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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

| Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment. | Rulemaking 17-06-026 |
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## SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

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## SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER

### Summary

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules),[1] this Scoping Memo and Ruling (Scoping Ruling) sets forth the schedule, assigns the presiding officer, addresses the scope of this proceeding and resolves other procedural matters following the prehearing conference (PHC) held on August 31, 2017. This ruling also determines that this is a ratesetting proceeding for which hearings are necessary. The schedule set below provides for two concurrent tracks within this proceeding. Consistent with Public Utilities Code Section 1701.5(a), this proceeding is expected to be resolved within 18 months of the date of this Scoping Ruling.

The Commission opened this Rulemaking on June 29, 2017 in order to review, revise, and consider alternatives to the "Power Charge Indifference Adjustment" (PCIA). The PCIA is a mechanism adopted by the Commission as part of the ratemaking methodology developed to ensure that when electric customers of the investor-owned utilities (IOUs) depart from IOU service and receive their electricity from a non-IOU provider, those customers remain responsible for costs previously incurred on their behalf by the IOUs — but only those costs.[2]

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[1] All references to Rules are to the Commission's Rules of Practice and Procedure. These rules are available on the Commission's website at http://docs.cpuc.ca.gov/WORD_PDF/AGENDA_DECISION/143256.PDF

[2] The "IOUs" referenced in this Scoping Ruling are the three electric utilities named as Respondents to this Rulemaking: Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E).

Track 1 of the proceeding (PCIA Exemptions for CARE and Medical Baseline) will provide an opportunity for parties to submit briefs addressing the legal issues regarding exemptions from the PCIA for customers participating in the California Alternative Rates for Energy (CARE) program or who are served on medical baseline rates. Parties may also request that evidentiary hearings be held in Track 1, subject to a showing in opening briefs of disputed material issues of fact.

Track 2 (Evaluation and Possible Modification of the PCIA Methodology) will examine the current PCIA methodology and consider alternatives to that mechanism. The schedule for Track 2 includes workshops as well as evidentiary hearings, followed by briefing.

This ruling is appealable only as to category of this proceeding, pursuant to Rule 7.6.

## 1. Background

The Commission opened this Order Instituting Rulemaking (OIR or Rulemaking) to review the current PCIA. The PCIA that is in place today dates to statute enacted during the 2001 California energy crisis. After finding that "a number of factors have resulted in a rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, with statewide impact, to such a degree that it constitutes an immediate peril to the health, safety, life and property of the inhabitants of the state", the Legislature declared that "the public interest, welfare, convenience and necessity require the state to participate in markets for

the purchase and sale of power and energy".[3] The state Department of Water Resources (DWR) was authorized to enter into contracts for the purchase of electric power for delivery to retail customers of PG&E, SCE and SDG&E. In the same legislation, the Legislature directed the Commission to suspend the right of customers to enter into direct access transactions with non-IOU providers of electricity.

Without recounting the entire history of the energy crisis, it soon emerged that the DWR purchases and contracts were extremely expensive relative to post-crisis electricity costs. In its decisions implementing the new law, the Commission noted that DWR had made purchases on behalf of direct access (DA) customers who returned to bundled service during the crisis, as well as those bundled service customers who later entered into direct access contracts or arrangements.[4] For this reason, the Commission determined that there would be a significant magnitude of cost-shifting if energy crisis costs were borne solely by bundled service customers but direct access customers were not required to pay a portion of these costs that were incurred by the state on behalf of all retail end use customers in the service territories of the three utilities during the crisis.[5] The Commission ordered that "direct access surcharges or exit fees shall be developed […] so that there is an equitable allocation of the DWR costs and other costs that may be considered, and that direct access customers pay their fair

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[3] AB 1X ((Stats. 2001 (1st Extraordinary Sess.), ch. 4.).

[4] Decision (D.) 02-03-055 at 9-10. The Commission noted that direct access share of total utility load dropped to about 2% by June 2001, then reversed such that between July 1, 2001 and September 20, 2001, approximately 11% of the total electric load of the utilities had shifted from bundled service to direct access service.

[5] *Id.*, Finding of Fact 3.

share of DWR costs and non-DWR costs and bundled service customers are indifferent".[6] The Commission then adopted a "cost responsibility surcharge" (CRS) methodology intended to incorporate the relevant costs covered by that directive. As initially adopted by the Commission, the CRS incorporated a DWR power charge, the DWR Bond Charge, and an ongoing competition transition charge (CTC) whose purpose was to recover statutorily-authorized costs dating to pre-crisis electric industry restructuring.[7] As defined by the Commission at the time, the CRS measured the change in total IOU portfolio costs attributable to serving customer load that migrated from bundled to DA status.

Also in 2002 the Legislature passed and the Governor signed into law Assembly Bill (AB) 117, which authorized the creation of Community Choice Aggregators (CCAs). CCAs are governmental entities formed by cities, counties, or a combination of cities and counties in order to serve the energy requirements of their local residents and businesses. AB 117 clarified Legislative intent regarding cost recovery and cost shifting by adding Section 366 (d) (1) to the Public Utilities Code:[8]

> It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the [DWR's] electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the

[6] *Id.*, Ordering Paragraph 3, as modified by D.02-04-067.

[7] D.02-11-022 at 3-4.

[8] Pub. Util. Code, § 366 (d)(1).

> Legislature to prevent any shifting of recoverable costs between customers.

