protected in the event an ESP fails.²⁷ PG&E and SDG&E also highlight the relatively limited amount of DA load.²⁸ In contrast, TURN argues there is no basis for excluding ESPs from any POLR obligations, since ESPs can be affected by the same market conditions that cause CCA defaults. TURN also posits that if wholesale markets become dysfunctional ESPs may require extended service arrangements provided by the POLR.²⁹

Given the current statewide cap on eligible DA load,³⁰ the ability for DA customers to switch between different ESP providers, and the limited ESP-specific proposals provided in this proceeding, we agree with the majority of parties that the changes in this decision should be largely limited to CCAs. The Commission may revisit this decision if the statewide cap on DA load is ever expanded or lifted.

The few exceptions, however, which we discuss in Sections 7, 11, and 14 of this decision, are the adopted changes to the minimum FSR amount, the ability for the IOU POLR to track actual administrative and procurement costs during a mass involuntary return of customers to POLR service, and the clarifications made to the deregistration process.

²⁷ DACC/UC/ AReM December 2021 OC at 8; DACC/UC/ AReM March 2022 OC at 3-5.

²⁸ PG&E March 2022 OC at 8-9; SDG&E August 2022 RC at 23.

²⁹ TURN April 2022 RC at 1-2.

³⁰ The total authorized statewide cap on eligible DA load is approximately 28,800 gigawatt-hours. (See D.19-05-043 at 6.)

5. Framework for Provider of Last Resort Services

5.1. Definitions, Rules, and Length of Service

As noted elsewhere, POLR service has been in place since the 1990s, while the existing rights and obligations – of both the POLR and customers who return to IOU bundled service – are set forth in the Commission approved tariff rules governing customer returns to the POLR. The approved tariff rules, commonly referred to as the “switching rules,” are briefly summarized below.³¹

- Voluntary Return:
 - Six-month advance notice or more: CCA and DA customers have the right to voluntarily return to POLR service and be served directly on BPS if they provide the POLR with a six-month advance written notice of their return. Providing the full six-month advance notice fully mitigates any incremental cost exposure that might otherwise be collected through re-entry fees.³² Customers have a minimum stay period on BPS before they are allowed to depart to another provider.
 - Less than six-month advance notice: CCA and DA customers who provide less than a six-month advance written notice of return have the option to switch to the POLR’s TBS for the six-month advance notice period before they go onto the BPS rate. DA customers may also voluntarily return for a 60-day safe harbor on the POLR’s TBS rate in order to switch ESPs, after which the DA customer is obligated to serve another six-months on the TBS rate before being placed on BPS. Customers have a minimum stay period on BPS before they are allowed to depart to another provider.
- Involuntary Return:
 - Protected under Section 394.25(e): Small commercial and residential DA customers, and all CCA customers,

³¹ SCE March 2022 OC at 7-8.

³² SCE April 2023 OC at 23.

who are mass involuntarily returned to POLR service due to their ESP's or CCA's failure/other service termination placed on the POLR's BPS for a 60-day safe harbor and/or six-month advance notice period before being placed on BPS (commonly referred to in this decision as mass involuntarily returned customers). Customers have a minimum stay period on BPS before they are allowed to depart to another provider.

- Not protected under Section 394.25(e):³³
 - A CCA or DA customer who is involuntarily returned to the POLR service due to a failure to pay their bill or otherwise comply with the terms and conditions of their CCA or DA service is placed on the POLR's TBS for a 60-day safe harbor and/or six-month advance notice period before they go onto BPS. Customers have a minimum stay period on bundled portfolio service before they are allowed to depart for another provider.
 - Large DA customers (i.e., those with loads 20 kW and above) and affiliated small customers who are mass involuntarily returned to POLR service because of their ESPs' failure/other service termination are placed on the POLR's TBS for a 60-day safe harbor and/or six-month advance notice period before they go onto bundled portfolio service. Customers have a minimum stay period on bundled portfolio service before they can depart to another provider.

³³ Section 394.25(e) states that if a customer of an ESP or CCA is involuntarily returned to IOU service, the re-entry fee imposed on that customer to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the ESP or CCA, "except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired."

5.1.1. Party Comment

Most parties support maintaining the current definitions and general processes for POLR service within the IOUs' existing switching rules.³⁴ The sole exception is Cal Advocates' recommendation, included as part of its alternative FSR proposal (*See* Section 7.6 of this decision), to extend the POLR service period for mass involuntarily returned customers from six to twelve months, which Cal Advocates recommends in order "to ensure the POLR has adequate time to recover its costs and avoid true-up charges to migrated customers."³⁵

5.1.2. Discussion

Cal Advocates' proposed extension of the POLR service period is primarily tied to cost forecasting and recovery under the current re-entry fee and FSR calculation methodology, and is not adopted for the reasons discussed in Section 7.6.2 of this decision.

Since current switching rules allow a CCA or ESP to fully mitigate any incremental procurement costs for its customers if a full six-month advance notice is provided (with even partial advance written notice mitigating the incremental procurement costs incurred), on the basis that the POLR will have sufficient time to plan and serve load,³⁶ maintaining the current six-month period for mass involuntarily returned customers would promote consistency and equitable treatment across the different switching rules. Further, from a reliability standpoint, no party in this proceeding argues that six months is insufficient for the POLR to be able to adjust its procurement portfolio to

³⁴ SCE March 2022 OC at 6-9; CalCCA March 2022 OC at 4-5; SDG&E March 2022 OC at 12-13; PG&E March 2022 OC at 4-5; SCE April 2022 RC at 2-3.

³⁵ Cal Advocates July 2022 OC at 1; *see, also*, Appendix A-1 through A-4.

³⁶ SCE July 2022 OC at 11.

accommodate load due to mass involuntary returned customers, and we continue to believe that the current switching rules remain appropriate for framing, defining, and governing IOU POLR service. For these reasons, this decision maintains the current six-month period for mass involuntarily returned customers, and finds the current definitions and general process for POLR service, as outlined in the IOUs' existing switching rules, provide a reasonable framework addressing POLR service requirements.

5.2. Regulatory Requirements During Provider of Last Resort Service

Commission-jurisdictional LSEs are subject to several procurement obligations designed to promote the safe and reliable operation of the electric grid, and to ensure the achievement of the state's renewable generation and greenhouse gas emissions (GHG) reductions goals. Resource Adequacy (RA) compliance obligations mandate each LSE to demonstrate sufficient capacity procurement to meet expected customer load and are currently assessed on a monthly and year ahead basis.³⁷ The Renewables Portfolio Standard (RPS) program requires LSEs to procure 60% of their electric portfolio from eligible renewable resources by 2030. Progress towards meeting long-term RPS requirements is reported and tracked annually.³⁸ Lastly, the Commission's Integrated Resources Planning (IRP) proceeding oversees planning and procurement to ensure system reliability and achievement of the state's long-term GHG reduction goals. The method for measuring compliance with IRP procurement obligations is established in the individual Commission decision

³⁷ See D.23-06-029, D.23-04-010, D.22-06-050, D.22-03-034, D.21-07-014, D.21-06-029, D.20-12-006, D.20-06-031, and D.20-06-002.

³⁸ See D.19-06-023.

authorizing the IRP procurement and compliance deadlines, and may be several years into the future.³⁹

5.2.1. Party Comments

The IOUs, CalCCA, and UCAN recommend the POLR be afforded a limited, short-term waiver or grace period of RA and RPS program compliance obligations associated with the mass involuntary return of customers due to an ESP's or CCA's failure or other service termination. These parties assert that during a mass, unplanned load migration occurring on an expedited timeframe the POLR's primary objective should be to "keep the lights on" and maintain continuity of service.⁴⁰ SCE further highlights the IOUs are not expected to remain long on RPS resources as they have been in the past.⁴¹ Additionally, PG&E, SDG&E, CalCCA, and UCAN recommend a limited waiver or grace period be applied to IRP requirements, for the same reasons above,⁴² although PG&E and SDG&E note that, to the extent the POLR is a short-term service, it is unclear what IRP obligations the POLR may actually have.⁴³

In contrast, TURN asserts there is no statutory provision that allows the Commission to issue a blanket "waiver" for compliance with RPS targets,⁴⁴ and that a waiver of these program obligations would be contrary to the requirement in SB 520 for POLR service to provide "[a] viable plan for meeting the resource

³⁹ SDG&E July 2022 OC at 6; also, D.18-02-018.

⁴⁰ PG&E December 2022 OC at 3-4; SCE December 2022 OC at 5; UCAN December 2022 OC at 2-3; SDG&E March 2022 OC at 15-16; CalCCA March 2022 OC at 12.

⁴¹ SCE December 2022 OC at 5.

⁴² PG&E December 2022 OC at 3-4; UCAN December 2022 OC at 2-3; SDG&E March 2022 OC at 15-16; CalCCA March 2022 OC at 12.

⁴³ PG&E July 2022 OC at 6; SDG&E July 2022 OC at 6.

⁴⁴ TURN March 2022 OC at 3-4.

adequacy requirements established pursuant to Section 380, the requirements of the California Renewables Portfolio Standard Program...and all other load-serving entity procurement requirements.”⁴⁵

5.2.2. Discussion

As highlighted by TURN, Section 387(c)(3) requires non-IOU LSEs who serve as the POLR to submit, among other things, a viable plan for meeting all compliance procurement obligations. Further, Section 387(h) authorizes the Commission, in consultation with the CEC, to establish rules and recommend modifications to relevant regulations “to ensure continued achievement” of the State’s GHG emission reduction and air quality goals, and does not explicitly address or provide for a blanket waiver of these program obligations. Taken together, it is clear from the plain language and broader context within SB 520 that the Legislature intended the Commission to ensure, to the greatest extent possible, continued compliance with all regulatory procurement requirements during an involuntary return of customers to POLR service. Further, no party in this proceeding recommends removing the current FSR cost components associated with RA and RPS compliance for involuntary returned customers, and it would be unfair to require CCAs and ESPs to post a bond or insurance sufficient to cover the upfront costs associated with RA and RPS compliance obligations for returning customers if the POLR is provided an upfront, blanket waiver of these obligations. Lastly, a blanket waiver does not make sense in the context of more limited customer returns, and would be counter to the state’s renewable procurement and GHG emission reduction goals.

⁴⁵ *Id.*; Section 387(c)(3).

For all the above reasons, this decision does not adopt an upfront short-term waiver or grace period of RA, RPS, and IRP program compliance obligations, and the POLR is directed to make a good faith effort to meet all regulatory compliance requirements during a mass involuntary return of customer load. While we find this to be a reasonable default position, it is not difficult to imagine a more extreme scenario where the POLR, through no fault of its own, is unable to meet all regulatory compliance obligations under a short timeframe and significant migrating load. This could occur, for example, if a large CCA representing a significant percentage of the load in an IOU's service territory unexpectedly defaults shortly before a compliance deadline. Under such a scenario, we agree the POLR's primary objective should be to maintain continuity of service to end use customers.

In D.20-06-031, the Commission established a Tier 2 advice letter process to consider limited system and flexible RA waivers for the POLR, which takes into consideration whether there is "insufficient time to meet the RA requirement."⁴⁶ Further, in the IRP proceeding, the Commission and staff "consider deficiencies and non-compliance on a case-by-case basis, taking the LSE's efforts and all relevant and exogenous factors into account."⁴⁷ Both of these processes would allow the POLR to submit waiver requests on a case-by-case basis, and no further action appears to be required as part of this decision.

The process for LSEs to request an RPS waiver are provided in D.12-06-038 and D.14-12-023, and are based on the following criteria as set forth in statute: (1) there is inadequate transmission capacity; (2) permitting, interconnection, or

⁴⁶ D.20-06-031 Ordering Paragraph 21.

⁴⁷ D.23-02-040 at 36.

other circumstances delay procured eligible renewable energy projects, or there is insufficient supply of renewable energy resources available to the retail seller; (3) unanticipated curtailment of eligible renewable resources would not result in an increase of GHG emissions; and (4) unanticipated increase in retail sales due to transportation electrification.⁴⁸ Because a mass involuntary return of customers is not listed as one of the potential waiver conditions in Section 399.15(b)(5), it is not within the Commission's discretion to grant a case-by-case waiver of RPS compliance requirements for POLR service. Phase 3 of this proceeding will consider potential recommendations to the Legislature, which may include proposed amendments to Section 399.15(b)(5) to address POLR service.

6. Provider of Last Resort Cost Recovery

SB 520 requires the Commission to "ensure that the provider of last resort for each service territory receives reasonable cost recovery for being designated and serving as a provider of last resort."⁴⁹ The Commission has already established cost recovery mechanisms for POLR service in the IOUs' tariffs, which include:

- A. Energy Resource Recovery Account (ERRA) Balancing Accounts (BA), where the IOU POLRs record the costs and revenues associated with their procurement services, including POLR service;
- B. Tariffed rates for recovering incremental costs caused by customer returns to POLR service, including:
 - o The IOUs' TBS rates, which recover incremental procurement costs from customers who are not protected by Section 394.25(e);

⁴⁸ See Section 399.15(b)(5).

⁴⁹ Section 387(g).

- The IOUs' service fees, which recover administration costs from customers who are not protected by Section 394.25(e);
 - The IOUs' re-entry fees for mass involuntary returns of customers who are protected by Section 394.25(e), calculated as a binding estimate pursuant to a tariffed methodology that includes incremental procurement and administration cost components; and
 - The CCA and ESP FSRs, which are supposed to be sufficient to cover the re-entry fees during a mass involuntary return of CCA customers to IOU POLR service.
- C. Established processes for reviewing IOU cost recovery, including annual ERRA reviews and advice letters that ensure the FSR and re-entry fee calculations are correct and in conformance with the tariffed processes for recovery from CCAs, ESPs, and/or their customers.⁵⁰

As discussed below, while parties have disputes regarding the adequacy of some of the inputs to the tariffed methodologies for the FSR and re-entry fees, as well as whether the POLR should be permitted to track actual, incremental procurement costs in a mass involuntary return, no party in this proceeding has argued that the existing tariffed cost recovery *mechanisms* are inadequate, or that broader changes to the existing mechanisms are necessary to comply with Section 387(g). Accordingly, we find the established cost recovery mechanisms for IOU POLR service, as described above, are reasonable and satisfy the requirement in Section 387(g) to ensure the POLR receives reasonable cost recovery. As discussed elsewhere in this decision, in addition to the existing cost recovery mechanisms, this decision authorizes, but does not require, the IOU POLR to establish one or more memorandum accounts to track actual

⁵⁰ SCE OB at 19-20.

administrative and/or procurement costs during a mass involuntary return of customers to IOU bundled service.

7. Modifications to the Financial Security Requirement and Re-Entry Fee Calculation

The statutory basis for the FSR is contained in Section 394.25(e), which provides that if a customer of a CCA or ESP is involuntarily returned to utility bundled service due to the fault of the CCA or ESP, then any re-entry fee deemed necessary by the Commission to avoid imposing costs on other customers of the utility must be paid for by the CCA or ESP. Section 394.25(e) further requires CCAs and ESPs to post a bond or demonstrate insurance sufficient to cover the costs of the re-entry fees.

The current FSR and re-entry fee calculations are based on the following methodology:

FSR / Re-Entry Fee = (Incremental Procurement Costs + Administrative Costs) – Revenues.

Incremental procurement costs include all energy, RPS, and RA costs forecast over a six-month period.⁵¹ Administrative costs are calculated based on the IOUs' per-customer tariff fees used for individual voluntary returns.⁵² Revenues are based on the generation component of the IOUs' BPS rate as determined in the Energy Resource Recovery Account (ERRA) proceedings. The current calculation allows negative procurement costs to be netted against incremental administrative costs, with a floor of zero, subject to the following minimum FSR amounts: ESPs have a minimum FSR amount at the higher of

⁵¹ D.13-01-021 Appendix 1; also, D.18-05-022.

⁵² D.18-05-022 at 3-4.

\$25,000 or the per customer amount required by Section 394(b)(9), while CCAs have a minimum FSR amount of \$147,000.⁵³

In D.11-12-018 and D.18-05-022, the Commission determined the IOU as POLR should calculate ESP and CCA re-entry fees within 60 days of the earlier of (1) the start of involuntary return, or (2) the IOU's receipt of the ESP's or CCA's written notice of involuntary return. Since the adopted schedule to calculate the re-entry fee necessitates forecasting the incremental administrative and procurement costs using the same methodology employed for the FSR calculation, all references to the FSR methodology in this decision are intended to refer to both the FSR and re-entry fee methodology.

Generally speaking, most of the proposed FSR methodology changes in this proceeding are intended to improve the accuracy of individual inputs in the FSR calculation to more closely reflect the actual, incremental costs incurred during a mass involuntary return of customers to POLR service. Some party recommendations also address potential POLR needs (such as increased liquidity) during a significant, mass involuntary return of customers, as well as the volatility and affordability of the FSR amount. All of the proposed changes are discussed in greater detail below.

Lastly, as noted above, the majority of changes in this section of the decision are focused on improving the accuracy of different *inputs* into FSR and re-entry fee calculation. As discussed elsewhere, given the current statewide cap on eligible DA load, the limited ESP-specific proposals provided in this proceeding, and the varying complexity of FSR input changes being considered, we find it reasonable and appropriate to limit the FSR input changes in this

⁵³ D.13-01-021 Ordering Paragraph 8; D.18-05-022 Ordering Paragraph 9.

decision to CCAs. However, the change to the minimum FSR amount (discussed in Section 7.5 of this decision) constitutes a broader change to the FSR and re-entry fee calculation methodology. To promote consistency and ensure compliance with Section 394.25(e), we find it prudent to apply the minimum FSR amount methodology changes in this decision to both CCAs and ESPs.

