STATE OF CALIFORNIA GAVIN NEWSOM, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 21, 2024

Linda McCallum
Sjoberg Evashenk Consulting, Inc
455 Capitol Mall, Suite 700
Sacramento, CA 95814

Dear Linda McCallum:

Thank you for your report. We have taken your findings and recommendations into consideration. Energy Division shared the Final Audit Report with the CPUC's Consumer Protection and Enforcement Division, and certain elements of the Community Choice Aggregator (CCA) complaints against Southern California Edison (SCE) regarding customer billing and transitions were formally referred for investigation to determine whether a rule violation occurred.

Energy Division resources to support the implementation of an ongoing task force are very limited. To accomplish the objectives of the audit report findings, CCAs can provide recommendations for how to make improvements to the process, and Energy Division is available to mediate disputes between the Investor-Owned Utilities and CCAs regarding issues arising from load departure and customer engagement. However, Energy Division does not have the authority to determine whether a rule has been violated or set penalties for a potential violation to the Code of Conduct Rules, so Energy Division's ability to address disputes is limited to reaching agreement on next steps.

Sincerely,

Leuwam Tesfai
Deputy Executive Director for Energy and Climate Policy /
Director, Energy Division
California Public Utilities Commission

SJOBERG EVASHENK
CONSULTING, INC

December 26, 2023

Mary Taylor, Regulatory Analyst
Energy Division
California Public Utilities Commission
400 R Street
Sacramento, CA 95811

Dear Mary:

Enclosed is the audit report, *San Diego Gas & Electric Complied with the Code of Conduct Rules, but Opportunities Exist to Improve Joint Operational Activities and Dispute Resolution Processes*. The report was prepared on behalf of the California Public Utilities Commission (CPUC) by Sjoberg Evashenk Consulting and includes our analysis and recommendations. The draft report was discussed with San Diego Gas & Electric (SDG&E) management prior to completion of our audit fieldwork. Management comments received throughout the audit process were considered in drafting the report.

Sjoberg Evashenk Consulting appreciates SDG&E's cooperation throughout the audit process.

Respectfully submitted,

Lynda McCallum

Lynda McCallum
Partner
Sjoberg Evashenk Consulting, Inc.

California Public Utilities Commission

Community Choice Aggregation Code of Conduct Rules Compliance Audit

San Diego Gas & Electric Complied with the Code of Conduct Rules, but Opportunities Exist to Improve Joint Operational Activities and Dispute Resolution Processes

December 2023

SJOBERG EVASHENK CONSULTING, INC

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REPORT HIGHLIGHTS

SJOBERG EVASHENK CONSULTING, INC

RESULTS

Sjoberg Evashenk Consulting, Inc. was hired by the California Public Utilities Commission to audit IOU compliance with Community Choice Aggregation (CCA) Code of Conduct Rules (CCR). The audit found that San Diego Gas & Electric (SDG&E) complied with the Code of Conduct Rules. Also, opportunities exist to improve joint operational activities and dispute resolution processes.

BACKGROUND AND PURPOSE

Assembly Bill 117 authorized the creation of CCA programs, and Senate Bill 790 directed the Commission to develop rules and procedures that facilitate the development of CCA programs and to help foster fair competition. In December 2012, the Commission approved the CCRs addressing electrical corporations' conduct related to CCAs, such as prohibiting IOUs from speaking on behalf of a CCA, making misleading statements about a CCA's service, or providing mechanisms for customers to opt-out of CCA service.

The audit focused on SDG&E's compliance with the CCRs, including topics such as accuracy and fairness of service and program information distributed to customers, restrictions on utilities speaking on behalf of CCA rates and services, and mechanisms provided to customers opting-out of CCA service. The audit also assessed whether IOUs undermined the development or operation of a CCA and evaluated the effectiveness of mechanisms to resolve disputes between IOUs and the CCAs.

KEY FINDINGS

SDG&E complied with the CCR requirements and restrictions.

Additionally, tariffs and service agreements guide IOU and CCA joint operational activities, including enrollments, metering, billing, and payment processing. The audit did not identify significant joint operational issues; however, SDG&E acknowledged that some delayed billing issues can occur. Also, the audit found the service agreements in place between SDG&E and the CCAs lack adequate performance standards and expectations.

Further, while CCAs reported good working relationships with SDG&E, the CCAs have a shared view that available informal and formal dispute resolution processes fail to ensure California's three major IOUs respond and address compliance or operational problems in a timely manner. As a result, CCAs feel they are left to work out joint operational issues with IOUs themselves, placing them at the mercy of the IOUs.

KEY RECOMMENDATIONS

The report provides the Commission with 6 recommendations, including the following key recommendations:

- Establish a task force that includes both CCA, SDG&E, and Commission representatives to:
  - Identify ongoing operational issues and causes as well as proposed practical and timely solutions with the intent of supporting a cooperative relationship.
  - Bolster SDG&E's Electric Rule 27 and Service Agreements to set standards and expectations, including specific time-frames CCAs can expect to have issues resolved as well as remedies when service standards are not met.
  - Identify practical dispute resolution processes that will ensure timely solutions issues, including implementing an independent and impartial Ombuds.

Key Terms

- **Bundled Customers:** Customers that receive both their electricity generation and distribution services from an IOU.
- **Community Choice Aggregation (CCA):** Governmental entities formed by cities and/or counties to procure electricity for their residents, businesses, and municipal facilities.
- **California Public Utilities Commission (CPUC):** The CPUC, or the Commission, regulates privately-owned utilities in the state of California, including electric power, telecommunications, natural gas, and water companies, but has limited jurisdiction over CCAs.
- **Investor-Owned Utility (IOU):** An electric utility provider that is a private company and/or owned by shareholders; by contrast, it is not a public (government-owned) utility. The three largest IOUs in California are Pacific Gas and Electric (PG&E), Southern California Edison (SCE), and San Diego Gas and Electric (SDG&E).
- **Load Serving Entity (LSE):** Any company, including IOUs and CCAs, that either sells or provides electricity to end users located in California, or generates electricity at one site and consumes electricity at another site that is in California and that is owned or controlled by the company.
- **Opt-out:** The process of a customer electing to return to IOU service from CCA service, or electing to not be automatically enrolled into CCA service at the onset of a new CCA in the customer's area. The customer must initiate this process directly with the CCA.
- **Resource Adequacy:** The Commission requires that all LSEs must procure a certain quantity of electricity resources that will ensure the safe and reliable operation of the grid in real time, and to submit annual and monthly filings demonstrating they have met this requirement.
- **Unbundled Customers:** Customers that receive electricity services from separate providers—their electricity generation services from CCAs and their distribution and transmission services from IOUs.

Introduction and Background

In 2002, Assembly Bill (AB) 117 authorized the creation of Community Choice Aggregators (CCAs).[1] The intent of this legislation was to require all electrical corporations to fully cooperate with CCAs investigating, pursuing, or implementing CCA programs; provide guidance on how communities may create a CCA program; and require that cities or counties pass an ordinance to implement a CCA program within their respective jurisdictions. Additionally, AB 117 granted the California Public Utilities Commission (CPUC or Commission) general jurisdiction over the CCA program to take actions to protect utility bundled customers and assure reasonable service to CCAs.

CCAs are governmental entities formed by cities and/or counties to procure electricity for their residents, businesses, and municipal facilities. When a CCA launches, residents and businesses in the designated service area are automatically opted-into CCA service and must opt out to continue being served by the Investor-Owned Utility (IOU). Once established, a CCA purchases electricity for its customers. Unlike rates set by IOUs, the CCA electricity generation rates are not regulated by the CPUC and instead are regulated by the CCA following its own public process. While CCAs provide electricity generation services for its customers, the IOU serving the area is mandated to provide CCA customers electricity transmission and distribution services and provide CCAs with metering, billing, and payment collection services. The nature of these divided but related responsibilities requires some form of partnership relationship between the CCA and the IOU on many operational issues.

