Direct Access Customer Coalition

Comments on the Draft Green Book

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On May 3 (revised May 17), the California Public Utilities Commission ("Commission") issued a document entitled Draft Green Book - California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market ("Green Book").

I. Introduction

These comments are offered in response by the Direct Access Customer Coalition ("DACC"). DACC is a regulatory advocacy group comprised of educational, governmental, commercial and industrial customers that utilize direct access for all or a portion of their electrical energy requirements. In the aggregate, DACC member companies represent over 1,900 MW of demand that is met by both direct access and bundled utility service and about 11,500 GWH of statewide annual usage.

DACC has regularly participated in Commission proceedings for over a decade, in support of customers' right to choose their energy supplier. As a result, it is keenly interested in the Green Book and commends the Commission's California Customer Choice team for its impressive efforts in developing the initial draft.

Accompanying the Green Book was a document entitled *Request for Informal Comments and Recommended Solutions on the Draft Green Book* ("Request"). Before offering specific comments on the Green Book, DACC offers a few observations with respect to the accompanying Request. The Request stated the following (in italics), followed by DACC's comments:

> *Through these changes, we are seeing some of the same trends that preceded the last energy crisis in California:*
>
> - ***Fragmented decision-making;***
>
> This suggests that fragmented decision making is problematical. To the contrary, DACC believes that having a multiplicity of decisionmakers is desirable and quite beneficial. Economies flourish best when there is a multiplicity of decisionmakers, each acting in its own interest, that lead to aggregated and usually positive decision making and societal results. To the contrary, the idea that coordinated command and control decision making by some governmental elite has

been shown to be quite commonly a failure. Put simply, fragmented decision making by a multiplicity of interests is almost always superior to the command and control mindset where the risk of "group think" and "regulatory capture" is always present.

- ***Poorly coordinated procurement of the specific resources needed to ensure reliability;***

This statement appears to presume that it would be more beneficial to have coordinated procurement rather than procurement by individual entities, each acting in its own best interest. DACC believes that individual procurement is a superior approach, so long as the entities doing the procurement are subject to clearly understood and defined resource adequacy and reliability standards set by the Commission and required of all load serving entities ("LSEs"). The Commission should not identify "coordinated procurement" as being a worthwhile goal that should be pursued and achieved.

- ***No plan for the possibility of energy providers to fail and strand customers.***

DACC finds it curious that this is identified as a current "trend" for which there is "no plan." To the contrary, the Commission has taken steps to address the issue of failure by non-utility LSEs. For example, it has imposed financial security requirements for electric service providers ("ESPs") pursuant to Pub. Util. Code § 394.25(e) to cover estimated re-entry fees due to DA customers that may be involuntarily returned to investor-owned utility ("IOU") procurement service;[1] determined what costs are to be included as re-entry fees to ensure bundled service customer indifference in the event of involuntary returns;[2] and specified what rates involuntarily returned DA customers should be placed on if they are involuntarily returned, in order to "hold them responsible for potential cost increases caused by the failure of their ESP, and [would] avoid shifting costs to bundled customers."[3] By requiring that returning customers be subject to paying the host utility's marginal cost of power for an interim period, until their demand can be subsumed

[1] *See*, D.11-12-018, at pp. 54-60.
[2] Id, at pp. 67-73.
[3] Id, at p. 91.

in the utility's procurement planning, bundled customers are protected. Similar protections have been quite recently adopted for CCA customers in R.03-10-003, with a decision that imposes similar obligations on CCAs approved at the Commission's May 31 meeting (D.18-05-022).[4]

It also should be pointed out that there have been no DA customers forcibly returned to utility service since the days of the energy crisis (where the return was precipitated in no small part by the utilities' unilateral decisions to stop paying the Commission-approved PX Credit, meaning DA customers were having to pay once for the power purchased from their ESP and yet again for imaginary power from their utility). Nor have natural gas customers ever been involuntarily returned to utility bundled service in the decades since natural gas customer choice has been allowed in California, despite numerous price spikes and market disruptions. Nor, to the best of DACC's knowledge has there been any forcible return of CCA customers to utility bundled service. Nevertheless, in the unlikely event a CCA or ESP failure should occur, the Commission has already taken steps to address the situation. The statement that there is "no plan" is plainly incorrect.