7.1. Financial Security Requirement Calculation Refinements: Consensus-Based Recommendations

Parties broadly agree the current CCA FSR calculation should be modified to:

- 1) Use the Commission's annual RA Market Price Benchmarks, as adopted in the Power Charge Indifference Adjustment (PCIA) proceeding, to forecast the costs of system and flexible RA. Currently, the FSR calculation uses RA proxy costs from the Energy Division's most recent RA Report, which presents historical RA price information.⁵⁴
- 2) Use the IOU POLR's system average residential and non-residential customers generation rates to better forecast the IOU's generation revenues associated with each CCA. Currently, the revenue offset of the FSR is calculated using the IOU's system average rates.⁵⁵
- 3) Account for the CCA customers' allocation of RA from the IOU POLR's Cost Allocation Mechanism (CAM), including central procurement entity (CPE) allocations, and Demand Response (DR) Resources, provided that the Commission prospectively guarantees that CAM and DR RA will be promptly and actually reallocated to the POLR during a mass involuntary return.⁵⁶

⁵⁴ Energy Division's most recent 2023 RA Report is available here: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/resource-adequacy-homepage/2021_ra_report_040523.pdf (last accessed June 21, 2023).

⁵⁵ CalCCA March 2022 OC at 8-9.

⁵⁶ Joint Case Management Statement at 5; also, TURN March 2022 OC at 6.

This decision adopts all of the above consensus-based input changes to the CCA FSR calculation. The RA Market Price Benchmarks are used in other Commission-approved rates,⁵⁷ and use of the RA Market Price Benchmarks is expected to improve RA cost forecasting and more accurately reflect RA market transactions and prices. Use of the IOU POLR's residential and non-residential rates, in place of the IOU's system average generation rate, will better account for each CCA's customer mix. Lastly, accounting for an LSE's share of CAM and DR related RA allocations will reduce the POLR's potential procurement costs and associated re-entry fee amount. Further, as stated by SCE, "[b]ecause the IOU's and benefitting customers' rights and obligations are regulatory (and not based in contract), they should automatically follow when customers migrate to and from the POLR."⁵⁸ We agree. Energy Division currently allocates, as part of the CAM process, RA credits using confidential load forecast information.⁵⁹ In the event there is a mass involuntary return of customers to POLR service, Energy Division shall promptly re-allocate the returning customers' share of RA from the IOU POLR's CAM and DR resources to the IOU POLR.

7.2. Financial Security Requirement Calculation Refinements: Revenue

Concerning the revenue component of the CCA FSR calculation, the IOUs, Cal Advocates, and UCAN assert the current FSR does not appropriately account for PCIA cost responsibility⁶⁰ of CCA customers since it does not distinguish

⁵⁷ Including the PCIA and TBS rates. (See SCE OB at 28.)

⁵⁸ SCE July 2022 OC at 5.

⁵⁹ See D.23-12-036 at 104.

⁶⁰ The PCIA is a vintaged rate component for both bundled service and departing load customers to ensure that the above market costs of electric generation resources that an IOU procured on behalf of customers who switched to another LSE are not disproportionately borne

Footnote continued on next page.

between gross and incremental revenues. Specifically, since the current FSR and re-entry fee calculation is intended to reflect the incremental costs and revenues to serve returning customers, these parties argue the incremental revenues expected to be received from the returning load must net out the existing PCIA obligation that would have otherwise been collected by the IOU.⁶¹

If the PCIA obligation is netted out of the revenue component of the FSR calculation, then CalCCA asserts the FSR calculation should also include a “hedge effect” of the PCIA and CAM portfolio. CalCCA’s hedge effect recommendation relates to incremental procurement and is explained later in this decision. In addition, CalCCA recommends the revenue component of the FSR calculation be modified to: (1) seasonally differentiate average generation rate revenues to match seasonal differentiation of forecast energy procurement costs, and (2) consider approved IOU rate changes that will take effect during the FSR posting period.⁶²

The IOUs and Cal Advocates oppose the use of seasonal system average generation rates for residential and non-residential customers,⁶³ arguing this change would significantly increase the complexity of the FSR calculation⁶⁴ and that it would be asymmetrical to account for seasonality in revenues without also

by an IOU’s remaining bundled service customers. (See D.18-10-019 OP1 and OP 6; also, PG&E August 2022 RC at 11-12.)

⁶¹ PG&E July 2022 OC at 6-7; SCE July 2022 OC 11-12; SDG&E July 2022 OC 8-9; Cal Advocates July 2022 OC at 5; UCAN July 2022 OC at 5-6.

⁶² CalCCA March 2022 OC at 9.

⁶³ SCE July 2022 OC at 13-14; SDG&E July 2022 OC at 10-11; PG&E July 2022 OC at 7-8; Cal Advocates July 2022 OC at 6; Joint Case Management Statement, Appendix A. Note: PG&E cautiously supports including seasonal changes in generation rates in its July 2022 OC, but opposes this change in Appendix A of the Joint Case Management Statement.

⁶⁴ SCE July 2022 OC at 13-14; SDG&E July 2022 OC at 10-11; PG&E July 2022 OC at 7-8.

applying seasonality in the incremental procurement costs, and RA prices in particular.⁶⁵ Similarly, SDG&E, PG&E, and Cal Advocates oppose CalCCA's proposal to consider approved IOU rate changes, arguing that including future rate changes in the FSR calculation would lead to greater inaccuracy and less transparency,⁶⁶ and that the added complexity would not outweigh the benefit given the frequency and timing of rate increases.⁶⁷

In contrast, UCAN supports use of seasonal system average generation rates, and suggests it might be feasible to use data from the RA Market Price Benchmarks to calculate a seasonal RA market price benchmark; alternatively, UCAN suggests historical RA reports could be used to calculate a seasonal differential.⁶⁸ SCE supports the potential inclusion of approved rate changes in the FSR calculation so long as the Commission also implements certain other changes to the FSR calculation.⁶⁹

7.2.1. Discussion

The following changes are made to the revenue component of the FSR and re-entry fee calculation for CCAs: first, revenues from PCIA rates of CCA customers shall be removed from the IOU POLR's generation revenues. As argued by the IOUs, Cal Advocates, and UCAN, PCIA rates cover the market costs associated with legacy, vintaged PCIA resources in the IOUs' existing generation portfolio. These revenues are necessary to ensure there is equitable cost sharing among customers for the IOUs' existing generation resources, and as

⁶⁵ SCE July 2022 OC at 13-14; SDG&E July 2022 OC at 16; Cal Advocates July 2022 OC at 6.

⁶⁶ Cal Advocates July 2022 OC at 7.

⁶⁷ PG&E July 2022 OC at 9; SDG&E July 2022 OC at 10-11.

⁶⁸ UCAN May 2023 RC at 7.

⁶⁹ SCE July 2022 OC at 12-13.

such are not available to pay any *incremental* procurement costs that may be needed during a mass involuntary return of customers. Further, while CalCCA believes this proposal should be considered alongside its PCIA hedge recommendation (discussed below), no party contests the merits of the proposed PCIA change. Since the PCIA component of the retail rate used to calculate the revenues in the FSR and re-entry fee can be positive or negative, we clarify that the rate component reflecting PCIA should be removed regardless of whether the component is positive or negative and should reflect the appropriate PCIA rate vintages.

Second, the IOUs as POLR shall incorporate approved generation rate changes that will go into effect during the forward period if they are known at the time of the FSR or re-entry fee calculation. As noted by SCE, this change could be accomplished by modifying the existing FSR and re-entry fee template to produce monthly generation inputs over the forward period.⁷⁰ In response to party comments, we clarify that forecast future rates should only be incorporated if they have been approved by the Commission or are known with certainty at the time the FSR or re-entry calculation is made.

Lastly, this decision adopts CalCCA's proposal to differentiate generation rates by season. While the IOUs and Cal Advocates are correct that this change would produce a somewhat asymmetrical FSR calculation if the seasonality in revenues is not offset by a corresponding seasonality in RA procurement costs, these parties fail to account for the fact that the FSR calculation is *already* asymmetrical, since the vast majority of the FSR costs are seasonally differentiated. As noted by CalCCA, energy costs make up approximately 85

⁷⁰ SCE July 2022 OC at 14.

percent of the cost component of the FSR, while RA costs make up only 10-14 percent.⁷¹ Therefore, reflecting seasonal rates in the FSR calculation equitably addresses some of the existing misalignment.

Notwithstanding the fact that energy costs are the largest cost component of the FSR, we also acknowledge that current RA prices continue to rise with scarcity in current supply.⁷² Parties have not proposed a seasonal RA benchmark in this proceeding with supporting evidence of its accuracy; therefore, this decision does not adopt a seasonal methodology for RA procurement costs at this time. The Commission may continue to consider this issue in a subsequent phase of this proceeding.

The IOUs' generation rates are forecasted and trued up in their respective ERRA Forecast applications, and seasonal generation rates are then derived using revenue allocations using revenue allocations approved in the IOUs' respective Phase 2 GRC applications. This process already provides the framework for how seasonal generation rates will be calculated. However, the IOUs are directed to hold a meet and confer session to discuss the timing of the IOUs' summer and winter seasonal generation rates and how that timing impacts the FSR/re-entry fee calculations. The IOUs shall invite all parties to this proceeding to participate in the meet and confer session and shall include a summary of the discussion in their respective advice letters implementing this decision.

⁷¹ CalCCA RB at 8.

⁷² See CalCCA's Resource Adequacy Track 1 Proposal Workshop presentation, February 14, 2024, Slides 207-218.

7.3. Financial Security Requirement Calculation Refinements: Incremental Procurement

As noted above, to the extent PCIA obligations are netted out of the revenue component of the FSR calculation, CalCCA recommends the FSR calculation include a “hedge effect” of the PCIA and CAM portfolio in recognition that the IOUs will not be subject to the full amount of energy and cost of procurement in the CAISO market. CalCCA explains that the PCIA has an inverse relationship to bundled rates (i.e., when bundled rates go down the PCIA goes up, and vice versa), meaning the PCIA acts as an energy price hedge against rising prices. Similarly, CalCCA asserts CAM resources provide the POLR with an energy hedge. CalCCA suggests this hedge effect could be incorporated into the FSR calculation by adjusting the procurement cost or by reducing the energy volumes procured, and presented this approach during the FSR calculations workshop.⁷³

The IOUs and Cal Advocates broadly oppose the inclusion of a hedge value in the FSR calculation based on the following arguments, among others: (1) CalCCA misuses the concept of a “hedge,” since a hedge is a voluntary financial instrument used to reduce the risk of an adverse impact whereas the PCIA and CAM are a means of cost recovery that all customers are required to pay;⁷⁴ (2) any PCIA and CAM financial hedge value is already recorded in each IOU’s balancing account, and offsets the costs of PCIA and CAM resources;⁷⁵ and (3) quantifying the purported hedge value of the PCIA portfolio with enough

⁷³ CalCCA July 2022 OC at 16-19 and 31; CalCCA April 2023 OC at 21-22 and Attachment B.

⁷⁴ Cal Advocates August 2022 RC at 10; SDG&E August 2022 RC at 19-20.

⁷⁵ SCE August 2022 RC at 10-12; SCE April 2023 OC at 16.

certainty to effect an adjustment to the FSR would be difficult.⁷⁶ In contrast, UCAN agrees with CalCCA that CCAs should not be required to cover the risk of a potential under-collection in an IOU's ERRA balancing account if bundled rates have been under-forecast, and recommends any FSR rate adjustment be based on the IOU's forecast of its ERRA balancing account.⁷⁷

CalCCA's proposed reduction in energy values to reflect the hedge value of PCIA and CAM resources is broadly opposed by the IOUs, Cal Advocates, and UCAN.⁷⁸ These parties assert that CalCCA's proposal does not reflect the realities of how energy is actually procured in the CAISO market and would result in double-counting.⁷⁹

With respect to the calculation of forward energy prices, CalCCA asserts the current use of Intercontinental Exchange (ICE) forward price quotes from the month prior to when the FSR calculation occurs can result in significant price volatility and corresponding changes in the FSR amount.⁸⁰ CalCCA demonstrates this volatility using forward price quotes from the New York Mercantile Exchange (NYMEX),⁸¹ and points to SCE's Advice Letter 4789-E filed on May 10, 2022, where high forecast energy market prices caused the FSRs within SCE's

⁷⁶ SDG&E August 2022 RC at 20-21; PG&E August 2022 RC at 12-13.

⁷⁷ UCAN April 2023 OC at 11-12.

⁷⁸ Cal Advocates April 2023 OC at 29; SCE April 2023 OC at 13-18; SDG&E April 2023 OC at 20-21; UCAN April 2023 OC at 11-2.

⁷⁹ Cal Advocates April 2023 OC at 29; SCE April 2023 OC at 13-18; SDG&E April 2023 OC at 20-21.

⁸⁰ The energy prices used to calculate forecast energy costs in the FSR calculation come from the ICE forward price quotes from the month prior to the month the FSR calculation occurs. (CalCCA July 2022 OC at 6.)

⁸¹ CalCCA relied on NYMEX data since the ICE data, currently used in the FSR calculation, is not publicly available and cannot be published even if a subscription were obtained. (*Id.* footnote 5.)

service territory to increase from approximately \$1.5 million to \$110 million for all ten CCAs.⁸² Based on these observations, CalCCA recommends that the energy cost component of the FSR calculation use a three-month average for future quotes rather than the current one-month average.⁸³

While PG&E agrees to an extent with CalCCA that mitigating price spikes may be in the general interest, PG&E also believes that using up-to-date pricing information provides the best security for the POLR and customers. Using a data set three times as large as what CalCCA relied upon, PG&E found that using the average of one month's forward price quotes resulted in more accurate predictions of actual CAISO settlement prices as measured by the mean squared error as compared to CalCCA's proposed simple average of the most recent three months' forward price quotes.⁸⁴ SDG&E asserts the current use of forward price quotes from the month ahead is the most current forecast available, and incorporating stale forecast prices will further reduce, rather than improve, the accuracy of the FSR forecast.⁸⁵ SCE argues that if the Commission increases the data used for the energy cost forecast, then it should also increase the frequency of the FSR calculation to quarterly to counterbalance the tendency for forecasts to be less predictive of actual prices.⁸⁶ Cal Advocates cautions against using broader averages when planning for black swan events.⁸⁷

⁸² CalCCA July 2022 OC at 6-11.

⁸³ *Ibid.*

⁸⁴ PG&E August 2022 RC at 14.

⁸⁵ SDG&E August 2022 RC at 13-15.

⁸⁶ SCE August 2022 RC at 16-17.

⁸⁷ Cal Advocates August 2022 RC at 4-5.

Lastly, several parties recommend Voluntary Allocation and Market Offer (VAMO) RPS-eligible resources be used to offset a POLR's incremental RPS need. Under the VAMO process, the IOUs are authorized to offer CCAs and ESPs the opportunity to buy allocations of the IOUs' RPS resources, before selling any unallocated resources through an annual market offer process. The transactions are effectuated through bilateral contracts between the IOUs and LSEs/winning bidders.⁸⁸ UCAN, CalCCA, and Cal Advocates believe VAMO resources that were purchased on behalf of returning customers should follow these customers back to the POLR, and should be applied as an offset to the incremental RPS procurement need in the FSR.⁸⁹ TURN does not specifically address whether VAMO resources should be applied as an offset in the FSR, but agrees that VAMO resources should be automatically transferred to the POLR during a mass involuntary return event.⁹⁰

The IOUs oppose applying an offset for VAMO resources to the RPS component of the FSR based on the following arguments: (1) due to the voluntary nature of the VAMO program and requirement for rejected allocations to be offered for sale, the IOUs assert it is not certain whether any portion of RPS-eligible energy associated with VAMO would actually return to the POLR;⁹¹ (2) because the IOUs and benefitting customers' rights and obligations under VAMO are based in contract, SCE and SDG&E assert those rights and obligations do not automatically follow benefitting customers when migrating to and from

⁸⁸ See D.21-05-030.

⁸⁹ UCAN July 2022 OC at 2-3; CalCCA July 2022 OC at 27-30; Cal Advocates July 2022 Amended OC at 4.

⁹⁰ TURN March 2022 OC at 6.

⁹¹ PG&E July 2022 OC at 3-4; SCE July 2022 OC at 3-5.

the POLR;⁹² (3) PG&E highlights that VAMO allocations reduce the overall costs of the IOU portfolio that are recovered in rates, but does not impact the POLR's procurement obligation;⁹³ and (4) SDG&E argues there is a potential misalignment between the short-term POLR service and when VAMO resources may be available.⁹⁴

7.3.1. Discussion

Concerning the use and accounting of VAMO resources, since the IOUs' and benefitting customers' rights and obligations under VAMO are based in contract, and since LSEs are allowed to resell allocated RPS energy, we agree with SCE, SDG&E, and DACC/UC/AReM that the rights and obligations under VAMO may not automatically follow benefitting customers when migrating to the IOU POLR, particularly for allocated RPS energy that is resold. No party in this proceeding advocates for amending existing VAMO contracts to ensure the rights and benefits automatically migrate to the POLR, and it is not clear, based on the record of this proceeding, whether the risks of reopening existing contracts would outweigh the resultant benefits. Therefore, the RPS forecast component of the FSR calculation shall not be modified to account for existing VAMO contracts.

While this approach is reasonable for existing VAMO contracts, we see no reason why new VAMO contracts could not contain a clause requiring all rights and obligations to automatically and immediately follow benefitting customers in

⁹² SCE July 2022 OC at 6-8; SDG&E August 2022 RC at 9-11. In addition, DACC/UC/AReM agree it would be inappropriate, if not illegal, to require an ESP who is taking in a DA customer of a failed ESP to take the VAMO allocations associated with a failed ESP. (DACC/UC/AReM August 2022 RC at 4-5.)

⁹³ PG&E August 2022 RC at 16-17.

⁹⁴ SDG&E July 2022 OC at 3-5.

the event of a mass involuntary return of customers to IOU POLR service, including any allocated RPS energy that is resold, with corresponding reductions to the forecast RPS cost in the FSR and re-entry fee calculations. This approach would benefit the IOU POLR by providing additional energy to help serve returning customers, with corresponding reductions to the FSR amount for CCAs. With that said, there is limited record in this proceeding concerning whether this approach would have any negative implications to the broader VAMO program, or the extent to which one or more new VAMO solicitations may be held. Therefore, the IOUs are directed to file a joint Tier 2 advice letter, within 90 days of the effective date of this decision and with service on this proceeding and on the RPS rulemaking (R.24-01-017), to propose proforma language that would require all rights and obligations under VAMO to automatically and immediately follow benefiting customers when migrating to IOU POLR service. In the event the proforma language (or a version thereof) is approved and included in future VAMO contracts, the IOUs are instructed to include corresponding reductions to the forecast RPS cost in the CCA FSR and re-entry fee calculations for CCAs with contracts containing such terms.

