BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	)))))	R.13-12-010 (Filed December 19, 2013)

COMMENTS OF MARIN CLEAN ENERGY ON THE PRELIMINARY SCOPING MEMO

Scott Blaising
BRAUN BLAISING MCLAUGHLIN & SMITH, P.C.
915 L Street, Suite 1270
Sacramento, California 95814
Telephone: (916) 682-9702
FAX: (916) 563-8855
E-mail: blaising@braunlegal.com

February 3, 2014

Attorneys for Marin Clean Energy

TABLE OF CONTENTS

I. INTRODUCTION **1**

II. COMMENTS **3**

A. CIRCUMSTANCES HAVE CHANGED WITH RESPECT TO CCA PROGRAMS SUCH THAT FURTHER CONSIDERATION OF CCA DL RULES IS WARRANTED 3

B. ISSUES RELATING TO CCA DL RULES MEET THE LTPP SCOPING STANDARD 5

C. A SEPARATE PHASE OR TRACK SHOULD BE ESTABLISHED TO SPECIFICALLY ADDRESS CCA DL RULES 8

D. THE SCOPING MEMO SHOULD INCLUDE THE ENERGY DIVISION WORKSHOP DISCUSSED IN D.13-08-023 9

III. CONCLUSION **10**

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans.	)))))	R.13-12-010 (Filed December 19, 2013)

COMMENTS OF MARIN CLEAN ENERGY
ON THE PRELIMINARY SCOPING MEMO

In accordance with Rule 6.2 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California ("Commission"), and Ordering Paragraph 6 of the Order Instituting Rulemaking in this proceeding ("OIR"), Marin Clean Energy ("MCE") hereby submits opening comments on the preliminary scoping memo set forth in the OIR.

I. INTRODUCTION

MCE is a Community Choice Aggregator that has been serving customers since May 7, 2010. MCE currently serves the City of Richmond and all of the communities comprising Marin County.[1] Development of CCA programs is progressing at an increasing rate, largely due to the interest in communities to actively pursue environmental goals. MCE is currently serving approximately 125,000 customer accounts. Sonoma Clean Power ("SCP") is slated to begin serving customers in May 2014, and is expected to serve approximately 140,000 accounts at full roll-out.

---

[1] On December 5, 2013, the Marin Energy Authority adopted the name Marin Clean Energy for its legal entity name. For purposes of clarity, Marin Clean Energy has always been the name of the community choice aggregation ("CCA") program created by the Marin Energy Authority to purchase cleaner, renewable energy. The Board of Directors of the Marin Energy Authority voted to change the official entity name to Marin Clean Energy to match the name of its CCA program. Thus, Marin Clean Energy is now also the name of the not-for-profit, joint powers public agency formed by the City of Richmond, the County of Marin, and eleven Marin cities and towns.

SB_GT&S_0112554

MCE has participated in past Long Term Procurement Plan (“LTPP”) proceedings for the purpose of, among other things, shedding light on CCA programs and addressing CCA departing load cost allocation and charge methodologies (“CCA DL Rules”).[2] In numerous decisions, the Commission has expressly held out the prospect for making changes to CCA DL Rules if future circumstances warranted such changes. For example, in Decision (“D.”)08-09-012 (the foundational departing load decision) the Commission stated that “[g]iven the potential long-term nature of the charge, we must allow for the possibility that certain future circumstances may result in a need to modify the NBC related processes adopted in this decision.”[3] More recently, in rejecting petitioners’ (including MCE’s) request for a separate rulemaking to address departing load issues, the Commission stated that “[e]xisting cost allocation and fee structures may be re-examined in the future in response to changed circumstances or additional information… .”[4] Likewise, the Commission stated that “we continue to be open to re-evaluating specific departing load charges in appropriate proceedings if changed circumstances warrant doing so.”[5]

The Commission has established LTPP proceedings as the appropriate forum for addressing changes to CCA DL Rules.[6] However, absent from the list of specifically defined issues within the

---

[2] For convenience, MCE refers hereunder to the broad rubric of CCA departing load cost allocation and charge methodologies as “CCA DL Rules.” The most prominent of the CCA DL Rules is the Power Charge Indifference Amount (“PCIA”), but CCA DL Rules should also be read as encompassing the Cost Allocation Methodology (“CAM”) and in some cases the Competition Transition Charge (“CTC”).

[3] D.08-09-012 at 57-58.

[4] D.13-08-023 at 14.

[5] D.13-08-023 at 17.

