Case No. D077271

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

PROTECT OUR COMMUNITIES FOUNDATION
Petitioner,
v.
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
Respondent,

PACIFIC GAS & ELECTRIC COMPANY, SAN DIEGO GAS 7 ELECTRIC COMPANY, SOUTHERN CALIFORNIA EDISON, THE UTILITY REFORM NETWORK, CALIFORNIA LARGE ENERGY CONSUMERS ASSOCIATION, and DIRECT ACCESS CUSTOMER COALITION

Real Parties in Interest.

From a Decision of the Public Utilities Commission of the State of California, No. 18-10-019 (October 19, 2018)

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS PROTECT OUR COMMUNITIES FOUNDATION; PROPOSED BRIEF OF SAN DIEGO COMMUNITY POWER

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CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons that must be listed in this certificate under Rule 8.208 of the California Rules of Court.

DATED: July 6, 2020

TY TOSDAL, Tosdal APC
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By:

/s/ Ty Tosdal
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APPLICATION OF SAN DIEGO COMMUNITY POWER FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

From a Decision of the
Public Utilities Commission of the State of California,
No. 18-10-019 (October 19, 2018)

TO THE HONORABLE PRESIDING JUSTICE:

Proposed *Amicus Curiae* San Diego Community Power ("SDCP") hereby makes this application to file the accompanying brief in this case pursuant to California Rules of Court, Rule 8.200, subd. (c).

SDCP is a Community Choice Aggregation ("CCA") program established in 2019 under a Joint Powers Agreement ("JPA") between the cities of San Diego, Encinitas, La Mesa, Chula Vista, and Imperial Beach. The five member cities established SDCP to provide customers with electricity service sourced from a cleaner power portfolio at rates that are lower or at least competitive with those offered by San Diego Gas & Electric Company ("SDG&E"). SDCP's goals include addressing climate change by reducing energy related greenhouse gas ("GHG") emissions, promoting electric rate price stability, and fostering local economic benefits such as job creation, local energy programs, and local power development. Participating customers will obtain power from SDCP and continue to receive transmission and distribution service from SDG&E.

The Court's resolution of the legal issues in this case will significantly impact SDCP's interest because all enrolled SDCP

customers will be obligated to pay the Power Charge Indifference Adjustment ("PCIA"). The PCIA is charged to all CCA program customers as a component of their monthly bill. An SDCP customer's PCIA charge is intended to represent the costs that SDG&E incurred as a result of procuring energy resources to serve that customer before customers departed for CCA service. To the extent that SDG&E is unable to avoid a loss from that procurement, the customer is responsible for making SDG&E "whole" and paying them back through this monthly charge.

As a consequence of the California Public Utilities Commission ("Commission") Decision ("D.") 18-10-019 ("Decision"), which authorized the above-market cost of utility-owned generation ("UOG") assets to be included in the PCIA, SDCP customers will be required to pay a substantial fee to compensate SDG&E for costs associated with those assets, even though CCA customers are unable to obtain or otherwise benefit from the power produced by the generating facilities at issue. Since SDCP is committed to providing enhanced customer choice while maintaining competitive rates, the added cost will cause SDCP to face increased difficulty attracting additional customers and expanding JPA membership. At the same time, SDG&E, a direct competitor to SDCP, will benefit by indefinitely passing above-market UOG costs on to departing customers. This outcome can be avoided if the Court requires the Commission to adhere to the express statutory limits of its authority and exclude UOG costs from the PCIA charge.

SDCP was formed in 2019, and thus could not participate in the proceeding that resulted in the Commission's 2018 Decision. As a nascent CCA program poised to become one of the largest electricity providers in the region, SDCP is uniquely situated to offer additional perspective on the law and insight into the practical consequences of the Commission's decision in D. 18-10-019.

Because SDCP will be affected by this Court's resolution of the issues, and may assist the Court with its unique perspective, SDCP respectfully requests the permission of the Honorable Presiding Justice to file this *amicus curiae* brief.

