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To inspire, align, and mobilize action in response to the climate crisis. We work with business, government, youth and the broader community to advance practical, science-based solutions for significant greenhouse gas emission reductions.

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June 4, 2018

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Comments: Center for Climate Protection

“California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market” (CPUC Draft Green Book – May 3, 2018)

Introduction

Thank you for the opportunity to comment on the California Public Utilities Commission’s (CPUC) “California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market” (Green Book). Our comments are limited to customer choice in the Community Choice Aggregation (CCA) context.

The Center for Climate Protection (Center or CCP) is a California 501(c)(3) non-profit organization founded in 2001 and based in Sonoma County that works statewide on greenhouse gas emissions reductions. The Center first identified CCA as a promising tool for greenhouse gas emissions reductions in 2005 and since then we have been advocating for its adoption and expansion throughout California for the potential it holds, and the results it is now demonstrating, as a model to exceed California’s clean energy and greenhouse gas reduction goals. These results are coming about because communities are collectively choosing cleaner power and employing other means of reducing greenhouse gases through the adoption of CCA programs.

Our main takeaway from the Green Book, and from the several retail or customer choice-related activities of the CPUC over the past year or so, is that the CPUC is implicating the widespread growth of CCA programs as a part of, perhaps even a central part of, factors leading

to a potential revisitation of the California energy crisis of 2000/2001. We firmly reject this premise. There are few similarities between the two events, and deregulation and community choice are fundamentally different models. Deregulation was an intentional retreat from government oversight of the energy markets undertaken with the idea that the private sector would play a much larger role. By contrast, local control and governance are critical aspects of community choice that provide stability and reliability as programs work toward statewide renewable targets and emissions reduction goals that did not exist during deregulation.

In fact, we suggest that the CPUC adopt a new approach to the entire question of customer or retail choice in the context of an electricity system that is undergoing a transition to decentralization. We suggest that the CPUC look to the Community Choice agencies as the optimal vehicle for ensuring ample customer choice and for navigating the path to the decentralized future.

General Comments

In our read of the Green Book we were surprised to see very little in the way of a response to the many comments received after the October 31 informal hearing on Customer Choice. Many commenters, including the Center, asserted that CCAs, far from being an impediment to good planning and an ability meet ambitious statewide goals, are actually the best of all options currently under consideration for navigating the transition to a cleaner, more socially just, decentralized 21st Century electricity system. It is our view that the “Green Book” is in truth part of an attenuated pretext aimed at introducing legislation that will impose new constraints on CCAs that will undermine the same qualities of CCAs that make them compelling to local governments – autonomy over procurement, portfolio planning, rates and rate designs, programs, and other statutory powers that enable innovation at the local level.

The Green Book makes several assertions with which we disagree: that there is fragmented decision-making with the rise of CCAs, poorly coordinated procurement of the specific resources needed to ensure reliability, no plan for the possibility of CCAs failing and stranding customers, and that CCAs are somehow creating doubt about the maintenance of reliability of the electric grid. In all of these instances, we see no valid substantiation of the concerns relative to Community Choice presented in the Green Book.

In CPUC’s May 3rd online presentation on the release of the Green Book, it was mentioned that the law that authorized CCA, Assembly Bill (AB) 117, was enacted in 2002 as part of the set of legislative responses to the California energy crisis that had just occurred in 2000/2001. In the next slide of the presentation, CCA is lumped into a category of factors that are supposedly leading to another crisis. However, this assertion has no basis in reason. AB 117 was carefully crafted by the legislature and underwent three years of rulemaking at the CPUC. The law and set of rules that came into being were developed with the crisis fresh in the mind. Community Choice does not present any of the same kinds of threats that late 1990s deregulation presented. CCAs are public agencies, managed by elected officials, bound to comply with state law and CPUC rules that apply to them, and operate in the interest of the communities they

serve, not corporate shareholders or high paid executives, which was indeed the case in the deregulation experiment. CCA is being mischaracterized.