This decision does not adopt CalCCA's recommendation to use a three-month average for the energy cost component of the FSR calculation in place of the current one-month average. The results from PG&E's larger study on the use of a three-month average versus one month's forward price quotes are compelling, and no party in the proceeding contests PG&E's study or the associated findings.

We also do not adopt CalCCA's proposal to account for the hedge value of CAM and PCIA energy in the FSR and re-entry fees. As noted by parties, the financial hedge value from IOU owned and contracted PCIA and CAM resources

is captured and recorded as market revenues in the IOU's balancing accounts before net costs flow into bundled and unbundled customer rates, and attempting to capture any additional financial hedge value would essentially amount to double-counting. Moreover, CalCCA's specific proposal to reduce the forecast energy needed to serve returning customers incorrectly assumes that the IOUs serve their customers' energy needs directly from owned or contracted power. In California all LSEs, including the IOUs, buy their energy through the CAISO market.⁹⁵ While the IOUs sell their generation resources into the CAISO market (typically when their costs are expected to be less than the CAISO market clearing price), these resources do not reduce the amount of energy the IOU as POLR would need to purchase in the CAISO market to serve customers' power needs. Therefore, CalCCA's energy hedge proposal is based on a flawed premise. Similarly, this decision does not adopt the proposal by UCAN and CalCCA to adjust the FSR for potential ERRA undercollections. Issues concerning ERRA over- or under-collections are better addressed through the respective ERRA proceedings if and when they occur.

7.4. Financial Security Requirement Calculation Refinements: Incremental Administrative Costs

The incremental administrative costs to serve returning customers are currently calculated in the FSR methodology by multiplying the forecast number of service accounts for each LSE by the re-entry fee for voluntary returns in each utility's tariffs.

PG&E and SDG&E assert current administrative fees do not account for the costs associated with a mass involuntary return, which may include additional labor, training, and marketing materials above the more automated

⁹⁵ SCE OB at 38; SDG&E RB at 6-7; PG&E RB at 5-6.

process used for individual voluntary returning customers.⁹⁶ By way of example, PG&E points to the significant administrative costs that SCE incurred when Western Community Energy (WCE) filed for bankruptcy.⁹⁷ SDG&E suggests adding a separate fee, distinct from the current customer re-entry fee, to differentiate between an automated/orderly return and a mass involuntary return of customers.⁹⁸

In contrast, SCE believes the current proxy based on the IOU's tariffed administrative re-entry fee is appropriate, since the actual cost and magnitude of returning customers are unknown, and since the IOUs currently have the option to track actual time and materials caused by a mass involuntary return for recovery in re-entry fees.⁹⁹ CalCCA and SBUA also believe SDG&E's and PG&E's claims are unsupported.¹⁰⁰ Further, CalCCA highlights that PG&E's per customer administrative fee (\$4.24 per customer service account) is significantly higher than that of the other IOUs (~\$0.50 per customer service account), and recommends PG&E's administrative fee be re-examined.¹⁰¹ Cal Advocates supports having the IOUs update their per-customer administrative costs with a detailed explanation of how they estimated these costs and provide a cost component breakdown.¹⁰²

⁹⁶ PG&E July 2022 OC at 10; SDG&E July 2022 OC at 12.

⁹⁷ PG&E August 2022 RC at 20.

⁹⁸ SDG&E July 2022 OC at 15.

⁹⁹ SCE July 2022 OC at 15-16.

¹⁰⁰ CalCCA August 2022 RC at 13; SBUA August 2022 RC at 5-6.

¹⁰¹ CalCCA July 2022 OC at 34-35; also, CalCCA April 2023 OC at 22-23.

¹⁰² Cal Advocates OB at 8.

In D.18-05-022, the Commission found that “[i]t is not possible to determine with certainty or precision how any future mass involuntary return to utility service would occur. It is possible that it could be orderly, and synchronized with the local utility’s meter-reading and billing cycles, but it could also be disorderly, and fall between meter-reading and billing cycles.”¹⁰³ In the absence of any degree of certainty, which depends not only on the timing of any involuntary return to POLR service but also on the number and type of customers being returned, we continue to find the current proxy based on the IOU’s tariffed administrative re-entry fee to be reasonable. Further, as discussed elsewhere in this decision, the IOUs are authorized to track actual administrative costs during a mass involuntary return of customers for future reasonableness review, which will allow the IOUs to track any actual costs that are in excess of the current proxy amount.

Regarding the variation in the per-customer administrative cost re-entry fees of the different utilities, it is concerning that PG&E’s per-customer fee continues to be significantly higher than that of the other IOUs. However, as we found in D.18-05-022, since this variation in fees reflects differences in the billing systems of each utility (including the level of automation),¹⁰⁴ the most appropriate place to address this issue is in each utility’s general rate case (GRC). It is not clear, based on the record of this proceeding, what updates may be needed to PG&E’s billing system to increase the level of automation, or what these updates would cost, and both of these issues are better presented and considered in the context of a utility’s GRC. In the decision on PG&E’s Test Year

¹⁰³ D.18-05-022 at 4.

¹⁰⁴ *Id.* at 4-5.

2023 GRC, the Commission directed PG&E to provide certain, additional information on its Billing System Upgrade Project, should PG&E seek to continue to pursue this project in the future.¹⁰⁵ As part of any future showing, PG&E shall also describe whether the Billing System Upgrade Project would increase the level of automation associated with CCA and ESP customers returning to PG&E's bundled service. In addition, as part of PG&E's next Phase 2 GRC, PG&E must identify the administrative fee as a separate item, describe its components, and explain how it is calculated.

7.5. Minimum Financial Security Requirement Amount

The Commission, in D.13-01-021 and D.18-05-022, determined that negative incremental procurement costs (i.e., if the forecast price of new power is lower than the system-average generation rate) could be netted against the administrative costs in the FSR calculation, with a floor of zero. ESPs are required to post a minimum FSR amount of \$25,000 or the financial viability amount required pursuant to Section 394(b)(9), whichever is greater.¹⁰⁶ CCAs are required to post a minimum FSR amount of \$147,000.¹⁰⁷

The IOUs and Cal Advocates support eliminating the current negative procurement offset in the FSR calculation. These parties argue that: (1) the current FSR minimums were adopted to ensure ESP and CCA viability, and were not intended to cover the administration component of the FSR and re-entry fee; (2) a per customer minimum fee would more accurately and fairly calibrate the minimum FSR amount to the size of each CCA; (3) a proportional minimum FSR

¹⁰⁵ See D.23-11-069 at 549-550.

¹⁰⁶ SCE December 2021 OC at 15; also, D.13-01-021 at 6.

¹⁰⁷ D.18-05-022 at 12.

would more likely match actual re-entry fees, thereby helping to avoid potential cost shifts between customers; (4) the POLR will incur incremental administration costs irrespective of the incremental procurement costs; and (5) the current netting approach results in different treatment between bundled and unbundled customers.¹⁰⁸ In setting the minimum FSR amount, SCE, SDG&E, and Cal Advocates recommend using the greater of \$147,000 or the calculated administration cost.¹⁰⁹

In response, CalCCA asserts the Commission correctly allowed negative procurement costs to offset incremental administrative costs in D.13-01-021 and D.18-05-022, and the only change required is to update the minimum FSR amount for inflation (i.e., \$173,000 for CCAs). SBUA also opposes the elimination of the negative procurement offset.¹¹⁰ If the negative procurement offset is removed, CalCCA argues the FSR calculation should rely on an average of SCE's and SDG&E's administrative fees, which are significantly lower than that of PG&E.¹¹¹

Instead of establishing a minimum FSR amount based on the above approach, PG&E proposes a minimum FSR amount based on two months of incremental procurement costs. PG&E explains that, due to timing discrepancies between when the POLR will be required to make payments to the CAISO for the incremental costs of energy and when bill payments from returning customers will be due, the POLR will be required to cover in advance two

¹⁰⁸ SCE July 2022 OC at 16-17; SDG&E July 2022 OC at 13-14; PG&E April 2023 OC at 22; SCE April 2022 OC at 8-9; Cal Advocates July 2022 OC at 8-10; Cal Advocates OB at 8-9.

¹⁰⁹ SCE July 2022 OC at 16-17; Cal Advocates August 2022 RC at 2-3; SDG&E April 2023 OC, Attachment C.

¹¹⁰ Joint Case Management Statement, Appendix A.

¹¹¹ CalCCA August 2022 RC at 11-13

months of energy procurement costs.¹¹² PG&E asserts the POLR will need upfront and immediate access to funds to be able to ensure continuity of electric service,¹¹³ and estimates the incremental procurement costs to provide two-months of energy-only service for CCA customers within its territory may range from approximately \$200 million to \$400 million for 2020-2022.¹¹⁴

In response, CalCCA and SBUA counter that removing any portion of generation revenues would overstate the amount of costs relative to expected revenues, resulting in an imbalanced and incorrect FSR calculation.¹¹⁵ If liquidity remains a concern, UCAN supports adding to the FSR calculation a financing cost or carrying cost needed to cover the lag in customer bills.¹¹⁶ SBUA notes the timing issue is more directly related to cash working capital, and questions PG&E's timing delay as representing a worst-case hypothetical.¹¹⁷ Similarly, CalCCA asserts that PG&E does not demonstrate that it will not be able to borrow to pay for two months of procurement costs.¹¹⁸ SCE does not have the same upfront liquidity concerns as PG&E, but acknowledges this may not be the case for all IOUs serving as the POLR.¹¹⁹

7.5.1. Discussion

In recommending changes to the minimum FSR amount, party comments address two distinct issues: the first is whether current minimum FSR amounts

¹¹² PG&E July 2022 OC at 9-10.

¹¹³ PG&E OB at 2-3 and 11-12.

¹¹⁴ PG&E OB at 16.

¹¹⁵ CalCCA July 2022 OC at 34; UCAN April 2023 OC at 10-11.

¹¹⁶ UCAN April 2023 OC at 10-11.

¹¹⁷ SBUA August 2022 RC at 4-5.

¹¹⁸ CalCCA March 2022 OC at 10-11.

¹¹⁹ SCE July 2022 OC at 15.

accurately reflect the administrative costs associated with a mass involuntary return of CCA customers. The second issue is whether the minimum FSR amounts should be designed to provide the POLR with sufficient liquidity to serve returning customers. We address each of these issues in turn.

In explaining why the current FSR calculation allows negative procurement costs to be netted against incremental administrative costs, D.13-01-021 states “[s]ince both administrative costs and procurement costs are incurred in connection with an involuntary return of DA customers to bundled service, it is reasonable to consider the net effect of both elements of costs in determining the amounts, if any, necessary to compensate the IOU and to avoid cost shifting to other customers.”¹²⁰

The IOUs and Cal Advocates present new and convincing arguments in support of eliminating the current negative procurement offset. As noted by Cal Advocates, when attaining bundled utility service, all new customers are charged an administrative service fee which is not offset by any negative procurement costs. Similarly, customers are charged an administrative fee if they voluntarily transfer from a CCA back to bundled service.¹²¹ Allowing negative procurement costs to be netted against the administrative fee during an involuntary return results in inconsistent treatment between the different types of customers. Further, as noted by the IOUs, the POLR will incur incremental administration costs for returning customers irrespective of whether there are “negative” procurement costs. The administration costs associated with switching CCA/ESP customer service accounts to IOU POLR service are

¹²⁰ D.13-01-021 at 31.

¹²¹ Cal Advocates OB at 8-9.

recovered through service fees designed to recover the costs from the CCA/ESP or customer who causes the IOU to incur the cost (i.e., cost causation-based service fees), which are separate from IOU procurement rates. Unless the actual administrative costs are tracked at the time of POLR service, failing to include minimum administrative costs in the FSR calculation will result in actual, incremental administration costs being shifted to IOU bundled customers, in conflict with Section 394.25(e). For all of these reasons, negative procurement costs shall no longer be netted against the administrative costs in the FSR calculation. Since the existing FSR minimum amounts were adopted to ensure CCA and ESP viability, rather than being tied to any specific re-entry fee cost, the revised minimum FSR amount shall be the greater of the viability amounts required for CCAs and ESPs (i.e., \$147,000 for CCAs, and \$25,000 or the per customer amount required by Section 394(b)(9) for ESPs) or the calculated per-customer administrative fee.

We do not agree with CalCCA that the FSR calculation should rely on an average of SCE's and SDG&E's administrative fees while ignoring PG&E's administrative fees. Section 394.25(e) prohibits returning customers from imposing costs on IOU bundled customers and, as discussed elsewhere, the variation in fees reflects the different billing systems used by each utility. As such, the administrative fee shall continue to be based on the re-entry fee for voluntary returns in each utility's tariffs.

We also do not agree with PG&E's proposed change to establish a minimum FSR based on two months of energy procurement. First, PG&E's concern is more of a timing problem with when customer bills will be due rather than a problem with the FSR calculation itself. While PG&E's proposal would address this timing issue, as argued by CalCCA and SBUA, setting the minimum

FSR amount to two months of procurement would also result in an imbalanced and incorrect FSR equation, overstating the amount of costs relative to expected revenues. Second, we find PG&E has not sufficiently demonstrated that it lacks sufficient liquidity or access to financing to be able to serve returning load. PG&E points to example scenarios of when liquidity may be limited,¹²² but provides insufficient information concerning its current access to cash or ability to issue new debt, or how any of the example risk scenarios might impact or be managed by PG&E given its current financial position. Lastly, PG&E argues its borrowing capacity is intended to serve its bundled customers, and should not be further constrained by serving former CCA customers during an unplanned an/or emergency return.¹²³ We note that former CCA customers *are* PG&E customers, either through the continued use of PG&E's distribution and transmission facilities, or through the return to bundled service through no fault of their own.

It is not clear whether an IOU POLR would always incur financing costs for the first two months of energy procurement, particularly in instances where there is a more limited number of customers returned to POLR service. Rather than incorporate an additional financing cost component into the FSR which may not always be needed, as explained elsewhere in this decision, the IOUs serving as the POLR are authorized to establish a memorandum account to track actual incremental administration procurement costs, which may include any credit capacity or financing costs directly associated with the incremental energy procurement.

¹²² PG&E indicates financial access may be limited during quarterly earnings blackouts, if PG&E has reached its maximum blackout capacity, or if financial markets are distressed. (PG&E May 2023 RC at 4-5.)

¹²³ *Id.* at 5.

In summary, this decision eliminates the current negative procurement offset to the administrative costs in the FSR and re-entry fee calculation. The minimum FSR amount shall be the greater of the viability amounts required for CCAs and ESPs or the calculated per-customer administrative fee.

7.6. Alternatives to the Financial Security Requirement

Parties presented three alternatives to the current FSR and re-entry fee methodology in this proceeding: (1) PG&E's Insurance Pool Proposal, (2) CalCCA's Modified Insurance Pool Proposal, and (3) Cal Advocates' Alternative FSR Proposal. In the Joint Case Management Statement, parties broadly agree that the Insurance Pool Proposals should not be considered in Phase 1 of this proceeding;¹²⁴ accordingly, this decision focuses on the proposal presented by Cal Advocates.

7.6.1. Cal Advocates' Alternative Financial Security Requirement Proposal

Cal Advocates' Alternative FSR Proposal builds upon the existing FSR methodology, with modifications to address the following issues: first, Cal Advocates asserts there is a potential mismatch between the current POLR service period of six months and the incremental procurement costs forecasted using the System Average Bundled Generation (SABG rate), which is based on a full year of data inputs. The result, according to Cal Advocates, is that the POLR might not make itself whole over the six-month period. Cal Advocates' proposed solution is to extend POLR service to twelve months, thereby allowing the POLR adequate time to recover its costs.¹²⁵

¹²⁴ Joint Case Management Statement at 5.

¹²⁵ Cal Advocates July 2022 OC, Appendix at A1-A4.

Second, Cal Advocates asserts the current FSR minimum of \$147,000 is insufficient to cover even the predictable administrative costs for migrating customers, and recommends each CCA pay an administrative fee based on the corresponding number of service accounts served.

Lastly, to address a POLR's upfront liquidity needs, Cal Advocates recommends CCAs be required to post the financing costs for obtaining liquidity to cover forecast incremental procurement costs for two months of POLR service, with financing costs defined as the POLR's Weighted Average Cost of Capital (WACC) applied to the forecasted incremental procurement costs for each individual CCA.¹²⁶

In response, PG&E and SCE assert Cal Advocates' Alternative FSR Proposal does not adequately solve the identified problems or protect customers, since the proposal assumes the POLR will be able to recover all of its costs over a twelve-month period.¹²⁷ SCE further highlights that incremental procurement costs are, by far, the largest cost driver of the FSR and re-entry fees, and argues that omitting these costs from the FSR would fail to adequately protect customers as required in Section 394.25(e).¹²⁸ Lastly, SCE and CalCCA argue that financing costs to the POLR should not be defined using the IOU's WACC since, unlike capital investments, the IOUs do not earn a rate of return on their procurement activities.¹²⁹

SDG&E generally supports Cal Advocates' Alternative FSR Proposal, but agrees with PG&E and SCE that the Commission should retain as a component

¹²⁶ *Id.* at A4-A12.

¹²⁷ PG&E August 2022 RC at 22; SCE August 2022 RC at 4-8.

¹²⁸ SCE August 2022 RC at 4-8.