DATED: July 6, 2020

Respectfully submitted,

By: /s/ Ty Tosdal

TY TOSDAL, Tosdal APC
Attorney for *Amicus Curiae*,
San Diego Community Power

[PROPOSED] ORDER

The application of San Diego Community Power for permission to file a brief as *Amicus Curiae* having been read and filed, and good cause appearing therefor,

IT IS HEREBY ORDERED that San Diego Community Power be, and hereby is, permitted to file the proposed brief attached to this application as Amicus Curiae herein; and PERMISSION IS HEREBY GRANTED to any party to this appeal to serve and file an answering brief within ___ [*number*] days thereafter.

Dated: _____

_____

Presiding Justice

BRIEF OF SAN DIEGO COMMUNITY POWER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS PROTECT OUR COMMUNITIES FOUNDATION

INTRODUCTION

SDCP is currently on track to become one of the largest electric energy providers in San Diego County by the end of 2021. (San Diego Community Power, Community Choice Aggregation Implementation Plan and Statement of Intent (2019), https://perma.cc/3XNM-4BQ3, at 17 [hereinafter SDCP Implementation Plan].) At full enrollment, SDCP expects to serve a customer base of approximately 740,000 accounts comprised of municipal, industrial, commercial, agricultural, and residential customers located within the jurisdictions of the five founding member cities of San Diego, Encinitas, La Mesa, Chula Vista, and Imperial Beach. (SDCP Implementation Plan at 17.) Recent load forecasts adopted by the Commission show that by 2022, within two years of implementation, SDCP will serve 42% of the total electricity demand in the SDG&E service territory. (*See* Rulemaking ("R.") 16-02-007, *Administrative Law Judge's Ruling Correcting April 15, 2020 Ruling Finalizing Load Forecasts and Greenhouse Gas Benchmarks for Individual 2020 Integrated Resource Plan Filings,* issued May 20, 2020, at Attachment A.)[1] This percentage may increase in the future if additional cities choose to enter the JPA and join the CCA program.

[1] The same forecasts also reflect that by 2022, SDG&E, which currently serves approximately 78% of the region's total electricity demand, will serve approximately 30%.

SDCP joins a growing number of CCA programs formed throughout California following the passage of Assembly Bill ("AB") 117 (Stats. 2002, ch. 838) authorizing cities and counties to aggregate customer demand and provide energy to retail customers within their jurisdictions. (Pub. Util. Code, § 366.2) Considered a means to accelerate the process of providing customer choice and responsiveness to local preferences in the wake of the California energy crisis, AB 117 provides local governments with the opportunity to take a more active role in energy procurement policy and planning. Notably, the statute authorizes CCA programs to be "solely responsible" for the generation and procurement of energy on behalf of its customers, and to set its own customer rates. (§ 366.2,(a)(5), § 366.2(c)(1)(3)(B)) Since 2010, 19 operational CCA programs have formed to provide service to cities and communities throughout the state of California. (1 App. 0131) The continued success and statewide proliferation of CCA programs will allow an increasing number of jurisdictions to contribute towards achieving the emissions reductions and climate planning goals established by the California Legislature.

The successful implementation of a CCA Program in the San Diego area is designed to expand customer choice in the region and provide several benefits to current and prospective SDCP member cities. By providing customers with larger amounts of renewable energy than currently provided by SDG&E, SDCP will allow member cities to reduce the total GHG emissions generated within their jurisdictions and achieve the

reduction goals outlined in their respective Climate Action Plans ("CAPs"). (*See generally* City of San Diego Climate Action Plan, City of San Diego (Dec. 2015), https://perma.cc/9VUC-JK52; City of Encinitas Final Climate Action Plan, City of Encinitas (Jan. 2018), https://perma.cc/2L75-KWM6; Climate Action Plan, City of La Mesa (Mar. 2018), https://perma.cc/S37M-5EH7; Chula Vista Climate Action Plan, City of Chula Vista (Sep. 2017), https://perma.cc/APF5-84EB; City of Imperial Beach Local Coastal Program Resilient Imperial Beach Climate Action Plan (Jul. 2019), https://perma.cc/UL6C-35W3.) In addition, in the first several years of operation, SDCP expects to focus on the development and implementation of local energy efficiency and other programs that will be responsive to community interests. (SDCP Implementation Plan at 12.) The extent to which these benefits will accrue necessarily depends on SDCP's financial condition and long-term viability.