AB 117 was enacted to salvage one element of the deregulation experiment – a degree of customer choice. It did that in a way that ensures *against* the kinds of problems that arose during deregulation. We have found that most communities that embark on pursuing CCA, include clean energy and GHG reductions as core goals. Two market surveys we have been involved in, one in Sonoma County¹ and one in the Central Valley² found that supermajorities want choice, clean energy, and reinvestment in their local communities.

It is our contention that IOUs are now offering more choices and doing other things that are to the benefit of electricity customers as a result of competition from CCAs. We believe that the Green Tariff Shared Renewables program, for example, which goes by the name Solar Choice in Pacific Gas and Electric (PG&E) service territory, was adopted in response to the growth of CCA throughout PG&E territory.

In summary our view is that thus far the result of the rise of CCA has been a net benefit both to meeting state policy goals and to customers throughout California. CCAs are especially well positioned to serve their communities with locally tailored projects, programs, and policies that advance resilience and service to historically disadvantaged communities. In short, CCAs are good “grid citizens” and we urge the Commission to explore ways to leverage this new opportunity to transition to a decentralized grid in a collaborative and constructive spirit.

Specific Comments

- Figure 1, page 2: Senate Bill (SB) 790, a key piece of legislation that demonstrated continuing support from the legislature for Community Choice and established the IOU code of conduct is omitted. It should be included.
- Figure 5, page 21: The map in this figure is produced by LEAN Energy US, as credited. The Center is very familiar with LEAN Energy’s work and we have no concern about the accuracy of the map. What we are concerned about is that the CPUC, as the regulatory agency that is tasked with certifying new CCAs, does not maintain its own map or database that could be used as the basis for the statewide CCA status presentation in the Green Book.

Reponses to questions posed in the Green Book

¹ https://sonomacleanpower.org/wp-content/uploads/2013/12/CCA-Residential-Survey-Summary-Analysis-2.28.12_FINAL.pdf

² <https://cleanpowerexchange.org/resources/central-valley/> (scroll to mid-page)

The Green Book poses several questions in the introductory letter from President Picker, the abstract, in the “Fundamental Questions for Policy Makers and Stakeholders to Inform Future Action,” and in the eight questions posed about the choice models presented in Part IV. Our comments respond to most but not all of these questions. We pose some of our own questions after our responses to the questions posed in the Green Book.

Note: CPUC Questions are presented in ***bold italic*** and Center for Climate Protection (Center or CCP) comments are in plain text.

The questions asked in the cover letter by President Picker:

1. How do we protect safe delivery of electricity to meet customer demand in an increasingly fragmented market?

CCAs pose no disruption to the delivery of electricity. This question was deeply explored in the 2003-2005 rulemaking process following the passage of AB 117. CCA customers remain customers of the delivery utility and pay for Transmission and Distribution (T&D) charges just like any bundled customer. Ensuring safety on the delivery side of the equation revolves around effective inspection and enforcement of existing safety laws and rules, and implementing new ones as it becomes evident that they are needed.

If part of this question is related to the generation side of the equation, “fragmented” is an odd way to describe a diversifying, decentralizing, and democratizing market in the energy sector. Is the potato chip industry fragmented because there are so many potato chips and potato chip companies to choose from? The auto industry? No, what the CPUC is calling a “fragmented” market is actually an increasingly strengthening and diversifying market. The more compelling question has always been how can you protect consumers and achieve goals in an environment where an uncompetitive regulated monopoly is in charge of so much that is essential. Hence the historic need for the Office of Ratepayer Advocates (ORA) and other safeguards.

2. How will we ensure that increasing fragmentation of suppliers and buyers will add up to meet our ambitious clean energy goals?

