

Decision 07-04-007 April 12, 2007

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement
Portions of AB 117 Concerning Community
Choice Aggregation.

Rulemaking 03-10-003
(Filed October 2, 2003)

**ORDER ADOPTING MODIFICATIONS TO THE COST RESPONSIBILITY
SURCHARGE APPLICABLE TO THE CITY OF CERRITOS
COMMUNITY CHOICE AGGREGATORS**

This order adopts certain modifications to the “cost responsibility surcharge” (CRS) charged by Southern California Edison Company (SCE) to the City of Cerritos (Cerritos), which by statute is subject to the CRS applied to Community Choice Aggregators (CCAs). These changes are consistent with those adopted in Decision (D.) 06-07-030 for the CRS applied to direct access customers and municipal departing load customers.

Background

Cerritos has provided retail electric services to the local community since mid-2005 as a publicly-owned utility. Public Utilities Code Section 366.1 provides Cerritos, as owner of the Magnolia Power Project, with a right to act as a “community aggregator” and provide electric services to customers. Those customers must pay to SCE a CRS, a charge that recovers from former SCE customers costs SCE incurred on their behalf. Consistent with an agreement

between Cerritos and SCE which this Commission adopted, the CRS paid by Cerritos' customers to SCE is the CRS applicable to CCA customers.¹ D.05-01-009 adopted the settlement and Resolution E-3990 approved SCE's related tariffs setting the initial CRS at \$.02. This CRS was suspended in May 2006 because the level of the charge was substantially higher than SCE's actual liabilities and the imposition of the charge was therefore resulting in a large overcollection of the charge from Cerritos. Resolution E-3990, and D.05-01-009 anticipated that overcollections and undercollections of the CRS would be "trued up" to conform to the requirement of Assembly Bill (AB) 117 that the utility collect exactly those liabilities it incurred as a result of the CCA's customers leaving the utility system. These provisions, which we have implemented in significant detail, satisfy AB 80 which applies only to owners of the Magnolia plant, now Cerritos.

Cerritos' Motion

Cerritos filed the pending motion on December 14, 2006 seeking clarification of the true-up of the CRS as it applies to Cerritos. Specifically, Cerritos wishes clarification of whether in calculating the true-up for Cerritos, SCE would use a negative indifference rate for 2006 to offset a positive indifference rate for 2005. Cerritos states this offset would apply only for the true-up period and would not involve a carry-over of a prior year's negative balance. Cerritos believes the issue is consequently distinguishable from the debate in this docket and D.06-07-030 regarding the carry-over of negative

¹ AB 117 established the rights and obligations of CCAs and the Commission has implemented the statute in this docket. No California customers are yet served by a CCA, although many cities and counties have either created a CCA or stated an intent to create one, which would permit the city or county to sell electricity directly to electricity customers within their respective jurisdictions.

balances into future CRS calculations. Cerritos observes that its customers are the only customers who have actually paid the interim CCA CRS. It also observes that the final CRS costs applicable to Cerritos' CA customers are zero for 2006, which SCE does not dispute.

SCE's Response

SCE responds that it does not dispute the need for a refund of a portion of Cerritos' payments of the CRS during 2005 and 2006. SCE, however, does not agree that Cerritos' total obligation for 2005 and 2006 is zero. SCE states Cerritos relies on D.06-07-030 to calculate its liabilities for 2005 and 2006. However, that decision established the CRS for municipal departing load for the years 2003 and 2004, which SCE states may not include the costs of procurement contracts entered into by SCE which would be recoverable from Cerritos' CA customers based on their CRS vintage. SCE observes that Cerritos' liabilities can only be established after the calculation of CRS obligations for 2005. SCE also objects to the use of an expected "negative indifference rate" for 2006 to offset expected 2005 positive CRS liabilities for Cerritos' customers. SCE observes that D.06-07-030 only adopted a negative indifference rate for undercollections. Cerritos, according to SCE, has accrued overcollections.

Discussion

D.05-01-009 adopted a settlement between Cerritos and SCE that would require the application of the CCA CRS to Cerritos. In the Commission's first policy order in this proceeding, D.04-12-046, the Commission found that the CCA CRS must be set so that a utility's ratepayers would be indifferent to the CCA's service to its customers. It also recognized that the development of the CCA CRS should follow "the lessons learned and the policies adopted" in proceedings that developed calculations and models for the CRS that applies to departing load customers. Those calculations and models are currently subjects

of R.02-01-011 and we recently addressed modifications to the CRS methodology in that docket. D.06-07-030 issued in R.02-01-011 modified the CRS methodology for municipal departing load. Subsequently, D.07-01-025 affirmed that those modifications would apply to the CCA CRS.

