State of California **California Natural Resources Agency**

M e m o r a n d u m

Date: July 9, 2021

To: Marybel Batjer, President
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, California 94102

From: **Department of Water Resources**

Subject: Rulemaking 15-02-012 Excess Amounts

In this Proposed Notice, the Department of Water Resources ("DWR" or "the Department") discusses the wind-down of the Electric Power Fund ("EPF") and provides notice to the California Public Utilities Commission ("CPUC" or "Commission") of certain "excess amounts" available to be returned to ratepayers in the Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), and San Diego Gas & Electric Company ("SDG&E") service areas.

Background

DWR established the Power Supply Program in 2001. Under the Power Supply Program, DWR purchased power for sale to end-use customers in the service areas of the investor-owned utilities ("IOUs") in the state.

The statutory authority for DWR to act in connection with the Power Supply Program is from Assembly Bill 1X ("AB1X"), which was codified as Division 27 of the California Water Code (collectively the "Act"). The Act established the framework under which DWR would procure electric power and recover the costs of the Power Supply Program. The Act also authorized DWR to issue up to $13.4 billion principal amount of Power Supply Revenue Bonds ("PSRBs" or the "Bonds") to provide permanent financing for costs incurred relating to the Power Supply Program.

In 2002, DWR issued the Bonds in multiple series over the course of the year in the aggregate principal of $11.3 billion to: repay certain loans, establish certain debt service reserves and operating reserves, pay costs of obtaining credit enhancement and pay costs of issuance related to the issued Bonds. All the Bonds issued in 2002 have since been refunded with subsequent issuances of refunding Bonds.

DWR recovered the costs of the Power Supply Program through "Bond Charges" and "Power Charges," (if applicable) which were imposed by the CPUC on over 11 million bundled customers and certain direct access, departing load and Community Choice Aggregation customers. The Act and a Rate Agreement specific to the Power Supply Program between DWR and the CPUC (the "Power Supply Rate Agreement") provide guidance regarding the collection and allocation of such charges.

After the last long-term power purchase contract expired in April 2015, DWR's revenues were substantially comprised of Bond Charges. As the Commission has been previously advised, the amounts currently held in the Power Charge accounts are projected to be more than sufficient to pay any outstanding costs related to the expired power contracts, including amounts to pay for litigation and regulatory support costs. If any amounts in the Power Charge accounts are determined to be excess amounts, such amounts have been and will continue to be returned to ratepayers.

This Proposed Notice confirms that on September 24, 2020, the Department had sufficient amounts available in its Bond Accounts in excess of its future bond obligations so that all the remaining PSRBs have been defeased through the establishment of an irrevocable escrow composed of securities backed by the U.S. government. The original security lien created by the Power Supply Indenture in favor of such defeased bonds has been released (i.e., the Bond Charge instituted to secure the PSRBs has been released from the lien securing the PSRBs) and the debt has been legally satisfied, even though it may not be retired until its maturity. Considering such defeasance, the remaining PSRBs are secured not by the assets of the issuer (which is, DWR), but by the assets held in the escrow account or trust estate.

This Proposed Notice also confirms the Department sent notice to the Commission to direct the IOUs to "shut off" EPF charges (which secure the Power Supply Revenue Bonds) on or before September 30, 2020. DWR also gave notice to the Commission to direct the IOUs to begin charging specified ratepayers in the IOUs service areas the Wildfire Non-by-passable Charge. In its Rulemaking 19-07-017 the Commission directed the IOUs to begin imposition and collection of the Wildfire Fund non-by-passable charge on October 1, 2020. The IOUs stopped imposition of the EPF Bond Charge on September 30, 2020.

Consistent with Decision 20-09-005 the IOUs ceased to impose new PSRB charges on customers after September 30, 2020, but the Department will continue to receive previously imposed PSRB charges as they are collected by the IOUs and submitted to DWR. Such revenues associated with these charges are approximately $170.7 million for the period of September 24, 2020, through June 30, 2021. These amounts, less amounts for administrative and legal costs associated with the PSRBs are deemed excess amounts by the Department.

Determination of Excess Amounts

As required by the Act governing the Power Supply Program, the Rate Agreement, and the Regulations, the Department determines, based on the materials presented and referred to in this Notice that it has adequate amounts in its Power Charge Accounts at all times to pay all Department costs including the costs to support future litigation. Specifically, the Department is a participant, along with other California Parties, in the Federal Energy Regulatory Commission Refund Proceedings associated with the energy crisis in California in 2000 and 2001. In the future, when the Department receives amounts associated with settlements it will notify the CPUC and support its allocation of any excess amounts that can be returned to ratepayers in the IOUs service areas.