With respect to CCAs, the means to this end is already in place. CCAs are bound by statute to meet the RPS and other state goals, and most if not all are exceeding it. Our recommendation is that the CPUC and the IOUs work proactively and constructively with CCAs to advance a decentralized clean energy economy. CCAs and individuals are not departing from bundled IOU service to build coal plants. They are departing in most cases in order to exceed state standards for clean energy. The IOUs have tended to view state standards as a ceiling while CCAs tend to see the standards as a floor from which to do better.

3. How will we make sure that different players are meeting their responsibilities to provide all the energy resources we need to make the grid work?

CCAs are not wildcatters. They operate within the statutory and regulatory context with regard to appropriate and adequate energy resources needed to make the grid work. See Public Utilities Code section 366.2 and other code sections.³

4. *How will we protect customers from the unfair behavior like “slamming” and “cramming” that we saw during deregulation of telecommunications?*

These terms are misapplied with respect to CCAs. These terms were misapplied to reference the status of Community Choice agencies as the default service providers in their territories by an Assembly member in the 2014 AB 2145 episode. Perhaps that is where the phrase in this context is derived. The fact is, there is no “slamming or cramming” of any kind associated with Community Choice. Community Choice introduces customer choice into a system that previously had no choice. No one, prior to the emergence of Community Choice, and outside the brief deregulation window in the late 1990s and early 2000s, ever “chose” to be a customer of their default regulated monopoly utility. If the terms “slam” and “cram” are to be used, perhaps they can be used in reference to ratepayers being slammed and crammed against their will into “service” from a monopoly. It is entirely appropriate that the CCA should be the default service in its territory, given that they are public, not-for-profit agencies governed by local elected officials serving the public interest. Customers may opt out at any time. There is no slamming or cramming with CCA.

5. *What preparations should we make for customers who might become stranded without service if their electric provider fails, as many did in the previous California deregulation?*

Using the phrase “previous deregulation” implies that the current dynamics are a case of deregulation. This is not an accurate characterization. In the context of CCAs, there is no deregulation, but a shift in governance and accountability from centralized to decentralized in a controlled way without losing overall state policy imperatives. On the regulatory matters that matter – Renewable Portfolio Standard (RPS), Resource Adequacy (RA), Integrated Resource Plan (IRP), etc., the legislature and the CPUC can institute general statewide goals that apply to all LSEs and CCAs are just one more LSE that must meet the state standard. In terms of provider of last resort (POLR), this is a complex question with many possibilities. In the case of CCAs, contingencies currently exist to allow smooth transition to the incumbent utility as POLR, however, there is no reason why a CCA that wishes to might want to take on the POLR responsibility. This does not answer the question of POLR in the case of a delivery utility failure.

6. *What is the best way for a fair, affordable and durable transition?*

Assuming this question is referring to the broader context transition away from the 100+ year old central station model, away from a regulated monopoly model, what would be fair is for the CPUC and IOUs to work with CCAs in good faith, without any bias to arbitrarily prop up the old centralized construct. As stated earlier, we see CCAs as the best of all options for transitioning to a decentralized system.

³Cal. Public Utilities Code § 366.2.

The questions in “Fundamental Questions for Policy Makers and Stakeholders to Inform Future Action” (pages 5 and 6).

1. How does California continue its course as a global leader in achieving deep decarbonization as regulated utilities provide electricity to fewer Californians?

The Californians who are no longer provided generation from the regulated utilities, but are served in this regard by CCAs, are by and large *exceeding* California’s deep decarbonization goals. The regulated monopolies have not been the leaders in achieving deep decarbonization. The regulated monopolies had to be forced to make investments in lower carbon energy sources. As CCAs emerged in 2010 and pressed forward above and beyond the RPS with deep greenhouse gas reductions as core goals, the IOUs accelerated their clean energy procurement, expansion of choices, and especially, their marketing about their interest in lower carbon electricity.

a. Does there need to be a single entity for policy target setting, implementation, oversight and enforcement?