The Commission acknowledged this legislative intent in its decisions implementing AB 117, but also articulated a counterbalancing precept that continues to guide Commission decisions:[9]

> The objective of AB 117 in requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of CCA customers. Our complementary objective is to minimize the CRS (and all utility liabilities that are not required) and promote good resource planning by the utilities.

While the basic principles regarding overall cost minimization and prevention of cost shifts between customers have remained in place since the beginning of legislative and Commission efforts to equitably address the cost responsibilities surrounding departing load, more recent legislative direction reemphasizes that the Commission must ensure equity on both sides of the departing load transaction, that is, for departing load as well as remaining bundled IOU load. For example, in 2011 Senate Bill (SB) 790 added the requirement that the cost responsibility of CCA customers shall be reduced by the value of any benefits that remain with bundled service customers, unless the CCA customers are allocated a fair and equitable share of those benefits.[10] Most recently, in 2015 SB 350 added Sections 365.2 and 366.3 to the Public Utilities Code, which make explicit the dual requirements that (1) bundled service IOU customers do not experience any cost increases when other retail customers elect to receive service from other providers, or due to the implementation of a CCA

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[9] D.04-12-046 at 29.

[10] Stats. 2011, ch. 599 (amending Pub. Util. Code § 366.2).

program, and (2) customers who depart for another provider or due to formation of a CCA not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load:[11]

> Section 365.2 provides that
>
> The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.
>
> Section 366.3 provides that
>
> Bundled retail customers of an electrical corporation shall not experience any cost increase as a result of the implementation of a community choice aggregator program. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

The legislative developments summarized above have been paralleled by increased interest in PCIA matters by parties participating in Commission proceedings. The Commission's efforts to implement legislative intent reached an initial period of stability in 2006, when the Commission adopted the current PCIA-based methodology.[12] As the Commission explained,[13]

> The PCIA is intended to preserve the indifference concept adopted in D.02-11-022 for DA customers who pay the DWR power charge component of CRS. To accomplish this intent, the cost responsibility

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[11] Stats. 2015, ch. 547.

[12] *See,* D.06-07-030.

[13] *Id.* at 25.

> for ongoing CTC and the PCIA charge for DA customers who pay the DWR power charge would equal their responsibility under the indifference rate concept [plus recovery of franchise fees].

The PCIA-based methodology reflected a consensus recommendation of IOU, direct access and customer-group parties active at that time. Its central feature was a revised calculation of the required "indifference amount" that compared each utility's total power portfolio costs, expressed in cents/kWh, to a market benchmark comprised of the posted forward prices for a one-year strip of power for the coming year plus a capacity/resource adequacy adder. The active parties stated that this modified market benchmark "will allow the indifference calculation to better reflect the cost impact on the resource portfolio serving bundled customers if the DA load were to return to bundled service".[14]

In the years since adoption of the PCIA-based methodology, dissatisfaction has grown with the process of calculating the PCIA, as well as with its numerical outcome. The Commission adopts annual values for the PCIA for each electric IOU in those utilities' annual Energy Resource Recovery Account (ERRA) forecast proceeding. In the 2016 ERRA forecast proceeding of PG&E (A.15-06-001), a number of parties expressed concerns over the increase in PG&E's PCIA compared to past years and raised issues related to the availability of data used to calculate the PCIA, as well as its inputs and methodologies. In response, the Commission directed the Energy Division to host a workshop addressing those issues in Phase 2 of A.14-05-024 (PG&E's 2015 ERRA forecast

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[14] February 1, 2006 "Final Report of the Working Group to Calculate CRS Obligations Associated with Municipal Departing Load and Direct Access" at 6, entered in the record in R.02-01-011 pursuant to February 23, 2006 ALJ "Ruling Incorporating Report and Letter Into the Record and Providing for Comments Thereon."

proceeding). The workshop took place in March, 2016 and the Energy Division issued a workshop report in September, 2016.

Following the workshop the Commission noted that while there were a number of issues raised at the workshop, transparency and certainty related to the PCIA were the main concerns expressed by DA and CCA parties.[15] In response, the Commission directed the formation of a working group to be led by Sonoma Clean Power and SCE, with participation from other interested groups, on the issues of improved transparency and certainty related to the PCIA.[16] The working group met a number of times and submitted its final report on April 5, 2017.[17]

Although the participants in the workshop and working group did not reach agreement on most issues they discussed, they identified several areas for further consideration that will now be addressed in this rulemaking. The proposals and concepts raised by participants in those processes will be considered, as well as additional issues related to improvements or alternatives to the current PCIA.

## 2. Scope of the Proceeding

Pursuant to Rule 7.1(d) the June 29, 2017 OIR included a preliminary scoping memo that provided a set of preliminary guiding principles for this proceeding and preliminarily determined the issues to be considered by the

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15 D.16-09-044 at 19.

16 *Id.*, at 20 and Ordering Paragraphs 7 and 8.

17 As a result of the working group process, SCE, PG&E and SDG&E and representatives of several CCAs jointly submitted a Petition for Modification of D.06-07-030, in order to create a common PCIA calculation workpaper template in the IOUs' ERRA Forecast proceedings. The Commission adopted this template in D.17-08-026.

Commission. The OIR also directed that all respondents must file comments in response to the OIR, and provided that other interested persons may file comments as well.[18] On July 24, 2017 the Commission received comments from 28 entities or groups.[19]

In addition to these comments, prior to the August 31, 2017 prehearing conference (PHC) the following entities or groups filed PHC statements: AReM, DACC and Shell (jointly), CalCCA, CLECA, Cal Choice, EPUC, the Joint IOUs, LACCE, and WRCOG.[20]

The comments on the OIR, the PHC statements and discussion at the PHC have informed the determinations made in this Scoping Ruling.