In this Notice, the Department is providing notice of revenue requirement determination for the Bond Charge Accounts. For 2022, the Department has examined, among others, the amount of

EPF Bond Charge collections by the Department with respect to prior Bond Charges imposed on ratepayers in prior annual revenue requirement periods, interest earnings on amounts on deposit in the Bond Accounts and determines that it has excess amounts of $170.7 million in its Bond Charge Accounts.

This determination of Excess Amounts considers preliminary actual operating results through May 30, 2021. The Department is not projecting to receive any Power Charge or Bond Charge revenue from ratepayers in the future. It projects to maintain approximately $13 million in the Power Charge Accounts to account for any contingent liabilities associated with the power purchase contracts and to pay certain administrative and litigation expenses through the end of the Power Supply Program.

Table 1 shows a summary of the Department's revenue requirement and the accounts associated with projected Department Costs ("Power Charge Accounts"). A summary of the Department's revenue requirement and the accounts associated with its Bond Related Costs ("Bond Charge Accounts") is presented in Table 2.

TABLE 1
SUMMARY COMPARISON OF THE DEPARTMENT'S POWER CHARGE REVENUE REQUIREMENT AND POWER CHARGE ACCOUNTS [1]

Description	2022 ($ millions)
Beginning Balance in Power Charge Accounts	**14.3**
Power Charge Accounts Operating Revenues	
Litigation Settlements Received	-
Interest Earnings on Fund Balances	-
Total Power Charge Accounts Operating Revenues	**-**
Power Charge Accounts Operating Expenses	
Return of Excess Amounts to Customers	-
Operating Expenses	1.5
Total Power Charge Accounts Operating Expenses	**1.5**
Net Operating Revenues	(1.5)
Ending Aggregate Balance in Power Charge Accounts	**12.8**

[1] Numbers may not add exactly due to rounding.

TABLE 2
SUMMARY COMPARISON OF THE DEPARTMENT'S BOND CHARGE REVENUE REQUIREMENT
AND BOND CHARGE ACCOUNTS [1]

Description	2022 ($ millions)
Beginning Balance in Power Charge Accounts	**170.6**
Bond Charge Accounts Revenues	
Bond Charge Revenues from Utilities	-
Interest Earnings on Fund Balances	0.1
Total Bond Charge Accounts Revenues	**0.1**
Bond Charge Accounts Expenses	
Return of Excess Cash	170.7
Administrative and General Expenses	-
Total Bond Charge Accounts Expenses	**170.7**
Net Bond Charge Revenues	(170.6)
Ending Aggregate Balance in Bond Charge Accounts	-

Future Revenue Requirement

The Department will, upon receipt of settlements from any legal proceedings involving the Department[2], and when it no longer requires maintaining amounts for Administrative and General expenses will inform the CPUC of these amounts and provide a future notice to the CPUC to return such amounts to ratepayers in the IOUs service areas, make material changes and will revise its revenue requirement accordingly.

Additionally, the Department has created a framework to guide the future decisions pertaining to the end of the Department of Water Resources' Power Supply Program, to be undertaken in consultation with the CPUC. The principles guiding the future decisions are outlined in the Bond Indenture which governs how any excess Bond Charges and Power Charges are to be used. Certain guidelines apply to the Power Charge excess amounts and certain guidelines apply to any excess amounts in the Bond Charge Accounts. A summary of these principles is below, followed by additional discussion and specific sections from the Indenture[3] for reference.

[2] The Department is a participant, along with other California Parties, in the Federal Energy Regulatory Commission Refund Proceedings associated with the energy crisis in California in 2000 and 2001. When the Department receives amounts associated with settlements it will notify the CPUC and support its allocation of any excess amounts that can be returned to ratepayers in the IOU service areas.
[3] The Indenture is used to guide decisions, it is no longer a legal agreement between bondholders and DWR after the EPF Bonds were defeased

Guiding Principles Regarding the Ending of Power Supply Revenue Bonds Program

The Power Supply Indenture governed how any excess Bond Charges and Power Charges are to be used. Certain guidelines in the Power Supply Indentures discuss the Power Charge excess amounts and to any excess amounts in the Bond Charge Accounts. A summary of these principles is below, followed by additional discussion and specific sections from the Power Supply Indenture for reference:

- Once amounts in the Power Charge Accounts are sufficient to pay for the future Power Charge Obligations of DWR, no further Power Charge deposits shall be required to be made into the Power Charge Accounts (i.e., no new Power Charges are imposed or collected once there are no longer any Power Charge Obligations).

- Excess amounts in the Power Charge Accounts are returned to ratepayers through a negative Power Charge (negative revenue requirement). This negative charge (credit) is applied to satisfy the obligation of the same class of customers that received DWR supplied power. This preserves and implements the underlying premise of the statute and financing structure, i.e., that DWR revenues are both derived from the ratepayers and applied for the benefit of the ratepayers, as opposed to the IOUs. In a sense, crediting can be viewed as analogous to a rebate to the customer class which initially paid the Power Charges.