There already is a single entity that sets policy goals – the CPUC – and CCAs are statutorily obligated to comply with the policy goals set by CPUC. It is important to stress here that CPUC’s role is setting targets, not micromanaging implementation, procurement and portfolio decisions. If CCAs are going to be platforms for innovation that help in the pathfinding to a decentralized clean energy economy, then they need to have latitude to allow them to craft procurement, programmatic, and planning strategies that work for them and the communities they serve. The CPUC and the legislature need only set the general goals for them to follow.

b. How can California continue to support innovation and provide financing for scaling up new technologies?

CCAs are excellent platforms for innovation, especially with regard to the evolution from a centralized to a decentralized electricity system. To date, the state has not only failed to support them financially, but in fact has engaged in activities that have hobbled CCA start-up efforts, early-stage operations, and ongoing operational activities. Resolution E-4907, as originally written, asserting that CCAs were somehow risking a shortfall in Resource Adequacy, is a case in point.⁴ With regard to new technologies, the CCAs are uniquely situated to serve as the key deployment vehicle for the local, integrated, automated, distributed energy resource systems. The nature of their close relationship with local government, as well as their customers, makes them the ideal choice for this kind of activity.

c. What is needed [to] reduce the use of fossil fuels such as natural gas, which is used not just for electric power, but also for industry and in homes and buildings?

⁴ <http://www.cpuc.ca.gov/cpucblog.aspx?id=6442455641&blogid=1551>

CCAs are excellent vehicles for promulgating programs and incentives for fuel-switching away from gas HVAC and water heating and cooking appliances to electricity-based technologies. Several CCAs are in the planning stages of developing programs that will help property owners pay for electric heat pump water heaters for example. Sonoma Clean Power, the CCA for Sonoma and Mendocino counties, offers programs and incentives for everything from low carbon zero-net-energy rebuilds⁵ in the areas impacted by the wildfire, to information about induction cooking.⁶

d. How are the utilities compensated for providing the essential infrastructure to achieve these policies?

All users of the grid should pay their share of T&D costs commensurate with their use of the grid. There is no disagreement about that. At the same time, the grid must evolve in a way that accommodates the expansion of distributed resources, and fees and charges must evolve as well. For example, in cases where localized projects are not using resources beyond the local distribution system, in other words, bypassing long distance transmission, some kind of new cost allocation system needs to be developed to recognize and account for the benefits associated with such projects.

2. What are the essential grid operations to make sure California's lights stay on?

The grid must be maintained so that catastrophic events such as the northern California wildfires do not occur as a result of poor maintenance of the system. Other than that, California's lights generally do stay on as things currently stand. There is no crisis that we are aware of on that front. The Investor-Owned Utilities (IOUs) by and large manage the grid in a way that keeps the system working. If a problem emerges, please let us know about it.

a. Who has the requirement to perform the necessary functions?

In the context of CCAs, relative to the grid, that responsibility remains with the incumbent utility and with now close to 23 years of collective CCA operation and interaction with their respective delivery utility, this arrangement appears to be working well.

b. Who establishes the rules and has enforcement authority?

To the extent that this question refers to grid infrastructure, currently the CPUC plays this role.

c. What does it cost and who pays?

No response at the current time.

3. Can California provide investment and operational certainty to address reliability and resiliency, especially in the face of catastrophic events that impact the electric sector, such as the 2017 wildfires?

⁵ <https://sonomacleanpower.org/advancedenergyrebuild/>

⁶ <https://sonomacleanpower.org/inductioncooking/>

California and the grid owners/operators should be able to do this. It also appears, based on results of the Butte fire investigation⁷ and early indications from the Tubbs fire, that improvements in grid infrastructure, maintenance, and other aspects of a preventive nature should be explored.

a. *With so many decision-makers entering into the market to provide electrical supply, how do we ensure coordination to provide all the energy needs for reliability purposes?*