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[18] The OIR named PG&E, SCE, SDG&E, all CCAs (see Appendix B of the OIR) and all ESPs (*see* Appendix C of the OIR) as respondents to this proceeding.

[19] Alliance for Retail Energy Markets (AReM); American Wind Energy Association (ACC); Carolyn A. Berry, Ph.D.; California Community Choice Association (CalCCA); California Large Energy Consumers Association (CLECA); Calpine PowerAmerica-CA, LLC; California Choice Energy Authority and CCA Cities (Cal Choice); City of San Diego (San Diego); Coalition for Utility Employees; Commercial Energy of California; Direct Access Customer Coalition (DACC); Energy Producers and Users Coalition (EPUC); First Solar, Inc.; Independent Energy Producers Association (IEP); SCE, PG&E and SDG&E (Joint IOUs); Just Energy Solutions; 350 Bay Area; Large-Scale Solar Association; Los Angeles Community Choice Energy; ORA; Pilot Power Group, Inc.; Public Agency Coalition (PAC); Shell Energy North America (US), L.P (Shell Energy); Solar Energy Industries Association; Tenaska California Energy Marketing; The Regents of the University of California; The Utility Reform Network; and Western Riverside Council of Governments and the Coachella Valley Association (WRCOG).

[20] The August 11, 2017 ruling that scheduled the PHC directed that PHC statements should address the following: scope of issues to be included in (or excluded from) the proceeding; need for evidentiary hearings; identification of specific material and contested issues that may require hearings, and issues for which no hearings would be required; identification of topics that could usefully be the subject of a workshop; proposed procedural schedule; appropriate category for this proceeding; discovery issues; and list and description of other matters the parties wish to address at the PHC.

### 2.1. Guiding Principles for this Rulemaking

The preliminary scoping memo proposed a set of preliminary guiding principles in order to provide a common framework for the specific tasks to be addressed in this proceeding. The OIR explained that these principles were derived from statutory instructions, prior Commission decisions, and participation of a variety of stakeholders in other proceedings and Commission forums. Parties were invited to address the following proposed guiding principles in their comments on the Rulemaking:

1. Bundled IOU customers should be neither worse off nor better off as a result of customers departing the IOU for other energy providers ("bundled customer indifference").
2. Any methodology to ensure bundled customer indifference should be transparent and verifiable, including the most open and easily accessible treatment of input data, while maintaining confidentiality of information that should remain confidential.
3. Any methodology to ensure bundled customer indifference should have reasonably predictable outcomes that promote certainty and stability for all customers within a reasonable planning horizon.
4. Any methodology to ensure bundled customer indifference should be flexible enough to maintain its accuracy and stability if the number of departing customers changes significantly.
5. Any methodology to ensure bundled customer indifference should not create unreasonable obstacles for customers of non-IOU energy providers.
6. Any methodology to ensure bundled customer indifference should be consistent with California energy policy goals and mandates.

#### 2.1.1. Final List of Guiding Principles

A number of parties suggested revisions to the principles listed above; some parties also suggested or requested that additional principles be added to

the list. Rather than summarize those suggestions and requests, a number of themes are noted here, followed by a revised list of guiding principles that reflect these themes.

First, parties emphasized that the Commission should ensure that the outcome of this proceeding reflects current statutory requirements, and requested that the Commission clearly commit to achieving that outcome. As parties noted in comments, recent statute emphasizes that the Commission's approach to cost shifts that may be created by departing load must be fair to the IOUs' bundled service customers as well as to those customers who depart IOU service for other energy providers.

Second, parties emphasized that the outcome of this proceeding should be a PCIA methodology that is transparent to all the interests impacted by the results of that methodology and, as such, should be based on non-confidential data; should capture all relevant inputs regarding IOU and CCA contributions; should be reasonably predictable; and should be "scalable" in a manner that will capture significant movement of customer load in either direction.

Third, parties addressed the concept of "stranded costs" or "above-market costs" in several ways, and the final guiding principles listed below strike a balance between those parties who cautioned against rewarding what they termed "imprudent" IOU procurement and portfolio management, at one extreme, and the response of the Joint Utilities, who caution that the Commission should not revisit issues that already have been decided in various Commission proceedings or entertain challenges to the reasonableness of the Joint Utilities' past management decisions, or existing contracts and extensions. As discussed below, this Scoping Ruling uses the term "above-market costs" to refer to costs that fall within the PCIA methodology.

Reflective of these themes, the comments of parties, and discussion at the PHC, this scoping memo provides a revised and reorganized list of principles that will be used to guide this proceeding.