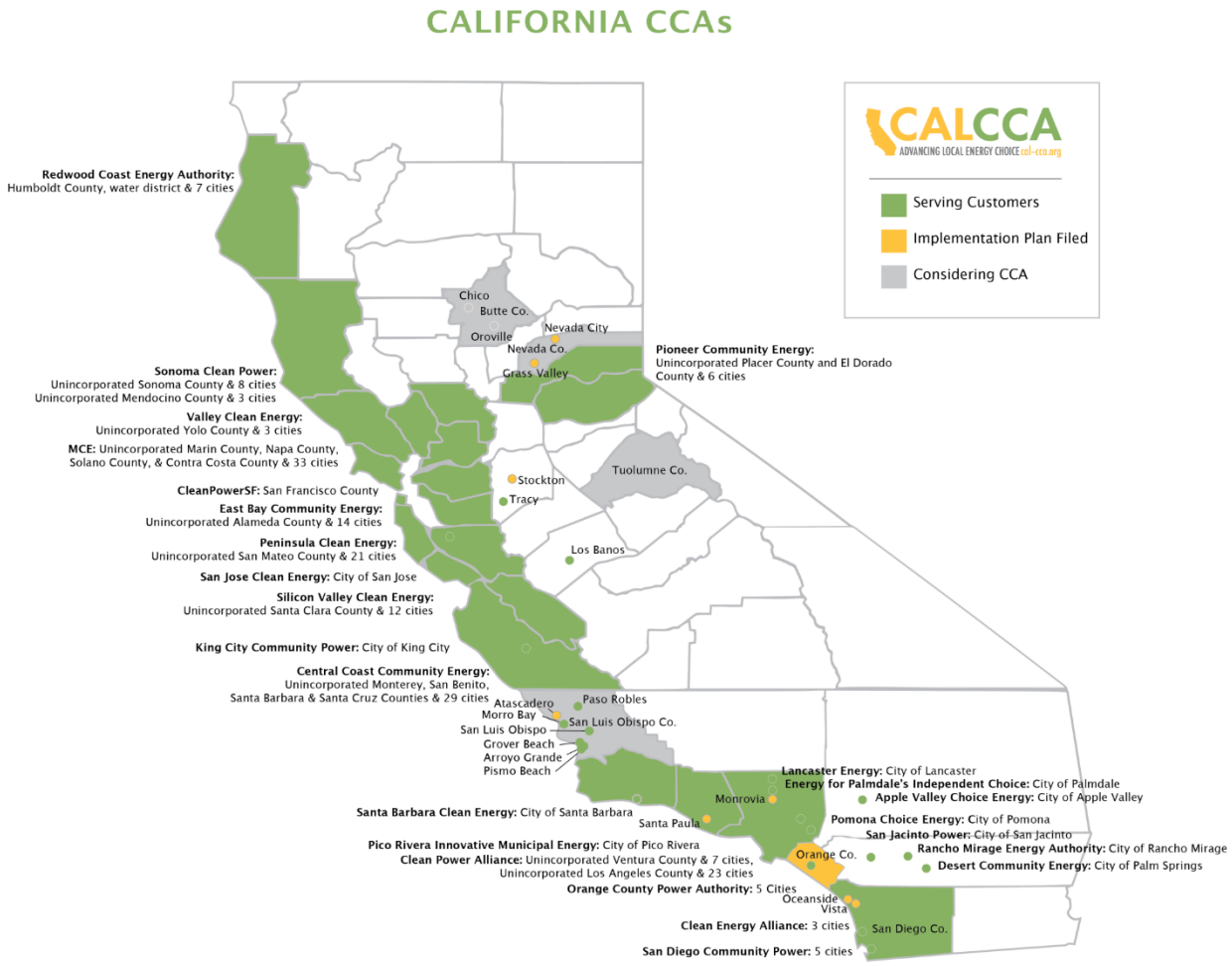
In 2011, the Legislature declared that the IOUs had inherent market power based on longstanding relationships and service, and that such market power had been used by IOUs to oppose the consideration, development, and implementation of CCA programs. As a result, the Legislature passed Senate Bill (SB) 790, directing the Commission to develop rules and procedures that facilitate the development of CCA programs and to help foster fair competition. In response on December 20, 2012, the Commission, through Decision D.12-12-036, approved the Code of Conduct Rules (CCR) addressing electrical corporations' conduct related to CCAs. Refer to Appendix A for listing of the CCRs. Briefly, the CCRs include:

- ✓ Requiring separation between an IOU's marketing division and its other divisions that work directly with CCAs, such as billing and customer service;
- ✓ Requiring IOUs and CCAs prepare and distribute neutral comparisons of tariffs;
- ✓ Prohibiting IOUs from speaking on behalf of a CCA, or making any untrue or misleading statements about a CCA's service and from providing alternative mechanisms for customers to opt-out of CCA service;
- ✓ Prohibiting IOUs from discriminating between bundled and unbundled customers;
- ✓ Requiring periodic audits to assess IOU compliance with CCRs; and
- ✓ Establishing a complaint procedure for use by CCAs.

[1] Codified as Public Utilities Code Section 366.2

In 2010, the first CCA launched with an additional 14 CCAs launching by 2017. As a result of such rapid growth in the number of CCAs, the Commission recognized that additional guidance was needed to formally establish the process for local jurisdictions to register and implement a CCA. On February 8, 2018, the Commission approved Resolution E-4907 that outlines regulatory requirements related to the development of CCAs, including implementation plans, resource adequacy requirements, bond payments, and customer notifications. By 2023, there were 25 active CCAs in the state of California, as shown in Exhibit 1.

EXHIBIT 1: LIST OF ACTIVE COMMUNITY CHOICE AGGREGATORS IN CALIFORNIA



Source: CALCCA

Collectively, California's three largest IOUs—Pacific Gas & Electric (PG&E), Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E)—serve 6.3 million CCA customers, as illustrated in Exhibit 2.

EXHIBIT 2. CCA METRICS BY IOU (2022)

IOUs	CCAs Currently in IOU Service Areas[A]	IOU Total Customer Base	CCA Customers within IOU Total Customer Base	% CCA Customers
PG&E	12	5.0 million	3.5 million	70%
SCE	12	4.9 million	1.7 million	35%
SDG&E	2	1.4 million	1.1 million	80%

Source: CPUC Community Choice Aggregation and Energy Service Provider Formation Reports and interviews with IOUs.
Notes:
A There are 25 unique CCAs; however, Central Coast Community Energy is counted within two IOU service areas.
B Baldwin Park (BPROUD) and Western Community Energy CCAs deregistered in 2021 and transferred all accounts back to SCE.

Scope and Methodology

Sjoberg Evashenk Consulting, Inc. was hired by the California Public Utilities Commission to audit IOU compliance with Community Choice Aggregation (CCA) Code of Conduct Rules (CCR) over a four-year period from January 1, 2019 through December 31, 2022. We were asked specifically to:

1. Assess whether an IOU used its position or market power to undermine the development or operation of a CCA;
2. Evaluate IOU compliance with the Code of Conduct Rules and identify potential violations;
3. Assess effectiveness of mechanisms to resolve disputes between IOUs and the CCAs in its service territory; and
4. Evaluate the effectiveness of the Code of Conduct Rules as the CCA Program has matured.

To meet the audit's objectives, we:

- Reviewed Code of Conduct Rules, utility tariffs, CCA service agreements, and laws, regulations, and Commission decisions and resolutions including AB 117, SB 790, PUC 366.2, D.12-12-036, D.05-12-041, D.04-12-046, D.08-06-016, D.02-12-074, D.10-05-050, E-4013, E-4250, E-4907, E-5051, E-5159.
- Interviewed CPUC management and staff involved with CCA program areas, including the Consumer Affairs Branch, Energy Division, Public Advisor's Office, and Utility Audits Branch.
- Interviewed utility management and staff to understand roles, responsibilities, and processes employed to ensure CCR compliance and to understand joint operational activities, and issue resolution processes.
- Reviewed utility policies, procedures, guidance, and training materials associated with complying with CCRs and working with CCA programs.
- Distributed a questionnaire to all active CCAs to gather information, insights, and concerns regarding CCR compliance, joint operational activities, and dispute resolution processes. Of the 25 CCAs sent a questionnaire, 19 either responded directions or relied on a single shared consultant. Conducted interviews with CCAs as needed for additional information and clarity.
- Evaluated IOU compliance with the CCRs, including:
    - Reviewed IOU's log of written complaints submitted by CCA customers to ensure the log contains the required information, including submission date, customer information, complaint description, and resolution. Identified the various vehicles for submitting written complaints such as CPUC's complaint portal or directly to the IOU and determined if sufficient processes were in place to ensure all submitted written complaints were tracked.
    - Selected a sample of joint rate mailers and joint rate comparisons to assess if information presented was complete, neutral, and accurate, and issued within required timelines. Also, determined if required approvals were obtained and cost-sharing requirements met.

- Selected a sample of calls between the IOU and CCA customers and listened to calls to determine if communications with CCA customers were appropriate, that IOU staff did not speak on behalf of CCAs, did not offer to process opt-out requests, remained neutral in discussions, and appropriately referred callers to CCAs.
- Selected a sample of written notices mailed to CCA customers to ensure IOU staff did not speak on behalf any CCA program, offer to process opt-out requests, or make untrue or misleading statements about CCAs' rates, terms, and conditions. The types of notices included notices to customers explaining duplicative charges, delayed billing, and automatic enrollments and confirming opt-out requests and service disconnects.
- Reviewed and assessed digital communications, such as social media posts and IOU's website information to ensure such communications were appropriate, did not mislead customers about CCAs, did not offer process opt-out requests, and did not appear to be marketing or lobbying against a CCA.
- Assessed IOU protocols and requirements related to IOUs selling excess electricity to determine whether any refused economic sales of excess electricity to CCAs because they are a CCA.