DACC now offers its comments on topics discussed in the draft Green Book.

II. Green Book Comments

A. The Legislature and Commission Have Acted to Ensure California's Policy Goals are the Responsibility of All LSEs

The Green Book begins by noting that the California Customer Choice Project has been charged with analyzing a fundamental question:

> **How does the increased customer choice occurring in the electric sector impact California's ability to achieve its policy objectives of affordability, decarbonization, and reliability?**

DACC believes increased customer choice should not frustrate California's achievement of the state's policy objectives of Affordability, Decarbonization and Reliability, due to actions already undertaken by the Legislature that are being implemented by this Commission, as well as actions taken on the Commission's own initiative along with those of other state agencies. If, however,

[4] Citation

the order of these policy objectives is meant to imply prioritization, DACC would suggest that in order of importance, the appropriate listing should read Reliability, Affordability and Decarbonization. While all three are of course important, reliability must be paramount, followed closely by affordability. Decarbonization is a worthwhile goal, but not at the expense of either of the other two policy objectives. DACC next looks at each of these objectives in turn:

Reliability – Both ESPs and CCAs are subject to the same resource adequacy ("RA") standards as the IOUs and are also subject to the integrated resource planning ("IRP") requirements imposed by the Commission's recent issuance of D.18-02-018 in Rulemaking ("R") 16-02-007.[5] As noted in the February 19, 2016, Rulemaking:

> The general issues to be addressed for the 2016 procurement planning cycle are as follows:
>
> (1) Assess the impact of SB 350 on future procurement needs and develop the process and requirements for the IRPs to be filed by load-serving entities (LSEs). This includes bringing together or taking to the next level a number of efforts that have been underway in previous LTPP proceedings or other related resource proceedings, including developing and refining modeling assumptions to assess the need for additional flexible resources to integrate variable renewable energy resources.
>
> (2) Develop or refine procurement rules for non-investor-owned utility (IOU) LSEs now required to develop IRPs who did not previously submit LTPPs and consider cost allocation and competitiveness issues between IOUs and other LSEs.
>
> (3) To the extent necessary, identify CPUC-jurisdictional needs for new resources to meet local, flexible, or system resource adequacy (RA) requirements and to consider authorization of procurement to meet that need.[6]

In summary, by ensuring that all LSEs are subject to these requirements, concrete steps have already been taken by the Commission to ensure that expanded customer choice does not impede achievement of these policy goals.

Affordability – Customers elect direct access service for many reasons, including the opportunity for cost savings offered by ESPs when compared to utility bundled service rates. DACC also believes that many CCAs also undercut utility bundled rates. Affordability, then, does not appear

[5] *See*, Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans, issued February 13, 2018.
[6] *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, at pp. 2-3

to be an issue that the Commission need to be concerned about when addressing the implications of customer choice.

Decarbonization – Both ESPs and CCAs are subject to the same greenhouse gas ("GHG") and renewable portfolio standards applicable to the more heavily regulated IOUs. DA customers are also frequently subject to California Air Resources Board ("CARB") standards such as cap-and-trade. Furthermore, in the IRP proceeding, activity is being conducted pursuant to Public Utilities Code Section 454.51 that directs the Commission to:

> Identify a diverse and balanced portfolio of resources needed to ensure a reliable electricity supply that provides optimal integration of renewable energy in a cost-effective manner. The portfolio shall rely upon zero carbon-emitting resources to the maximum extent reasonable and be designed to achieve any statewide greenhouse gas emissions limit established pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code) or any successor legislation.[7]

The same decision also cites Public Utilities Code Section 454.52 that requires each LSE to file an integrated resource plan to ensure that they do the following:

> (A) Meet the greenhouse gas emissions reduction targets established by the State Air Resources Board, in coordination with the commission and the Energy Commission, for the electricity sector and each load-serving entity that reflect the electricity sector's percentage in achieving the economywide greenhouse gas emissions reductions of 40 percent from 1990 levels by 2030.[8]

See also the discussion regarding Reliability for more on this topic.

