

COMMENTS ON ‘CALIFORNIA CUSTOMER CHOICE: AN EVALUATION OF REGULATORY FRAMEWORK OPTIONS FOR AN EVOLVING ELECTRICITY MARKET’ (DRAFT GREEN BOOK)

The California Center for Sustainable Communities (CCSC) is pleased to have the opportunity to provide comments on the Draft Green Book ‘California Customer Choice: An Evaluation of Regulatory Framework Options for An Evolving Electricity Market’. The CCSC is committed to science in the public interest and conducts research on energy, water, and sustainability in California and Los Angeles County. The CCSC welcomes the launch of the California Customer Choice Project and the Green Book, and strongly agrees that recent developments in customer choice, particularly community choice aggregation, warrant a detailed evaluation of the relevance and effectiveness of California’s existing electricity governance framework.

The CCSC believes that the Draft Green Book is currently lacking the analytical rigor and necessary degree of imagination required to achieve the Commission’s stated regulatory objectives of affordability, decarbonization, and reliability in the context of a rapidly evolving energy and electricity sector. The following comments address omissions and factual inconsistencies as well as larger themes identified through a detailed review of the Green Book, the accompanying FAQ, and attendance at the May 3 webinar hosted by the Commission.

THE ANALOGY BETWEEN THE 2000-01 CALIFORNIA ENERGY CRISIS AND THE RECENT EXPANSION OF CUSTOMER CHOICE IS FLAWED

The Green Book relies heavily on assumed similarities between the 2000-01 California Energy Crisis and recent developments in customer choice, such as community choice aggregation. While the two events reflect similar trends – particularly fragmented decision-making – the underlying drivers contributing to these trends are quite distinct and thus not directly comparable. The CCSC argues that this analogy is flawed for the following reasons:

- ◆ Many of the factors that drove the 2000-01 Energy Crisis, including over-reliance on antiquated natural gas generation and the absence of reliability requirements, no longer apply.
- ◆ A fundamental flaw in deregulation preceding the Energy Crisis was the notion of competition – that it would necessarily result in lower prices for electricity. Electricity is a basic need; creating an unregulated competitive market for something that is a basic need is a fundamental logical flaw. CCA power procurement – conducted by public entities on behalf of their constituents – does not resemble this approach.
- ◆ The process of electricity market deregulation that preceded the Energy Crisis represented a purely hermetic market approach. Deregulation was passed with no consideration of distributed generation and the energy transition. CCAs, in many cases motivated by a desire to promote local distributed renewable energy generation, operate

under an entirely different incentive structure. The Green Book discussion does not take into account that the CCA's are public entities, which is an important state shift from the private-sector model on which deregulation was based.

THE SUCCESS OF THE EXISTING REGULATORY FRAMEWORK IS OVERSTATED

The CCSC agrees that IOUs have played a significant role in the response to the 2001 Energy Crisis. As noted in the previous section, however, the current policy and technological dimensions of the California electricity sector differ significantly from those of the early 2000s. The CCSC identifies a number of areas in which the existing regulatory framework has failed to adapt to these changing circumstances, which may ultimately impede the Commission's ability to meet its stated objectives of affordability, decarbonization, and reliability if left unaddressed.

- ◆ Distributed generation: The Green Book states that “Beyond renewable procurement, the Legislature and the CPUC have relied on the incumbent utilities’ economies of scale as a finance model to underwrite energy efficiency investments, market transformation programs for technologies such as rooftop solar and battery storage, demand response programs, and low-income programs” (p. 4). However, previous submissions to the Commission demonstrate utilities have actively pushed back on support measures for roof top solar and battery storage¹. While IOUs are indeed able to employ economies of scale as a finance model they are: 1) obligated by the Commission to invest in energy efficiency; and 2) have been reluctant players in the transformation to distributed generation, limiting ‘over’ generation, and constraining generation by setting limits on grid penetration. Current programs do not, as the Green Book claims, “empower customers to choose from new distributed energy options or to procure electricity from companies and agencies deploying new business models” (p. 4). Rather, customer empowerment is limited to the extent that utilities are obligated to provide access to such programs.
- ◆ Direct access: The need for a cap on Direct Access enrollments (p. 9) demonstrates pent up demand, suggesting some level of dissatisfaction among electricity customers with the incumbent utility offerings.
- ◆ Storage: While the Commission required Southern California Edison and San Diego Gas & Electric to procure storage to address reliability concerns created by the shutdown of the Aliso Canyon natural gas storage facility (p. 13), the required storage infrastructure not yet been installed.