- Evaluated joint operational processes and activities between IOUs and CCAs, including CCA launches, customer enrollments, billing processes, and payment processing for efficiency and effectiveness and compliance with tariffs, rules, requirements, and agreements.
- Interviewed back-end service provider to understand their roles and responsibilities associated with CCAs, including processes associated with data validation, sharing, and management.
- Identified the formal and informal mechanisms available to IOUs and CCAs to resolve disputes and assessed the efficiency and effectiveness of those mechanisms.

Audit fieldwork was performed between July 2022 and September 2023. On October 24, 2023, a draft of this report was provided to utility management for review and discussion and an exit Conference was held on November 6, 2023. Responses and feedback provided by utility management were considered and incorporated where applicable in the final report. SDG&E's official response is attached at the end of this report.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Finding 1. SDG&E Complied with the Code of Conduct Rules

In 2002, Assembly Bill 117 was enacted authorizing the creation of Community Choice Aggregators (CCAs). In 2011, Senate Bill 790 was passed directing the California Public Utilities Commission (CPUC or Commission) to develop rules and procedures that facilitate the development of CCA programs and to help foster fair competition. In response on December 20, 2012, the Commission, through D.12-12-036, approved 21[2] Code of Conduct Rules (CCR) addressing electrical corporations' conduct related to CCAs—most of which relate to requirements and information about independent marketing divisions. Audit results associated with SDG&E's compliance with the CCRs are covered in this finding (Finding 1); several findings and recommendations related to joint operational activities between SDG&E and CCAs and dispute resolution processes are discussed later in Findings 2 and 3.

Because SDG&E does not have an independent marketing division, this audit focused on SDG&E's compliance with five specific CCRs—3, 9, 19, 20, 21—covering topics such as accuracy and fairness of service and program information distributed to customers, restrictions on utilities speaking on behalf of CCA rates and services, and mechanisms provided to customers opting-out of CCA service[3]. We found that SDG&E complied with the CCRs' requirements and restrictions and that SDG&E appears to have created processes and implemented protocols to ensure it complies with CCRs or promptly identifies situations that need to be addressed.

SDG&E Complied with CCR 3 by Coordinating with CCAs to Issue Joint Rate Comparisons

SDG&E complied with CCR 3 requiring electrical corporations and CCAs to jointly prepare and distribute two types of neutral, complete, and accurate comparison information to customers within the CCA boundaries. The two types of required comparisons are:

- **Joint Rate Mailers (JRM)** mailed to customers annually by July 1st. The JRM must provide a comparison of the IOU and CCA's average tariff, include sample, generation portfolio content, and refer customers to the IOU and CCA's website for more information. Before JRMs can be distributed, CCR 3 requires the JRM to be submitted to Commission's Public Advisor's Office (PAO) for approval to ensure the content of the mailer complies with the CCR. The IOU and CCA must share the costs associated with the design, preparation, and distribution of the JRMs equally.

- **Joint Rate Comparisons (JRC)** posted on both entities websites. IOUs and CCAs must post the same comparative information on their websites annually when the JRMs are distributed and throughout the year within 60 days after any tariff change. The PAO is not required to approve

[2] While the CCRs include 29 rules, 8 of the rules do not involve requirements and restrictions: CCR 1 provides definitions and CCRs 23 through 29 provide audit and enforcement procedures.

[3] Because SDG&E's parent corporation, Sempra, stopped operation of its independent marketing division in July 2019 before the first CCA in SDG&E's service territory launched, related CCRs were not included in the audit. While audit tests were not performed directly on CCRs 14, 17, or 18, audit work conducted throughout the engagement did not identify any instances of noncompliance with the three CCRs.

website content, but expects the information to be consistent with the approved JRM and will occasionally review website materials.

To determine if SDG&E complied with CCR 3 during the audit period, we reviewed a selection of JRMs distributed to customers and JRCs posted to determine if the comparisons included the required elements, were presented to the public in a neutral, complete, and accurate manner, if cost-sharing requirements were met, and if the PAO's approval was evident when required. The audit found the JRMs included neutral, complete, and accurate information, provided a sample bill and generation portfolio content, and referred customers to SDG&E's and CCAs' websites as required. The audit also found that SDG&E and the CCAs shared the costs associated with designing, preparing, and distributing the JRMs equally. Additionally, our review found that SDG&E posted JRCs on their website with content consistent with the JRMs, as required by the CCRs. Further, in reviewing prior website snapshots, it appeared that SDG&E complied with posting JRCs when rate changes were made however, it was difficult to determine how many rate changes were approved as the CPUC did not always post all rate changes approved.[4]

SDG&E Generally Complied with CCR 9 by Refraining from Speaking on Behalf of CCAs or Providing Untrue or Misleading Statements about CCA Rates and Services

SDG&E generally complied with CCR 9 prohibiting electrical corporations from speaking or appearing to speak on behalf of any CCA program or making untrue or misleading statements related to CCA rates or service.

To determine if SDG&E complied with CCR 9 during the audit period, we reviewed training material and scripts for call center representatives, manuals, 21 notices mailed to CCA customers, listened to 267 calls between SDG&E call center representatives and CCA customers, and examined 165 digital and social medial posts and announcements. The audit found that SDG&E has processes in place to ensure communications with CCA customers comply with CCRs, including policies and procedures, multiple levels of communication review, and tools to identify certain calls that require review, and employee training and coaching. Overall, the audit found all sampled written notices, calls, and posts reviewed generally complied with CCR 9.

SDG&E Complied with CCR 19 by Not Offering Alternative Mechanisms to Opt-Out of CCA Service

SDG&E complied with CCR 19, which prohibits IOUs from providing their customers with any mechanism for opting out of CCA service unless requested to do so by the CCA.

To determine if SDG&E complied with CCR 19 during the audit period, we interviewed SDG&E personnel knowledgeable of the IOU's opt-out process and reviewed SDG&E procedures, training, and guidance related to customers requesting to opt out of CCA service. Additionally, during our review of 21 notices mailed to CCA customers, 165 digital and social medial posts and announcements, and 267 calls between

[4] The California State Auditor recently reported that rate advisories on the Commission's website were helpful but needed improvement. Report #2022-115, *Electricity and Natural Gas Rates: The California Public Utilities Commission and Cal Advocates Can Better Ensure That Rate Increases Are Necessary*, August 2023.

SDG&E call center representatives and CCA customers, we did not observe any instances in which SDG&E representatives offered or solicited opt-out requests. Further, we gathered information from and conducted interviews with CCAs in SDG&E's service territory and no CCAs noted issues with opt out processes with SDG&E.

SDG&E Complied with CCR 20 by Not Refusing to Make Economic Sales of Excess Electricity

SDG&E complied with CCR 20, which prohibits IOUs from refusing to make sales of electricity to a CCA because it is a CCA.

To determine if SDG&E complied with CCR 20 during the audit period, we performed the following:

- **Identified the various types of energy resources SDG&E sells to CCAs**. We found SDG&E sales to CCAs primarily included physical electricity and procurement compliance attributes, such as resource adequacy and renewable energy credits.

- **Considered the definition of "excess electricity" as used in CCR Rule 20**. Because the Commission lacks a formal definition of excess electricity, we interpret "excess electricity" to refer only to physical electricity and to exclude other types of energy resources, such as procurement compliance attributes. We base our interpretation on information; discussions with CPUC and other utility stakeholders, and CPUC's rulemaking discussions regarding the implementation of Resolution E-4250 and the Code of Conduct Rules. We also recognize that CPUC would have written CCR 20 to prohibit IOUs from refusing to sell "excess energy ***resources***" if it intended for the prohibition to cover more than "excess ***electricity***".

- **Identified the mechanisms IOUs use to sell "excess electricity" to CCAs**. We found that SDG&E only sold their "excess electricity" to CCAs through the California Independent System Operator (CAISO) wholesale energy market—CAISO matches energy supply with demand via bids and schedules and identifies participants only after transactions are settled. We received independent confirmation of this process from CPUC's Utility Audits Branch, which performs energy procurement audits. Likewise, through our information gathering efforts and interviews with CCAs, no CCAs reported that SDG&E refused to make economic sales of excess electricity.

SDG&E Complied with Rule 21 by Maintaining a Log of Complaints

SDG&E complied with CCR 21 requiring electrical corporations to maintain a log of all complaints submitted in writing related to services provided for the CCA and CCA customers. The rule requires that the log be subject to review by CPUC and CCAs, and include key information, such as submission date, customer information, complaint description, and resolution.