The Commission's adoption of D. 18-10-019 undermines these efforts in contravention of a rate structure established by the Legislature in Public Utilities Code section 366.2. The addition of UOG costs to the PCIA charge will impose a heavy financial burden on SDCP customers, increasing the risk of customer opt-outs and reducing the likelihood of further expansion. Competitive rates will be critical to retaining and attracting key customers. For SDCP to succeed, the value of SDCP's product to customers must be superior or comparable to the value of SDG&E's product. (SDCP Implementation Plan at 29.)

Furthermore, the Commission's Decision to include UOG costs in the PCIA will provide SDG&E with an unfair competitive advantage by inflating SDCP's baseline customer rates while allowing SDG&E to pass off its uneconomic costs. A higher baseline affords SDCP with less flexibility in maintaining a low customer opt-out rate and thus reduces the program's ability to effectively provide cleaner energy choices to communities throughout our region. Further, non-competitive rates and high customer opt-out rates will make SDCP less attractive to other cities and communities in the region that are considering joining SDCP.

For these reasons, SDCP urges the Court to grant the following relief requested by Petitioner:

1. Issue a writ of review to determine the lawfulness of Commission Decision 18-10-019;
2. Direct the Commission to certify its record in the subject proceeding to this Court;
3. Set aside Decision 18-10-019 and remand with direction to adhere to the provisions of Public Utilities Code section 366.2, which does not include UOG costs; and
4. Grant other relief as the Court may deem just and proper.

LEGAL ARGUMENT

A. Commission Decision 18-10-019 Is Erroneous

The rules of statutory interpretation provide the guidance necessary to resolve the question of whether CCA customers, once they elect to leave utility service, may nevertheless be

charged for the above-market costs of UOG assets that remain part of the utility portfolio. In short, the answer is no. The plain language of the applicable statute, Public Utilities Code section 366.2, uses specific terms to describe a rate structure governing the costs associated with utility portfolios that can subsequently be passed on to CCA customers. The rate structure includes certain costs associated with third party contracts that the utility enters into for power, but it does not include UOG costs. The intent of the Legislature can be ascertained from the plain language of the statute, and it may not be amended or supplanted by the Commission.

As a preliminary matter, the Commission's interpretation of the applicable statutes should be given limited weight. When an implementing regulation is challenged on grounds that it is in conflict with a statute or does not lay within the lawmaking authority delegated by the Legislature "the issue of statutory construction is a question of law on which a court exercises independent judgment." (*Western States Petroleum Assn. v. Board of Equalization* (2013) 57 Cal.4th 401, 415 [159 Cal.Rptr.3d 702, 304 P.3d 188, 196].) Statutory interpretation is "ultimately the court's responsibility." (*Western States Petroleum Assn.*, *supra*, 57 Cal.4th 401.) The weight given to an agency's interpretation is "situational" and depends on whether the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. (*Ibid.*) Here, the applicable provisions of the Public Utilities Code do not fall

into these categories, and so little weight should be afforded to the Commission's interpretation.

The rules of statutory interpretation require the courts to ascertain legislative intent. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 715 [3 Cal.Rptr.3d 623, 74 P.3d 726, 729].) A court must first "examine the words themselves because the statutory language is generally the most reliable indicator of legislative intent. [citation] The words of the statute should be given their ordinary and usual meaning and should be construed in their statutory context." (*Ibid.*) Provided that the statutory language is unambiguous, the plain meaning of the statute governs. (*Whaley v. Sony Computer Entertainment America, Inc.* (2004) 121 Cal.App.4th 479, 485 [17 Cal.Rptr.3d 88, 93].)