As a general matter, it is always been our intention that the CCA – or in this case, Cerritos – pay the utility for all liabilities incurred on behalf of CCA customers and not more. We have also found that in the context of CRS liabilities, a CCA and its customers may not be “paid” for leaving the utility’s procurement services. That is, when the CRS would be negative as a result of market conditions, CCA customers’ liability would be zero. They would not receive a refund or credit as a result of the CRS being negative. We address the dispute here with this in mind.

There is no question that SCE owes Cerritos some amount for Cerritos’ overpayments of the CRS in 2005 when Cerritos paid \$.02 kilowatt-hour (kWh) for a 2005 CRS liability that Cerritos suggests is about \$.006 kWh. However, SCE and Cerritos dispute whether that 2005 liability should be offset because the 2006 CRS fell below zero. We first address the matter of whether negative balances should be carried forward in the calculation of the CRS applicable to Cerritos, as it proposes. D.06-07-030 is the subject of petitions to modify. However, as we stated in D.07-01-025, even an interpretation of D.06-07-030 that is favorable to Cerritos would not cause a negative balance to be carried forward at this time where there is no current undercollection. SCE states it has collected too much from Cerritos rather than too little.

Moreover, as SCE states, the CRS adopted in D.06-07-030 was relevant for the period 2003 and 2004, not the periods during which Cerritos has so far operated. D.04-12-046, issued in this docket, found that Section 366.2 requires that CCA CRS liabilities must be equal to the actual costs the utility incurred on

behalf of the CCA's customers. Accordingly, the 2003-2004 CRS set for departing load cannot be a "proxy" for Cerritos' 2005-2006 CRS, as Cerritos suggests. SCE has not yet calculated the CRS for the period during which Cerritos operated and Cerritos' liabilities during that period therefore cannot be calculated.

For these reasons, we direct SCE to develop a final methodology for calculating the CCA CRS applicable to Cerritos consistent with our decisions in this docket. Because Cerritos is owed a refund, we expect SCE to complete this exercise within 30 days of the issuance of this order and to provide credits or refunds to Cerritos or its customers within 30 days thereafter. Consistent with D.07-01-025, SCE shall calculate the 2005-2006 CRS for Cerritos according to the principles adopted in D.06-07-030 and any modifications to that order.

Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Cerritos and SCE filed comments on March 19, 2007, and reply comments were filed on March 26, 2007. This order makes minor changes to the proposed decision to reflect those comments.

Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner and Kim Malcolm is the assigned ALJ in this rulemaking.

Findings of Fact

1. D.06-07-030 adopted modifications to the CRS, some of which could be applied to the CCA CRS, as anticipated by D.05-12-041 issued in this docket.

2. The Commission has addressed whether to carry-over of negative CRS balances from year-to-year in R.02-01-011 and is reviewing related petitions to modify D.06-07-030 on that subject.

3. SCE has not yet calculated a final CCA CRS for the period during which Cerritos operated.

Conclusions of Law

1. Sections 366.1 and 366.2 require that the CRS reflect all liabilities incurred by the utility on behalf of CCA customers and therefore the CRS adopted in D.06-07-030 cannot be used as a proxy for Cerritos' CRS.

2. The Commission should order SCE to calculate Cerritos' CRS for the period 2005-2006 during which Cerritos' provided procurement services to its customers as set forth herein.

3. The calculation of the CRS for Cerritos should be consistent with D.06-07-030 and orders issued in this proceeding.

4. The motion of Cerritos filed on December 14, 2006 should be denied to the extent set forth herein.

IT IS ORDERED that:

1. Southern California Edison Company shall, no later than 30 days from the effective date of this order, calculate the cost responsibility surcharge (CRS) applicable to the City of Cerritos, consistent with Decision (D.) 05-01-009 and D.07-01-025.

2. The motion of the City of Cerritos filed in this docket on December 14, 2006 is denied as set forth herein.

3. Rulemaking 03-10-003 is closed.

This order is effective today.

Dated April 12, 2007, at San Francisco, California.

MICHAEL R. PEEVEY

President
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
TIMOTHY ALAN SIMON
Commissioners