¹ See SCE, “Southern California Edison Company’s Informal Comments on the Energy Division’s Proposed Guiding Principles and Program Elements for a Successor Standard Contract or Tariff to the Current Net Energy Metering Policy,” 2014, <http://www.the.Commission.ca.gov/WorkArea/DownloadAsset.aspx?id=5836>. PG&E and SDG&E submitted similar proposals to this rule-making proceeding. SCE, “Southern California Edison Company’s Informal Comments on the Energy Division’s Proposed Guiding Principles and Program Elements for a Successor Standard Contract or Tariff to the Current Net Energy Metering Policy.”

- ◆ Energy efficiency: To date, the majority of energy efficiency programs implemented in California have been scattershot and most effective for wealthier people². In addition, the Rosenfeld effect (p. 14) has been questioned and explained by policy independent factors such as climate and demographic characteristics as opposed to specific policy interventions³.
- ◆ Low-income: The Green Book discussion of distributed generation (pp. 14-15) fails to consider possible disproportionate impacts on low-income people and ways in which higher electricity prices will hit people at the very time they get home from work and need electricity. There is currently little in the regulatory portfolio that protects people from higher rates impacting them at a time when they get home with their families. Further, the behind-the-meter discussion (pp. 21-22) demonstrates that commercial customers are not being served by the current utility model.
- ◆ Resource adequacy: The Green Book states that “[o]ver the last 10 years, the RA program has maintained adequate reserves to meet peak demand and ensure a reliable grid”. While the Energy Crisis was driven in part by lack of generation capacity to meet demand, deregulation and subsequent market manipulation played a significant and arguably greater role⁴. As such, the efficacy of RA requirements warrants further scrutiny. The CCSC urges the Commission to consider the role of RA requirements in driving over-procurement, particularly of natural gas generation, which creates an unnecessary burden on rate payers while disincentivizing investment in energy storage.
- ◆ Transparency: The transparent and public process is formal (p. 19), but not substantive as it requires knowledge to participate and funds that are unavailable to most other than lobbyists. Much of the data required to validate assessment of important decisions, such as those being made relative to the distribution of effects associated with the pending migration to default time-of-use rates for IOU customers for example, are not publicly available. Consequently, the results of these assessments cannot be independently verified by external third parties.

THE EXPLICIT AND IMPLICIT SUPPORT FOR THE UTILITY-BASED MODEL REQUIRES EMPIRICAL JUSTIFICATION

² Jordan Scavo et al., “Low-Income Barriers Study, Part A: Overcoming Barriers to Energy Efficiency and Renewables for Low-Income Customers and Small Business Contracting Opportunities in Disadvantaged Communities,” Commission Final Report (Sacramento, CA: California Energy Commission, December 2016). Scavo et al., “Low-Income Barriers Study, Part A: Overcoming Barriers to Energy Efficiency and Renewables for Low-Income Customers and Small Business Contracting Opportunities in Disadvantaged Communities.”

³ Sudarshan, “Deconstructing the Rosenfeld Curve.”

⁴ CBO, “Causes and Lessons of the California Electricity Crisis” (Washington DC: Congress of the United States Congressional Budget Office, September 2001). CBO, “Causes and Lessons of the California Electricity Crisis.” CBO, “Causes and Lessons of the California Electricity Crisis” (Washington DC: Congress of the United States Congressional Budget Office, September 2001).

Innovative features of the markets discussed in Part IV could inform positive changes in California’s electricity regulatory framework, provided the Commission is willing to deviate from the status quo. In the discussion of New York’s Reforming the Energy Vision (REV), the Green Book states that “REV places DER at the center of the evolution of the electric grid [and aims to provide] enhanced customer knowledge and tools to support bill management” as one of its six goals. In addition, “Under REV, utilities would serve as distributed system platform providers, enabling competition among ESCOs, DER providers and other third parties.” Not only are such goals in California limited by the “loading order” established under the 2003 CA Energy Action Plan (p. 11), but any discussion of ways in which a new regulatory framework would assist in transitioning utilities toward new roles that support customer choice is absent. Rather, the Green Book, in its implicit support for the status quo, focuses overwhelmingly on minimizing disruption as opposed to informing innovative yet robust regulatory design.