¹²⁹ SCE August 2022 RC at 8-9; CalCCA August 2022 RC at 15.

of the FSR the existing obligation of CCAs to cover forecasted incremental procurement costs.¹³⁰

7.6.2. Discussion

As discussed elsewhere, the minimum FSR amount is amended to reflect the per-customer administrative fee corresponding to the number of service accounts served. Cal Advocates' other recommendations are all denied for the reasons provided by parties, including: Cal Advocates' Alternative FSR Proposal assumes the POLR will be able to recover all of its costs over a twelve-month period, but does not provide any actual evidence to support this conclusion. By failing to consider the actual incremental procurement costs that may be needed by each CCA, we find Cal Advocates' Alternative FSR Proposal does not adequately protect customers as required by Section 394.25(e). Further, the WACC is not an appropriate measure to capture financing costs for incremental procurement, since the IOUs do not earn a rate of return on their procurement activities, while it is unclear, based on the record of this proceeding, whether the IOUs would require short-term financing to cover incremental procurement costs in every instance where there is an involuntary return of customers.

8. Affordability of Financial Security Requirement Amount

Historically, the FSR calculation has regularly resulted in CCA FSR postings at the minimum \$147,000 amount. However, as demonstrated during the April 4, 2023 FSR calculations workshop in this proceeding, and through SCE's May 10, 2022 advice letter filing to update the CCA FSR amounts,¹³¹ the

¹³⁰ SDG&E August 2022 RC at 5-6.

¹³¹ SCE Advice Letter 4789-E, as updated by supplemental Advice Letter 4789-E-B, included new FSR amounts ranging between \$2 - \$88 million for the CCAs within SCE's service territory. (See Energy Division's June 13, 2022 letter rejecting without prejudice SCE Advice Letter 4789-E, *Footnote continued on next page.*)

FSR amount can increase significantly depending upon the forecast energy and capacity prices used. CalCCA and Energy Division presented various proposals in this proceeding to address issues concerning affordability of the FSR amounts. These proposals are discussed below.

To avoid over-securitization, CalCCA proposes to weight the FSR amount based on the financial health of an LSE.¹³² CalCCA states that the FSR posting mechanisms have “cost and liquidity or credit consequences for the CCA and its customers” and asserts that modifying the FSR calculation without considering the likelihood of customer return results in imbalanced and costly FSR postings.¹³³ In response, SCE states the Commission already considered this issue in D.18-05-002, that there is no reasonable way to “risk adjust” for each CCA and ESP, and that Section 394.25(e) requires each LSE to post an FSR “sufficient” to cover re-entry fees.¹³⁴

To further address the cost and affordability of the FSR amount, the ED Staff Proposal introduced the following ideas for party consideration: (1) allowing CCAs to request a ramping period for any FSRs that are above a certain amount following the issuance of a final decision in Phase 1 of this proceeding; (2) allowing new CCAs to similarly request a ramping period to comply with FSRs that are above a certain amount; and (3) allowing CCAs to apply a discount

as supplemented by SCE Advice Letter 4789-E-A and 4789-E-B, at 3-4.) The increased FSR amounts were attributed, in part, to high forecast energy market prices. (CalCCA July 2022 OC at 6-11.)

¹³² CalCCA December 2021 OC at 17; also, CalCCA July 2022 OC at 19-22.

¹³³ CalCCA OB at 38; also, CalCCA May 2023 RB at 10-11.

¹³⁴ SCE August 2022 RC at 13-15.

to the FSR amount if they can demonstrate adequate hedging contracts¹³⁵ and are not considered to be at financial risk.¹³⁶

CalCCA supports ED Staff's ramping proposals.¹³⁷ PG&E supports a ramping period that enables CCAs to post an FSR adequate to fund POLR functions; however, PG&E notes a ramping period is only feasible if the FSR posting is expected to remain relatively stable for the next few FSR postings.¹³⁸ In contrast, SCE, SDG&E, Cal Advocates, and UCAN highlight that, during the ramping period the CCA would be underinsured and would pose a risk of cost shifting so long as the FSR is not fully paid, which would contravene the directive in Section 394.25(e).¹³⁹ Further, SDG&E asserts new CCAs already have the capability to "ramp" their load and financial obligations by phasing in customers over time.¹⁴⁰

No party supports ED Staff's proposal to apply a discount to the FSR amount under specified conditions, either in concept or as proposed.¹⁴¹ CalCCA asserts ED Staff's proposal contains qualifications that are overly restrictive.¹⁴² Consistent with their arguments above, SCE, SDG&E, and Cal Advocates argue

¹³⁵ Defined in the ED Staff Proposal as CCAs that substantially met their month ahead during the past year and year-ahead RA requirements, and have fixed priced contracts with a collateralized counterparty to meet at least 80% of a CCA's load forecast. (ED Staff Proposal at 12-13.)

¹³⁶ ED Staff Proposal at 12-13.

¹³⁷ CalCCA April 2023 OC at 12.

¹³⁸ PG&E April 2023 OC at 16-17.

¹³⁹ SCE April 2023 OC at 27-29; SDG&E April 2023 OC at 13-15; Cal Advocates April 2023 OC at 22-23; UCAN May 2023 RC at 4.

¹⁴⁰ SDG&E April 2023 OC at 13-15.

¹⁴¹ We note that CalCCA supports ED Staff's proposal in concept, but as proposed found some of the qualifications to be overly restrictive. (CalCCA OB at 39.)

¹⁴² CalCCA April 2023 OC at 14-16.

any discount would contravene the requirements in Section 394.25(e),¹⁴³ and would be unlikely to cover actual re-entry costs in an emergency deregistration scenario.¹⁴⁴ PG&E highlights that risk mitigation is not the same as risk elimination, while PG&E, SDG&E and UCAN assert it is unknown how CCA energy hedges might reduce a POLR's financial exposure.¹⁴⁵

8.1. Discussion

Because this decision adopts a new minimum FSR amount which will impact most, if not all, of the CCAs and ESPs, we find it reasonable to grant CCAs and ESPs some additional time to implement the first FSR posting following the changes adopted in this decision. Currently, the IOUs recalculate the FSR amounts by the 10th of May and November of each year, with CCAs and ESPs required to post any adjustments to their designated FSR amount by the following July 1 and January 1, respectively.¹⁴⁶ For the first FSR posting following the approval of the IOUs' tariffs implementing this decision, CCAs and ESPs shall be provided an additional 60 days to comply, with the first designed FSR amount due on the 1st day of the fourth month following the IOU's initial calculation.¹⁴⁷ All subsequent FSR postings shall follow the current FSR posting deadlines, by July 1 and January 1 of each year.

All other proposals to promote affordability of the FSR amount are rejected. The Commission previously addressed CalCCA's proposal to calibrate

¹⁴³ SCE April 2023 OC at 29; SDG&E April 2023 OC at 15; Cal Advocates April 2023 OC at 23-25.

¹⁴⁴ Cal Advocates April 2023 OC at 23-25.

¹⁴⁵ PG&E April 2023 OC at 17-18; SDG&E April 2023 OC at 15; UCAN May 2023 RC at 5-6.

¹⁴⁶ D.13-01-021 at 26-29; D.18-05-022 at 11.

¹⁴⁷ For example, if the IOUs' first FSR calculation following the implementation of this decision were to occur in November, then CCAs and ESPs would have until March 1, 2025, to update their first FSR posting.

the level of the FSR to the risk of CCA failure, finding that “[b]ecause this Commission cannot accurately determine in advance the likelihood (and potential impact) of failure for each individual CCA, the more prudent approach to ensuring compliance with the statute is to have the FSR match the level of reentry fee.”¹⁴⁸ This decision affirms our previous finding that the FSR should match the level of the re-entry fee to ensure compliance with Section 394.25(e). As noted by SDG&E, new CCAs already have the ability to “ramp” their load and financial obligations by phasing in customers over time, so there is no need to provide additional time to meet the required FSR amounts. Lastly, we agree with the IOUs, Cal Advocates, and UCAN that providing a discount to the FSR based on a CCA’s hedging contracts risks CCAs being underinsured, which would shift costs to IOU bundled customers in conflict with Section 394.25(e).

While we are hopeful some of the FSR generation rate changes in this decision will increase the accuracy and associated affordability of the required FSR amount, CCAs and ESPs are statutorily obligated to cover all re-entry fees necessary to avoid imposing costs on other customers, including potential increases to the FSR and re-entry fee amount due to high-priced or stressed market conditions. The occurrence of a significant increase to required FSR postings is not, by itself, a sufficient basis to reject the IOU advice letter reports updating the FSR amounts, since an LSE failure during a period of stressed market conditions would result in a corresponding cost increase for the POLR to serve returning customers.

¹⁴⁸ D.18-05-022 at 8.

9. Frequency and Timing of the Financial Security Requirement Calculation

Currently, the CCAs' and ESPs' FSR calculations are updated twice each year, in November and May, with any adjustments implemented on January 1 or July 1, respectively. Adjustments to the posted FSR amounts are only required if they exceed a ten percent deadband (i.e., if the existing FSR amount is less than 90 percent or more than 110 percent of the recalculated amount).¹⁴⁹

To better account for market volatility and changes in energy prices, Cal Advocates, SCE, and UCAN support updating the FSR calculation more frequently on a quarterly basis.¹⁵⁰ As discussed elsewhere, SCE also asserts more frequent FSR calculations would be necessary to counterbalance CalCCA's proposal to increase the data used for the FSR Energy Cost forecast, if adopted,¹⁵¹ and requests clarification to the IOUs' tariffs indicating when the FSR calculation is performed.¹⁵² PG&E supports a more frequent calculation as long as the total posted value remains based on six months of incremental costs, with a minimum floor based on two-months of incremental procurement costs.¹⁵³ SDG&E believes the Commission should consider how adopted refinements to the FSR will impact the calculation before deciding whether updates should occur quarterly or semi-annually.¹⁵⁴

¹⁴⁹ See D.13-01-021 at 25; D.18-05-022 at 10-11.

¹⁵⁰ Cal Advocates December 2021 OC at 9-10; SCE July 2022 OC at 18; UCAN August 2022 RC at 5-6.

¹⁵¹ SCE August 2022 RC at 16-17.

¹⁵² SCE July 2022 OC at 17-18.

¹⁵³ PG&E July 2022 OC at 13.

¹⁵⁴ SDG&E August 2022 RC at 2.

In contrast, CalCCA asserts that updating the FSR posting more frequently would further exacerbate the misalignment between FSR forecast costs and the PCIA costs forecast in customer rates, which are updated annually.¹⁵⁵ DACC/UC/AReM argue it would be unnecessary and administratively burdensome for the IOUs to update the ESP FSR amounts more than annually given the limited number of commercial and residential DA customers, and associated small amount of FSRs posted by ESPs.¹⁵⁶

9.1. Discussion

Overall, the changes in this decision are expected to increase the accuracy of inputs into the FSR and re-entry fee calculation. Further, as the Commission found previously, requiring semi-annual updating to the CCA and FSR amount “provides a reasonable balance between timeliness and administrative efficiency” while “[m]ore frequent updating could prove to be administratively burdensome without offsetting benefits in terms of increased accuracy or timeliness.”¹⁵⁷

We continue to believe the current semi-annual FSR schedule strikes a reasonable balance between the accuracy of the FSR amount and the administrative burden of performing and implementing the calculation; therefore, this decision maintains the current semi-annual reporting schedule for updating the FSR calculations, as well as the 10 percent deadband for CCAs and ESPs to adjust their posted FSR amounts. To ensure the calculations are applied consistently across the IOUs, the semi-annual CCA and ESP FSR calculations shall be calculated as follows:

¹⁵⁵ CalCCA August 2022 RC at 14-15.

¹⁵⁶ DACC/UC/AReM July 2022 OC at 8.

¹⁵⁷ D.13-01-021 Finding of Fact 11; also, D.18-05-022 at 10-11.

- **May:** Using April forwards, May as the calculation month, with the energy quotes and FSR posting covering June – November.
- **November:** Using October forwards, November as the calculation month, with the energy quotes and FSR posting covering December – May.

Consistent with current practice, the FSR amounts shall be recalculated by May 10 and November 10 of each year, with any adjustments to the CCA and ESP FSR amounts posted on the following January 1 or July 1, respectively.

10. Financial Security Requirement Instruments

The current acceptable forms for satisfying the FSR include letters of credit, surety bonds, and cash held by a third party are acceptable forms for satisfying the FSR.¹⁵⁸

The IOUs and Cal Advocates argue that surety bonds are often subject to litigation and thereby inadequate to serve as security instruments for the FSR,¹⁵⁹ as a result, these parties recommend removing surety bonds as an acceptable FSR instrument. CalCCA counters that the current posting mechanisms “have cost and liquidity or credit consequences for the CCA and its customers” and that “these limitations could affect an LSE’s ability to advance clean energy resource development.”¹⁶⁰ Additionally, CalCCA states Section 394.25(e) expressly allows for posting a bond.¹⁶¹

The arguments provided by the IOUs and Cal Advocates were previously considered and rejected by the Commission. As stated in D.18-05-022:

¹⁵⁸ D.18-05-022 at 10-11; also, D.13-01-021 at 25.

¹⁵⁹ PG&E July 2022 OC at 15; SCE July 2022 OC at 20; SDG&E July 2022 OC at 16; Cal Advocates August 2022 RC at 3.

¹⁶⁰ CalCCA July 2022 OC at 19-20.

¹⁶¹ CalCCA OB at 36.

[T]he language of Section 394.25(e) states that the CCA: '[S]hall post a bond or demonstrate insurance sufficient to cover those reentry fees.' The purpose of the statute appears to be more about basic financial security – ensuring that money is available – rather than liquidity. The fact that surety bonds may not be commonly used for other purposes in the energy procurement business does not control in this context, where there is express statutory language.¹⁶²

There have been no changes to Section 394.25(e) since D.18-05-022, nor do parties present any new arguments for the Commission's consideration. Accordingly, we continue to interpret Section 394.25(e) as including surety bonds, and affirm that surety bonds shall continue to be a usable FSR.

11. Cost Tracking During the Re-Entry Fee Process

In D.11-12-018 and D.18-05-022, the Commission determined that the IOU as POLR should calculate ESP and CCA re-entry fees within 60 days of the earlier of (1) the start of involuntary return, or (2) the IOU's receipt of the ESP's or CCA's written notice of involuntary return.¹⁶³ ESPs and CCAs then have an additional 15 days to remit payment. While the adopted schedule involves forecasting incremental procurement and administration costs over the six-month POLR service period, each IOU POLR is also permitted to establish a memorandum account to track actual incremental administration costs in lieu of a proxy per-service-account fee amount in the re-entry fee calculation.¹⁶⁴

The following additional options for POLR cost tracking and recovery were presented in the ED Staff Proposal: (1) authorize the IOUs to record incremental procurement and administrative costs of serving returning customers, with any net costs to be recovered through re-entry fees, and (2)

¹⁶² D.18-05-022 at 9.

¹⁶³ D.11-12-018 at 94-95; D.18-05-022 at 6-7.

¹⁶⁴ SCE OB at 58.

authorize the IOUs to only track administrative costs of serving returning customers, with this more limited tracking accomplished through adjustments to the re-entry fee during the deregistration process rather than tracking actual costs.¹⁶⁵ ED Staff identify several potential issues associated with the first option, including challenges with isolating the load, and associated procurement cost and revenue, for returning customers. In contrast, ED Staff believe it would be relatively straightforward to track incremental administrative expenditures as an adjustment to the re-entry fee calculation.¹⁶⁶

SCE, SDG&E, and CalCCA support the tracking of adjustments to the re-entry fees, rather than tracking actual costs, and SCE believes the tracking of re-entry fees and revenues could occur through a separate report rather than a new balancing account.¹⁶⁷ Further, SCE supports re-entry fees that are calculated under a transparent, tariffed methodology as a binding estimate of the incremental procurement and administration costs; however, SCE would also support allowing (but not requiring) the POLR to track actual incremental and/or procurement costs caused by a mass involuntary return.¹⁶⁸ In contrast, PG&E and Cal Advocates assert administrative and procurement costs should both be tracked to determine whether and by how much the initial re-entry fees under- or over-estimated actual costs, and to prevent cost-shifting consistent

¹⁶⁵ Specifically, ED Staff propose a balancing account be established to track the actual administrative costs incurred during the deregistration process, less the amount collected from the FSR, taking into account any adjustments made by decisions or claims that occur during the deregistration process. (ED Staff Proposal at 13-16.)

¹⁶⁶ *Ibid.*

¹⁶⁷ SCE April 2023 OC at 29-330; CalCCA April 2023 OC at 17; SDG&E April 2023 OC at 16.

¹⁶⁸ SCE April 2023 OC at 29-30.

with Section 366.2(a)(4).¹⁶⁹ These parties also argue that incremental procurement costs could dwarf administrative costs by orders of magnitude, and that the IOUs already calculate and track actual PCIA costs across multiple subaccounts and cost allocation processes.¹⁷⁰

11.1. Discussion

No party disputes ED Staff's proposal to allow the POLR to adjust the administrative component of the re-entry fee based on actual administrative costs incurred during the deregistration process; rather, PG&E, SCE and Cal Advocates also support the additional option of allowing the POLR to track actual incremental and/or procurement costs caused by a mass involuntary return.

The basic idea behind Section 394.25(e) is to ensure existing customers of an electric utility are protected from potential costs resulting from a mass involuntary return of CCA and ESP customers to the utility. While the FSR mechanism is intended to cover any resultant customer re-entry fees, and is explicitly authorized by statute for this purpose, as noted elsewhere in this decision, it is not possible to determine with absolute certainty or precision how or when any future mass involuntary return to utility service would occur. Given the potential variations in the timing and scope of a mass involuntary return of customers, this decision finds it prudent and reasonable to provide the POLR with different options to ensure compliance with Section 394.25(e). Specifically, the POLR is authorized to adjust the administrative component of the re-entry

¹⁶⁹ Section 366.2(a)(4) states: "The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation."

¹⁷⁰ PG&E April 2023 OC at 19-20; Cal Advocates OB at 11.

fee based on actual administrative costs incurred during the deregistration process. In addition, IOU POLRs are permitted, but not required, to establish one or more memorandum accounts to track actual incremental administrative and/or procurement costs, including any credit capacity or financing costs directly associated with the incremental procurement, during a mass involuntary return of customers. As noted by PG&E and Cal Advocates, the IOUs already calculate and track generation resource costs across multiple subaccounts and cost allocation processes as part of the PCIA process, indicating it should be possible to track such costs during an involuntary return of customers and transfer to a memorandum account. Any actual incremental procurement and administrative costs tracked by an IOU POLR shall be subject to Commission review and approval through a formal application process, prior to the associated costs being recovered through returning customer rates, and the respective IOU shall have the burden of demonstrating that the recorded costs are just, reasonable, and directly associated with the incremental costs to serve returning customers. All recorded costs shall be tracked in a clear and transparent manner, and may be subject to a future independent audit, as determined by the assigned Commissioner and/or assigned ALJ.