To determine if SDG&E complied with CCR 21 during the audit period, we reviewed SDG&E's complaint logs and interviewed SDG&E and CPUC Consumer Affairs Branch staff to understand how customer complaints are submitted, logged and processed. SDG&E's Complaint Resolution team uses a customer

relationship management system to intake, manage, and track written customer complaints, including those submitted by CCA customers. All customer complaints may be sent to SDG&E through various channels, including the CPUC's complaint portal ("CIMS"), the Better Business Bureau, SDG&E's call center, and letters or emails to SDG&E. There were four written CCA customer complaints regarding services provided by SDG&E submitted during the audit period and the complaints were maintained in a log with the required information, including complaint submission date, customer information, complaint description, and resolution. Additionally, while CCR 21 requires that IOUs provide CCAs with access to the complaint logs, we did not find evidence of any CCA having requested access to review these logs.

Recommendations

None.

Finding 2. No Significant Issues Noted, but Opportunities Exist to Improve Joint Operational Activities

Given that the law requires IOUs to provide services to CCAs, including billing and metering, it is important that the utilities and CCAs have cooperative working relationships. SDG&E's Electric Rule 27 guides the ongoing joint operational activities, including enrollments, metering, billing, and payment processing, by providing process descriptions and requirements that the utility and CCAs must follow. SDG&E and the CCAs also have established service agreements, approved by CPUC, to govern the business relationship between the parties.

The audit identified no significant problems when SDG&E transitioned customers to CCA service during the audit period. While our review did not uncover any significant issues with services and activities SDG&E provides to CCAs, SDG&E acknowledged that delayed bills are a standard business risk and delays could adversely impact CCAs with cash flow issues. Also, the audit found the service agreements in place between SDG&E and the CCAs lack adequate performance standards and expectations.

Commission Resolution E-4907 Provides Implementation Processes CCAs are Required to Follow Before Providing Service to Customers

Through Resolution E-4907, the Commission provides the following directives that CCAs must follow:

- Policy Requirements—CCAs must provide customers with universal access, reliability, and equitable treatment, and the implementation of a CCA cannot result in costs shifted between CCA customers and IOU customers.
- Implementation Plan Documents and Requirements—CCAs must submit to the Commission an Implementation Plan and Statement of Intent, which describes the program's organizational structure, operations, funding, and processes to set rates and allocate costs. Such plans must be submitted by January 1st for load service of the following year. The Implementation Plan and any ensuing changes must be considered and adopted at a public hearing. Within 10 days of the filing, the Commission must notify the respective IOU of the filing. Within 90 days of the filing, the Commission must certify that the plan is satisfactory, and provide the CCA with its findings regarding any cost recovery that must be paid by CCA customers to prevent shifting of costs to IOU customers. The Commission also designates the earliest date for implementation.
- CCA Registration Requirements—Within 90 days of the filing, CCAs must submit the registration packet to the Commission that includes a signed service agreement with the incumbent IOU and a bond[5] to cover reentry fees in the event CCA customers involuntarily return to an IOU's bundled service. Within 120 days of the registration packet being deemed as meeting all requirements, the Commission must confirm the CCA's registration.
- Resource Adequacy Requirements and Forecasts—CCAs must submit two annual load forecasts as CCAs are subject to Resource Adequacy (RA) requirements to ensure sufficient resources are

[5] $100,000 or as determined in R.03-10-003

available to serve electricity demand. A preliminary load forecast must be submitted by mid-April for the following year and a revised load forecast with improved accuracy must be submitted in August. The submissions result in a RA obligation that the CCA must demonstrate that it has procured sufficient resources to meet its obligation. In the event an existing or pre-operational CCA does not submit an annual load forecast, they will not be allocated a RA obligation and the incumbent IOU remains responsible for procuring energy resources for the CCAs customers. Beginning in October and thereafter, CCAs submit monthly load forecasts.

- Public Notices—State law dictates that once a city or county implements a CCA, customers within the CCA's jurisdiction are automatically enrolled in the CCA's service unless the customer has chosen to opt-out. Prior to customers being automatically enrolled in the CCA, the CCA must send two notices to the prospective customers describing the terms and conditions of services being officered and the customer's right to opt-out of CCA service and remain with the incumbent IOU. The first notice must be sent within 60 days of automatic enrollment and the second notice within 30 days of automatic enrollment. IOUs cannot assist CCA customers in opting-out of CCA service.

The primary requirement that Resolution E-4907 places on an IOU during the development and launch of a CCA is that once the CCA sends out the required public notices, the IOU must transfer all applicable accounts to the CCA within 30 days[6].

SDG&E's Electric Rule 27 Guides Processes Associated with Transitioning Eligible Customers to CCA Service and Ongoing Operational Activities

The Commission established the required processes that a local jurisdiction must go through to register and provide services as a Community Choice Aggregator (CCA). In 2004 and 2005, several years before the first CCA launched, the Commission issued several decisions, including D.04-12-046 and D.05-12-041, to create a CCA program in compliance with AB 117. These decisions are intended to ensure CCAs operations comport with utility tariff requirements and rules, and promote understanding and cooperative relationships between the utilities and CCAs. Given that PUC Section 366.2(C)(9) requires that the IOUs provide billing and metering services to CCAs, the Commission relies on utility tariffs to govern the relationship between CCAs and serving utilities.

As such, SDG&E's Electric Rule 27 and CCA service agreements, approved by the Commission, address the CCA implementation and transition processes as well as ongoing operational activities. Key processes include agreeing on the CCA implementation schedule, transferring customer accounts to CCA service, and facilitating data sharing:

- Implementation Schedule—CCA and SDG&E must agree to a mutually acceptable implementation schedule that complies with the Commission-designated earliest launch date.

- CCA Customer Enrollment—Customers within the CCA jurisdiction that have not chosen to opt-out will be automatically transferred and enrolled to CCA service through mass enrollment processes. The mass enrollment process starts between 30 and 45 days after the initial customer notification

[6] Within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

period ends and involves SDG&E transferring all CCA customer account to CCA service[7]. According to SDG&E, a weekly reconciliation report is provided to CCAs containing data for all customers in each CCA's respective jurisdiction with flags that note if the customer is eligible for enrollment and information about each customer's current enrollment status (i.e., are they currently enrolled or opted out).

- Data Sharing—After the mass enrollment processes are complete, SDG&E provides the CCA with individual customer information through the Electronic Data Interchange (EDI)[8], including historical energy usage data that CCAs use to determine energy procurement requirements.

After customers are transitioned to CCA service, the CCAs are responsible for procuring energy for their customers, but SDG&E must provide other services such as transmission, distribution, metering, billing, payment processing, and customer communication. While the CCRs do not address ongoing operational processes and requirements directly, SDG&E's Electric Rule 27 and CCA service agreements, approved by the Commission, guide the ongoing joint operational activities by providing process descriptions and requirements that the utility and CCAs must follow. The key joint operational activities are customer metering, billing, and collecting payments described below.

CCA-Customer Metering

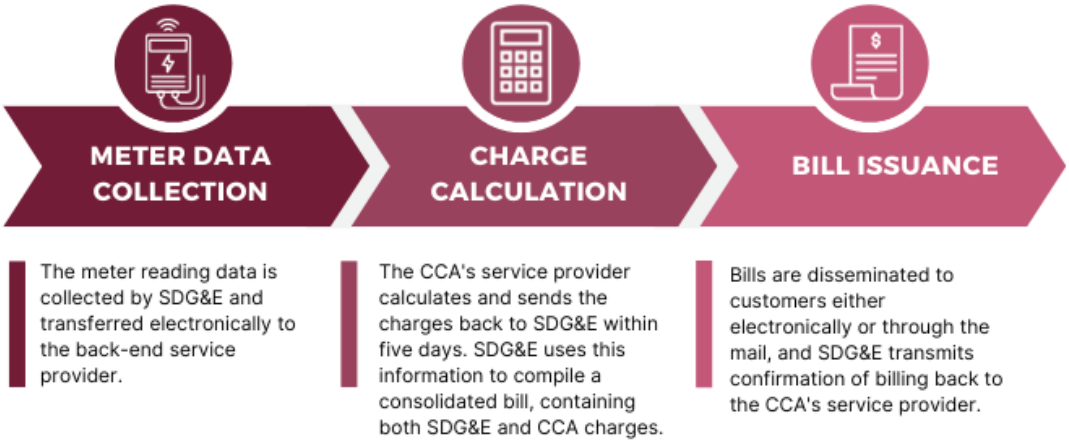
SDG&E is required to perform all metering services for CCA customers, including installing meters and providing the CCA with customer meter data. Specifically, energy consumption data obtained from CCA customer meters is electronically sent to SDG&E and to the CCA and its service provider. The meter data is used by the CCA for its operational processes, such as the bill generation and energy demand forecasting. After a customer is enrolled into a CCA service, SDG&E is required to send the customer's account information to the CCA, including metering information as well as twelve months of historical usage.