Once balances in the Bond Charge Accounts were sufficient to pay for the future Bond Charge Obligations of DWR, no further deposits were required to be made into the Bond Charge Accounts (i.e., no new Bond Charges will be imposed there are now sufficient funds on hand to pay the Bond Charge Obligations). As provided in its September 24, 2020, Notice to the CPUC and related CPUC decision, EPF Bond Charges were "shut-off" on or about September 30, 2020. However, due to the collection curve which is related to the period between when a ratepayer is billed for charges and when such charges are sent to the Department, the Department continued to receive Bond Charges even after “shut-off” occurred.

These amounts, provided in Table 2 are deemed excess amounts and DWR will work with the CPUC and the IOUs to return such amount to ratepayers through a negative charge (credit) so that the credit is applied to satisfy the obligation of the same class of customers that paid the Bond charges. This preserves and implements the underlying premise of the statute and financing structure, i.e., that DWR revenues are both derived from the ratepayers and applied for the benefit of the ratepayers, as opposed to the IOUs.

Consistent with the permitted use of such excess amounts, DWR has historically, in consultation with the CPUC, returned these amounts through a negative revenue requirement which is allocated to ratepayers as a credit on their monthly utility bill. Also, consistent with the Power Supply Indenture, DWR is retaining a contingency amount to pay certain administrative and legal costs associated with the Power Supply Program and DWR's participation with the California Parties[4], which are participating in Federal Energy Regulatory Commission ("FERC") proceedings to recover excess electricity costs incurred by ratepayers since 2001.

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[4] Includes the Governor’s Office, California Attorney General’s Office, CPUC and the IOUs.

These FERC proceedings have led to numerous settlement agreements[5] between the California Parties and the responsible energy suppliers.

The Power Supply Rate Agreement similarly contemplated that no Bond Charges need be collected once all Bond Related Costs have been provided for as described below. As noted above, following the historical practice for excess Power Charges, amounts are collected during the period when the collection of Bond Charges is being halted will be returned to ratepayers.

Because all Bonds have been retired and/or defeased, any excess amounts held under the Power Supply Indenture should be returned to ratepayers pursuant to the indenture and subject to the applicable provisions of the Water Code, managed in consultation with the CPUC by virtue of the funds being derived from ratepayers. The application of excess amounts, including how final balances would be applied and refunded to customers in a similar manner to the refunds of Power Charges, would be outlined in the future revenue requirements prepared by DWR.

The application of any excess amounts held under the Power Supply Indenture after the payment of all remaining Bonds will be implemented consistent with the requirements of the Power Supply Indenture. Section 1101 of the Power Supply Indenture governs the termination of the Indenture and it provides: "*If the Department shall pay or cause to be paid to the Owners of all Bonds then Outstanding the principal or Redemption Price, if any, and interest to become due thereon ..., and to the holders or issuers of or other parties to all Parity Obligations all amounts payable thereunder and upon the termination thereof, at the times and in the manner stipulated therein and in the Indenture, then the covenants, agreements and other obligations of the Department to the Owners of Bonds, ... and the holders or issuers of or other parties to all Parity Obligations shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Department, execute and deliver to the Department all such instruments as may be desirable to evidence such discharge and satisfaction and the Fiduciaries shall pay over or deliver to the Department all money, securities and funds held by them pursuant to the Indenture which are not required for the payment or redemption of Bonds not theretofore surrendered for such payment or redemption, or required to make payments under ... [any] Parity Obligations.*" To document such compliance, DWR, has provided a letter to the Trustee (i) advising the Trustee that all payments due on all Bonds (and any Parity Obligations) have been paid when due and requesting that the Trustee confirm that all such Bonds and Parity Obligations are no longer outstanding, (ii) directing the application of whatever excess amounts remain on hand under the Indenture, and (iii) requesting that the Trustee confirm by its execution of the letter that all of the covenants, agreements and other obligations of DWR to the Owners of Bonds and the holders or issuers of or other parties to all Parity Obligations are discharged and satisfied and that the Indenture is accordingly terminated in accordance with its terms. The Trustee subsequently executed the letter.

[5] Website for settlement agreements

PRIOR DETERMINATIONS

Each new revenue requirement determination builds, to the extent necessary or appropriate, on the various preceding determinations. Successive determinations incorporate the information from each previous determination into the supporting administrative record. Determinations are available by contacting DWR California Energy Bond Office ("CEBO") staff by visiting the CEBO website Additionally, supporting materials are available at the CEBO office in Sacramento, subject to applicable non-disclosure requirements.