Prior to filing their respective advice letters implementing this decision, the IOUs are instructed to hold at least one meet and confer session where all parties to this proceeding are invited to participate. The purpose of the meet and confer session shall be to develop a common understanding, approach, and language to implement the various options above. Each of the IOU advice letters implementing this decision shall identify the main issues discussed during the meet and confer session(s) and explain whether and how each issue is addressed.

12. Continuity of Service During a Mass Involuntary Return Event

A significant focus of party comments in this proceeding concerns how to ensure continuity of electric service during a mass involuntary return of customers to the POLR. In addition to updates and improvements to the re-entry fee and FSR calculation, as discussed above, party comments and the ED Staff Proposal address different timing and contractual options to ensure the POLR has access to the financial liquidity and/or generation resources needed to be able to serve returning customers during a potential catastrophic CCA failure. Each of these options is discussed below.

12.1. Access to the Financial Security Requirement Instrument

Currently, the IOU POLRs are required to file a Tier 1 advice letter within 30 days of an involuntary return being initiated to notify the Commission and to provide a calculation of the customer re-entry fees. The IOUs may file a supplement to the advice letter to calculate the final re-entry fees, within 30 days of the initial advice letter submittal. The CCA (whose customers are being involuntarily returned) then has 15 days after an IOU's demand for payment to remit the calculated re-entry fees, after which the IOUs are authorized to immediately draw upon the defaulting CCA's FSR instrument in an amount not to exceed the re-entry fees. Generally, the IOUs may move forward with drawing upon the CCA's posted FSR instrument after the 15-day deadline, even if the CCA files a protest to the Tier 1 advice letter, except in limited circumstances where a CCA's FSR instrument is in the process of being replaced.¹⁷¹

¹⁷¹ Commission Resolution E-5059 at 16-17; PG&E Rule 23 at 58-63; SCE Rule 23 at 56-60; SDG&E Rule 27 at 48-49.

To address POLR liquidity needs, the ED Staff Proposal recommends the POLR be authorized to draw upon the FSR prior to the advice letter approval, with any over-drafting subject to refund. ED Staff further recommend any disputed re-entry costs, as calculated in the IOU's Tier 1 advice letter, be addressed via resolution rather than a formal Commission rulemaking.¹⁷² SDG&E supports the POLR having immediate access to the full amount of the FSR, with any excess amounts to be returned to the CCA, but also recommends building upon the existing, approved CCA deregistration tariff requirements and processes.¹⁷³

Each of the IOU's approved CCA deregistration tariffs provides that, in the event a CCA fails to make full payment of the re-entry fee within 15 days after an IOU's demand for payment, then the IOU shall be entitled to immediately draw upon the defaulting CCA's FSR instrument.¹⁷⁴ We find the existing approved tariff language to be sufficient to ensure the POLR has timely access to the FSR instrument during a mass involuntary return of customers, and do not believe further changes are necessary. This decision clarifies that any disputed re-entry costs, as calculated in the IOU's advice letter, shall be addressed via resolution rather than a formal Commission proceeding.

12.2. Energy and Capacity Hedges

To ensure the POLR has sufficient generation resources to be able to serve customers during a mass involuntary return event, parties were asked to comment on whether non-IOU LSEs should be required to carry energy hedges

¹⁷² ED Staff Proposal at 16. Resolution E-5059 specifies that "Any disputed reentry fees will be evaluated and approved in the POLR or its successor proceeding." (Resolution E-5059 at 17.)

¹⁷³ SDG&E March 2022 OC at 17-18; SDG&E April 2023 OC at 4 and Appendix A.

¹⁷⁴ SCE Rule 23 at 58; PG&E Rule 23 at 61.

that would be transferrable to the POLR during a mass involuntary return of customers or, alternatively, whether the POLR should be required to conduct advance procurement. Parties broadly oppose the establishment of an energy or capacity hedging requirement. These parties argue, among other things, that: (1) it is impossible to predict the level of procurement and potential load transfer in advance of the involuntary return of customers; (2) advance procurement/hedging would increase competition for limited capacity in already constrained markets; (3) advance procurement/hedging would be an expensive insurance policy to meet procurement objectives; (4) it is unclear how the costs of advance procurement would be allocated, especially if the advance procurement is ultimately not used to provide emergency POLR service; and (5) the Commission has no legal authority to impose hedging requirements on ESPs.¹⁷⁵

We agree there should not be an advance energy or capacity hedging for many of the reasons above, and decline to adopt such a requirement. Importantly, since it is not possible to predict the level of procurement and potential load transfer in advance of an involuntary return of customers, any advance hedging requirement could result in costly energy or capacity contracts that are not well suited to the POLR's or returning customer's actual needs at the time of a mass involuntary return to POLR service.

12.3. Contract Transfer Mechanisms

As an alternative to conducting advance procurement, parties were asked whether existing CCA energy resource contracts should be made available or

¹⁷⁵ PG&E December 2021 OC at 16; SCE December 2021 OC at 20; SDG&E December 2021 OC at 15-16; CalCCA December 2021 OC at 24; DACC/UC/AReM December 2021 OC at 4-6; Cal Advocates December 2021 OC at 11; CalCCA March 2022 OC at 12-13; DACC/UC/AReM March 2022 OC at 10; UCAN April 2022 RC at 1-2.

reassigned to the POLR during a mass involuntary return of customers through one or more contract transfer mechanisms. The different types of contract mechanisms discussed in this proceeding are briefly summarized below:

- Contract Assignment: A contract assignment clause allows a party to assign its rights and obligations under contract to another party. When the contract is assigned, the terms of the original contract remain intact and the assignor is still bound by the contract. A unilateral contract assignment clause allows assignment without the non-assigning party's consent, whereas a mutual assignment clause requires both parties to agree to the assignment.
- Contract Novation: A contract novation is similar to an assignment in that the rights and obligations of one party are transferred to another. However, a novation causes a substitution of one of the parties for a new party, requiring the creation of a new contract and completely removing a party to the original contract of any future obligations.
- Right-of-First-Refusal (ROFR): A ROFR is a contractual right that gives the holder (in this case the POLR) the option, upon a triggering event, to enter into a transaction with the CCA for the subject procurement contract before anyone else. Typically, the seller will attempt to negotiate new terms, and the holder of the ROFR has the right or opportunity to match those negotiated terms and execute an agreement before the procurement contract can be entered into the market.¹⁷⁶

SEIA/LSA and CESA support required contract novation, with the costs of subject contracts allocated solely to returning customers. As an alternative to including a specific contract novation provision into existing or new CCA contracts, SEIA/LSA recommend that, should the seller offer the energy or capacity which had been the subject of contract between the seller and the

¹⁷⁶ SDG&E March 2022 OC at 5-8; SEIA/LSA March 2022 OC at 4.

defaulting CCA to the POLR IOU, under the original contract terms, then the POLR must accept.¹⁷⁷ These parties argue that contract novation: (1) ensures continuity of service during a mass involuntary return event; (2) supports a robust and cost-effective procurement market that will benefit CCA customers, bundled POLR customers, and the larger renewable procurement market; (3) prevents projects from being sold out of state; (4) alleviates the risk of accurately calculating the component of the required CCA re-entry fee that is intended to cover incremental procurement costs which could be incurred by the POLR; and (5) eliminates the risk of cost shifts between CCA customers and bundled customers.¹⁷⁸ Further, SEIA/LSA assert its alternative proposal addresses any concerns regarding the Commission's authority to require CCAs to insert a contract novation provision into its contracts.¹⁷⁹

Cal Advocates and UCAN support the inclusion of a ROFR provision in LSE procurement contracts to provide the POLR with the option of assuming the contracts in the event of a mass involuntary return of customers, which they argue will: (1) support continuity of service, meet compliance requirements, and reduce transaction costs, especially during constrained market conditions; (2) provide the POLR an option, rather than a requirement, to assume the contracts of a failed LSE; (3) provide a lower-cost alternative to advanced procurement; and (4) be credit-positive for LSEs and their counterparties, since it will decrease risk in the event that the contracting LSE defaults.¹⁸⁰ Cal Advocates also asserts

¹⁷⁷ CESA March 2022 OC at 1-2; SEIA/LSA OB at 16-17.

¹⁷⁸ SEIA/LSA OB at 5-8; SEIA/LSA March 2022 OC at 7-8.

¹⁷⁹ SEIA/LSA OB at 17.

¹⁸⁰ Cal Advocates December 2022 OC at 11-14; Cal Advocates March 2022 OC at 7-10; UCAN December 2022 OC at 7.

the Commission has the authority to require CCAs/ESPs to include contract assignment clauses in its contracts.¹⁸¹ TURN supports the general goal of having the costs and benefits of such agreements follow customers in the event they are forcibly moved to POLR service, and suggests the Commission may want to focus any ROFR requirements on prospective contracts that have yet to be executed, rather than attempting to reform existing agreements.¹⁸²

The IOUs, CalCCA, DACC/UC/AReM, and SBUA oppose any type of contract transfer requirement. These parties argue, among other things, that: (1) the POLR may not need the procurement contracts to meet its obligations, thereby increasing customer costs and stranded cost risks; (2) forced assignments will accrue a liability assigned to the IOU's balance sheet (i.e., will have debt equivalence), which ultimately impacts customers in the form of higher costs; (3) there are existing contracts that do not contain contract assignment/novation provisions, including contracts to meet long-term RPS requirements; (4) the Commission does not review CCA or ESP contracts for reasonableness, and so cannot discharge its statutory duty to ensure that rate recovery for the costs of contracts mandatorily assumed by the POLR is just and reasonable; (5) the Commission has limited jurisdiction over CCA/ESP rates and contracts; and (6) the IOUs have no means for passing specific contract costs to a certain group of customers for years beyond POLR service, particularly if customers migrate to another provider.¹⁸³

¹⁸¹ Cal Advocates OB at 22-23.

¹⁸² TURN March 2022 OC at 6-7.

¹⁸³ PG&E March 2022 OC at 15-19; SCE March 2022 OC at 18-23; SDG&E March 2022 OC at 6-7; CalCCA March 2022 OC at 13-16.

In consideration of party comments, the ED Staff Proposal put forward three additional options for party consideration: (1) a ROFR that would require the seller to give the POLR the first opportunity to purchase the energy or capacity under contract, but would not obligate the seller to make its offer under the original contract terms; (2) a short-term unilateral assignment, and a mutual assignment clause with re-entry fee credits, whereby the seller would be required to offer to continue the contract with the POLR for the transition period; and (3) a mutual assignment clause whereby the LSE and seller agree to assign a contract to the POLR, with the contracted resource used to offset the re-entry fee.¹⁸⁴

Except for some general agreement that the POLR should be able to protect returning customers from higher costs by using resources already under contract, parties broadly oppose all three options presented by ED Staff.¹⁸⁵ Some of the arguments against the ED Staff Proposal include: the proposed options all involve renegotiation of contract terms, which would undercut the ability of a contract reassignment to provide lower costs to consumers; the placement of obligations on the seller is outside the Commission's jurisdiction; and mutual contract assignment can already be negotiated amongst parties today.¹⁸⁶

Lastly, there was significant party disagreement in this proceeding concerning whether a ROFR or contract assignment/novation clause would be enforceable if a failed LSE filed for bankruptcy. CalCCA asserts a POLR ROFR provision is unlikely to be enforceable during bankruptcy, since it would

¹⁸⁴ ED Staff Proposal at 6-9.

¹⁸⁵ Joint Case Management Statement, Appendix A.

¹⁸⁶ UCAN April 2023 OC at 3-5; SEIA/LSA April 2023 OC at 4-7; Cal Advocates April 2023 OC at 3-4; PG&E April 2023 OC at 7-8; SDG&E April 2023 OC at 9-10; SCE April 2023 OC at 24-25; PG&E April 2023 OC at 8-9.

undermine the court's jurisdiction in distributing the estate's assets or reorganizing its obligations.¹⁸⁷ In contrast, Cal Advocates believes contract assignment clauses would be enforceable in bankruptcy, and asserts that CalCCA confuses Chapter 11 bankruptcy, which covers corporate reorganization, with Chapter 9 bankruptcy, which covers CCAs and other municipalities.¹⁸⁸ Many of the other parties believe it is unclear whether contract assignment clauses would survive bankruptcy.¹⁸⁹

12.4. Discussion

This decision does not adopt any of the contract transfer clause requirements presented in this proceeding. While the Commission supports the general concept of having CCA procurement contracts made available to the POLR in the event of a mass involuntary return of customers, we find that contract assignment/novation clauses present many of the same problems as an advance hedging requirement, while it not clear, based on the record of this proceeding, how a ROFR requirement would impact CCA contracts, whether a ROFR clause requirement is needed, or whether a ROFR provision is the best means to ensure system reliability. We discuss each of these conclusions below.

Contract assignment/novation clauses, as well as the alternative proposal by SEIA/LSA, would require the IOU POLR to serve as a guarantor for CCA procurement contracts in the event of a CCA failure or program termination. Similar to an advance procurement hedge requirement, which no party supports in this proceeding, a mandatory contract assignment requirement fails to

¹⁸⁷ CalCCA March 2022 OC at 14.

¹⁸⁸ Cal Advocates OB at 20-22.

¹⁸⁹ See PG&E March 2022 OC at 17; SCE March 2022 OC at 19; SDG&E March 2022 OC at 7; TURN March 2022 OC at 6-7.

consider whether CCA contracts will actually be needed by the IOU POLR when serving returning load. The amount of energy and capacity needed during a mass involuntary return of customers to POLR service depends not only on the scale and type of customers being returned, but also on the IOU POLR's generation portfolio and market prices at the time customers are transitioned to POLR service. Since these factors are difficult to predict with any degree of certainty, mandatory contract assignment risks the IOU POLR being over-procured, with associated contract costs that are potentially unnecessary and/or above current market prices. Further, and as noted by parties, since the Commission does not review CCA or ESP contracts for reasonableness, a mandatory contract assignment requirement would circumvent the Commission's statutory obligation under Section 451 to ensure rate recovery for contracts assumed by the IOU POLR is just and reasonable.

With respect to a ROFR clause requirement, we find there is limited record in this proceeding concerning how this provision could impact CCA contracts, and to what degree. Cal Advocates argues a ROFR clause would be credit-positive for LSEs since it will decrease risk if the contracting LSE defaults. Since the ROFR imposes no obligation on the POLR to assume a contract, it is not clear why this provision would reduce the risk of contract default. Further, we agree with CalCCA that the exact impact will likely depend upon the financial status of the POLR, including its bankruptcy status, credit rating, and other factors. Parties presented limited evidentiary record in this proceeding demonstrating, with any specificity, the degree to which new or existing CCA contracts could be impacted by a ROFR clause, making it difficult to evaluate the financial and practical impacts from such a requirement. For example, it is not clear whether

and under what terms and conditions a CCA could resell the output under a contract if it contained a ROFR provision.

In addition, it is not clear, based on the record of this proceeding, whether a ROFR provision is really needed in all or some CCA contracts to ensure system reliability. In support of the different types of contract transfer mechanisms, parties often cite to potential RA needs during a catastrophic CCA failure or black swan event. The Commission's RA proceeding is tasked with ensuring the safe and reliable operation of the electric grid in real-time by providing sufficient generation resources when and where needed, and includes consideration of technical and capacity needs assessment studies by the CAISO.¹⁹⁰ Rather than adopt a blanket reliability-driven requirement in this proceeding, we find that issues concerning short-term electric system reliability are more appropriately considered and addressed in the Commission's RA proceeding.

For all these reasons, we decline to adopt any of the contract transfer clause requirements presented in this proceeding.

13. Monitoring the Financial Status of Community Choice Aggregators

Currently, there is no requirement that CCAs provide advance notice if they are in a financial position in which they may imminently default on their procurement contracts, including contracts needed for electric reliability. As public agencies, CCAs are required by law to publicly post their audited financial statements; however, these financial statements are only posted twice a year, and some CCAs do not post these documents until several months after the

¹⁹⁰ See D.04-01-050, D.04-10-035, D.05-10-042, and D.06-06-064; also, December 18, 2023 Assigned Commissioner's Scoping Memo and Ruling in R.23-10-011 at 3-7.

end of the financial period. In addition, there is currently no requirement for CCAs who are at risk of failure to inform the Commission or the POLR.¹⁹¹

In order to promote greater situational awareness for any CCA that is at risk of defaulting on its procurement obligations, and which may lead to the involuntary return of customers to POLR service, ED Staff propose at risk CCAs be subject to certain reporting requirements and obligations. Specifically, ED Staff propose CCAs are at-risk if any of the following conditions are met:

- The CCA is downgraded below investment grade credit rating;
- Days Liquidity on Hand (DLOH) is less than 45 days and Debt Service Coverage Ratio falls below 1.0;¹⁹²
- Cash reserves falls below five percent of annual expenses;
- Default on one or more procurement contracts required to meet RA requirements or to the CAISO scheduling coordinator due to non-payment;
- The CCA becomes insolvent or files for bankruptcy.

In the event one or more of the above triggers are met, ED Staff propose the CCA(s) at risk of failure or default be subject to the following obligations and reporting requirements, all of which would receive confidential treatment:¹⁹³

- Within ten days of the occurrence of any of the above conditions, the CCA shall submit a confidential letter to the Director of Energy Division.

¹⁹¹ ED Staff Proposal at 9.

¹⁹² DLOH calculates the number of days a business entity can keep up with its operating expenses with its available cash on hand, and is a standard financial metric used by credit agencies to evaluate financial health. The Debt Service Coverage Ratio measures a business entity's available cash flow to pay current debt obligations. (*Ibid.*)

¹⁹³ ED Staff consider these reporting requirements, including the initial notification letter, to necessitate confidential treatment to protect the CCA's market position in securing future procurement. (*Id.* at 10.)