INSUFFICIENT ATTENTION TO CURRENT DYNAMICS OF CUSTOMER CHOICE IN CALIFORNIA AND OTHER CONTEXTS

Overall, the CCSC find that the analysis of CCAs presented in the Draft Green Book fails to acknowledge significant developments that have occurred since the launch of California’s first CCA, Marin Clean Energy, in 2010. Specific examples include:

- ◆ The Green Book states that “IOUs are currently implementing pilot programs to install additional infrastructure to support electric vehicle charging at multi-unit dwellings, workplaces, and public destinations” (p. 15). While not operating at the same scale as the IOUs, MCE Clean Energy and Sonoma Clean Power have both undertaken pilot programs providing financial incentives for electric vehicle drivers. Lancaster Choice Energy has implemented supporting infrastructure such as charging stations at multi-unit dwellings, workplaces, or public interest destinations.
- ◆ As of February 2017, MCE Clean Energy had entered 26 medium-to-long term contracts with developers of new and existing RPS eligible renewable energy projects in California⁵
- ◆ In Massachusetts, the first state to adopt CCA-enabling legislation yet conspicuously absent from the Green Book analysis, recent analysis by the state’s Office of Attorney General demonstrates competitive supply customers paid \$176.8 million more than if they had stayed with their utility company during the two-year period from July 2015 to June 2017⁶. In contrast, the majority of California CCAs offer a slightly lower rate than

⁵ MCE, “2017 Integrated Resource Plan” (San Rafael, CA: Marin Clean Energy, February 2017), <https://www.mcecleanenergy.org/wp-content/uploads/2017/02/MCE-2017-Integrated-Resource-Plan.pdf>. MCE, “2017 Integrated Resource Plan.” MCE, “2017 Integrated Resource Plan” (San Rafael, CA: Marin Clean Energy, February 2017), <https://www.mcecleanenergy.org/wp-content/uploads/2017/02/MCE-2017-Integrated-Resource-Plan.pdf>.

⁶ Massachusetts Office of Attorney General, “AG Healey Calls for Shut Down of Individual Residential Competitive Supply Industry to Protect Electric Customers,” Mass.gov, March 29, 2018, <https://www.mass.gov/news/ag-healey->

their incumbent IOUs, and the difference between each entity has been found to be greater when comparing their 50 or 100 percent renewable products⁷.

As stated on Page 61 "this paper offers lessons learned from California's own history", yet the paper offers little if any analysis of the current situation as it pertains to customer choice in California. Specifically, the current draft contains no substantial evaluation of the costs and benefits associated with CCAs or customer choice in California, or the extent to which Californian CCAs and other entities offering customer choice have been able to meet their stated objectives.

As an alternative to the present focus on causes and responses to the 2000-01 Energy Crisis, the Green Book could be significantly improved by applying the same form of analysis based on the core principles and key questions used to evaluate customer choice in other contexts to existing customer choice developments in California. Further, the Green Book could include current analysis of CCAs, including their deployment, procurement and pricing structures, some of which was included in the Commission's 2017 Community Choice Aggregation En Banc Background Paper.

DEMONSTRATED UNWILLINGNESS TO DEPART FROM THE STATUS QUO

While claiming to adopt a 'strategically agnostic' stance on community choice in California (p. iv), the Green Book contains numerous instances that appear to suggest a preference for maintaining the status quo.

Many important assumptions, particularly that "[w]hatever the next evolution in the regulatory framework, the IOUs will retain responsibility for essential safe and reliable grid operations", warrant much further discussion and justification. Statements such as "Greater choice options based on statewide programs create unnecessary costs and, in some cases, stifle innovation by rewarding technologies that have become commercially viable and blocking new market entrants" (p. 56) are presented without context or justification. Claims such as "Going forward, California may consider whether market forces should take the place of mandates and how innovation programs should be funded" suggests that utilities have been effective in driving

calls-for-shut-down-of-individual-residential-competitive-supply-industry-to-protect.Massachusetts Office of Attorney General, "AG Healey Calls for Shut Down of Individual Residential Competitive Supply Industry to Protect Electric Customers."Massachusetts Office of Attorney General, "AG Healey Calls for Shut Down of Individual Residential Competitive Supply Industry to Protect Electric Customers," Mass.gov, March 29, 2018, <https://www.mass.gov/news/ag-healey-calls-for-shut-down-of-individual-residential-competitive-supply-industry-to-protect>.