CCA-Customer Billing

A CCA service provider uses the energy consumption data sent by SDG&E to calculate CCA-customer energy generation charges—SDG&E is not responsible for the accuracy of CCA-customer charges. Charge information must be sent back to SDG&E the day following SDG&E's actual meter reading date. If billing charges have not been received by SDG&E from the CCA by the required date, SDG&E will render the bill for SDG&E charges only, without CCA charges. SDG&E uses the charge information to generate a consolidated bill for the CCA customer that contains both SDG&E charges (energy distribution) and CCA charges (energy generation). SDG&E is required to include CCA charges on customer bills at least once a month. SDG&E transmits confirmation of the billing process to the CCA service provider. Customer disputes of CCA charges must be directed to the CCA. The utility bill generation process is depicted in Exhibit 3:

EXHIBIT 3: UTILITY BILL GENERATION PROCESS

[7] The customer switch occurs on the day of each customer's scheduled meter reading.
[8] Before exchange of information, the CCA must satisfy applicable electronic data exchange requirements and complete all necessary data interfaces to communicate with SDG&E.



Source: SDG&E Interviews and SDG&E Rule 27

According to SDG&E's Electric Rule 18, if SDG&E has failed to deliver a bill, actual or estimated, in a timely manner—3 months for residential customers and small business customers and 3 years for all other customers—SDG&E cannot seek payment for those charges. In other words, if a bill is delayed by more than three months, a residential customer is only responsible for the most recent three months of SDG&E charges. It's important to note that, when the criteria is met, SDG&E automatically provides delayed billing credits to their bundled customers and CCA customers for generation, transmission and delivery charges.

CCA-Customer Payment Collection

CCA-Customers pay their bills directly to SDG&E. SDG&E is required to remit payments to the CCA the next business day after SDG&E receives the payment from the customer. Upon receipt of SDG&E's payment, the CCA is responsible for posting the payment to the customer's account in the CCA's billing system. If a billing issue arises that is related to CCA charges, the customer must coordinate with that CCA, but SDG&E is still required to forward to the CCA amounts paid to cover CCA charges. According to SDG&E, it sends each CCA a daily report[9] that shows the posting date that SDG&E applied CCA customer payments and the date the CCA received the payment to verify timely payments.

Additionally, service providers assist the CCAs working with SDG&E to ensure smooth transition and operational processes, including data validation, sharing, and management.

No Significant Problems When SDG&E Transitioned Customers to CCA Service or with Ongoing Operational Activities; However, Billing Processes Can Be Delayed

Our information gathering processes and discussions with CCAs and audit testing revealed instances of occasional operational issues and challenges that the IOU and CCAs worked through; however, we did not find significant ongoing issues related to SDG&E's launch of one CCA during the audit period or related to services and activities provided by SDG&E. However, SDG&E acknowledged that some delayed billing issues can arise when an account fails a system validation or cannot be processed automatically, which creates an exception for manual review by an individual in the billing department. The issue could be due to

[9] 820 EDI transactions report.

a failed system validation or a technical error in the system which requires modification to the account set up.

To provide context, SDG&E provided data indicating there are currently[10] about 140 delayed bills (out of the total population of roughly 1.1 million CCA customers); most of the delayed bills were late by an average of 3.4 months and ranging from just a couple of days late to more than 800 days late. According to SDG&E, there is no available report of the dollar value of delayed bills as SDG&E can only report the dollar value on bills that have been finalized and issued. It is important to note that SDG&E automatically provides delayed billing credits to their bundled customers and CCA customers for generation, transmission and delivery charges. Although not required by Rule 18, SDG&E's current business practice is to also cover the CCA's lost revenue associated with credits applied to a CCA's generation charges. According to SDG&E, the costs of the charges are covered by SDG&E because typical delays are due to conditions outside of CCA control. SDG&E was unable to estimate the dollar value of credits that were covered during the audit period, but indicated it would be an inconsequential number of occurrences and dollar amounts. Nonetheless, when SDG&E delays customer bills, the CCAs indicated that their cashflows are impacted.

SDG&E's Electric Rule 27 and Service Agreements with CCAs Lack Clear Performance Standards and Service Expectations

Providing successful services to CCA customers requires CCAs—local, not-for-profit, public agencies—and California's three major IOUs to work together on key operational processes. When two very different organizations with different systems, processes, and interests and under different regulatory authorities are required to work together on complex administrative efforts, challenges and barriers to cooperation could arise. Although CCAs have not reported significant ongoing service issues, SDG&E's Electric Rule 27 and service agreements with CCAs should still be bolstered to set clear expectations to reduce potential conflicts and to provide a clear path for timely resolution when conflicts do arise.

SDG&E and the CCAs established service agreements, approved by the Commission, to govern the business relationship between the parties. The services primarily involve those provided by SDG&E to the CCAs as referenced in SDG&E's community choice aggregation tariff Electric Rule 27, and include critical services such as customer enrollments into CCA service, meter reading, customer billing, and payment processing. In return, the CCAs pay SDG&E for the services provided according to SDG&E's rate schedules.

Typically, service agreements include performance standards and service expectations to ensure clarity and accountability. Clearly defined expectations establish the level of service to be delivered and provide a basis for measuring performance, promote a shared understanding of what is required, and mitigates potential misunderstandings. A few examples of standards and expectations that are often part of service agreements include:

[10] As of August 4, 2023.

- **Quality Standards:** Outlines the quality levels that the service provider is expected to meet. For example, the service provider agrees to perform tasks with a certain degree of accuracy and precision, minimizing errors and inaccuracies.
- **Timeliness:** Defines the acceptable timeframes or deadlines for completing tasks and services.
- **Response Time:** Specifies the expected response time for addressing inquiries, issues, or requests.
- **Penalties and Remedies:** Provides consequences for failing to meet the agreed-upon performance standards and expectations, and incentivizes mutually satisfactory performance.

The service agreements between SDG&E and CCAs reference Electric Rule 27 to provide some description of service processes. However, aside from requiring SDG&E to submit customer payments to CCAs by the next business day after receiving the payment, neither the service agreements nor Rule 27 specify expected quality standards, such as SDG&E providing the services accurately and within agreed upon time-frames, or response times for correcting issues or penalties.

While it is not unexpected that conflicts will arise from time to time when one entity provides services to another, CCAs and IOUs are impacted when operational problems occur, particularly when the IOUs do not address the issues timely, particularly because CCAs are wholly reliant on the IOUs for the services. This could include problems such as operational inefficiencies, customer dissatisfaction, reputational damage, and financial consequences. While some delays and issues such as billing issues may not monetarily impact an IOU because of its size and profitability, it could monetarily impact a CCA which is much smaller and has much less of a margin or reserves to carry it through while the issues are resolved.

Although the CCAs generally acknowledge that the SDG&E teams they work with directly are generally responsive to concerns, the service agreements and Rule 27 do not provide response times for correcting issues or penalties, liquidated damages or other remedies when service expectations are not met.

Recommendations

To facilitate effective working relationships and establish clear performance standards and service expectations, the Commission should:

1. Establish a task force that includes both CCA, SDG&E, and Commission representatives to:

    a. Identify ongoing operational issues and causes as well as proposed practical and timely solutions with the intent of supporting a cooperative relationship.

    b. Bolster SDG&E's Electric Rule 27 and Service Agreements to set standards and expectations, including specific time-frames CCAs can expect to have issues resolved as well as remedies when service standards are not met.

2. Establish a uniform and consistent approach for handling late billings credits across all IOUs that details and clarifies how late billing credits should be applied to both bundled and unbundled

customer bills and that assigns the responsibility for bearing the costs associated with issued credits.

Finding 3. CCAs Perceive the Dispute Resolution Processes Administered by the CPUC to be Ineffective in Addressing CCR Compliance and Operational Issues

CCAs have a shared view that available dispute resolution processes fail to ensure IOUs respond and address compliance or operational problems in a timely manner, and allegations of compliance violations do not prompt investigations by the CPUC to determine if violations have occurred and penalties warranted. Based on our interviews with CCAs associated with all three of California's major IOUs, there is a perception among many that the Commission is not motivated to help resolve disputes between IOUs and CCAs and when issues are elevated to the Commission's Energy Division for informal assistance, little is done to address the concerns. While the audit did not uncover any instances where disputes between SDG&E and CCAs would have risen to the level of a formal dispute to be submitted to the Commission, the CCAs also believe formal dispute resolution procedures under Article 4 of the Commission's Rules of Practice and Procedure are too costly and time-consuming and are overly cumbersome. As a result, CCAs feel they are left to work out joint operational issues with IOUs themselves, placing them at the mercy of the IOUs and possibly incurring costs that more heavily impact a CCA because of its much smaller scale of operation as compared to that of an IOU.