"In the face of the plain statutory language, there is no need to resort to rules of statutory construction to ascertain legislative intent; it was made clear." (*Palmer v. City of Ojai* (1986) 178 Cal.App.3d 280, 290 [223 Cal.Rptr. 542, 548].) A court "may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349 [45 Cal.Rptr.2d 279, 902 P.2d 297, 301].). "It is our task to construe, not to amend, the statute." (*California Fed. Savings & Loan Assn.*, *supra*, 11 Cal.4th 342, 349.) It is not the role of the court "to insert what has been omitted, or to omit what has been inserted …." (*Id.* at

301, quoting *Manufacturers Life Ins. Co. v. Superior Court* (1995) 10 Cal.4th 257, 274 [41 Cal.Rptr.2d 220, 895 P.2d 56, 65].)

1. Public Utilities Code Section 366.2 Contains Specific Language that Does Not Include Utility Owned Generation

The Legislature established a rate structure governing costs incurred by utilities to serve customers who subsequently departed a utility for a CCA program. The "cost-recovery mechanism in subdivisions (d), (e), and (f)" of the statute contains a list of permissible costs that can be charged to CCA customers for this purpose. (Pub. Util. Code, § 366.2(c)(5).) The relevant parts of the statute describe these costs in detail as follows.

Public Utilities Code section 366.2(d)(1) addresses Department of Water Resources costs and contract obligations. This section provides:

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

(Pub. Util. Code, § 366.2 (d)(1).)

Public Utilities Code section 366.2(e) elaborates on Department of Water Resources costs and specifies what costs are eligible for recovery from CCA program customers:

> A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:
>
> (1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond-related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.
>
> (2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(Pub. Util. Code, § 366.2(e).)

Public Utilities Code section 366.2(f) provides that certain utility costs, namely "past undercollections" and "electricity purchase contract costs", are required to be recovered from CCA customers:

> A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:
>
> (1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.
>
> (2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(Pub. Util. Code, § 366.2(f).)

The plain language of these sections of the statute is specific and contains a detailed list of costs that are eligible to be included in charges imposed on CCA program customers. None of the statute's provisions authorize the recovery of UOG costs

stemming from power plants owned and operated by utilities. The statute restricts charges to contract-related costs and Department of Water Resources costs. The term "electricity purchase contract obligations" in section 366.2(d)(1) refers to contract-related costs, not UOG costs. The provisions of section 366.2(e) applies to Department of Water Resources costs rather than costs associated with utility portfolios. Finally, section 366.2(f) refers to "past undercollections for electricity purchases" and "electricity purchase contracts" that are contract-related costs, rather than costs associated with power plants owned and operated by a utility.

Furthermore, while there is general language about preventing cost-shifting in section 366.2(d)(1) and elsewhere, there is no specific language in the statute that demonstrates a legislative intent to allow additional unmentioned costs to be recovered from CCA customers. To the contrary, Section 366.2(d)(1) uses the term "should" to refer to the obligations of CCA customers and then provides a detailed description of Department of Water Resources costs that must be paid, while sections (e) and (f) similarly provide that CCA customers "shall" pay specific costs listed. The absence of qualifiers that would support an alternative interpretation that the list of costs is open-ended is noteworthy.

There is apparently no dispute that the specific costs listed in Public Utilities Code section 366.2(d)(1), (e), and (f) fail to provide legal authority to recover UOG costs from CCA customers. Instead, the Commission and Real Parties rely on

general language that refers to preventing cost shifting in Public Utilities Code section 366.2, as well as language in sections 365.2 and 366.3, for authority to support the recovery of UOG costs from CCA customers. (*See* Respondent's Brief at 16; Real Parties' Brief at 17.) As described below, the interpretation advanced by the Commission and the Real Parties is incorrect because it relies on general language regarding costs, and as further explained below, depends on a false assumption.

