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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)

**ADMINISTRATIVE LAW JUDGE'S RULING SETTING FORTH
BOND REQUIREMENT PHASE OF THE PROCEEDING**

Summary

This Administrative Law Judge's Ruling solicits comments from parties on the bond requirements for Community Choice Aggregators (CCA) pursuant to Public Utilities Code section 394.25(e).¹ Further, we seek input from parties on any additional mechanisms that are needed to ensure that bundled ratepayers are not made liable for the potential costs associated with the return of CCA customers to utility bundled service as the result of a CCA's failure.

Background

In 2002, as part of its response to California's energy crisis, the Legislature enacted Assembly Bill (AB) 117. (Stats. 2002, ch. 838.) Among other things, AB 117 authorized customers to aggregate their electrical loads as members of their local community with community choice aggregators (CCA), as that term is defined by Pub. Util. Code § 331.1. The Commission opened this rulemaking on October 2, 2003 to implement certain provisions of AB 117, including procedures

¹ Unless otherwise stated, all statutory references are to the Public Utilities Code.

for a CCA to file its implementation plan with the Commission and to register with the Commission.

As part of its registration, AB 117, as codified in section 394.25(e) provides:

“If a customer of an electric service provider or a community choice aggregator is involuntarily returned to service provided by an electrical corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the electrical corporation shall be the obligation of the electric service provider or a community choice aggregator, 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. As a condition of its registration, an electric service provider or a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that an electric service provider becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.”

While section 394.25(e) requires a CCA to “post a bond or demonstrate insurance sufficient to cover . . . reentry fees” it does not specify what costs should be reflected in these fees. In Decision (D.) 04-12-046, which resolved issues on pricing and costs attributable to CCAs, we noted:

With regard to “re-entry” fees referred to in R.03-10-003, we find that the utility may charge the customer for the transfer back to the utility once that customer is again a bundled utility customer. The re-entry fee as we use the term here refers to the utility’s administrative cost of making the transfer. We will address how to calculate and allocate the cost of incremental procurement and reliability in Phase 2 of this proceeding.²

² D.04-12-046, p. 19 (*slip op.*).

In D.05-12-041, the Phase 2 decision in this proceeding, we determined that “[t]he CCA’s registration packet shall include the CCA’s service agreement with the underlying utility and evidence of insurance, self-insurance or a bond that will cover such costs as potential re-entry fees, penalties for failing to meet operational deadlines, and errors in forecasting.”³ D.05-12-041 was subsequently modified by D.08-02-013 to eliminate the requirement that the bond requirement include liability associated with CCA’s forecasting errors.⁴ The Phase 2 decision, however, did not address the methodology for calculating re-entry fees.

Pursuant to D.05-12-041, San Joaquin Valley Power Authority (SJVPA) submitted its Implementation Plan with the Commission on January 29, 2007. As part of its registration requirement, SJVPA was required to provide a bond. On December 24, 2007, the Commission issued Resolution E-4133 which addressed what bond amount should be posted by SJVPA as part of its registration requirement.⁵ Because SJVPA had not yet filed a Binding Notice of Intent (BNI)⁶, the Commission concluded that there were no “operational deadlines” to be

³ D.05-12-041, p. 18 (*slip op.*).

⁴ D.08-02-013, p. 10 (*slip op.*).

⁵ Although the Commission had determined that a CCA provide a bond as part of its registration requirement, it did not specify the amount for the bond or a methodology for calculating the bond amount.

⁶ A BNI allows a utility to take into account a CCA’s commencement date when planning to meet the utility’s load and resource adequacy requirement. If a CCA does not commence operations by the date on the BNI, the utility may need to procure additional electricity and capacity to serve the load that did not depart to the CCA as expected.

met.⁷ Further, the Commission reasoned that since the CCA is never liable to the utility for the CCA's forecasting errors, the bond amount did not need to cover this risk.⁸ Based on these determinations, and in consideration of the bond requirements for Electric Service Providers, the Commission set an interim bond amount of \$100,000 for SJVPA. However, in setting this interim amount, the Commission noted that it would be considering the bond requirements applicable to all CCAs in a formal Commission proceeding. Included in this consideration would be whether or not it was necessary to adjust SJVPA's interim bond.⁹

Pacific Gas and Electric Company (PG&E) subsequently sought rehearing of Resolution E-4133. The Commission denied PG&E's rehearing application in D.08-03-023. However, it directed that "further action be initiated in 2008 . . . to address bond requirement issues for CCAs."¹⁰

On April 25, 2008, the Commission issued D.08-04-056, which granted a petition for modification filed by SJVPA of Resolution E-4013, concerning utility tariff requirements for joint and several liabilities of members participating in a CCA program through a joint powers agency. In that decision, the Commission reiterated the need to review the bond requirement for CCAs.¹¹

⁷ Resolution E-4133, p. 7.

⁸ Resolution E-4133, p. 8.

⁹ Resolution E-4133, pp. 8-9.