SDG&E and CCAs Attempt to Resolve Disputes

The Commission encourages the CCAs and IOUs to work together to address disputes, including allegations of noncompliance with the CCRs or operational issues, whenever possible. According to SDG&E, most disputes do not require escalation to the Commission as issues are regularly worked out informally. SDG&E holds weekly meetings with CCA during the launch phase and monthly meetings after the implementation is complete and continues to hold frequent ad hoc meetings with CCA staff on an ongoing basis. CCAs generally reported that SDG&E is cooperative and has demonstrated a willingness to establish regular communications and join meetings to discuss issues.

When regular, day-to-day efforts to resolve issues are unsuccessful, more formal approaches between the parties are used to resolve disputes, such as written complaints and responses between the parties and "meet and confer" conferences. During the audit period, SDG&E indicated that no "meet and confer" conferences were held with CCAs as issues are resolved before rising to that level and no settlement agreements were executed. If an IOU and a CCA are unable to reach consensus after meeting, either party may request that the Commission's Energy Division informally assist to resolve the dispute or may submit the dispute to the Commission through the Commission's formal dispute resolution processes, as discussed in the sections that follow.

CCAs Perceive the Assistance Provided by the Commission's Energy Division to Resolve Disputes with IOUs As Too Passive

If CCAs and IOUs are unable to reach a satisfactory resolution to a dispute, CCAs may request help directly from the Commission's Energy Division. While no CCAs sought the Energy Division's assistance with disputes with SDG&E during the audit period, in general, the CCAs associated with all three of

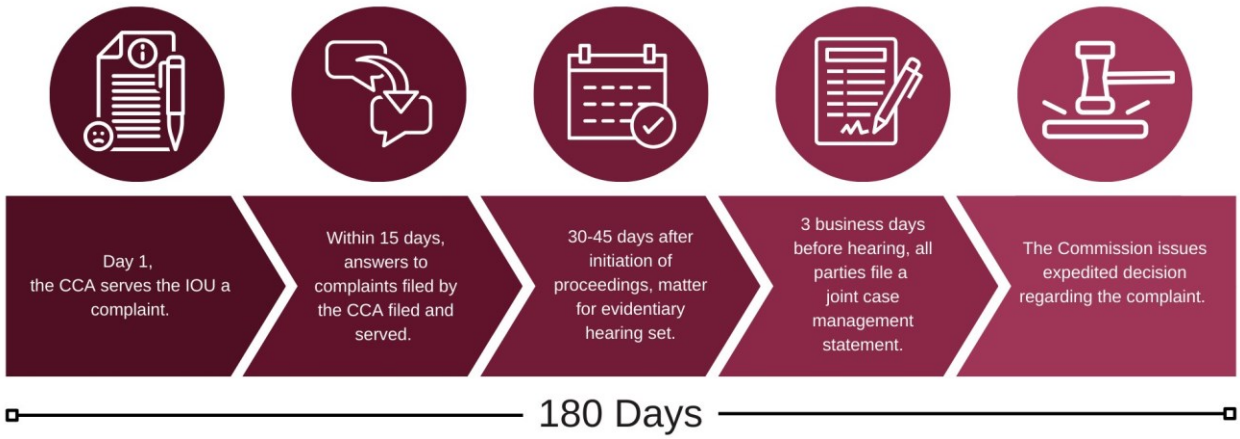
California's major IOUs perceive the Energy Division's assistance as either passive or minimally involved. While the audit did not uncover any allegations of potential violations by SDG&E of the CCRs, the CCAs believe that any potential violations by any of the three major IOUs communicated to the Energy Division would not prompt an investigation to be opened to determine if a violation occurred or a penalty was warranted, leaving CCAs to feel at the mercy of the IOUs when addressing disputes.

Additionally, the Energy Division acknowledged there are no protocols or procedures in place to guide staff efforts when CCAs request the Division's informal assistance to resolve disputes with IOUs, including tracking the status of disputes that are submitted or documenting actions taken.

Formal Dispute Resolution Procedures Under Article 4 of the Commission's Rules of Practice and Procedure are Perceived by CCAs as Time Consuming, Overly Cumbersome and Costly

After good faith efforts to resolve disputes informally have been attempted and failed, CCRs 24 through 29 provide a formal mechanism for disputes between CCAs and IOUs alleging CCR violations to be filed with the Commission. Specifically, the CCRs require these disputes be filed pursuant to rules outlined in Article 4 of the Commission's Rules of Practice and Procedure and be resolved within 180 days under an expedited process. The Commission may impose fines, injunctive relief, or any other appropriate remedy. Exhibit 4 summarizes the procedural steps and expedited timelines required associated with formal disputes concerning CCR compliance issues submitted to the Commission under Article 4.

Exhibit 4: Expedited Dispute Resolution Procedures and Timelines Under Article 4



Source: Code of Conduct Rules 24-49

Disputes that do not involve CCR compliance issues can also be submitted to the Commission under Article 4, but an expedited process is not specifically provided.

Additionally, at any time during a formal proceeding before the Commission, but preferably early in the process, parties may use the Commission's Alternative Dispute Resolution (ADR) program at no cost to the parties. This program involves Administrative Law Judges helping disputants resolve conflicts through facilitation, negotiation, mediation, and early neutral evaluation processes. According to the Commission, ADR sessions, in general, are typically completed in 0.5 to 2 days, although some continue over several

weeks with the disputants meeting for a day or two at a time. According to the Commission, during the audit period, the ADR Program has not been used by any CCA.

During the audit period, we did not identify evidence that any formal disputes had been submitted by CCAs to the Commission under Article 4 against SDG&E concerning potential violations of the CCRs. The CCAs associated with all three of California's major IOUs routinely indicated that the Commission's formal dispute resolution procedures are not used because the process is not effective for issues that need to be resolved quickly, particularly because many issues cannot wait six months for resolution, and the process is perceived as being too costly, likening it to going through a lawsuit. However, given the ADR program's apparent ability to expeditiously resolve disputes, it is unclear why it has not been utilized by the CCAs to address disputes with IOUs.

Recommendations

To ensure that compliance with the CCRs is handled in a fair and independent manner and to optimize the effectiveness dispute resolution processes, the Commission should:

3. Develop a process to investigate possible CCRs violations when identified rather than relying on IOUs and CCAs to work out compliance issues among themselves and implement consequences for noncompliance. The process should include making formal compliance violation determinations.

4. Establish a task force that includes both CCA and IOU representatives to discuss and identify practical dispute resolution processes that will ensure timely solutions issues.

5. Implement an independent and impartial Ombuds to:
    - Investigate, manage, and track CCR compliance issues and take action to resolve the matters timely.
    - Assist in resolving disputes and conflicts between IOUs and CCAs.

6. Ensure CCAs are aware of the ADR program and its benefits.

Appendix A. Summary of Code of Conduct Rules

CCR	Summary of CCRs
1	Defines basic concepts relevant to electric utility actions.
2	Prohibits IOUs from marketing or lobbying against a CCA program, expect through an independent marketing division that is funded exclusively by the IOU's shareholders and that is functionally and physically separate from the IOU's ratepayer-funded divisions.
3	Requires IOUs and CCAs to annually, jointly prepare and distribute neutral, complete, and accurate comparison of their tariffs, sample bills, and generation portfolio contents; annual more detailed comparison information to be posted on the two parties' websites; and ongoing detailed tariff comparisons to be posted to websites within 60 days after any changes. Costs are to be shared.
4	Specifies how the cost of an IOU's independent marketing division's use of support services from the IOU's ratepayer-funded divisions is to be allocated and must be supported by detailed public reports filed quarterly with the Commission's Energy Division and available on the IOU's website.
5	Prohibits an IOU's independent marketing division from having access to competitively sensitive information.
6	Forbids an IOU from recovering any direct or indirect costs used by the IOU for promotional or political advertising from any person other than the shareholders or other owners of the IOU.
7	Requires IOUs to provide access to utility information, rates and services to CCAs on the same terms as it does for its independent marketing division.
8	Specifies that an IOU cannot provide access to market analysis reports or any other types of proprietary or non-publicly available reports to its independent marketing division.
9	Requires IOUs to refrain from, or give the appearance of, speaking on behalf of any CCA, or making a statement related to a CCA's rates or terms and conditions of service that are untrue or misleading.
10	Requires IOUs to keep separate books and records from its independent marketing division.
11	Requires IOUs to be physically separate from its independent marketing division including separate office space, computers and information systems except to the extent appropriate to perform shared corporate support functions.
12	Allows an IOU and its independent marketing division to make joint purchases of goods and services, other than purchases of electricity for resale. The IOU is to ensure that all joint purchases are priced, reported, and conducted in a manner that clearly identifies purchases made by the IOU or its independent marketing division.
13	Allows an IOU to share with its independent marketing division joint corporate oversight, governance, support systems and support personnel; provided that support personnel does not include any persons who are themselves involved in marketing or lobbying. Requires shared support to comply with Commission pricing and reporting requirements and specifies what is not allowed so as to not create preferential treatment, unfair competitive advantages or customer confusion.
14	Requires an IOU to apply tariff provisions in the same manner to the same or similarly situated entities if there is discretion in the application of the provision.
15	Prohibits employees of an IOU's independent marketing division from being employed by the IOU.
16	Places certain requirements on all employee movement between the independent marketing division and other divisions of the IOU requiring them to be consistent with provisions listed including tracking and reporting movement, limiting movement for a period of time, prohibiting using or providing certain information to benefit the IOU or to the detriment of CCAs, and prohibiting assignments or rotations to the division.
17	Does not allow either the IOUs or their marketing divisions to offer to provide, or provide, any goods services, or programs to a local government or to the customers within a local government's jurisdiction on the condition that the local government not participate in a CCA program, or for inducing the local government not to participate in a CCA program. The rule further specifies what the restriction applies to and when it does not apply.
18	Forbids IOUs from discriminating between its own customers and CCA customers in matters relating to products or services that are subject to a tariff on file with the Commission and does not allow an IOU to condition or tie the provision of any product, service, or rate agreement to a customers' participation or non-participation in a CCA program. This does not apply to Commission-approved items only available to bundled service customers.
19	Prohibits IOUs from making any mechanism available for their customers to opt out of a CCA programs unless requested to do so by the CCA.