Determination	Date Issued
2001-2003, including Reexamination and Redetermination for 2001-2002	August 16, 2002
Reconsideration of Just and Reasonableness of 2001 - 2003	August 19, 2004
2003 Supplemental	July 1, 2003
2004	September 18, 2003
2004 Supplemental	April 16, 2004
2005	November 4, 2004
Revised 2005	March 16, 2005
2006	August 3, 2005
Final 2006	October 27, 2005
2007	August 2, 2006
Revised 2007	October 30, 2006
2008	August 22, 2007
Revised 2008	October 31, 2007
Supplemental 2008	February 15, 2008
2009	August 6, 2008
Revised 2009	October 29, 2008
2010	August 6, 2009
Revised 2010	October 27, 2009
2011	August 5, 2010
Revised 2011	October 26, 2010
2012	August 4, 2011
Revised 2012	October 27, 2011
2013	August 2, 2012
Revised 2013	October 15, 2012
2014	August 1, 2013
Revised 2014	October 18, 2013
2015	August 21, 2014
Revised 2015	October 23, 2014
2016	August 6, 2015
2017	August 4, 2016
Revised 2017	October 21, 2016
2018	August 8, 2017
2019	August 2, 2018
2020	August 22, 2019

THE 2022 DETERMINATION OF EXCESS AMOUNTS

PUBLIC PROCESS

Under the terms of the Rate Agreement between the Department and the Commission, and the terms of the Bond Indenture, the Department has agreed to review, determine and revise its Retail Revenue Requirement at least annually.

The Department is providing this proposed Determination of Excess Amounts for the period January 1, 2022, through December 31, 2022, for public review and comment under the Regulations promulgated pursuant to the California Administrative Procedures Act. The Department will provide interested persons with quantitative results from its contract volume and cost analytical models and Financial Model, subject to applicable non-disclosure requirements. Interested parties were advised to submit comments no later than July 23, 2021.

JUST AND REASONABLE DETERMINATION

The Department, intends to, after completing its assessment of the administrative record, the Act, the Regulations, Bond Indenture requirements and the Rate Agreement, –find this Determination, for the period of January 1, 2022, through December 31, 2022, to be a just and reasonable determination of its 2022 Revenue Requirement.

REFERENCE MATERIALS UPON WHICH THE DEPARTMENT RELIED TO MAKE THE DETERMINATION

Volume	Record Number	Date	Record Title
DWR22pRR	1	4/30/2021	DWR Electric Power Fund Audited Financial Statements, for fiscal year ending 6/30/20
DWR22pRR	2	09/24/2020	Power Bonds Defeasance Memo
DWR22pRR	3	06/30/2021	CONFIDENTIAL: NOT FOR PUBLIC RELEASE: Data files supporting the Proposed Determination of Revenue Requirement for 2022, specific to PG&E
DWR20pRR	4	06/30/2021	CONFIDENTIAL: NOT FOR PUBLIC RELEASE: Data files supporting the Proposed Determination of Revenue Requirement for 2022, specific to SCE
DWR22pRR	5	06/30/2021	CONFIDENTIAL: NOT FOR PUBLIC RELEASE: Data files supporting the Proposed Determination of Revenue Requirement for 2022, specific to SDG&E
DWR22pRR	6	06/30/2021	DWR Financial and Operating Model CFMG6V5v-2022 EPF RR 7-9-2021 filing.xlsm

Summary

The PSRBs have been defeased as described in this Proposed Notice and a notice provided to the Commission on September 24, 2020. Consistent with Decision 20-09-005 the IOUs ceased to impose new PSRB charges on customers after September 30, 2020, however the Department has continued to receive previously imposed PSRB charges as they are collected by the IOUs and submitted to DWR. As described in Table 2, the revenues associated with these charges have resulted in a $170.7 million overcollection through June 30, 2021. This amount, associated with the PSRBs, are deemed Excess Amounts by the Department. The Power Bond Charges were implemented as an equal charge on non-exempt load in the service areas of the IOUs. DWR will work with the CPUC to facilitate the return of such amounts in a manner that assures that the credit is applied to satisfy the obligation of the same class of customers that paid the Bond Charges. This preserves and implements the underlying premise of the statute and financing structure, i.e., that DWR revenues are both derived from the ratepayers and applied for the benefit of the ratepayers, as opposed to the IOUs. Given that the Department expects to have additional amounts in the future it recommends that the CPUC maintain the current DWR revenue requirement proceeding (R.15-02-012) open through at least December 31, 2022, so that the Excess Amounts can be returned to ratepayers in a timely manner.

If you have any questions or need additional information, please contact Jesse Cason, Jr. at (916) 557-4620 or jesse.cason@water.ca.gov.

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(Cc: See attached list.)

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