[6] *See generally,* D.04-12-048 and D.08-09-012. *See also,* D.13-08-023 at 16-17 (“[C]ost allocation and fee issues raised in the petition are appropriately addressed on a case-by-case basis, including through LTPP and GRC proceedings.”). *See also,* D.13-08-023 at 12 (“[E]xisting processes are appropriate for consideration of future modifications to these mechanisms.”].)

SB_GT&S_0112555

scope of this proceeding is the general issue of whether, and if so to what degree, the Commission should consider modifications or improvements to the CCA DL Rules.

MCE believes that circumstances have changed with respect to the emergence and presence of CCA programs so that certain changes to the CCA DL Rules are now warranted. Moreover, MCE believes that a robust review of CCA DL Rules in this proceeding is consistent with the Commission’s recent expression of interest in avoiding (and statutory obligation to avoid) cross-subsidization that adversely affects CCA programs.[7] As such, and as further described below, MCE requests that the following changes be made to the preliminary scoping memo:

1. The scoping memo should expressly state that issues associated with CCA DL Rules (as further defined below) are included within the scope of this proceeding.
2. A separate phase or track should be established to address issues related to CCA DL Rules.
3. The scoping memo should direct that the workshop mentioned in D.13-08-023 will be conducted in this proceeding.

II. COMMENTS

A. Circumstances Have Changed With Respect To CCA Programs So That Further Consideration Of CCA DL Rules Is Now Warranted

In a previous LTPP proceeding (R.06-02-013), the Commission established fundamental departing load principles and made numerous holdings with respect to cost allocation issues. In D.08-09-012, the Commission stated, however, that there was “insufficient history” with respect to CCA

[7] *See* D.13-08-023 at 17 (“The Commission remains committed to ensuring that Community Choice Aggregators and other non-utility LSEs may compete on a fair and equal basis with regulated utilities. Towards this end, we will continue to consider both the mechanics and overall fairness of cost allocation and departing load charge methodologies proposed in the future, with the specific goal of avoiding cross-subsidization.”). *See also* Pub. Util. Code §707(a)(4)(A).

SB_GT&S_0112556

programs in order to make additional findings.[8] Nevertheless, as noted previously,[9] the Commission stated that it was open to modify its CCA DL Rules if future circumstances changed.

Future circumstances have changed with respect to CCA programs since the issuance of D.08-09-012, significantly so. The following is a summary of the more salient events, as related to procurement policies:

- MCE began serving customers in May 2010. When D.08-09-012 was issued, no CCA programs were operational. Now, MCE has been providing electric service for nearly four years, and currently provides electric service to 125,000 accounts, including its recent expansion to the City of Richmond. In addition, at the end of 2013, MCE received formal requests to join MCE from the County of Napa and the City of Albany.

- In May 2014, another major CCA program (Sonoma Clean Power) will begin providing electric service. At roll-out, SCP will provide electric service to approximately 140,000 accounts.

- Senate Bill ("SB") 790 was adopted in 2011. (Stats. 2011; ch.599.) SB 790 is a CCA-centric bill (authored by Senator Leno) that, among other things, seeks to protect CCA programs against the investor-owned utilities' ("IOUs") inherent market power and the potential of the IOUs to cross-subsidize competitive generation services. In addition, SB 790 expressly authorizes the Commission to incorporate new rules to facilitate the development of CCA programs.

- MCE initiated and implemented numerous activities to integrate supply-side procurement with demand-side activities. For example, in 2012 MCE initiated and began running energy efficiency programs authorized by the Commission.[10] MCE has also launched other innovative electricity programs, including distributed renewable energy and energy storage efforts.[11]

---

8 *See* D.08-09-012 at 20; emphasis added ("At this time, there is insufficient history of such [CCA] transactions and limited knowledge of [CCA] customers' intent to pursue such transactions in the future… .").

9 *See* footnote 3, above.

10 MCE's 2012 energy efficiency program was approved via Resolution E-4518; MCE's 2013-14 energy efficiency program was approved in D.12-11-015.

11 In its consideration of CCA DL Rules, it is important for the Commission to not lose sight of broader policy goals that may be affected by CCA DL Rules. MCE's energy efficiency and renewable energy efforts are a prime example. If MCE had not first become a CCA and provided electricity supply, MCE would not have been positioned to offer energy efficiency and other integrated services.