First, one overall goal is established, a goal that reinforces the importance placed by the Commission on implementing statutory requirements. In order to avoid any misunderstandings or misinterpretations of the intended result of this proceeding, the language below is quoted directly from Pub. Util. Code §§ 365.2 and 366.3, the Legislature's most recent statement of its intent regarding allocation of costs to departing load:[21]

**Overall Goal of this Proceeding**

> The Commission shall ensure that bundled retail customers of an electrical corporation shall not experience any cost increases as a result of either (1) retail customers of an electrical corporation electing to receive service from other providers or (2) the implementation of a community choice aggregator program.
>
> The Commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

Second, the other guiding principles provided in the OIR are revised and reorganized to reflect the statutorily required balance between bundled load and departing load:

**Final Guiding Principles**

1. Any PCIA methodology adopted by the Commission to prevent cost increases for either bundled or departing load:
    a. should be transparent and verifiable, including the most open and easily accessible treatment of input data, while

[21] This "predicate goal" is consistent with the recommendation of the Joint Utilities as well as language suggested by PAC (PAC Comments at 4).

maintaining confidentiality of information that should remain confidential (original GP #2);

b. should have reasonably predictable outcomes that promote certainty and stability for all customers within a reasonable planning horizon (original GP #3);

c. should be flexible enough to maintain its accuracy and stability if the number of departing customers changes significantly, and to maintain its accuracy and stability if customers return to bundled-customer service (Joint IOU revision to original GP #4);

d. should not create unreasonable obstacles for customers of non-IOU energy providers (original GP #5);

e. should be consistent with California energy policy goals and mandates (original GP #6);

f. should allow alternative providers to be responsible for power procurement activities on behalf of their customers, except as expressly required by law (CalCCA proposal #7);

g. should allow an alternative provider to elect to pay for its share of above-market costs in a manner that complements the CCA's particular procurement needs and goals (CalCCA proposal #8);

h. should only include legitimately unavoidable costs and account for the IOUs' responsibility to prudently manage their generation portfolio and take all reasonable steps to minimize above-market costs (CalCCA 9 & DACC & EPUC);

i. should reflect the value of the benefits that departing customers impart to remaining bundled service customers (CalCCA proposal #10);

j. should accurately reflect and seek to preserve all short, medium, and long-term value of the resources procured by the utilities (CalCCA proposal #11); and

k. should respect the terms of existing power purchase agreements between power suppliers and IOUs (consistent with IEP and ACC proposals).

## 3. Issues Within the Scope of this Proceeding

Pursuant to Pub. Util. Code 1701.1 (b) and Rule 7.3 (a) this section of this Scoping Ruling determines the issues to be addressed by the Commission in this proceeding.

In addition to the guiding principles discussed above, the OIR also preliminarily identified a specific list of issues that could fall within the scope of this proceeding, along with examples of topics that may be considered as part of each issue. The OIR noted that the examples were intended to be illustrative and should not be considered exclusive. Parties were invited to address the following preliminary issues in their comments on the Rulemaking:

1. Implementation of SB 350 language discussing bundled customer indifference and protection of departing customers from allocation of costs not incurred on their behalf (Pub. Util. Code Sections 365.2 and 366.3).
2. Transparency of current PCIA methodology.
    a. Information sharing (e.g., load forecast methodology).
    b. Publication of IOUs' contract terms to greatest extent permitted without violating confidentiality rules.
    c. Non-disclosure agreements for confidential information.
3. Data access for current PCIA methodology.
    a. Public online source of information used for PCIA calculation.
    b. Revision of rules on access to confidential PCIA input data.
4. Review and possible modification of current PCIA methodology.
    a. Total Portfolio Cost inputs and calculation.
    b. Market Price Benchmark.
        i. Updating.
        ii. Alternative methods.

   c. Optimization of IOU portfolio management (e.g., contract extensions and contract renegotiation) to minimize stranded costs.
   d. PCIA forecasting and possible cap.
   e. Sunset of obligation to pay PCIA.
   f. Accuracy of PCIA in assuring bundled customer indifference.
5. Alternatives to PCIA framework.
   a. IOUs' Portfolio Allocation Methodology.
   b. Portfolio buy-out by CCA/ESP.
   c. Assignment of IOUs' contracts to CCA/ESP.
6. Exemptions from PCIA for CARE and Medical Baseline customers.
   a. Review and possible revision of exemptions.
   b. Consistency of treatment of exemptions among IOUs.
7. Additional considerations and statutory changes relevant to review, revision, and consideration of alternatives to the PCIA.

Based on parties' comments on these preliminary issues, and discussion at the PHC, two tracks are established in this proceeding, to be scheduled and managed concurrently.

### 3.1. Track 1: PCIA Exemptions for CARE and Medical Baseline

One of the issues identified in the preliminary scoping memo concerned exemptions from the PCIA for CARE and Medical Baseline customers. This proceeding will also examine the concerns raised by several parties in other proceedings about the status of exemptions from the PCIA for customers using California Alternative Rates for Energy and Medical Baseline rates. The scope of this track will include review and possible revision of exemptions and the consistency of treatment of exemptions between SCE, PG&E and SDG&E.

Parties at the PHC discussed whether this matter is strictly a question of legal interpretation and thus entirely amenable to resolution through legal briefing, or whether there are factual issues subject to dispute that will require evidentiary hearings. In order to provide for a procedural schedule that could allow this matter to be resolved by the Commission expeditiously, the schedule for this track will begin with legal briefing, but those briefs may include requests for evidentiary hearings. Parties believing that evidentiary hearings are necessary in this phase shall include the following information in their opening brief: 1) an explanation of why evidentiary hearings are necessary; and 2) identification of all disputed or contested material issues of fact to be addressed in hearings. The schedule for Track 1 is provided in Section 4 of this Scoping Ruling.

### 3.2. Track 2: Evaluation and Possible Modification of the PCIA Methodology

Similar to their approach to the guiding principles, a number of parties suggested revisions to the preliminary issues listed above and some parties also suggested or requested that additional issues be added to the list. Most of the suggestions and requests concerned matters related to transparency of the PCIA method and its results, and the issue of "stranded costs". The list of issues provided later in this section reflects consideration of the suggestions made in parties' comments.