2. The Commission and Real Parties Rely on General Language Regarding Cost-Shifting Between Customers and a False Assumption about Utility Owned Generation

The Commission and Real Parties rely on general statutory language regarding cost-shifting to support their argument that UOG costs must be included in the PCIA and charged to CCA customers. One of the sections of the statute they cite provides:

> The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

(Pub. Util. Code, § 365.2). Another section cited by the Commission and the Real Parties is Public Utilities Code section 366.3, which includes language that is nearly identical to the

language above. Finally, they rely on Public Utilities Code section 366.2(d)(1), which provides: "It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers." Notably, the prohibition against cost-shifting applies equally to utility customers and CCA program customers.

While the language contained in these statutory provisions provides direction to the Commission in its development of regulations, it is general in nature. The language refers to "cost increases" and "recoverable costs" without further modification. Unlike the statutory provisions of Public Utilities Code section 366.2 that are discussed above, no specific costs are identified among these provisions. With specific language having been provided by the Legislature on the subject, the general language provides no basis to amend or supplant the rate structure established for departing CCA program customers.

Furthermore, the Commission and Real Parties apparently rely on the false assumption that UOG costs must be paid by utility customers or CCA program customers, but that is not the case. There are other options available. For example, the Commission could disallow the recovery of UOG costs in utility rates when it is determined that plants are longer needed to serve remaining utility customers. Utilities may then contract with other energy providers for the power generated by those plants, or sell the plants and obtain value for them. Alternatively, the Commission could engage in a formal process to supervise the sale of such power plants.

There are numerous historical examples of utilities selling power plants to a third parties. For example, prior to deregulation, SDG&E obtained approval from the Commission to sell the South Bay Power Plant located in Chula Vista to the San Diego Unified Port District and sell the Encina Power Plant located in Carlsbad to NRG Energy Inc. (*In the Matter of the Application of San Diego Gas & Elec. Co. (U 902-e) for Auth. to Sell Elec. Generation Facilities & Power Contracts.* (Mar. 4, 1999) 85 CPUC 2d 248 at Ordering Paragraph 1; *In Re Application of San Diego Gas & Elec. Co.* (Feb. 18, 1999) 85 CPUC 2d 134 at Ordering Paragraph 1.) The sale of these facilities show that not only is there a market for the sale of power plants, but also that it is possible to eliminate UOG costs that arise from utility plants when they are no longer necessary to serve utility customers. The assumption that such costs must be borne by utility or CCA customers is wrong.

As Petitioner POC points out, the Commission does not harmonize the general statutory language that it relies upon with the specific language that describes costs that may be recovered from CCA customers in Public Utilities Code section 366.2, subdivisions (d)(1), (e) and (f). (Petition at 46-51.) Yet harmonizing these statutory provisions is possible, provided that the plain meaning of specific language in the statutes is given effect and that false assumptions are rejected. For these reasons, the Commission and Real Parties' interpretation of the applicable statues is incorrect. The specific language contained in section 366.2 reveals a legislative intent to establishe a rate structure

governing utility costs that may be passed on to CCA customers, and that rate structure does not include UOG costs.

B. The Commission's Decision Regarding Utility Owned Generation Costs Will Result in Substantial Harm to San Diego Community Power Customers

The Commission's decision to include UOG costs in the PCIA will result in substantial harm to SDCP customers. SDG&E has estimated that its total PCIA-eligible UOG costs range between $100 and $200 million per year, and charges for those costs may be imposed for a period of 16 years, until the power plants reach the end of their life cycle. (2 App. 1807.) SDCP customers will be obligated to pay a significant percentage of these costs, most likely 40% to 50%, based on the anticipated size of the program. Despite the heavy burden, SDCP customers will be unable to obtain power or other benefits from the power plants that SDG&E owns and operates.

To put the consequences in perspective, SDG&E currently provides electricity service to 1.46 million customer accounts. (SDG&E, *Diverse Business Enterprises 2019 Annual Report and 2020 Annual Plan*, March 1, 2020, at 2.) When SDCP completes customer enrollment, it will serve an estimated 740,000 customer accounts, reaching millions of customers across the five participating cities. (SDCP Implementation Plan at 17.) These accounts will comprise the full range of customer classes, including municipal, commercial, industrial, residential and agricultural customers. (SDCP Implementation Plan at 17.)