A key answer to this question is that reliability is not just about generation resource. The deeper resolution revolves around the evolution of the system from one where generation resources are dispatched to meet demand, to one where demand management/response can be “dispatched” to reduce load during what would be peak events where historically spinning reserves would be ramped up. As automated DR matures and expands, the need for traditional dispatchable reliability will be diminished. Granted, this is a difficult “moving target” and during this transitional period, calibrating the balance between the traditional generation dispatch and the energy demand dispatch will be a period of uncertainty.

b. *Who will provide backstop procurement for resource adequacy if there are shortages [or] power needs identified in planning and a disaggregated set of electricity purchasers cannot fill the need?*

Again, think about demand response and rapidly dispatchable storage emerging on the scene. Things are changing. The need for traditional RA is changing.

c. *Who will coordinate supply and operations during local events where resources must come from outside the region?*

This question is unclear and sounds like tasks that FEMA or the National Guard would take on in the event of an emergency. CCAs should not be considered any kind of first responder. They may be responsible for catalyzing the deployment of resilient systems such as DERs, smart technologies, microgrids, etc., in a non-emergency setting that may end up helping when an event occurs, but they will not arrive “on scene” to resolve crises.

d. *What is the responsibility of non-utility electricity suppliers to help meet unexpected contingencies?*

As local agencies, governed by local or regional elected officials, CCAs have an inherent responsibility to help meet unexpected contingencies in ways that are relevant and appropriate.

e. *What role do non-utility providers play to ensure adequate responses to catastrophic and emergency events?*

CCAs have no role or responsibility with regard to responding to problems that arise with the transmission and distribution grid; all interconnections to distributed energy resources must be

⁷ <https://www.uniondemocrat.com/localnews/4266954-151/cal-fire-confirms-pge-caused-butte-fire>

inspected and approved by the distribution utility. That said, in the case of the October 2017 northern California wildfires, the local CCA, Sonoma Clean Power, responded in several ways, including contributing \$1 million to the relief fund and initiating an incentive for low carbon rebuild.

4. Are there adequate protections for all customers with the wider choices created by Direct Access, CCAs and behind-the-meter installations?

CCAs have proven to be highly responsive to their customers. The cities and counties that make up the CCAs collectively have centuries of experience and demonstrated ability to provide adequate protections to the communities they serve. Most CCAs have established Community Advisory Committees to facilitate customer protection, outreach and engagement.

a. Should there be a state entity that provides basic customer protections to customers of services that are either behind the meter or served by entities not historically under the jurisdiction of the CPUC?

No, an entity that is governed by elected officials from local government is well qualified to protect customers. There is no state entity that provides basic protections to residents of cities or counties against missteps on the part of those cities and counties. The presumption is that each city and county acts in the interest of their constituents (“customer” in the CCA case), and that in general that local government basic protection is adequate.

b. Who will ensure that customers have access to power service if a lightly or unregulated electric power provider fails?

With regard to CCAs this is already in place in the code. The legislature and the CPUC considered this eventuality in the course of enacting and carrying out the rulemaking for AB 117 in the early 2000s. CA PU Code Chapter 838: *“As a condition of its registration...a community choice aggregator shall post a bond or demonstrate insurance sufficient to cover those reentry fees. In the event that [a CCA] becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.”*⁸

c. What protects customers who are not interested in choice, elect not to engage or unwittingly make the wrong decision or might otherwise be left behind?

CCAs offer the best protection of customers who fail to engage or make any kind of proactive choice where one is offered. In the context of CCA, the default service, for those who fail to make a proactive choice, has tended to be a default that is generally in their favor in terms of service cost and in the favor of meeting state policy goals. Beyond that, the question about engagement is too general and difficult to answer. Engagement in what? This is a question that requires some clarification. In the end, individuals are responsible for the choices they make about providing for their own basic needs as well as any other product or service choice they face in their life.