SB_GT&S_0112557

B. Issues Relating To CCA DL Rules Meet The LTPP Scoping Standard

In the OIR, the Commission addresses the concern that umbrella proceedings, like the LTPP, might be used for "forum shopping" proposals that have been previously rejected by the Commission or not yet considered.[12] In response to this concern, the Commission set forth the following standard in determining whether an issue should be considered in the LTPP:

> *LTPP Scoping Standard.* The LTPP scoping standard is defined as follows:
>
> - Any procurement-related issue(s) not already considered in other procurement-related dockets expressly listed in Table 1 (or some other docket opened in the future to cover procurement related issues) below may be considered, subject to the following conditions. The issue(s) must:
>   (1) Materially impact procurement policies, practices and/or procedures;
>   (2) Be narrowly defined; and
>   (3) Demonstrate consistency with one or more of the LTPP proceeding goals.[13]

Issues relating to CCA DL Rules meet this scoping standard. First, issues related to CCA DL Rules have a material impact on procurement policies, practices and procedures. As noted above, departing load issues have a long history of being defined as "major issues" in LTPP proceedings. This is so because the departure of load has a material impact on procurement policies, practices and procedures. The materiality of departing load has often been cited by the Commission in its LTPP decisions. For example, CCA departing load was identified in two landmark LTPP decisions (D.04-12-048 and D.09-09-012) as a major issue:

> In D.04-12-048, the Commission stated, "A major issue in this proceeding is the extent to which the utilities will be compensated for investments or purchases that they must make in order to meet their obligations to provide reliable service to their customers. The implementation of CCA, departing municipal load, and the potential for lifting, in some form or another, the current ban on allowing new DA all create a great degree of uncertainty as to the amount of load the existing

---

[12] OIR at 13.

[13] OIR at 14.

utilities will be responsible for serving in the future. Given the potential for a significant portion of the utilities' load to take service from a different provider, the utilities are concerned that they could end up over-procuring resources and incurring the stranded costs associated with these resources." (D.04-12-048, p. 55.)[14]

Second, issues related to CCA DL Rules are (or can be) narrowly defined. In general, the issue can be defined as follows: Should the Commission modify the CCA departing load cost allocation and charge methodologies based on changed circumstances, and if so to what degree? If the Commission desires to narrow this general issue, MCE suggests that, based on changed circumstances related to the emergence of CCA, the following two issues should be addressed:

1. Based on increased knowledge and history, is it now appropriate to implicitly reflect CCA departing load in the IOUs' load forecasts in a manner that is comparable to municipal departing load ("MDL") and customer generation departing load ("CGDL")?

In a previous LTPP decision (D.08-09-012), the Commission stressed the advantages of using "historic information and trends" instead of other methods of notice to establish departing load cost responsibility.[15] Using this method, the Commission determined that MDL and CGDL were implicitly reflected in the IOUs' load forecasts. Based on this determination the Commission held that MDL and CGDL were not responsible for costs associated with certain generation resources.[16] At the time that D.08-09-012 was issued, the Commission did not have enough information to make a similar finding with respect to CCA. In this regard, the Commission stated that "[a]t this time, there is insufficient history of such [CCA] transactions and limited knowledge of [CCA] customers' intent to pursue such transactions in the future, for the IOUs

---

14 D.08-09-012 at 57; footnote 58 (citing D.04-12-048).

15 *See* D.08-09-012 at 21 ("We note that the use of historic information and trends to reflect future departing load reduces some risk to the IOUs of possibly adopting overly optimistic estimates and tends to limit the dispute and litigation related to what the appropriate levels of departing load should be.").

16 *See generally* D.08-09-012 at 20-26.

SB_GT&S_0112559

to use in determining how much, or how long, power should be procured on such customers' behalf."[17] Based on the history of CCA development over the last five years, MCE believes it is appropriate to reexamine this issue.

2. As an alternative or complement to any CCA DL Rule addressing the issue described above (implicit reflection of CCA load in the IOUs' load forecasts), should the Commission modify or refine its 10-year rule regarding cost recovery based on changed circumstances and in the interest of promoting other Commission goals?

In various LTPP decisions, the Commission has established 10 years as the standard period within which to apply certain departing load cost responsibility principles.[18] As affirmed in D.08-09-012, the Commission fully expected that, by the end of 10 years, the IOUs should have adjusted their load forecasts and resource portfolios so that cost recovery is no longer needed to ensure bundled service customer indifference:

> [T]he utilities can, over time, adjust their load forecasts and resource portfolios to mitigate the effects of [departing load] on bundled service customer indifference. By the end of a 10-year period, we assume the IOUs would be able to make substantial progress in eliminating such effects for customers who cease taking bundled service during that period.[19]

In this proceeding, based on a showing of changed circumstances, the Commission should consider what modifications or refinements are needed to the 10-year rule, and whether it is appropriate to establish a bright-line 10-year cost recovery rule. MCE believes that such a rule could promote more cost-effective purchasing of electricity and management of the IOUs' generation portfolio.