CCR	Summary of CCRs
20	Prohibits IOUs from refusing to make economic sales of excess electricity to a CCA program, or from refusing in advance to deal with any CCA program in selling electricity because it is a CCA program.
21	Requires IOUs to maintain a log of all new, resolved, and pending complaints submitted in writing, related to services provided for the CCA and CCA customers with specific key information and, requires the log to be available for inspection by CPUC and CCAs.
22	Requires each IOU that intended to market or lobby against a CCA submit, by March 31, 2013, a compliance plan demonstrating to the CPUC that there are adequate procedures in place that will preclude the sharing of information with its independent marketing division that is prohibited.
23	Requires the Commission's Executive Director to arrange for biennial audits prepared by independent auditors verifying that each IOU was in compliance with the CCRs during the preceding two years and describes how costs are to be paid.
24 - 29	Provides complaint processes and enforcement procedures.

Appendix B. Audit Response Letter

On the following pages, we provide San Diego Gas & Electric Company's official response.

Dana Golan
Vice President, Customer Services
8330 Century Park Court
San Diego, CA 92123

December 11, 2023

Mary Taylor
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California Public Utilities Commission
401 R Street
Sacramento, CA 95811

Dina Mackin
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401 R Street
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SUBJECT: SDG&E Response to Community Choice Aggregation Code of Conduct Audit Final Report for January 1, 2019 through December 31, 2022

PURPOSE

San Diego Gas & Electric Company (SDG&E) appreciates the opportunity to respond to the California Public Utilities Commission's (CPUC or Commission) mandated audit to assess compliance with Community Choice Aggregation (CCA) Code of Conduct Rules (CCR) and hereby submits this response to the CPUC for consideration.

BACKGROUND

CPUC Decision (D.) 12-12-036 approved the CCR addressing electrical corporations' conduct related to CCAs. CCR 23 directs that "Beginning in 2015 and every other year thereafter, the Commission's Executive Director shall have audits prepared by independent auditors verifying that each electrical corporation was in compliance with the rules set forth herein during the preceding two years."[1] Because SDG&E has not had an audit directed or prepared by the CPUC since the establishment of the CCA Code of Conduct Rules, this audit covered the four-year period of January 1, 2019 through December 31, 2022. For this audit, SDG&E understands that Energy Division staff requested the auditors to expand the audit scope beyond CCR compliance,

[1] D.12-12-036, Attachment 1 at A1-10.

and asked the auditors to "[a]ssess effectiveness of mechanisms to resolve disputes … and [e]valuate the effectiveness of the Code of Conduct Rules."[2]

SDG&E appreciates the professionalism and collaboration displayed by the Sjoberg Evashenk Consulting (SEC) team during the audit and believes the report to be generally balanced and thorough. SDG&E addresses the audit report recommendations regarding the effectiveness of dispute resolution, and notes that no formal disputes have been raised by any the active CCAs in the SDG&E service territory. In addition, while the audit report did assess whether SDG&E complied with the CCRs, there is little assessment or evaluation in the audit report of the effectiveness of the CCA Code of Conduct Rules, contrary to audit scope as outlined above. As discussed further below, SDG&E has ongoing concerns regarding two outstanding Petitions for Modification (PFMs) related to D.12-12-036, which demonstrate the need to reassess the CCRs for better clarity and effectiveness. SDG&E requests the Commission either address the outstanding PFMs, or alternatively, open a new rulemaking to formally evaluate the CCR the changing market dynamics and considering the exponential growth of CCAs in SDG&E's service area.

DISCUSSION

I. SDG&E supports customer choice and has comprehensive procedures in place to ensure compliance with the Commission's Code of Conduct Rules.

SDG&E's mission is to deliver customers energy that is clean, safe and reliable. Customer choice through CCAs and Direct Access provides the region with clean energy supplies that support climate action plans and policies from state and local government. Unlike the other investor-owned utilities (IOUs) in the state, SDG&E did not have an active CCA in its service territory when D.12-12-036 was adopted by the Commission. The Solana Energy Alliance (SEA) launched in 2018 and was the first CCA in SDG&E service territory. Since that time, SEA merged with the newly formed Clean Energy Alliance (CEA) in 2021 and San Diego Community Power also launched service in 2021. Since the launch of CCAs in the San Diego region in 2018, the CCA unbundled customer base has grown from roughly 7,000 customers (less than half a percent of the total customer base) to over 1 million customers as of December 2023 (representing more than 70% of the total customers in the region). The CCA unbundled customer base will continue to grow in 2024 with the expansion of CEA, and SDG&E forecasts the number of customers served by a CCA in the SDG&E service territory will increase to above 80% by the end of 2024[3]. From a statewide perspective, SDG&E has only a quarter of the customers compared to the other two IOUs, but has one of the state's largest CCAs and the highest percentage of the utility customer base opted into CCA service.

SDG&E has clear protocols and procedures to ensure that the company complies with the CCA Code of Conduct Rules and is pleased that the audit finds that SDG&E complies with the CCRs with no compliance-related recommendations. SDG&E takes the CCRs seriously and errs on the side of caution in all matters of communication with stakeholders and customers related to CCAs, particularly with regard to CCRs 2, 3, 9 and 21. Often, SDG&E communicates nothing at all rather than risk a code of conduct violation. This could be perceived by stakeholders and customers alike as a lack of transparency. As discussed in detail below, SDG&E urges the Commission to

[2] Community Choice Aggregation Code of Conduct Rules Compliance Audit, Draft Report (November 2023) (Audit Draft Report) at 6.
[3] *Id.* at 5, Exhibit 2.

address the outstanding PFMs by considering changed market dynamics and lessons learned over the last 11 years to update the CCRs.

II. SDG&E recognizes the hard work on both sides to bring about an effective working relationship.

With the launch of CCAs in the San Diego region SDG&E has established a Customer Choice team, dedicated to meeting the operational needs of the two regional CCAs as well as any municipalities that express interest in CCA formation. The audit acknowledges the solid working relationship in place between SDG&E and the CCAs, but makes several recommendations to "facilitate effective working relationships."[4] SDG&E provides a response to each of these recommendations below.

- ***Recommendation 1:*** Establish a task force that includes both CCA, SDG&E, and Commission representatives to: (a) Identify ongoing operational issues and causes as well as proposed practical and timely solutions with the intent of supporting a cooperative relationship. (b) bolster SDG&E's Electric Rule 27 and Service Agreements to set standards and expectations, including specific time-frames CCAs can expect to have issues resolved as well as remedies when service standards are not met.

  Response: SDG&E does not object to the recommendation to establish a task force if ongoing "operational issues" continue to remain unresolved. SDG&E would support a Commission-led review of Rule 27 and/or the existing Commission-authorized Service Agreements as part of an open proceeding, potentially combined with SDG&E's recommendation to create a new rulemaking to reevaluate the Code of Conduct Rules.

- ***Recommendation 2:*** Establish a uniform and consistent approach for handling late billings credits across all IOUs that details and clarifies how late billing credits should be applied to both bundled and unbundled customer bills and that assigns the responsibility for bearing the costs associated with issued credits.

  Response: SDG&E agrees that additional discussion amongst the IOUs could be useful regarding the approach for handling late billing credits and whether these credits can or should be applied to both bundled and unbundled customer bills.

III. SDG&E will continue to treat CCAs fairly and work toward best practices for dispute resolution if and when any disputes arise.

- ***Recommendation 3:*** Develop a process to investigate possible CCR violations when identified rather than relying on IOUs and CCAs to work out compliance issues among themselves and implement consequences for noncompliance. The process should include making formal compliance violation determinations.