⁷ Julien Gattaciecce, J.R. DeShazo, and Kelly Trumbull, "The Promises and Challenges of Community Choice Aggregation in California" (Los Angeles, CA: UCLA Luskin Center for Innovation, 2017). Gattaciecce, DeShazo, and Trumbull, "The Promises and Challenges of Community Choice Aggregation in California." Julien Gattaciecce, J.R. DeShazo, and Kelly Trumbull, "The Promises and Challenges of Community Choice Aggregation in California" (Los Angeles, CA: UCLA Luskin Center for Innovation, 2017).

innovations in response to customer demand. It could be argued, however, that the driving factor behind innovation has been regulatory oversight by way of the RPS and state-mandated energy efficiency measures. The argument that IOUs are directly responsive to customer demands is baseless. Overall, the paper fails to entertain the idea that perhaps what is required is an *alternative* to the existing utility business model, rather than simply look for ways to maintain it.

As stated on Page 5, "as the status quo retail electric service model is being up-ended, the CPUC must now review long-held assumptions in its regulatory framework." Questions such as "[h]ow will these utilities be compensated for building the necessary infrastructure and operating the grid?" (p. 6) should be reframed to accommodate a discussion of an alternative regulatory framework in which utilities are not responsible for building the necessary infrastructure and operating the grid, and thus do not *require* compensation. The CCSC urges the Commission take this position seriously, and to commit to re-evaluating the regulatory framework and associated business models designed in the context of a vastly different electricity service model. Such analysis must consider the potential of CCAs, not as an alternative to IOUs, but as a supplementary form of governance designed to achieve specific outcomes currently beyond the scope of IOUs. The Green Book does not, further, acknowledge the success of MOUs in maintaining their own grids and servicing their clients. It ignores a de facto alternative set of utilities that are alternatives to the IOUs. CCAs could be imagined as operating their own grids as well or taking over grid responsibility for the IOUs. While the CCSC does not endorse this alternative, it should be considered by Commission for a full evaluation of options of energy alternatives in the state.

KEY QUESTIONS CURRENTLY ABSENT OR LACKING IN DETAIL

- ◆ What are the specific implications of an increasingly fragmented retail electricity market? How will such fragmentation materially inform the effectiveness of policy measures that require large customer bases, such as time of use pricing? Specific examples, including the recent decision by the Massachusetts Department of Public Utilities declining to authorize advanced metering infrastructure due to increased rates of customer migration to third- electric services⁸, warrant closer examination and inclusion in the Green Book.
- ◆ The rapid expansion of CCA in recent years is a clear indication of broad dissatisfaction with the utility model. The Commission would do well to better understand the root causes of this dissatisfaction as a first step in considering regulatory reform. Doing so may inform an approach to reform that seriously reconsiders the effectiveness of the utility model, as opposed to simply bringing customer choice into step with the existing regulatory framework.

⁸ St John, "Massachusetts Rejects Smart Meter Rollouts, as Competitive Energy Undermines the Business Case."

- ◆ On what grounds are customers making decisions regarding their preferred means of energy procurement? To what extent do alternative electricity service models promote transparency and informed customer decision-making?
- ◆ To what extent must CCAs deliver on their promises and stated objectives? To whom are CCAs ultimately accountable?
- ◆ What are the implications if the CCAs develop a cooperative organization that is charged to ensure reliability is maintained? Such an arrangement may allow for IOUs to operate in parallel with CCAs, potentially working together in a new form such as a Joint Powers Authority (JPA).

CONCLUSION

The CCSC agrees there is a need to ensure that all load serving entities, including CCAs, don't fail to meet their requirements. However, while recent trends suggest the utility model may be in jeopardy, whether a successful energy transition is contingent upon continued adherence to that model warrants closer scrutiny than that offered in the Green Book.

The CCSC appreciates the opportunity to offer comments to the Commission and looks forward to continued participation.