With respect to the adopted scope of this proceeding, the term "stranded costs" warrants further discussion so that parties clearly understand what is within the scope of this proceeding when that topic is mentioned, and what is not within scope. The Joint IOUs suggest that

> Any reference to "stranded costs" is more accurately referred to as "above-market costs." All IOU generation portfolio costs that were

> incurred pursuant to the appropriate Commission approval process will be recovered from customers, and therefore there should not be any "stranded" costs. In this proceeding, the Commission will determine the cost allocation methodology to recover from different customer groups those costs that are in excess of the market value that the IOUs can obtain for their respective energy portfolios. (PHC Statement at 2)

On this basis, the Joint IOUs question the inclusion of "optimization of IOU portfolio management (e.g., contract extensions and contract renegotiation) to minimize stranded costs" as in issue in the OIR (*see* preliminary issue 4.c). The Joint IOUs suggest the Commission should (1) clarify that the purpose of this topic is to consider whether (as some parties have suggested) utilities should seek to assign contracts to other providers or otherwise renegotiate, liquidate, or terminate contracts in their portfolios to address departing load on a going-forward basis (Comments on OIR at 10) and/or (2) clarify that the purpose of this topic is to consider whether existing oversight of potential utility actions to assign contracts to other providers or otherwise renegotiate, liquidate, or terminate contracts in their portfolios (to the extent permitted by the underlying contracts and acceded to by the counterparties) to address departing load on a going forward basis, is sufficient or whether additional oversight is necessary (PHC Statement at 2). As expressed in both their OIR Comments and their PHC Statement (at 10-11 and 2-3, respectively), the Joint IOUs are concerned that

> Absent clarification, this topic could be misconstrued as an invitation to revisit issues that already have been decided in various Commission proceedings (such as Joint Utilities' administration of their portfolios and Least Cost Dispatch, which are considered in their respective ERRA proceedings).
>
> It also could be misused to try to challenge the reasonableness of the Joint Utilities' past management decisions, or existing contracts and extensions, which would be directly contrary to the State's

foundational post-PCIA Energy Crisis AB 57 procurement policy regime, as codified in Section 454.5 of the Public Utilities Code.

Indeed, some parties do recommend that this proceeding include within its scope the types of questions that the Joint IOUs argue should be out of bounds.[22] As made clear at the PHC, and reiterated here, the scope of this proceeding will not include revisiting prior Commission determinations regarding the reasonableness of the IOUs' past procurement actions.

However, a distinction should be made here between "revisiting" prior Commission determinations and "analyzing" the outcomes of those determinations. The underlying nature of the cost responsibility of departing load cannot be fully understood — and accepted — by those customers without fully analyzing the source of those costs, and the reasons the IOUs incurred them when they did. A number of parties make this point in their comments:

- WRCOG: Before addressing how to evaluate the cost of the stranded assets, there must first be a discussion of how to reduce them (WRCOG Comments at 3).
- EPUC: The Rulemaking will need to examine the utility procurement process in order to establish a methodology that minimizes stranded cost. Additionally, understanding of procurement is central to developing a PCIA that is sufficiently flexible to equitably address costs as additional customers elect to depart utility service (EPUC Comments at 3).
- San Diego: The City of San Diego requires a more transparent process that results in a just bearing of procurement costs for both the IOUs and all unbundled electricity consumers currently and potentially subject to the PCIA (or possible replacement). To

[22] *See*, for example, Shell Energy Comments at 2 and 4 regarding holding the IOUs "accountable", and Public Agency Comments at 3-4 referencing "unreasonable or imprudent costs."

> ensure fairness, the CPUC should require each IOU to document and disclose the inputs and calculations that determine the PCIA for its respective service territory in a detailed and replicable manner (San Diego Comments at 2).

The Joint IOUs express no real disagreement with this reasoning, having stated with respect to their (now dismissed) Portfolio Allocation Methodology application that "any proposal in this proceeding must prove it achieves true indifference through an equitable, transparent and scalable mechanism" (A.17-04-018, Joint Reply of SCE, PG&E and SDG&E to the Protests and Responses at 17). It appears there is consensus that a detailed analysis of underlying costs, supported by an accessible factual record, is required in this proceeding. The scope of issues listed below reflects that consensus. The issues also use the term "above-market costs" to refer to costs that fall within the PCIA methodology.

In summary, based on the suggestions of parties in comments and PHC statements, as well as discussion at the PHC, the list below identifies the issues that the Commission shall resolve in Track 2 of this proceeding.

1. Does the current PCIA methodology prevent cost increases for bundled customers as a result of either (1) retail customers of an electrical corporation electing to receive service from other providers or (2) the implementation of a CCA program?
2. Does the current PCIA methodology prevent cost increases for CCA customers and direct access customers as a result of an allocation of costs that were not incurred on behalf of the departing load?
3. If the answer to question 1 or 2 is "no," can the current PCIA methodology be revised to ensure that cost increases are prevented for bundled and departing load?
4. If not, what replacement methodology should the Commission adopt in order to meet the statutory requirement to ensure that bundled retail customers shall not experience any cost increases

as a result of either (1) retail customers of an electrical corporation electing to receive service from other providers or (2) the implementation of a CCA program, and that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

5. How should the Commission ensure access to necessary data and require transparency of calculations in order to enable interested parties to (1) review the current PCIA methodology and understand its results and (2) contribute to and understand the development of any possible replacement methodology?[23]
6. Should the Commission require and verify optimization of IOU portfolio management (e.g., contract extensions and contract renegotiation) in order to minimize above-market costs?
7. Should the Commission adopt alternatives to the PCIA framework, including but not limited to the following?
   a. The Joint Utilities' Portfolio Allocation Methodology;
   b. Portfolio buy-out by CCA/ESP;
   c. Assignment of IOUs' contracts to CCA/ESP; or
   d. Options for customers to prepay the PCIA on a one-time basis, to be relieved of the PCIA burden going forward.
8. Should the Commission require forecasting of the PCIA or an alternative cost allocation method for a specific future period?
9. Should the Commission "cap" the PCIA or an alternative cost allocation method?