- Meet with Energy Division as requested, up to one meeting per month, and provide the following information:
 - Energy and hedging contracts for the next six months with term details;
 - Status of all procurement contracts, in particular, those at risk of default;
 - Detailed financial information as requested by the Commission including, but not limited to the CCA's most recent financial statements and DLOH;
 - Plan for financial correction and/or market exit.¹⁹⁴

Parties generally agree it is appropriate for CCAs to provide some level of financial reporting to serve as an early warning system on financial problems that can lead to CCA terminations or other program failures, and most parties support or support with modifications ED Staff's proposed criteria that would trigger reporting, as well as the associated reporting requirements.

Concerning the proposed metrics that would trigger financial reporting, CalCCA recommends the CCA who triggered financial reporting be provided the opportunity to explain to Energy Division the reasoning behind the trigger. If, after the initial consultation, the CCA can demonstrate that its triggering event was not indicative of poor financial health, CalCCA suggests that Energy Division can decide not to require additional financial reporting. CalCCA also recommends several clarifying edits.¹⁹⁵ SDCP/CEA support CalCCA's recommendations. In addition, SDCP/CEA recommend the contract default trigger be eliminated from the criteria, based on arguments that the proposal exceeds the Commission's jurisdiction over CCA programs and is not a reliable

¹⁹⁴ ED Staff Proposal at 9-10.

¹⁹⁵ CalCCA OB at 43-47.

indicator of financial condition. Further, SDCP/CEA believe the credit rating requirement should be amended or eliminated to provide new CCAs a grace period, and the cash reserve threshold should be amended to a more reasonable level.¹⁹⁶

UCAN supports adding an additional trigger threshold for CCAs that provide voluntary termination notice.¹⁹⁷

Cal Advocates recommends the Commission adopt the following three conditions to trigger financial monitoring: downgrade below investment grade credit rating; DLOH is less than 45 days; or a Current Ratio of 2.0.¹⁹⁸ Cal Advocates asserts ED Staff's other proposed trigger metrics cannot be readily inferred from publicly available financial statements and involve complexities that could require the Commission to engage in potentially lengthy discussions with CCAs to understand. Cal Advocates also asserts the insolvency or bankruptcy trigger does not appear to add any warning value. In the event the five percent cash reserve trigger is retained, Cal Advocates proposes to only count cash reserves in the financial statement of the CCA itself (as opposed to a city's general fund cash reserves) to avoid potential instances of double-counting.¹⁹⁹

In addition to several clarifying edits and proposed definitions, SDG&E recommends increasing the DLOH to 90 days and increasing the Debt Service

¹⁹⁶ SDCP/CEA April 2023 OC at 2-7; Joint Case Management Statement, Appendix A.

¹⁹⁷ UCAN April 2023 OC at 5-6.

¹⁹⁸ Current Ratio measures the ratio of a CCA's current assets to its current liabilities and provides a snapshot of a CCA's near-term liquidity and ability to meet its obligations over the next year. A Current Ratio of 2.0 indicates an entity has adequate liquidity to cover twice its obligations over the next year. (Cal Advocates April 2023 OC at 11-20.)

¹⁹⁹ *Ibid.*

Coverage Ratio threshold to 1.5, and proposes additional triggers related to a CCA's Unrestricted Net Position,²⁰⁰ uncertainties in a CCA's audited financial statement, and the filing of a material lawsuit. SDG&E believes the most critical new obligation to be implemented at this point is the requirement that all CCAs register with third party credit rating agencies.²⁰¹ PG&E also provides recommended clarifications to the credit rating and cash reserves triggers.²⁰²

The IOUs and Cal Advocates recommend some form of ongoing financial reporting for CCAs, rather than financial reporting that only begins once meeting certain triggers.²⁰³ These parties support a two-tier system, with the first tier being audited financial information reported on a quarterly basis, with additional tier 2 financial reporting information required once certain triggers are met.²⁰⁴ PG&E and Cal Advocates highlight that CCAs are already required by state law to publicly post audited financial statements, and believe regular reporting of these financial statements would streamline the information-gathering process for ED.²⁰⁵ To make it more manageable for the Commission, SCE "recommends that new CCAs be prioritized for more monitoring during

²⁰⁰ Unrestricted Net Position is defined as the "net amount of the assets, deferred outflows of resources, liabilities, and deferred inflows of resources that are not included in the determination of net investment in capital assets or the restricted component of net position." (SDG&E April 2023 OC at 10-11.)

²⁰¹ SDG&E OB at 22-23.

²⁰² PG&E April 2023 OC at 9-15.

²⁰³ Joint Case Management Statement, Appendix A.

²⁰⁴ PG&E April 2023 OC at 9-15; SDG&E April 2023 OC at 12; Cal Advocates May 2023 RC at 1-3.

²⁰⁵ PG&E April 2023 OC at 12; Cal Advocates May 2023 RC at 1-3.

their first three years of service, as they are likely to pose more risk than established CCAs as a general matter.”²⁰⁶

Parties generally support, or support with modifications, ED Staff’s proposed CCA reporting requirements and obligations (based on arguments above, to be provided once a trigger has been met or on an ongoing basis).²⁰⁷ SCE recommends including information on the CCA credit facility usage and availability, and the provision of non-confidential information to the POLRs upon request.²⁰⁸ SDG&E recommends requiring forward-looking financial statements, meetings with consumer advocates and additional relevant stakeholders, and notification to the relevant POLR within five days of a CCA triggering any of the financial monitoring conditions.²⁰⁹ CalCCA recommends the Commission define criteria based on the initial triggers which, once met, would allow a CCA to stop financial reporting. Similarly, Cal Advocates recommends a CCA be allowed to graduate from financial monitoring if it does not meet any triggers for 12 consecutive months.²¹⁰

CalCCA and UCAN assert all information shared with Energy Division must be kept confidential, since the IOU acts as both a POLR and an LSE, and providing the IOU with confidential information about a potential counterparty could put CCAs at a competitive disadvantage.²¹¹ Cal Advocates and SCE

²⁰⁶ SCE April 2023 OC at 25-26.

²⁰⁷ Joint Case Management Statement, Appendix A.

²⁰⁸ SCE April 2023 OC at 27, Table IV-1.

²⁰⁹ SDG&E April 2023 OC at 12.

²¹⁰ Cal Advocates April 2023 OC at 20-21.

²¹¹ CalCCA April 2023 OC at 10-11; UCAN May 2023 RC at 3-4.

disagree that confidential treatment is necessary, and urge the Commission to err on the side of transparency.²¹²

Concerning the enforcement of timely financial reporting and disclosure, Cal Advocates recommends the Commission look to its existing reliability penalty structures, including scheduled penalties for specified violations of RA filing requirements.²¹³ PG&E recommends leveraging existing processes to delegate authority to Energy Division to oversee ongoing CCA financial reporting, such as through the existing advice letter process. If a CCA does not comply with these reporting mandates, PG&E recommends the Commission consider whether a citation program is needed, similar to the programs in place governing the RPS and RA programs.²¹⁴ CalCCA suggests the necessary financial reporting enforcement mechanisms are already covered through Rule 1.1 of the Commission's Rules of Practice and Procedure; therefore, no other form of enforcement is necessary.²¹⁵

13.1. Discussion

We agree with parties that some level of financial reporting from CCAs is reasonable and necessary to serve as an early warning system to the Commission and/or POLR on potential financial problems which could lead to a CCA's termination. Further, the Commission's existing authority to require information and reporting from CCAs is well established,²¹⁶ while Section 387(h)(1) authorizes the Commission to establish rules for all LSEs in preparation of any

²¹² Cal Advocates May 2023 RC at 4; SCE May 2023 RC at 6-7.

²¹³ Cal Advocates May 2023 OC at 21; also, Resolution E-4195.

²¹⁴ PG&E May 2023 OC at 15.

²¹⁵ CalCCA April 2023 OC at 11.

²¹⁶ See D.05-12-041 at 8-12; also, D.12-07-023 at 9.

potentially large and unplanned customer migration to ensure continued achievement of California's GHG reduction goals. The establishment of CCA financial reporting rules is critical to performing the Commission's duties in managing the involuntary return of customers.

As recommended by the IOUs and Cal Advocates, this decision adopts a two-tiered reporting structure. Under the first tier, all CCAs, regardless of their financial standing or years of operation, shall be required to provide to Energy Division a copy of their most recent audited financial information. The audited financial statement shall be provided once a year, in January or July, whichever comes earlier relative to the availability of the audited financial statement. As noted by parties, CCAs are already required by state law to publicly post audited financial statements every year, and regular reporting of these financial statements will help streamline the information-gathering process for interested parties and ED Staff. Energy Division shall post the audited financial statements received on the Commission's website.

A second, Tier 2, reporting, shall apply to CCAs that meet any of the following conditions:

- Receives a credit rating below BBB-/Baa3 from S&P & Moody's;²¹⁷

²¹⁷ Only applicable to CCAs who are downgraded from an investment grade rating to a noninvestment grade rating, as specified.

- DLOH (cash reserves) is less than 45 days,²¹⁸ and Adjusted Debt Service Coverage Ratio (cash plus lines of credit) is less than 1.0;²¹⁹
- Cash reserves for the CCA fall below 5% of annual expenses;²²⁰
- The CCA defaults on one or more procurement contracts required to meet RA requirements or to the CAISO scheduling coordinator due to non-payment;
- The CCA becomes insolvent or files for bankruptcy, or the CCA has a reasonable expectation that either event will occur.

We adopt all of ED Staff's proposed and uncontested reporting requirements. Specifically, upon meeting any of the Tier 2 reporting triggers above, the CCA shall be subject to the following requirements:

- Within 10 days of the occurrence of any of the above conditions, the CCA shall submit a letter to the Director of Energy Division to indicate which Tier 2 condition(s) has/have been triggered.
- Meet with Energy Division as requested, up to one meeting per month, and provide the following information:
 - Energy and hedging contracts for the next six months with term details;

²¹⁸ DLOH shall be calculated as: the CCA's available unrestricted cash and investments and eligible unused bank LOCs and capacity under commercial paper programs, multiplied by 365. This amount shall then be divided by the CCA's annual operating and maintenance expenses, excluding depreciation and amortization. (See CalCCA OB at 47.)

²¹⁹ Adjusted Debt Service Coverage Ratio shall be calculated as: Numerator: Annual recurring revenue plus interest income plus withdrawals from a Rate Stabilization Fund, minus recurring annual cash operating expenses and General Fund Transfers (where recurring revenue and recurring expenses exclude special, one-time items, and annual operating expenses exclude depreciation and amortization expenses). Denominator: Aggregate annual debt service (i.e., principal, interest, and fees). (*Ibid.*)

²²⁰ The measure of cash reserves must be directly tied to the CCA, and shall not consider a city's general fund cash reserves.

- Status of all procurement contracts, in particular, those at risk of default;
- Detailed financial information as requested by the Commission including, but not limited to, the CCA's most recent financial statements and DLOH;
- Plan for financial correction and/or market exit.

In response to party comments, we clarify that a CCA shall graduate from the Tier 2 reporting requirements if it does not meet any Tier 2 triggers (excepting insolvency/bankruptcy) for six consecutive months. If a CCA believes that its letter notifying Energy Division of a triggered Tier 2 condition, or any of its attendant reporting, is market sensitive, the CCA should follow regular Commission process for securing confidential treatment. Regarding the DLOH, we are not convinced an increased trigger requirement (i.e., requiring cash reserves for longer periods of time) is necessary, and therefore we retain ED Staff's proposed 45 day time period. Lastly, there is limited record in this proceeding concerning the impact or cost of requiring smaller or newly-formed CCAs to register with a third-party credit rating agency. Therefore, while all CCAs are encouraged to obtain a credit rating, we do not require all CCAs to register with a third-party credit rating agency as a condition of operation.

Finally, concerning the timely enforcement of financial reporting and disclosure, this decision adopts a penalty structure based on the existing scheduled penalty for late RA filings.²²¹ Specifically, a CCA that fails to submit a letter to Energy Division within ten days of the occurrence of any of the above Tier 2 triggering conditions shall incur a penalty of \$1,000 per incident *plus* \$500 per day for the first ten days the filing was late and \$1,000 for each day

²²¹ See Resolution E-4195, Appendix A.

thereafter. Commission Staff and the Commission may take any action provided by law to recover unpaid penalties and ensure compliance with applicable statutes and Commission orders, decisions, rules, directions, demands or requirements.

14. Registration and Deregistration

Parties were asked to comment on whether existing CCA and ESP registration and deregistration processes are adequate to manage load migration and continuity of service in light of SB 520.²²² Concerning CCA registration, CalCCA proposes the Commission enhance the implementation planning process, and lists four requirements that would apply to newly forming CCAs: (1) submission of a feasibility study and pro forma financial statement with the Implementation Plan;²²³ (2) establishment of annual assumptions to be included in the pro forma financial statement; (3) establishment of milestones for critical implementation action and review progress; and (4) submission of an updated pro forma financial statement six months prior to launch.²²⁴ Cal Advocates recommends further development of CalCCA's proposal in a future workshop.²²⁵ Beyond CalCCA's proposal, parties offered limited proposed changes to the existing registration process, or argued SB 520 does not address registration requirements for a CCA.²²⁶

²²² Scoping Memo at 5; November 23, 2023 *Administrative Law Judge's Ruling Directing Further Party Comment, Requesting Party Proposals, and Amending Procedural Schedule*, Attachment 2.

²²³ New CCAs are required to submit an Implementation Plan with the Commission that provides information regarding rates, organizational structure, operations and third party power suppliers. (D.05-12-041 at 12; also, Resolution E-4907.)

²²⁴ CalCCA March 2022 OC at 17.

²²⁵ Cal Advocates OB at 17.

²²⁶ SCE December 2021 OC at 8. Some parties recommend regular financial monitoring as part of the CCA formation process, which is discussed elsewhere in this decision.

Concerning the deregistration process, SCE, Cal Advocates, and Solana recommend the Commission adopt clear rules for transitioning RA, RPS, and IRP compliance obligations of an LSE upon its failure/market exit, including how and when the compliance obligations shift from an LSE to the POLR.²²⁷ SCE clarifies that an LSE should not be deregistered until it is no longer serving load, in accordance with the IOU's current CCA tariffs, in order to ensure ongoing consumer protections.²²⁸ SCE also requests clarification that an IOU POLR is permitted to draw on a deregistering CCA's posted FSR to recover incremental RA costs incurred by the IOU POLR when assuming the RA obligations of a CCA that deregisters before it starts serving load. SCE asserts this is appropriate to avoid cost shifting, since RA compliance involves forward obligations that inure to the CCA during the year before it begins serving load pursuant to Resolution E-4907.²²⁹ Lastly, SEA and UCAN request the Commission adopt a deregistration process to govern instances when a CCA program's customer load is voluntarily transferred to and served by another existing CCA program.²³⁰

To further clarify the deregistration process, the ED Staff Proposal includes a 'Deregistration Checklist' for LSEs to safely return customers to the POLR while maintaining compliance with all Commission programs.²³¹ The Deregistration Checklist was designed to follow existing procurement and

²²⁷ Solana December 2021 OC at 3-7; Cal Advocates December 2021 OC at 2-5; SCE December 2021 OC at 3-6.

²²⁸ SCE December 2021 OC at 5-6.

²²⁹ SCE OB at 45-46.

²³⁰ Solana July 2022 OC at 1-9; UCAN August 2022 RC at 7.

²³¹ ED Staff Proposal, Appendix A.

reporting rules and requirements in the IRP, RA, RPS, and Smart Grid proceedings,²³² and includes the following primary steps:

- (1) Initial consultation with Energy Division;
- (2) LSE and POLR coordination;
- (3) Notice of intent to deregister;
- (4) POLR files AL to set re-entry fees;
- (5) LSE informs POLR of payment plan for re-entry fees;
- (6) POLR collects funds from LSE;
- (7) Customer notification;
- (8) LSE files notice of transfer of RA obligations to POLR;
- (9) POLR submits RA filings to assume load of returned customers;
- (10) LSE files notice of transfer of IRP obligations to POLR;
- (11) LSE continues to file annual and final RPS compliance report;
- (12) LSE customer privacy requirements during deregistration;
- (13) POLR files AL to set final re-entry fee collection or reimbursement if needed; and
- (14) Letter confirming LSE deregistration.

In addition to the above steps, the ED Staff Proposal includes an ‘orderly deregistration window’ to return customers to POLR service,²³³ which ED Staff present as “an ideal window in which a CCA could deregister and in which minimal incremental procurement costs would be incurred.”²³⁴

²³² See R.20-05-003, R.19-11-009, R.18-07-003, and R.08-12-009, respectively.

²³³ ED Staff define an ‘orderly deregistration window’ as deregistration that provides the POLR sufficient, advance notice to conduct necessary administrative changes and to fulfill month-ahead RA obligations, with a deregistration period that is at least three months in duration and that does not occur during summer peak periods. (ED Staff Proposal at 4-5.)

²³⁴ ED Staff Proposal at 4-6.

Cal Advocates and CalCCA support ED Staff's proposed Deregistration Checklist. Rather than developing a new set of requirements, SDG&E and UCAN recommend incorporating the proposed Deregistration Checklist into SDG&E's existing Rule 27 tariff's requirements and processes governing CCA voluntary and involuntary service terminations (for PG&E and SCE, these tariff requirements are contained in Rule 23).²³⁵ In comments, SDG&E compares each of ED Staff's proposed checklist items against its Rule 27 requirement. DACC/UC/AReM and UCAN also recommend additional redline clarifications.²³⁶

Lastly, while parties generally support the objective of an 'orderly transition window,' several parties find ED Staff's proposal to be problematic for the following reasons: (1) there is no means or enforcement mechanism to firmly bind an LSE to follow the orderly deregistration framework; (2) a hypothetical "orderly deregistration" does reflect emergency scenarios, and it would be unrealistic to expect a CCA to control the timing during a potential bankruptcy scenario; (3) the proposed timing and definitions in Staff's proposed orderly deregistration window conflict with Rule 27; and (4) the criteria for the proposed orderly transition would reduce notification to the POLR and therefore increase the potential for an emergency, and incorrectly assume that winter prices are stable and conducive to an orderly transition.²³⁷ Finally, SDG&E asserts its

²³⁵ UCAN April 2023 OC at 2-3; SDG&E April 2023 OC at 16-18.