⁸ http://www.leginfo.ca.gov/pub/01-02/bill/asm/ab_0101-0150/ab_117_bill_20020924_chaptered.pdf

5. What is the role of the investor-owned utilities in the new regulatory construct?

We envision the IOUs as continuing to provide transmission, distribution and other grid services. We would like to see IOUs participate as good faith collaborators with CCAs on development of projects and programs that advance low carbon local energy resource utilization. The Advanced Energy Rebuild program in SCP's service territory is good example.⁹

a. Under all visions of the future, the IOUs continue to provide transmission, distribution and other grid services, what are the requirements to maintain these systems?

No response at the current time.

b. How will these utilities be compensated for building the necessary infrastructure and operating the grid?

No response at the current time.

6. Regulated utilities were required by laws, like the Renewables Portfolio Standard, to enter into long-term contracts. If customers increasingly buy electricity from non-utility sources, what happens to the contracts that the regulated entities executed?

The question of legacy contracts can be worked out equitably, as is in fact happening in the current proceeding on the Power Charge Indifference Adjustment before the CPUC. CalCCA's proposal on this matter includes several mechanisms by which contracts can be auctioned or transferred and contains other means of reducing the costs of the contracts through securitization.¹⁰ We believe this proposal has merit and should be closely examined as part of the customer choice effort.

a. Who will execute the long-term contracts that can be used to finance construction of new facilities going forward?

CCAs are executing long term contracts.

b. Should the incumbent electric utilities be allowed to compete with other market participants, or should they be limited to offering a platform for other electricity suppliers?

The latter. Our view is that the highest and best role of the deliver utility is to serve as a grid services platform that may collaborate with and ultimately allows the private sector, CCAs, and perhaps other entities, to operate, innovate, collaborate, and compete. In other words, the functions of the utilities and load serving entities should be separated so that they are no longer in direct competition. This permits utilities and load serving entities to focus on their core competencies, and eliminates several problems associated with utilities having control over generation and procurement, on the one hand, and transmission and distribution, on the other.

⁹ <https://sonomacleanpower.org/advancedenergyrebuild/>

¹⁰ <https://cal-cca.org/wp-content/uploads/2018/04/R1706026-CalCCA-Volume-1-various.pdf>

Center for Climate Protection questions to CPUC and stakeholders

In addition to the questions posed in the Green Book, we feel that there are a number of other questions related to customer choice that should be asked as part of the customer choice project:

1. How can the CPUC help protect CCAs' right to develop and administer integrated DER and energy efficiency programs in their service territories?
2. How can the CPUC help protect CCA customers' right to select, install, and operate behind-the-meter DERs and energy efficiency measures?
3. How can the CPUC foster and develop integrated DERs as non-wires alternatives to expanding distribution infrastructure and centralized generation, while still compensating the IOUs adequately for the delivery and grid services they continue to provide?
4. How can the resources, human capital, and entrepreneurial spirit of local communities be engaged and optimized to help navigate the transition to a decentralized clean energy economy?
5. Cities and counties have building codes, local transportation planning authority, code enforcement, close relationships with the customers and stakeholders in their communities etc., that they can employ. How can the special, unique in some instances, powers and authorities of local governments and the CCAs they administer be employed to advance the decentralized, decarbonized clean energy economy?
6. How can the CPUC evolve into a regulatory agency that treats the CCA community in good faith with the respect it has earned over nearly 23 collective years of operational success?

Conclusion

We are generally in accord with the stated core principles of California's energy policy – decarbonization, reliability, and affordability. However, we would add at least one more principle, equity. The emergence of the decentralized energy economy offers new opportunities for all socioeconomic sectors of society, including historically disadvantaged communities, to participate in the enjoying the opportunities and benefits of the local economic benefits that accompany a decentralized energy system. Equity is also a principal that must apply across all customer classes.

We also agree that California needs long range vision and a revised regulatory framework that accommodates many of the rapidly evolving elements of the transition that are a good, constructive part of the equation – two in particular are distributed energy resources and CCAs. Together, these two powerful tools can help lead the pathfinding to the California's

democratized clean energy future, as long as the regulatory community crafts policies that empower, not hinder, the synergy.

Thank you again for the opportunity to comment.

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