Each of these customers will have to pay a share of SDG&E's UOG costs on their monthly bills for the foreseeable future.

The amount of the charges is significant. For comparison, at full enrollment beginning in 2022, SDCP anticipates that its annual revenue from electricity sales will be between $517 million and $587 million over the next five years. (SDCP Implementation Plan at 27.) SDG&E estimates that its total PCIA-eligible UOG costs will be between $100 and $200 million per year for a period of 16 years. (2 App. 1807.) Based on the anticipated size of the CCA program, it stands to reason that 40% to 50% of these UOG costs will become the obligation of SDCP customers, who will pay significantly more than they would otherwise to compensate SDG&E for the cost of power plants that it owns but that do not serve SDCP customers any longer.

Beyond direct charges to customers, the Commission's decision to pass on UOG costs to CCA program customers will negatively affect SDCP's budget. Assuming that SDCP maintains competitive rates, which is an important stated goal of the program (SDCP Implementation Plan at 29-31), the resulting budget impact will require SDCP to make extraordinarily difficult choices about how to use available resources to meet other important goals, such as meeting the GHG reduction targets of its member cities, and launching customer programs. (SDCP Implementation Plan at 4.) For all of these reasons, the financial harm to SDCP customers is substantial.

C. Portfolio Optimization, Provided it Occurs at All, Does not Correct the Legal Error

The Commission and Real Parties argue that efforts being undertaken now in a subsequent phase of the same proceeding that produced D. 18-10-019 can address concerns over increased costs and portfolio mismanagement. (2 App. 2318; Real Parties' Brief at 56). However, as of the date of this brief, the Commission has not issued a decision regarding the management of utility portfolios, and there is no guarantee that in the event a decision is issued, it will provide any relief to the parties. In addition, these efforts will focus on "future portfolio mismanagement," and not necessarily on past imprudent decisions. (2 App. 2318.) As such, the notion of customer relief from increased PCIA rates remains purely speculative and does nothing to relieve customers from higher rates due to past portfolio mismanagement. This leaves SDCP customers to suffer the consequences of SDG&E's failure to avoid UOG costs for the foreseeable future.

In any event, whether portfolio optimization efforts can or will provide relief to SDCP and other CCA customers going forward is immaterial to the issue before the Court. The Commission's authority to impose charges on CCA program customers for utility costs is limited to the bounds of Public Utilities Code section 366.2(d)(1), (e), and (f). (Pub. Util. Code, § 366.2,(c)(5).) Petitioners now challenge the Commission's decision in D. 18-10-019 to include costs not contemplated by any of these subdivisions in the PCIA. As such, the Commission's

hypothetical ability to remedy the effects of its unlawful decision should bear no weight on the Court's review.

CONCLUSION

For the foregoing reasons, San Diego Community Power respectfully requests that this Court grant the relief requested by Petitioner, stated as follows:

1. Issue a writ of review to determine the lawfulness of Commission Decision 18-10-019;
2. Direct the Commission to certify its record in the subject proceeding to this Court;
3. Set aside Decision 18-10-019 and remand with direction to adhere to the provisions of Public Utilities Code section 366.2, which does not include UOG costs; and
4. Grant other relief as the Court may deem just and proper.

DATED: July 6, 2020

By: /s/ Ty Tosdal
TY TOSDAL, Tosdal APC
Attorney for *Amicus Curiae*,
San Diego Community Power

CERTIFICATE OF COMPLIANCE

(California Rules of Court 8.204(c)(1))

I hereby certify, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed brief of Amicus Curiae San Diego Community Power contains 4,479 words, not including tables of contents and authorities, the signature block, and this certificate, as counted by Microsoft Word, the word processing program used to prepare this brief.

DATED: July 6, 2020

TOSDAL APC

By: */s/ Ty Tosdal*

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