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[23] "Limited" revisions to confidentiality rules related to the PCIA are also the subject of a recently filed Petition for Modification (PFM) of D.11-07-028 in R.05-06-040, the Commission's "Order Instituting Rulemaking to Implement Senate Bill No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)) Relating to Confidentiality of Information". The PFM was filed by CalCCA on June 13, 2017 and seeks "limited modifications to the Commission's existing confidentiality rules to allow specified employees of CCAs access to all information necessary to evaluate whether the PCIA imposed on their customers is accurate and based only upon 'unavoidable' costs, as required by statute." CalCCA PFM at 1.

10. Should the Commission adopt a sunset of the obligation to pay the PCIA or an alternative cost allocation method?
11. Additional considerations and statutory changes relevant to review, revision, and consideration of alternatives to the PCIA.

In order to develop the record in Track 2 necessary to resolve these issues, a combination of workshops and evidentiary hearings is necessary.

First, parties at the PHC indicated a willingness to act quickly to resolve threshold issues regarding data availability. The schedule below directs that a "meet and confer" process be followed in order to address and resolve these issues. The parties should submit a consensus proposal if one is reached through the "meet and confer" process. If parties fail to reach consensus, then the parties should prepare a joint filing that lays out the areas of agreement and disagreement, preferably in the form of a comparison table that will facilitate the adoption of a protective order.

Concurrently with that effort, an initial workshop can be conducted by parties to provide a review of the current PCIA methodology. It is noted that the Energy Division conducted a workshop covering the same ground relatively recently, and the PCIA working group also addressed these issues, but this proceeding should nevertheless provide parties with the opportunity to establish a common frame of reference.

Once the data access issues are resolved and parties have a common understanding of the current PCIA, a second workshop should be conducted to provide a forum for a data-based discussion of (1) cost responsibilities and (2) going-forward solutions. That workshop should be followed by a joint status update regarding the need for evidentiary hearings.

Depending on the progress reported by parties following the meet-and-confer and workshop process, a procedural ruling will be issued regarding the schedule for testimony and hearings, if determined to be necessary.

## 4. Schedule

The schedule for this proceeding is as follows:

| Track 1: PCIA Exemptions for CARE and Medical Baseline | |
|---|---|
| **Event** | **Date** |
| Concurrent opening briefs on CARE and Medical Baseline PCIA Exemptions<br>• Parties believing that evidentiary hearings are necessary in this phase shall include the following in their opening brief: 1) a brief explanation of why evidentiary hearings are necessary; and 2) identification of all disputed or contested material issues of fact to be addressed in hearings. | December 8, 2017 |
| Concurrent reply briefs (parties may include replies to requests for hearings made in opening briefs) | January 12, 2018 |
| If necessary, further procedural guidance | January 26, 2018 |
| Proposed Decision (if hearings are not held) | 90 days after reply briefs |

| Track 2: Evaluation and Possible Modification of the PCIA Methodology | |
|---|---|
| **Event** | **Date** |
| Meet and confer regarding data issues | No later than October 6, 2017 |
| Workshop #1: "Review of Current Methodology" | No later than October 16, 2017 |
| Joint filing of results of meet and confer regarding data issues | No later than October 16, 2017 |
| Protective order adopted by ALJ ruling | TBD |
| Workshop #2: "Data-based discussion of (1) cost responsibilities and (2) going-forward solutions" | No later than November 17, 2017 |

| | |
|---|---|
| Joint status update regarding the need for evidentiary hearings | December 1, 2017 |
| Ruling regarding schedule for testimony and hearings, if necessary | December 8, 2017 |
| Testimony served and submitted to Supporting Documents | March 12, 2018 |
| Concurrent rebuttal testimony served | April 2, 2018 |
| Evidentiary Hearings, if necessary<br>Commission Courtroom<br>505 Van Ness Avenue<br>San Francisco, California | April 16-20, 2018 |
| Concurrent opening briefs filed and served | May 11, 2018 |
| Request for Final Oral Argument filed and served | Concurrent with opening briefs |
| Concurrent reply briefs filed and served | May 25, 2018 |
| Proposed Decision mailed for comment | July, 2018 |

The schedule may be adjusted, as necessary, by the Administrative Law Judge (ALJ) or the assigned Commissioner.

## 5. Need for Hearings

The OIR anticipated that many of the issues in this proceeding can be addressed by filed comments or in workshops, but that some are likely to require evidentiary hearings. Therefore, the OIR preliminarily determined that hearings will be needed. (Rule 7.1(d).) This Scoping Memo and Ruling confirms that preliminary determination and makes a final determination that evidentiary hearings will be needed. (Rule 7.3 (a.).)