  Response: This recommendation is redundant because the process already exists via the "Alternate Dispute Resolution (ADR)" program (as identified in

[4] Audit Draft Report at 17.

Recommendation 6) and the record around dispute resolution established by D.12-12-036 was thoroughly litigated and appropriately decided. The Decision notes:

> Not only do the rules and procedures adopted here allow such informal solutions, the requirements that parties attempt to meet and confer before a complaint is filed under this procedure and that parties prepare a joint case management statement before hearings are intended to ***encourage informal dispute resolution activities***. We also remind parties that mediation under the Commission's Alternate Dispute Resolution Program may be available for both formal Commission proceedings and, in certain cases, to disputes expected to lead to formal Commission proceedings. The Rules contained in Attachment 1 provide appropriate flexibility to allow the Commission to process complaints efficiently and expeditiously, while ensuring that the due process rights of parties are preserved.[5]

In addition, according to the audit report, this recommendation aims to address a concern expressed by CCAs over the excessive time it takes to resolve disputes. SDG&E is concerned that the recommendation would add additional complication and burden to the existing processes; it is difficult to see how adding more process will shorten time to any potential resolution of issues. In sum, SDG&E's experience confirms D.12-12-036 and its reliance on negotiation before resorting to formal process. Adding an upfront process "to investigate possible CCR violations when identified rather than relying on IOUs and CCAs to work out compliance issues among themselves" would confound the objective of timeliness.

- ***Recommendation 4:*** Establish a task force that includes both CCA and IOU representatives to discuss and identify practical dispute resolution processes that will ensure timely solutions [of] issues (sic).

  Response: While SDG&E submits that the existing dispute resolution process is fair and adequate, SDG&E does not object to this recommendation if the Commission deems that D.12-12-036 does not adequately make clear the practicality of the existing dispute resolution practices. Alternatively, if the Commission deems it appropriate to revise any existing dispute resolution practices, that can be accomplished through SDG&E's recommendation to open a rulemaking that addresses the CCRs in their entirety.

- ***Recommendation 5***: Implement an independent and impartial Ombuds to: Investigate, manage, and track CCR compliance issues and take action to resolve the matters timely. Assist in resolving disputes and conflicts between IOUs and CCAs.

  Response: As noted above, the dispute resolution procedures were litigated and decided in D.12-12-036. The CCA's contend that the formal dispute resolution practices in place under Article 4 of the Commission's Rules of Practice and Procedure are "too costly and time-consuming and are overly cumbersome"[6] but have not availed themselves of the alternative method of dispute resolution as noted under

[5] D.12-12-036 at 31 (emphasis added).
[6] Audit Draft Report at 19.

Recommendation 6. SDG&E believes the Ombuds concept aligns well with the Commission's ADR process set forth in Resolution ALJ-185 because Energy Division staff are independent and impartial in this context. Therefore, the recommendation should be focused on ways to adapt the existing dispute resolution process to CCA issues, while clarifying roles and responsibilities, including those of Commission staff. SDG&E proposes this assessment be conducted via a new rulemaking that addresses the CCRs in their entirety.

If Recommendation 5 is interpreted to mean another party, other than Energy Division, should be the Ombuds, then SDG&E has some concerns regarding process and funding. In SDG&E's experience, finding a third-party Ombuds will be a lengthy exercise that will likely require a Staff Proposal on the scope of work and proposed budget, a commenting period, a proposed decision with subsequent commenting period, a request for proposal, and contracting. The amount of time required for the above process would add procedural complexity and unnecessarily delay improvement efforts. Furthermore, hiring a vendor to be the Ombuds would require incremental ratepayer funding, thus impacting rates. In this scenario, the recourse to the Ombuds should be consistent with CPUC Resolution ALJ-185, which includes the confidential treatment of submittals and proceedings before the Ombuds and if an Ombuds is established, there should be no enforcement authority conferred.

- ***Recommendation 6:*** Ensure CCAs are aware of the ADR program and its benefits.

  Response: SDG&E agrees with this recommendation.

IV. SDG&E Recommends the Commission Address the Outstanding PFMs in the Proceeding, or open a new Rulemaking to Modernize the CCRs Considering the Rapid Growth of CCAs in the State.

The Commission developed initial policies and procedures related to CCAs in Rulemaking (R.) 03-10-003. In this proceeding, D.04-12-046 and D.05-12-041 addressed most issues related to CCA implementation across the state. In 2011, Senate Bill 790 was enacted directing the Commission to consider and adopt a code of conduct, rules and enforcement procedures governing the conduct of electrical corporations relative to the consideration, formation and implementation of CCAs. The CCR formally established by D.12-12-036, with the stated guiding principles,

> In developing the Code of Conduct and enforcement mechanisms adopted here, our goal, consistent with this statute, is to provide CCAs with the opportunity to compete on a fair and equal basis with other load serving entities (LSEs), and to prevent utilities from using their position or market power to gain unfair advantages. Ultimately, we believe that such a Code of Conduct should benefit customers by preserving their ability to make educated choices among authorized electric providers. Unfair practices by any market participant, and particularly one with market power, may result in a reduction in customer choices, contrary to the public interest.[7]

[7] D.12-12-036 at 6.

After implementation of the CCR, the IOUs grew increasingly concerned about the restrictions imposed in the CCR, particularly with regard to communications regarded as lobbying. Despite the Commission's principles to restrict unfair practices by any market participant, the IOUs found that the restrictions were so onerous that they could not communicate at all, even when they were the subject of potentially erroneous or intentionally false communications from other market participants submitted to local government. Therefore, the IOUs filed a PFM on January 30, 2018 to allow utilities to communicate with local governments regarding CCAs.[8] The CCR imposes substantial restrictions on such communications, which the CCR classifies as "lobbying." SDG&E still contends that modifying these restrictions would advance the public interest, would be consistent with California law, and is necessary to ensure that the CCR complies with the United States Constitution. For these same reasons, the Joint Utilities also requested that the Commission confirm that the CCR does not restrict the Joint Utilities' right to communicate with the press -newspapers, television stations, and radio stations - regarding CCAs.

The Joint CCAs filed a PFM on August 6, 2021 with a request to modify Rule 3 of the Code of Conduct, and asked "to eliminate, after two years, the requirement to distribute a joint rate mailer, while keeping in place, with some modifications, the ongoing requirement for CCAs and IOUs to maintain joint rate comparisons on their respective websites."[9] The IOUs supported this PFM and requested that both PFMs be addressed at the same time. As of this response, both PFMs remain unaddressed by the Commission.

The audit included in its scope to "Evaluate the effectiveness of the Code of Conduct Rules as the CCA Program has matured."[10] SDG&E hoped that such an effectiveness review would have been included but notes there is no discussion or recommendations regarding the effectiveness of the Code of Conduct overall, particularly in its ability to prohibit "unfair practices by any market participant."

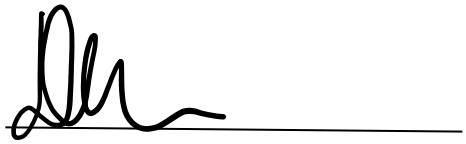
With regard to the recommendations by this first CCR compliance audit, SDG&E notes several recommendations that could be addressed through a new rulemaking to revisit the CCRs overall. The energy market landscape in California has substantially shifted since the CCR was adopted. If the CCR was set up to "provide Community Choice Aggregators with the opportunity to compete on a fair and equal basis with other load serving entities, and to prevent investor-owned electric utilities from using their position or market power to undermine the development or operation of aggregators"[11] then events over the last 11 years, demonstrate that the CCRs have been a tremendous success in expanding CCA service across the state. SDG&E encourages the Commission to consider the need for an open and transparent review of the CCR in the context of this mature and successful market.

CONCLUSION

SDG&E appreciates the work undertaken by the Commission and the SEC audit team to conduct a fair, practical, and impartial audit of compliance with the CCA Code of Conduct Rules. SDG&E generally agrees with the recommendations presented by the auditors, with the caveats noted herein. In particular, SDG&E reiterates concerns regarding the now outdated CCRs, and requests

[8] R.12-02-009, *Petition for Modification of Decision 12-12-036 Of Pacific Gas and Electric Company, SDG&E, and Southern California Edison Co*mpany (January 30, 2018) at 10-21.
[9] R.12-02-009, Joint Community Choice Aggregators' Petition for Modification of Decision 12-12-036 (August 6, 2021) at 1-2.
[10] Audit Draft Report at 6.
[11] D.12-12-036 at 2.

the Commission open a new rulemaking to formally evaluate the CCA Code of Conduct Rules given the changing market dynamics and exponential growth of CCAs in the state. At a minimum, the Commission should address the two outstanding PFMs to provide better clarity for the rules that govern electric IOU and CCA business interaction.



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