---

[17] D.08-09-012 at 20.

[18] *See, e.g.,* D.4-12-048 at 61-63 (imposing a 10-year cost recovery period for non-renewable projects, absent a special showing) and D.08-09-012 at 52-55 (affirming D.04-12-048 and providing further justification of the need to limit cost recovery in certain situations).

[19] D.08-09-012 at 54-55.

Third, issues related to CCA DL Rules are consistent with one of the overarching goals in the LTPP proceeding: ensuring a "cost-effective electricity supply in California through integration and refinement of a comprehensive set of procurement policies, practices and procedures underlying long-term procurement plans."[20] Undoubtedly the focus of this effort is on the IOUs. This is understandable. However, cost effectiveness cannot be determined in a vacuum. Two initial points can be made in this regard. First, it is important to keep in mind that the policies and practices established in the LTPP have a bearing on the cost effectiveness of other providers' electricity supply, including Community Choice Aggregators. Approximately 85% of MCE's customers are residential customers; these customers bear a disproportionate impact of the PCIA vis-à-vis commercial customers. Second, in reviewing the cost effectiveness of the IOUs' electricity supply, the Commission should seriously consider whether existing CCA DL Rules subsidize and possibly mask the supposed cost effectiveness of the IOUs' electricity supply. Stated differently, the Commission should examine whether the CCA DL Rules contribute to inefficient procurement on the part of the IOUs.

C. A Separate Phase or Track Should Be Established To Specifically Address CCA DL Rules

The OIR identifies two phases of this proceeding, and invites parties to offer their views on "whether to separate certain issues into different tracks or phases."[21] As briefly described below, MCE recommends that the Scoping Memo establish a third phase or a separate track that will deal principally with CCA DL Rules.

For the sake of administrative efficiency and timeliness, LTPP proceedings have a long history of dividing common-themed issues into various tracks, and sequential matters into various phases. In

---

20 OIR at 2; emphasis added.

21 *See* OIR at 8.

SB_GT&S_0112561

R.06-02-013 (the LTPP rulemaking proceeding in which D.08-09-012 was issued), the Commission established "[t]rack 3 of Phase II" to separately address [Non-bypassable Charge] and related issues."[22] Addressing CCA DL Rules issues in a separate phase or track makes sense for several reasons. First, from a practical perspective, a separate phase or track for CCA DL Rules would allow time-sensitive planning and implementation matters to proceed as needed, without being delayed by a robust consideration of CCA DL Rules. Second, a separate phase or track would allow for greater clarity and focus on a key policy matter. Again, this was the approach taken in R.06-02-013, and that approach led to a very well-supported and reasoned decision (D.08-09-012).

D. The Scoping Memo Should Include The Energy Division Workshop Discussed In D.13-08-023

As previously stated, in D.13-08-023 the Commission rejected MCE's (and other petitioners') request for the establishment of a separate rulemaking to address cost allocation issues. Instead, the Commission directed that these issues be addressed in existing proceedings, like the LTPP. However, the Commission nevertheless suggested that it might be fruitful to have a workshop to further review the status and process for addressing these issues. Specifically, the Commission stated that "[i]f appropriate, Energy Division staff may hold a workshop to develop a process for addressing any specific departing load charges or other fee mechanisms that may benefit from review due to significant changes in circumstances since the charge's development."[23]

As noted previously, several key events have occurred since the issuance of D.13-08-023 that make a workshop on CCA DL Rules not only "appropriate" but also highly advisable. Such a workshop could serve as a prehearing conference of sorts in which parties, aided by the Energy Division, could

---

[22] *See* D.08-09-012 at 4.

[23] D.13-08-023 at 17.

seek to mutually agree on a list of specific issues for the CCA DL Rules track/phase, and on a process for examining and addressing these issues. The workshop could also be used to explore how implementation matters associated with recent decisions, including the proposed track 3 decision in R.12-03-014, should be integrated with this proceeding.

III. CONCLUSION

MCE thanks Administrative Law Judge Gamson and Commissioner Florio for their attention to the issues discussed herein.

Dated: February 3, 2014 Respectfully submitted,

Scott Blaising
BRAUN BLAISING MCLAUGHLIN & SMITH, P.C.
915 L Street, Suite 1270
Sacramento, California 95814
Telephone: (916) 682-9702
FAX: (916) 563-8855
E-mail: blaising@braunlegal.com

Attorneys for Marin Clean Energy