## 6. Categorization of the Proceeding

The OIR preliminarily determined the category of this proceeding to be quasi-legislative and noted that the preliminary category shall be confirmed or

changed by the assigned Commissioner's Scoping Memo and Ruling after consideration of comments on this preliminary determination. Based upon the input of the parties, the category of this proceeding is determined to be ratesetting. This ruling as to category is appealable pursuant to Rule 7.6.

## 7. Rules Governing *Ex Parte* Communications

In a ratesetting proceeding such as this one, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the ALJ are permitted as described in Pub. Util. Code §§ 1701.1 and 1701.3(h).[24]

The schedule for this proceeding includes a number of workshops. The workshops conducted in this proceeding will be posted on the Commission's Daily Calendar in order to inform the public that decision makers, including Commissioners or advisors and administrative law judges may attend the workshops. Pursuant to Pub. Util. Code § 1701.1(e)(1)(A), because the workshops scheduled in this scoping memo are being noticed herein to the official service list, no *ex parte* communication shall be considered to occur should a decisionmaker or an advisor be present at those workshops.

## 8. Final Oral Argument

A party in a ratesetting proceeding in which a hearing is held has the right to make a final oral argument before the Commission, if the argument is requested within the Closing Brief. (Rule 13.13.) The schedule established in Section 4 of this Scoping Ruling indicates that requests for final oral argument in Track 2 of this proceeding shall be filed and served concurrently with opening

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[24] Interested persons are advised that, to the extent that the requirements of Rule 8.1 et seq. deviate from Pub. Util. Code §§ 1701.1 and 1701.3 as amended by SB 215, effective January 1, 2017, the statutory provisions govern.

briefs. At this time, hearings are not contemplated in Track 1 but parties will have the opportunity to request hearings in their briefs. Thus, the opportunity for final oral argument in Track 1 does not exist at this time, but will be addressed as necessary in future procedural guidance.

## 9. Intervenor Compensation

A party who intends to seek an award of compensation pursuant to Pub. Util. Code §§ 1801-1812 must file and serve a notice of intent to claim compensation no later than 30 days after the August 31, 2017 PHC.[25] Under the Commission's Rules, future opportunities may arise for such filings but such an opportunity is not guaranteed.

## 10. Assigned Commissioner and Administrative Law Judge

Carla A. Peterman is the assigned Commissioner and Stephen C. Roscow and Anne E. Simon are the assigned ALJs. ALJ Roscow is the presiding officer.

## 11. Filing, Service, and Service List

In its Comments on the OIR, Choice Authority requested that the Commission clarify that respondent status in the Rulemaking attaches to "registered or operational" community choice aggregators, and not "certified" community choice aggregators. As Choice Authority explains,[26]

> The Commission's certification of a prospective CCA program's implementation plan occurs relatively early in the CCA formation process. An entity that has been "certified" as a CCA Program may be months away from becoming an operational CCA. Presumably this is why, in past rulemaking proceedings, the Commission has

[25] Pub. Util. Code § 1804(a)(1).

[26] Choice Authority comments at 9-10, citing R.15-02-020 and R.16-02-007.

attached respondent status to Community Choice Aggregators that are either "registered" or "operational."

Choice Authority further explains that requiring newly forming community choice aggregators to formally participate in a regulatory proceeding is out of step with the Commission's own process for reviewing the formation of CCAs, "because grounding formal requirements in intent alone (certification), disconnected from any [subsequent] Commission review and registration of the CCA" imposes obligations on entities too early in the process of their formation.

The distinctions drawn by Choice Authority are correct. Therefore, this Scoping Ruling clarifies that respondent status attaches only to registered community choice aggregators.

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

Persons may become a party pursuant to Rule 1.4. Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at process_office@cpuc.ca.gov to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

This proceeding will follow the electronic service protocols set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. Parties are reminded, when serving copies of documents, the document format must be consistent with the

requirements set forth in Rules 1.5 and 1.6. Additionally, Rule 1.10 requires service on the ALJ of **both** an electronic **and a paper copy** of filed or served documents.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: R.17-06-026 – PCIA Rulemaking. In addition, the party sending the e-mail should briefly describe the attached communication; for example, "Comments."

Rules 1.9 and 1.10 govern service of documents only and do not change the Rules regarding the tendering of documents for filing. Parties can find information about electronic filing of documents at the Commission's Docket Office at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission's Docket Office must include the caption approved by the Docket Office and this caption must be accurate.

## 12. Supporting Documents

The Commission's website now allows electronic submittal of supporting documents (such as testimony and workpapers supporting that testimony). The purpose of the supporting document feature is to make publicly available parties' testimony and workpapers and does not replace the requirement to serve documents on other parties in a proceeding. Therefore, in addition to that requirement, parties shall also submit copies of their testimony and workpapers in this proceeding through the "Supporting Documents" feature of the Commission's electronic filing system. Instructions for submitting supporting documents are provided in Appendix A of this ruling.

## 13. Discovery/Law and Motion Matters

Discovery will be conducted pursuant to the provisions of Article 10 of the Rules and Rule 11.3. Rule 11.3 requires parties to meet and confer before

bringing a motion to compel or limit discovery. Parties are expected to engage in timely discovery well before deadlines and are expected to raise discovery issues in a timely fashion to avoid adverse impacts on the schedule.