¹⁰ D.08-03-023, p. 5 (*slip op.*)

¹¹ D.08-04-056, p. 7 (*slip op.*)

Discussion

D.05-12-041, as modified by D.08-02-013, states that a CCA's bond requirement should cover the following types of risks: 1) penalties for failing to meet operational deadlines and 2) potential re-entry fees. Thus, in order to determine the appropriate bond requirement for a CCA, we must consider the appropriate penalties for failing to meet operational deadlines and the methodology for calculating re-entry fees. Furthermore, we shall consider whether there are other ways to protect bundled customers from the potential costs resulting from the involuntary, en mass return of CCA customers to bundled service as the result of the failure of a CCA.¹² Finally, as we stated in D.08-03-023, the interim bond amount adopted for SJVPA in Resolution E-4133 may be adjusted as a result of our determination of the bond requirements for all CCAs.

As a preliminary matter, we need to define the term "re-entry fee." In D.04-12-046, we noted that a re-entry fee would include the administrative costs associated with the transfer of CCA customers back to bundled service, we did not at that time address what other costs, if any, should also be part of the re-entry fees. PG&E has previously stated that re-entry fees should also include the incremental procurement and reliability costs associated with the involuntary return of CCA customers to bundled service. Accordingly, we seek comments from parties on which costs should be included in re-entry fees and the extent to which these costs would apply to all CCAs.

¹² D.08-05-046, p. 8 (*slip op.*).

Once the term “re-entry fee” is defined, we will then determine the methodology for calculating the amount of re-entry fee for CCAs. Pursuant to section 394.25(e), the re-entry fee must be the amount “necessary to avoid imposing costs on other customers of the electrical corporation.”¹³ We seek comments from parties on how to determine what is a “necessary” amount and whether the necessary amount will vary depending on the level of risk presented by the CCA. That is, should different categories of CCAs be subject to different bond requirements? For example, Resolution E-4133 noted that, the likelihood of a CCA suddenly ceasing operations may be partly dependent on whether it owns its own generation facilities and the length of its power supply contracts.

A CCA’s bond requirement shall also take into consideration the appropriate penalties to be imposed for failing to meet operational deadlines. In Resolution E-4133, SJVPA’s interim bond amount of \$100,000 was determined in part because no BNI had been signed and, thus, there were no operational deadlines. However, we have yet to define what operational deadlines should be subject to penalties and the methodology for determining these penalties.

Finally, we do not want the bond requirement to serve as an impediment to the development of CCAs. As such, there is a possibility that any bond levels established may be insufficient to indemnify bundled ratepayers from the costs associated with the failure of a CCA. Therefore, this phase shall also consider whether other mechanisms should be used in addition to or in place of the bond requirement to ensure that costs resulting from the failure of a CCA are not unfairly shifted onto bundled ratepayers.

¹³ This concept of prohibiting the shifting of costs among electrical customers is also articulated in section 366.2(d).

We therefore seek comments from parties to the following questions:

1. To what extent should the CCA bond requirements be similar to the bond requirements for electric service providers?
2. How should the re-entry fee be defined? What costs should be included in the re-entry fee?
3. How should the re-entry fee be calculated? What risk factors should be considered in determining the CCA's appropriate bond level?
4. Should the CCA bond level be established as to different categories of CCAs or as to the range of load served by the CCA?
5. How should penalties for failing to meet operational deadlines be established? Should this be a fixed amount or should it vary by class of CCA? If variable, what factors should be considered?
6. What other mechanisms should be used in addition to or in place of the bond requirement to ensure that costs resulting from the failure of a CCA are not unfairly shifted onto bundled ratepayers?
7. Is it necessary to adjust SJVPA's interim bond?

We anticipate that the Commission will resolve this portion of the proceeding through written comments and replies. However, if parties believe evidentiary hearings are necessary, parties shall address in their reply comments the need for hearings, and specifically state the disputed material issues of fact for which hearings would be necessary. Parties may also include in their opening comments any additional bond requirement issues that they believe should be considered. Parties wishing to file comments to the questions raised above shall file their comments by July 14, 2008; replies shall be filed by July 28, 2008.

To ensure that all parties interested in CCA implementation issues are notified of our intent to fully consider CCA bond requirements at this time, this Ruling shall also be served on the service lists in R.02-01-011 (Direct Access Rulemaking) and R.06-02-013 (Long-Term Procurement Rulemaking). Any further proceedings (e.g., party filings, Commission decisions) will be filed and addressed in R.03-10-003. Therefore, parties who wish to participate in this phase of R.03-10-003 and are not on the service list shall file a motion to become a party pursuant to Rule 1.4.

IT IS RULED that:

1. Parties wishing to comment on the questions listed in this Ruling shall file their comments by July 14, 2008 and replies by July 28, 2008. Parties shall address in their reply comments the need for evidentiary hearings and the specific disputed material issues of fact for which hearings would be necessary.
2. This Ruling shall also be served on the service lists in R.02-01-011 and R.06-02-013. However, all future proceedings on CCA bond requirements shall be filed and addressed in R.03-10-003.
3. Parties who wish to participate in this phase of R.03-10-003 and are not on the service list shall file a motion to become a party pursuant to Rule 1.4.

Dated May 27, 2008, at San Francisco, California.

/s/ AMY YIP-KIKUGAWA

Amy Yip-Kikugawa
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated May 27, 2008, at San Francisco, California.

/s/ TERESITA C. GALLARDO
Teresita C. Gallardo