²³⁶ DACC/UC/AReM OB Attachment A; UCAN May 2023 RC at 6-7.

²³⁷ PG&E April 2023 OC at 6; SCE April 2023 OC at 20-21; SDG&E April 2023 OC at 4-8; UCAN April 2023 OC at 2-3.

existing Rule 27 already distinguishes between an orderly transition and emergency transition.²³⁸

14.1. Discussion

First, CalCCA's proposed CCA registration requirements are adopted. While no party contests the additional proposed registration requirements, we agree with Cal Advocates that some of CalCCA's proposals might benefit from further development. Rather than require a workshop, we direct the CCAs to file a joint Tier 2 advice letter within 90 days from the effective date of this decision to further develop CalCCA's proposal concerning the requirements that would apply to newly forming CCAs. Specifically, the advice letter filing should include an explanation of the type of annual assumptions that might be included in the pro forma financial statement, as well as example milestones for critical CCA implementation. These new requirements shall not take effect until ED Staff's disposition of the joint CCA Tier 2 advice letter.

Second, the Deregistration Process in Attachment A is adopted, and shall apply to both CCAs and ESPs. The Deregistration Process includes several modifications to the ED Staff Proposal to conform with, and ensure consistency across, the IOUs' approved tariffs governing voluntary and involuntary service terminations. For consumer protection purposes, this decision clarifies that an LSE may not deregister until it is no longer serving load.

For consumer protection purposes, LSEs are required to meet all procurement obligations while they continue to serve load.²³⁹ The current IRP, RA, and RPS procurement obligations and rules are reflected in the

²³⁸ SDG&E April 2023 OC at 4-5.

²³⁹ Section 380(c)-(k).

Deregistration Process, included in Attachment A to this decision; however, these obligations are subject to modification in their respective proceedings. Currently, LSEs must file their Month-Ahead (MA) RA requirements up to the date the LSE returns load, and the Year-Ahead requirements for the years in which they have submitted a binding load forecast. If an LSE submits a Notice of Intent to Deregister following the submission of its binding load forecast, it is financially obligated to cover the cost of its Year Ahead RA requirements. If the LSE is unable to meet its RA obligation due to bankruptcy, the RA cost shall be applied to re-entry fees. In this event, the POLR shall be required to file updated RA load forecast(s) and may request a temporary waiver, as discussed elsewhere in this decision, via a Tier 2 advice letter. Because RA compliance involves forward obligations that inure to the LSE during the year before it begins serving load, and to avoid cost shifting, the IOU POLR is permitted to draw on a deregistering CCA's/ESP's posted FSR to recover incremental RA costs incurred by the IOU POLR when assuming the RA obligations of an LSE that deregisters before it starts serving load.

We decline to adopt the deregistration window as contained in the ED Staff Proposal for all the reasons enumerated by parties. In its assertion that existing IOU tariffs already distinguish between an orderly and emergency transition, SDG&E highlights a potential area of inconsistency. Section S of SDG&E Rule 27, and Section S of SCE and PG&E Rule 23, all refer to "Voluntary CCA Service Termination," and state that CCAs shall provide at least a one-year advance written notice to the Commission and the IOU as POLR of the CCA's intention to voluntarily discontinue its CCA service.²⁴⁰ Meanwhile, individual

²⁴⁰ See SDG&E Rule 27 at 30; SCE Rule 23 at 41; PG&E Rule 23 at 47.

customers who elect to voluntarily return to IOU bundled service are only required to provide a six-month notice, while the FSR instrument itself covers the incremental procurement and administrative costs for six months of POLR service.

To ensure consistency with the different customer switching rules, the IOUs are directed to amend Section S of their CCA tariff rules to state that a CCA is *required* to provide at least a six-month advance written notice to the Commission and the IOU of the CCA's intention to discontinue its CCA service. The IOUs may further indicate in their respective tariffs that CCAs who elect to discontinue service are *encouraged* to provide at least 12 months' notice of the intent to discontinue CCA service. Further, Section S requires that CCAs provide customers with "a six-month notice and at a minimum provide a second notice during the final 60 days before the CCA's scheduled termination of service." As noted by SDG&E in comments on the proposed decision, a deregistering CCA cannot meet the requirement in Attachment A to this decision to consult with Energy Division and begin the *development* of a customer notification plan at the six-month prior mark while simultaneously meeting the Rule 27 requirement to provide customers with a full six months of advance notice of cessation of service.²⁴¹ Therefore, the IOUs shall remove the current Section S requirement that CCAs "shall provide customers with a six-month notice" but shall retain the requirement that a deregistering CCA provide customers a minimum of 60 days' notice of the CCA's termination of service. In addition, all of the IOUs' CCA tariff rules currently refer to voluntary vs. involuntary returns to IOU POLR service, both in the context of individual customers as well as CCAs as a whole. To

²⁴¹ SDG&E comments on the proposed decision at 8.

promote additional clarity and distinguish between voluntary CCA service terminations that provide the requisite six months advance notice to the POLR and ones that fail to do so, the IOUs should amend their CCA tariff and switching rules to refer to CCA voluntary service terminations as either ‘planned’ (*i.e.*, providing the full six months advance notice) or ‘unplanned’ (*i.e.*, providing less than the full six months advance notice).

Based on our initial review of the IOUs’ respective DA tariffs, it does not appear that there are similar areas of confusion or potential inconsistencies with this decision. However, the IOUs shall review their respective DA tariffs and are directed and authorized to make any clarifications and updates necessary to comply with the intent in Sections 7.5, 11, and 14 of this decision, as well as in Attachment A to this decision.

Lastly, this decision does not adopt a deregistration process or guidelines to govern instances when a CCA program’s customer load is voluntarily transferred to another existing CCA program. While we appreciate SEA’s thoughtful comments and recommendations, the issue of voluntary transfer to another CCA is outside the scope of this phase of the proceeding, which is focused on IOU POLR service. The development of guidelines or rules for voluntary transfer to another CCA program may be considered in a subsequent phase of this rulemaking.

15. 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. As of November 1, 2023, there were no public comments posted to the Docket Card for R.21-03-011.

16. Conclusion

This decision finds the existing POLR framework, defining POLR service and length of service, and the existing POLR cost recovery mechanisms to be reasonable and consistent with SB 520. Several updates are made to improve the accuracy of inputs into the FSR and re-entry fee. In addition, the IOUs as POLR are authorized, but not required, to establish one or more memorandum accounts to track actual incremental administrative and/or procurement costs during a mass involuntary return of customers. This decision also establishes a CCA financial monitoring process to provide early notice of a potential involuntary return of customers, and clarifies and/or enhances the existing rules and requirements concerning CCA and ESP registration and deregistration. Together, these changes are intended to ensure POLR cost recovery and compliance with SB 520, to promote continuity of electric service, and to prevent cost shifts between customers during a potential mass involuntary return of CCA/ESP customers to POLR service. The IOUs are directed to each file a Tier 2 Advice letter within 90 days from the effective date of this decision to implement the changes above.

17. Comments on Proposed Decision

The proposed decision (PD) of Commissioner Darcie L. Houck 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 on April 3, 2024, by PG&E, CalCCA, Cal Advocates, DACC/UC/AREM, SCE, UCAN, SBUA, and

SDG&E. Reply comments were filed on April 8, 2024, by SCE, CalCCA, PG&E, and DACC/UC/AReM.

We have carefully reviewed and considered the parties' comments and made appropriate changes to the proposed decision where warranted. We find that all further comments not specifically addressed by revisions to the proposed decision do not raise any factual, legal, or technical errors that would warrant modifications to the proposed decision.

Several parties recommend this decision require or confirm whether and when issues of RA seasonality, POLR liquidity needs/alternative FSR proposals, the development of guidelines for notifying the POLR of an imminent CCA deregistration, RA reform, and/or potential recommended legislative changes to Section 399.15(b)(5) will continue to be considered in subsequent phases of this proceeding.²⁴² This decision confirms that parties will be provided an opportunity to comment on the timing and scope of issues to be considered in subsequent phases of this proceeding. Consistent with Rule 7.3 of the Commission's Rules of Practice and Procedure, the assigned Commissioner is responsible for determining the final schedule and issues to be addressed in this proceeding.

Concerning the per-customer administrative fee, DACC/UC/AReM state that the fees for voluntary returns are clear on each IOUs' CCA tariff but that there are no analogous "re-entry" fees in the DA tariffs. Accordingly, DACC/UC/AReM request that a workshop or meet and confer session be held so that each utility can present its proposed administrative fees, explain how

²⁴² SCE PD Comments at 1-3; PG&E PD Comments at 3; SDG&E PD Comments at 6 and 13-14; UCAN PD Comments at 2-3 and 5.

they are calculated, and answer any questions from the affected ESPs.²⁴³ The per customer administrative re-entry fee are currently referenced in all of the IOUs' DA tariffs,²⁴⁴ and nothing in this decision changes how the proxy administrative fees are calculated. Further, and as explained elsewhere, the variation in each utility's per-customer administrative re-entry fee is better addressed in each utility's respective GRC. Therefore, we will not require the IOUs to present how the current proxy per customer fees are derived as part of a workshop or meet and confer session following this decision. As explained elsewhere, the new minimum FSR amount for ESPs shall be the greater of the current viability amounts (i.e., \$25,000 or the per customer amount required by Section 394(b)(9)) or the calculated per-customer administrative fee. In their respective advice letters implementing this decision, the IOUs are instructed to identify the the per customer amount required by Section 394(b)(9) as well as the applicable per-customer administrative fee, so that it is clear how the costs compare and how the minimum FSR amounts were derived.

Cal Advocates, PG&E, and SDG&E filed comments regarding the confidential treatment of documents and communications associated with CCA financial monitoring. CalCCA and SCE filed reply comments on this issue. Cal Advocates argues that the proposed decision would improperly provide for confidential treatment of information that may be publicly available and proposes two processes for public notice of a Tier 2 triggering event.²⁴⁵ In its reply comments, SCE supports Cal Advocates' position on confidentiality, and

²⁴³ DACC/UC/AReM PD Comments at 4-5.

²⁴⁴ See PG&E Electric Rule 22 at 65; SCE Electric Rule 22 at 53; and SDG&E Electric Rule 25 at 43-44.

²⁴⁵ Cal Advocates PD Comments at 1-4.

argues that the Commission should not presume that the information provided is confidential.²⁴⁶ PG&E and SDG&E request that the Commission develop a process by which the POLR can be notified when certain financial monitoring conditions are met.²⁴⁷

In its reply comments, CalCCA acknowledges that certain reportable information following a Tier 2 triggering event may ultimately become public, but counters that at the time the information is reported to Energy Division it may not have yet been publicly disclosed.²⁴⁸ As to notifying the POLR as part of the financial monitoring process, CalCCA argues that such a notice would disadvantage the CCA by granting the POLR, a competing market participant, access to information that is not publicly available.²⁴⁹ CalCCA further argues that there is insufficient record to demonstrate the benefits to the POLR of gaining access to financial monitoring information.²⁵⁰

We agree that CCAs subject to financial monitoring according to the terms of this decision must follow the regular process for securing confidential treatment of information provided to the Commission.²⁵¹ In response to comments, we remove from this proposed decision language that would predetermine the confidential treatment of financial monitoring information. This change should not be read to prejudge the confidentiality of the information provided to Energy Division, but rather that the CCA will have the same burden

²⁴⁶ SCE PD Comments at 1-2.

²⁴⁷ PG&E PD Comments at 13; SDG&E PD Comments at 6.

²⁴⁸ CalCCA PD Reply Comments at 4.

²⁴⁹ *Id.*

²⁵⁰ *Id.* at 5.

²⁵¹ This process is largely described in General Order 66-D. Also relevant here is D.21-11-029, which updates the confidentiality matrices, first adopted in D.06-06-066.

as any entity that wishes to secure confidential treatment for information provided to the Commission.

Regarding a requirement to report certain financial monitoring information to the POLR, the record is not sufficient to support a determination on this issue and it may be taken up in a subsequent phase of this proceeding.

18. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner and Ehren D. Seybert is the assigned ALJ in this proceeding.

Findings of Fact

1. In D.10-03-022, D.11-12-018, D.13-01-021, D.18-05-022, and Resolution E-5059, the Commission adopted and evolved rules governing customer migration from IOU bundled service to CCA and ESP service (and vice versa), the standards and duration of IOU POLR service, as well as the mechanisms and framework for recovery of IOU POLR costs.

2. Section 394.25(e) requires the Commission to ensure existing customers of an electric utility are protected from potential costs resulting from a mass involuntary return of CCA and ESP customers to the utility.

3. Section 387 codifies what a POLR is, specifies that the IOUs are the default POLRs in their respective service areas, and requires the Commission to ensure the designated POLR receives reasonable cost recovery.

4. The FSR and re-entry fee calculation is used to forecast the incremental administrative and procurement costs associated with six months of POLR service.

5. The current total authorized statewide cap on eligible DA load is approximately 28,800 gigawatt-hours; there is no cap on new CCA formations provided certain requirements are met.

6. Parties presented a limited number of ESP-specific proposals in this proceeding.

7. Aside from Cal Advocates' Alternative FSR Proposal to extend POLR service to one year, parties support the existing definitions, processes, and duration of POLR service contained within the IOUs' existing switching rules.

8. Maintaining the current six-month period for mass involuntarily returned customers would promote consistency and equitable treatment across the different switching rules.

9. No party in this proceeding argues that six months is insufficient for the POLR to be able to adjust its procurement portfolio to accommodate load during a mass involuntary return of customers to POLR service.

10. Section 387(c)(3) requires non-IOU LSEs who serve as the POLR to submit a viable plan for meeting all RA and RPS compliance procurement obligations, while Section 387(h) authorizes the Commission, in consultation with the CEC, to establish rules and recommend modifications to relevant regulations "to ensure continued achievement" of the State's GHG emission reduction and air quality goals.

11. No party in this proceeding recommends removing the current FSR cost components associated with RA and RPS compliance for involuntary returned customers.

12. The Commission has established a process to consider limited system and flexible RA waivers for the POLR, and considers IRP deficiencies and non-compliance on a case-by-case basis.

13. A mass involuntary return of customers is not included as one of the potential RPS waiver conditions set forth in Section 399.15(b)(5).

14. No party in this proceeding has argued that the existing tariffed cost recovery mechanisms are inadequate, or that broad changes to these mechanisms are necessary to comply with Section 387(g).

15. Except for a methodology change to the minimum FSR amount, the FSR and re-entry changes in this decision focus on improving the accuracy of different inputs into FSR and re-entry fee calculation.

16. There is general consensus among the parties in this proceeding that the FSR and re-entry fee calculation should be modified to: use the Commission's annual RA Market Price Benchmarks to forecast the costs of system and flexible RA; use the IOU POLR's system average residential and non-residential customers generation rates to forecast the IOU's generation revenues associated with each CCA; and account for the CCA customers' allocation of RA from the IOU POLR's DR and CAM resources, including resources procured by the CPE.

17. As provided in this decision, the consensus based FSR changes proposed by parties in this proceeding are expected to improve the accuracy of inputs into the FSR and re-entry fee calculation.

18. Energy Division currently allocates, as part of the CAM process, RA credits using confidential load forecast information.

19. PCIA rates address the market costs associated with legacy, vintaged PCIA resources in the IOUs' existing generation portfolio.

20. The revenues from PCIA rates are not available to pay for incremental procurement costs that may be needed during a mass involuntary return of customers.

21. No party contests the merits of the recommendation by the IOUs, Cal Advocates, and UCAN to remove the revenues associated with CCA PCIA rates from the IOU POLR's generation revenues.

22. The incorporation of known or approved rate changes could be incorporated into the FSR and re-entry fee calculation by modifying the FSR and re-entry fee template to produce monthly generation inputs.

23. Forecast energy costs in the FSR calculation are seasonally differentiated.

24. Forecast energy costs make up approximately 85 percent of the cost component of the FSR, while RA costs make up approximately 10-14 percent.

25. Parties have not proposed a seasonal RA benchmark in this proceeding with supporting evidence of its accuracy.

26. Since the IOUs' and benefitting customers' rights and obligations under VAMO are based in contract, and since LSEs are allowed to resell allocated RPS energy, the existing rights and obligations under VAMO may not automatically follow benefitting customers when migrating to and from the POLR.

27. No party in this proceeding advocates for amending existing VAMO contracts to ensure the rights and benefits migrate to the POLR during a mass involuntary return of customers.

28. Requiring all rights and obligations under VAMO to automatically and immediately follow benefitting customers in the event of a mass involuntary return of customers to POLR service by IOUs would benefit the IOU as the POLR by providing additional energy to help serve returning customers, and would provide corresponding reductions to the FSR and re-entry fee amount for CCAs and ESPs.

29. There is limited record in this proceeding concerning whether a transfer of VAMO rights and obligations to the POLR would negatively impact the broader VAMO program, or the extent to which one or more new VAMO solicitations may be held.

30. PG&E presented data in this proceeding indicating that the average of one month's forward price quotes resulted in more accurate predictions of actual CAISO settlement prices as measured by the mean squared error as compared to CalCCA's proposed simple average of the most recent three months' forward price quotes.

31. The financial hedge value from IOU owned and contracted PCIA and CAM resources is captured and recorded as market revenues in the IOU's balancing accounts before any net costs flow into bundled and unbundled customer rates.

32. CalCCA's proposal to reduce the forecast energy needed to serve returning customers incorrectly assumes that the IOUs serve their customers' energy needs directly from owned or contracted power.

33. It is not possible to determine with certainty or precision how a future mass involuntary return to utility service would occur.

34. PG&E's re-entry fee for voluntary customer returns is significantly higher than that of SCE and SDG&E.

35. The variation in the customer re-entry fee for voluntary returns reflects differences in the billing systems of each utility, including the level of automation capabilities.