## 14. Outreach Efforts and Assistance in Participation in Commission Proceedings

Public Utilities Code § 1711(a) states:

> Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

The Commission's Outreach Office conducted outreach pursuant to Pub. Util Code § 1711(a) by sending the Commission's June 29, 2017 press release announcing this Rulemaking to a number of local government groups, and asking those groups to distribute the information to their members.[27]

The Commission's Public Advisor can assist persons who have questions about the Commission's procedures and how to participate in the Commission's proceedings. Any person or entity interested in participating in this proceeding who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor's Office in San Francisco by telephone at (415) 703-2074 or (866) 849-8390, or by e-mail at public.advisor@cpuc.ca.gov. The TTY number is (866) 836-7825. Written communication may be sent to Public

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[27] The Outreach Office sent the press release to the League of California Cities, the California State Association of Counties, the California Association of Councils of Governments, and the Southern California Association of Governments. The press release is available at http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M191/K560/191560774.PDF

Advisor, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102. A calendar of hearing dates, the Commission Rules, and other helpful information is also available on our website at http://www.cpuc.ca.gov.

**IT IS RULED** that:

1. The category of this proceeding is ratesetting. Appeals as to category, if any, must be filed and served within ten days from the date of this scoping memo.

2. Administrative Law Judge Stephen C. Roscow is designated as the Presiding Officer.

3. The preliminary determination that evidentiary hearings will be needed is confirmed.

4. The scope of this proceeding is set forth in Section 3 of this ruling.

5. The schedule of this proceeding is set forth in Section 4 of this ruling. The assigned Commissioner or Administrative Law Judge may adjust this schedule as necessary for efficient management and fair resolution of this proceeding.

6. Community choice aggregators that have only been certified by the Commission are not respondents to this Rulemaking. Any community choice aggregator that, subsequent to the date of this Scoping Ruling, becomes registered to provide service, shall automatically become a respondent to this Rulemaking.

7. *Ex parte* communications with the assigned Commissioner, other Commissioners, their advisors and the Administrative Law Judge are permitted as described in Public Utilities Code §§ 1701.1 and 1701.3(h).

8. Pursuant to Public Utilities Code § 1701.1 (e)(1)(A), because the workshops scheduled in this scoping memo are being noticed herein to the official service

list, no *ex parte* communication shall be considered to occur should a decisionmaker or an advisor be present at those workshops.

9. A party shall submit request for Final Oral Argument in Track 2 of this proceeding in its opening briefs, but the right to Final Oral Argument ceases to exist if hearing is not needed.

10. Parties shall submit all testimony and workpapers to supporting documents as described in Appendix A.

Dated September 25, 2017, at San Francisco, California.

/s/  CARLA J. PETERMAN
Carla J. Peterman
Assigned Commissioner

# Appendix A

## APPENDIX A

### 1. Electronic Submission and Format of Supporting Documents

The Commission's web site now allows electronic submittal of supporting documents (such as testimony and workpapers supporting that testimony).

Parties shall submit their testimony or workpapers in this proceeding through the Commission's electronic filing system.[1] Parties must adhere to the following:

- The Instructions for Using the "Supporting Documents" Feature, (http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=158653546) and
- The Naming Convention for Electronic Submission of Supporting Documents (http://docs.cpuc.ca.gov/SearchRes.aspx?docformat=ALL&DocID=100902765).
- The Supporting Document feature does not change or replace the Commission's Rules of Practice and Procedure. Parties must continue to adhere to all rules and guidelines in the Commission's Rules of Practice and Procedures including but not limited to rules for participating in a formal proceeding, filing and serving formal documents and rules for written and oral communications with Commissioners and advisors (i.e. "*ex parte* communications") or other matters related to a proceeding.

[1] These instructions are for submitting supporting documents such as testimony and workpapers in formal proceedings through the Commission's electronic filing system. Parties must follow all other rules regarding serving testimony.

Any document that needs to be formally filed such as motions, briefs, comments, etc., should be submitted using Tabs 1 through 4 in the electronic filing screen.

- The Supporting Document feature is intended to be solely for the purpose of parties submitting electronic public copies of testimony, work papers and workshop reports (unless instructed otherwise by the Administrative Law Judge), and does not replace the requirement to serve documents to other parties in a proceeding.
- Unauthorized or improper use of the Supporting Document feature will result in the removal of the submitted document by the CPUC.
- Supporting Documents should not be construed as the formal files of the proceeding. The documents submitted through the Supporting Document feature are for information only and are not part of the formal file (i.e. "record") unless accepted into the record by the Administrative Law Judge.

All documents submitted through the "Supporting Documents" Feature shall be in PDF/A format. The reasons for requiring PDF/A format are:

- Security – PDF/A prohibits the use of programming or links to external executable files. Therefore, it does not allow malicious codes in the document.
- Retention – The Commission is required by Resolution L-204, dated September 20, 1978, to retain documents in formal proceedings for 30 years. PDF/A is an independent standard and the Commission staff anticipates that programs will remain available in 30 years to read PDF/A.
- Accessibility – PDF/A requires text behind the PDF graphics so the files can be read by devices designed for those with limited sight. PDF/A is also searchable.

Until further notice, the "Supporting Documents" do not appear on the "Docket Card." In order to find the supporting documents that are submitted electronically, go to:

- Online documents, choose: "E-filed Documents,"

- Select “Supporting Document” as the document type, (do not choose testimony)
- Type in the proceeding number and hit search.

Please refer all technical questions regarding submitting supporting documents to:

- Kale Williams (kale.williams@cpuc.ca.gov) 415 703- 3251 and

Ryan Cayabyab (ryan.cayabyab@cpuc.ca.gov

**(END OF APPENDIX A)**