36. The current FSR and re-entry fee calculation allows incremental administrative costs to be offset by negative procurement costs.

37. When attaining bundled utility service, all new customers are charged an administrative service fee which is not offset by any negative procurement costs; similarly, customers are charged an administrative fee if they voluntarily transfer from a CCA back to bundled service.

38. Allowing negative procurement costs to be netted against the administrative fee in the FSR and re-entry fee calculation results in inconsistent treatment between customers that are involuntarily returned to IOU bundled service and new customers or voluntary returns to IOU bundled service.

39. The POLR will incur incremental administration costs for returning customers irrespective of whether there are “negative” procurement costs.

40. The existing FSR minimum amounts are associated with ensuring CCA and ESP viability.

41. PG&E’s proposal to set the minimum FSR amount to two months of procurement would result in an imbalanced and incorrect FSR equation, overstating the amount of costs relative to the expected revenues.

42. PG&E provides insufficient information in this proceeding concerning its current access to cash or its ability to issue new debt, or how any of the example risk scenarios it presents in this proceeding might impact or be managed by PG&E given its current financial position.

43. Cal Advocates does not provide any evidence to demonstrate that the POLR will be able to recover any and all procurement costs associated with a mass involuntary return event over a twelve-month period.

44. The IOUs do not earn a rate of return on their procurement activities.

45. It is unclear, based on the record of this proceeding, whether the IOUs would require short-term financing to cover forecast incremental procurement costs in every instance where there is a mass involuntary return of customers.

46. Historically, the FSR calculation has regularly resulted in CCA FSR postings at the minimum \$147,000 amount; however, the FSR amount can increase significantly depending upon the forecast energy and capacity prices used.

47. The changes to the minimum FSR amount in this decision will impact most, if not all, of the CCAs and ESPs.

48. In D.18-05-022, the Commission rejected CalCCA's proposal to calibrate the level of the FSR to the risk of CCA failure.

49. New CCAs have the ability to "ramp" their load and financial obligations by phasing in customers over time.

50. Providing a discount to the FSR based on a CCA's hedging contracts risks CCAs being underinsured.

51. CCAs and ESPs are statutorily obligated to cover all re-entry fees that are necessary to avoid imposing costs on existing IOU customers.

52. Currently, CCA and ESP FSR calculations are updated twice each year, in November and May, with any adjustments implemented on January 1 and July 1, respectively.

53. In D.13-01-021 and D. 18-05-022, the Commission found that semi-annual updating of the CCA and ESP FSR amount provides a reasonable balance between timeliness and administrative efficiency.

54. No party recommended changes to the 10 percent deadband for updating the FSR amount.

55. In D.18-05-022, the Commission determined that Section 394.25(e) authorizes the use of surety bonds as a security instrument for the FSR.

56. The amount of energy and capacity needed during a mass involuntary return of customers to POLR service depends not only on the scale and type of customers being returned, but also on the IOU POLR's generation portfolio and market prices at the time customers are transitioned to POLR service.

57. Mandatory contract assignment clauses do not take into consideration whether CCA contracts will actually be needed by the IOU POLR to serve returning load.

58. The Commission does not review CCA or ESP contracts for reasonableness.

59. There is limited record in this proceeding concerning how a ROFR provision could impact CCA contracts, and to what degree.

60. It is not clear, based on the record of this proceeding, whether a ROFR provision is needed to ensure system reliability, and if so, for what level and type of CCA contracts.

61. The Commission's RA proceeding is tasked with ensuring the safe and reliable operation of the electric grid in real-time by providing sufficient generation resources when and where needed, and includes consideration of technical and capacity needs assessment studies by the CAISO.

62. No party disputes the merits of ED Staff's proposal to allow the POLR to adjust the administrative component of the re-entry fee based on actual administrative costs incurred during the deregistration process.

63. The IOUs currently calculate and track generation resource costs across multiple subaccounts and cost allocation processes as part of the PCIA process.

64. In the event of a mass involuntary return of customers, CCAs have 15 days from an IOU's demand for payment to remit the calculated re-entry fees, after which the IOUs are authorized to immediately draw upon the defaulting CCA's FSR instrument in an amount not to exceed the re-entry fees.

65. No party contests ED Staff's recommendation to address disputed re-entry fees in the IOU's Tier 1 advice letter (following an involuntary return) through a resolution rather than a formal Commission proceeding.

66. Parties generally agree it is appropriate for CCAs to provide some level of financial reporting to serve as an early warning system on financial problems that can lead to CCA terminations or other program failures.

67. Most parties support, or support with modifications, ED Staff's proposed criteria that would trigger CCA reporting, as well as the associated reporting requirements.

68. The Commission's existing authority to require information and reporting from CCAs is well established.

69. CCAs are required by state law to publicly post audited financial statements and do so once per year.

70. Regular reporting of a CCA's financial statements will help streamline the information-gathering process for interested parties and ED Staff.

71. No party contests ED Staff's proposed Tier 2 reporting requirements (i.e., the reporting required if a CCA triggers certain triggering conditions).

72. The triggering of Tier 2 financial reporting, as described in this decision, is not a guarantee that CCA customers will be involuntarily returned to POLR service.

73. There is limited record in this proceeding concerning the impact or cost of requiring smaller or newly formed CCAs to register with a third-party credit rating agency.

74. In Resolution E-4195, the Commission adopted a penalty structure for late RA filings.

75. No party contests CalCCA's proposal to require newly forming CCAs to submit, as part of the implementation planning process, all of the following: a feasibility study and pro forma financial statement with the Implementation Plan; establishment of annual assumptions to be included in the pro forma

financial statement; establishment of milestones for critical implementation action and review progress; and submission of an updated pro forma financial statement six months prior to launch.

76. Some of CalCCA's proposed CCA registration requirements could benefit from further development.

77. The Deregistration Process included in Attachment A of this decision reflects current IRP, RA, and RPS procurement obligations and rules.

78. RA compliance involves forward obligations that inure to the CCA during the year before it begins serving load.

79. ED Staff's proposed orderly deregistration window does not reflect emergency scenarios, contains proposed timing and definitions that conflict with the IOUs' approved CCA tariffs, and assumes that winter electric prices are more stable than summer electric prices.

80. Section S of the IOUs' respective CCA tariffs require CCAs to provide at least a one-year advance written notice to the Commission and the IOU as POLR of the CCA's intention to voluntarily discontinue its CCA service.

81. The current IOU 'switching rules' allow individual CCA and DA customers to voluntarily return to POLR service and be served directly on BPS if they provide the POLR with a six-month advance notice of their return.

82. The IOUs' respective CCA tariffs currently refer to voluntary versus involuntary returns to IOU service, both in the context of individual customers as well as CCAs as a whole.

Conclusions of Law

1. Except for changes to the minimum FSR amount, the authorization for the IOU as POLR to track actual administrative and procurement costs during a mass involuntary return of customers, and the clarifications to the deregistration

process for CCA and ESPs, this decision should not modify or add to the ESP requirements set forth in D.11-12-018 and D.13-10-001.

2. The existing definitions, processes, and duration of POLR service, as outlined in the IOUs' existing switching rules, provide a reasonable framework for addressing POLR service requirements.

3. It would be inequitable to require CCAs and ESPs to post a bond or insurance sufficient to cover the upfront costs associated with RA and RPS compliance obligations for returning customers if the POLR is provided an upfront, blanket waiver of these obligations.

4. A blanket waiver of RA, RPS, and IRP compliance obligations during POLR service is not reasonable in the context of more limited customer returns, and would be counter to the state's renewable procurement and GHG emission reduction goals.

5. Sections 387(c)(3) and (h) are interpreted to mean the Commission should ensure, to the greatest extent feasible, the continued achievement of all regulatory procurement requirements during an involuntary return of customers during POLR service.

6. RA and IRP compliance obligations should be considered on a case-by-case basis, as permitted under state law and prior Commission decisions.

7. It is not within the Commission's discretion to grant a case-by-case waiver of RPS compliance requirements for POLR service.

8. The Commission may consider, in a subsequent phase of this proceeding, proposed amendments to Section 399.15(b)(5) to address RPS compliance waivers during POLR service.

9. The established cost recovery mechanisms for IOU POLR service are reasonable and satisfy the requirement in Section 387(g) to ensure the POLR receives reasonable cost recovery.

10. The consensus-based changes to the FSR and re-entry fee calculation should be approved.

11. In the event there is a mass involuntary return of customers to POLR service, Energy Division should promptly re-allocate the returning customers' share of RA from the IOU POLR's DR and CAM resources, including resources procured by the CPE.

12. Revenues from PCIA rates of CCA customers should be removed from the IOU POLR's generation revenues in the FSR and re-entry fee calculation.

13. The IOUs as POLR should incorporate into the FSR and re-entry fee calculation any approved or known generation rate changes that will go into effect during the forward period.

14. The RPS forecast component of the FSR and re-entry fee calculation should not be modified to account for existing VAMO contracts.

15. The IOUs should be directed to file a joint Tier 2 advice letter within 90 days of the effective date of this decision, with service on this proceeding and on the RPS rulemaking (R.18-07-003 or successor proceeding), to propose proforma language that would require all rights and obligations under VAMO to automatically and immediately follow benefiting customers when migrating to IOU POLR service.

16. In the event proforma language is adopted that would require all rights and obligations under VAMO to automatically and immediately follow benefiting customers when migrating to IOU POLR service and new contracts are executed, then the IOUs should include corresponding reductions to the

forecast RPS cost in the FSR and re-entry fee calculations for CCAs with contracts containing such terms.

17. The energy cost component of the FSR and re-entry fee calculation should continue to use a one-month average.

18. The FSR calculation should continue to be updated on a semi-annual basis, as described in this decision.

19. No changes should be made to the 10 percent deadband for updating the FSR amount.

20. CalCCA's proposal to account for the hedge value of CAM and PCIA energy and proposals to account for ERRA and PABA undercollections in the FSR and re-entry fees should be rejected.

21. Changes to the per-customer administrative cost re-entry fee should be considered and addressed in each utility's individual GRC.

22. As part of any future showing for its Billing System Upgrade Project, PG&E should describe whether the project is expected to increase the level of automation associated with CCA and ESP customers returning to PG&E's bundled service.

23. As part of its next Phase 2 GRC, PG&E should identify its per-customer administrative cost re-entry fee as a separate item, describe its components, and explain how it is calculated.

24. Negative procurement costs should no longer be netted against the incremental administrative costs in the FSR and re-entry fee calculation.

25. The minimum FSR amount should be the greater of the viability amounts required for CCAs and ESPs (i.e., \$147,000 for CCAs, and \$25,000 or the per customer amount required by Section 394(b)(9) for ESPs) or the calculated per-customer administrative fee.

26. PG&E's proposal to establish a minimum FSR amount based on two months of energy procurement should be rejected.

27. Except for the changes in this decision to the minimum FSR amount, Cal Advocates' Alternative FSR Proposal should be rejected.

28. For the first FSR posting following the approval of the IOUs' tariffs implementing this decision, it is reasonable to provide CCAs and ESPs an additional 60 days to comply, with the first designated FSR amount due on the 1st day of the fourth month following the IOU's calculation.

29. The occurrence of a significant increase to the required FSR postings is not, by itself, a sufficient basis to reject the IOU advice letter reports updating the FSR amounts.

30. Surety bonds should remain an acceptable FSR instrument.

31. Given the potential variations in the timing and scope of a mass involuntary return of CCA and/or ESP customers, it is prudent and reasonable to provide the POLR with different options to ensure compliance with Section 394.25(e).

32. The POLR should be authorized, but not required, to adjust the administrative component of the re-entry fee based on the actual administrative costs incurred during the deregistration process, and to establish one or more memorandum accounts to track actual incremental administrative and/or procurement costs during a mass involuntary return of customers to POLR service.

33. If an IOU POLR establishes one or more memorandum accounts to track actual incremental procurement and administrative costs during a mass involuntary return of customers to POLR service, then the costs being tracked should be subject to Commission review and approval through a formal

application process, prior to being recovered in returning customer rates, where the respective IOU will have the burden of demonstrating that the recorded costs are just, reasonable, and directly associated with the incremental costs to serve returning customers.

34. Each of the IOUs should be instructed to file a Tier 2 advice letter within 90 days of the effective date of this decision to update their respective CCA and ESP tariffs following the direction in this decision.

35. Prior to filing their respective advice letters implementing this decision, the IOUs should hold at least one meet and confer session to discuss and develop a common understanding, approach, and language to implement the various options to track actual customer re-entry fees, as discussed in this decision.

36. The IOUs' existing CCA tariff rules provide the IOU POLR with timely access to the FSR instrument during a mass involuntary return of customers.

37. Any disputed re-entry fees, as calculated in the IOU's Tier 1 advice letter following an involuntary return, should be addressed via a Commission resolution.

38. Any disputed re-entry fees should be paid in full and subject to a refund.

39. A mandatory contract assignment requirement conflicts with the Commission's statutory obligation under Section 451 to ensure that rate recovery for any contracts assumed by the IOU POLR is just and reasonable.

40. Issues concerning short-term electric system reliability should be considered and addressed in the Commission's RA proceeding.

41. This decision should not adopt a contract transfer clause requirement.

42. It is reasonable to require CCAs to provide Energy Division with their most recent audited financial information in January or July of every year, based

on whichever comes earlier relative to the availability of the audited financial statement.

43. Energy Division should post to the Commission's website the CCA's audited financial statements.

44. It is reasonable to require CCAs to provide Energy Division with additional information, as described in this decision, if any of the Tier 2 reporting conditions in this decision have been triggered.

45. A CCA should graduate from the Tier 2 reporting requirements if it does not meet any Tier 2 triggers (excepting insolvency/bankruptcy) for six consecutive months.

46. CCAs should not be required to register with a third-party credit rating as a condition of operation.

47. It is reasonable to adopt a penalty structure, based on the current scheduled penalties for late RA filings, for CCAs that fail to submit a letter to Energy Division within 10 days of the occurrence of any of the Tier 2 triggering conditions adopted in this decision.

48. CCAs should be directed to file a joint Tier 2 advice letter within 90 days from the effective date of this decision to further develop the four additional registration requirements which CalCCA proposes to apply to newly forming CCAs.

49. The Deregistration Process included in Attachment A of this decision should be adopted and should apply to both CCAs and ESPs.

50. LSEs should be required to meet all procurement obligations while they continue to serve load.

51. To avoid cost-shifting, the IOU POLR should be permitted to draw on a deregistering CCA's posted FSR to recover incremental RA costs incurred by the

IOU POLR when assuming the RA obligations of a CCA that deregisters before it starts serving load.

52. ED Staff's proposed orderly deregistration window should not be adopted.

53. To ensure consistency with current customer 'switching rules,' the IOUs should be directed to amend Section S of their CCA tariffs to state that a CCA is required to provide at least a six-month advance written notice to the Commission and the IOU of the CCA's intention to discontinue its CCA service.

54. To distinguish between voluntary CCA service terminations that provide the requisite six months advance notice and ones that fail to do so, the IOUs should amend their CCA tariff and switching rules to refer to CCA voluntary service terminations as either 'planned' (*i.e.*, providing the full six months advance notice) or 'unplanned' (*i.e.*, providing less than the full six months advance notice).

55. The issue of voluntary transfer from one CCA to another CCA is outside the scope of Phase 1 of this proceeding.

56. This proceeding should remain open.

O R D E R

IT IS ORDERED that:

1. Updates are made to the Financial Security Requirement and re-entry fee calculation pursuant to Public Utilities Code Section 394.25(e), as described throughout this decision.

2. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively, the investor-owned utilities (IOUs)) shall each file a Tier 2 advice letter within 90 days from the effective date of this decision to implement the changes in this decision. Prior to their

respective advice letter filings, the IOUs shall hold one or more meet and confer sessions to discuss how the seasonal generation rates will be implemented.

3. Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E) are authorized to adjust the administrative component of the re-entry fee based on actual administrative costs incurred during the deregistration of a Community Choice Aggregator (CCA) or Electric Service Provider (ESP), and are authorized, but not required, to establish one or more memorandum accounts to track actual incremental administrative and/or procurement costs during a mass involuntary return of customers to Provider of Last Resort service. These costs shall be subject to audit. PG&E, SCE, and SDG&E shall hold at least one meet and confer session, where all parties to this proceeding are invited to participate, to develop a common understanding, approach, and language to implement the cost tracking options adopted in this decision prior to filing their respective Tier 2 Advice Letters implementing this decision.

4. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (collectively the investor-owned utilities, or IOUs) are directed to file a joint Tier 2 advice letter within 90 days of the effective date of this decision, with service on this proceeding and on the Renewables Portfolio Standard rulemaking, to propose proforma language that would require all rights and obligations under the Voluntary Allocation and Market Offer program to automatically and immediately follow benefiting customers when migrating to IOU Provider of Last Resort service.

5. Community Choice Aggregators are directed to file a joint Tier 2 advice letter within 90 days of the effective date of this decision to further develop the

additional registration requirements proposed by California Community Choice Association.

6. Community Choice Aggregators are required to provide Energy Division a copy of their most recent audited financial information in January or July of every year, whichever comes earlier relative to the availability of the availability of the audited financial statement.

7. A Community Choice Aggregator, upon meeting any of the Tier 2 financial triggers identified in this decision, shall be subject to the additional reporting requirements and obligations as identified in this decision.

8. Any disputed re-entry costs, as calculated in the Tier 1 advice letter filed by Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company during an involuntary return of customers to bundled utility service, shall be paid in full and will be subject to a refund as determined through a Commission resolution.

9. The deregistration processes, included as Attachment A to this decision, are adopted and apply to both Community Choice Aggregators and Electric Service Providers.

10. This proceeding remains open.

This order is effective today.

Dated April 18, 2024, at Sacramento, California.

ALICE REYNOLDS

President

DARCIE L. HOUCK

JOHN REYNOLDS

KAREN DOUGLAS

Commissioners

Commissioner Matthew Baker recused himself from this agenda item and was not part of the quorum in its consideration.

ATTACHMENT A

Deregistration Process