B. Increased Customer Choice is a Benefit rather than a Problem

DACC finds it revealing that the Green Book's Abstract says, "Part I is an Introduction containing the problem statement and an overview of the key issues."[9] Put simply, the chief concern DACC has with the entire Green Book is its tone, particularly its constant implicit (and occasionally explicit) assumption that the increase in customer choice is a "problem." While it is entirely appropriate that the Commission's California Customer Choice team should identify issues to be addressed as a result of the growth in choice, all too often there appears a bias that

[7] Id, at p. 11 (emphasis added).
[8] Id, at p. 12 (emphasis added).
[9] Green Book Abstract, at p. iv.

suggests an exaggerated concern, such as the worry expressed in President Picker's cover letter that, "If we are not careful, we can drift into another crisis," as well as the Green Book's highlighted statement that, "Without a coherent and comprehensive plan, the current policies in place may drift California to an unintended outcome and breakdown in services like the Energy Crisis."[10]

DACC believes the Commission should have more confidence and faith in the many steps it has taken to ensure that the Core Principles of affordability, decarbonization and reliability will be consistent features of an expanded competitive market. As noted in the Green Book Introduction, "After the California Energy Crisis, the Legislature and the CPUC developed a regulatory construct that has kept the lights on, ensured that electric bills remained affordable, and progressed to deep decarbonization of the electric industry and its fuel supply."[11] Continually characterizing choice and retail competition as a "problem" to be solved has the effect of casting it in a negative light that is unfair and inappropriate.

For, in fact, we regard choice as an essential feature of our everyday life. We have institutionalized choice when it comes to where we buy our food, what gas station to patronize or how to acquire cellular or telecom services. Shelter, clothing and education are also areas where choice is a fundamental precept. Why then, should we consider choice to be a negative feature when it comes to the selection of electricity providers? Quite simply, we should not. It is unfair and inappropriate to regard increased customer choice as a problem to be solved by the Commission. Rather, its role should be to encourage and facilitate choice, while ensuring that the state's Core Principles are also achieved.

C. The Availability of Choice Has Empowered Customers

The Green Book observes that in addition to establishing a new resource adequacy regime after the Energy Crisis, California has moved to make electric generation and consumption greener while focusing on fuel diversity, air pollution and other environmental impacts related to electric generation. These efforts are cited as having "led to significant innovation in technologies and in business models."[12] All of this is true and commendable. The Green Book then goes a bridge too

[10] Draft Green Book, at p. 5.
[11] Id, at p. 1.
[12] Green Book, at p. 4.

far by claiming that, "As many of these programs mature, they empower customers"[13] such as Direct Access customers and CCAs. This claim is more questionable as both DA and CCA are creatures of statute and legislative empowerment that certainly have been affected by the Commission's efforts to focus on fuel diversity, air pollution and environmental impacts, but not empowered.

Instead, customers that can elect to purchase power are empowered by the right of choice – the right to make their own decisions as to power procurement; to choose their own supplier; and to choose their own terms and conditions of service. Choice truly empowers customers, which is why if the Commission truly wishes to empower customers it must act to *increase* the options available to customers, such as by urging removal of the current cap on direct access.

D. Responses to Fundamental Questions for Policy Makers and Stakeholders to Inform Future Action

The Green Book poses several questions and seeks stakeholder engagement to answer these questions. DACC does not respond to all these topics but offers a series of responses below to the questions that pertain specifically to direct access.

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

DACC generally believe the answer to be that current regulatory structures are fine, depending on which activity is under consideration. Yes, policy targets should be set by the Commission for IOUs, ESPs and CCAs (keeping in mind that the latter also have their own policy making entities in the form of their governing boards). The question is how to avoid overreach and especially conflicts with other state agencies. Setting policy goals for matters like RA, RPS and GHG has been done and is subject to periodic update in the respective proceedings devoted to these topics. The use of the word "implementation" in the question is where the possibility of overreach intrudes.

No, there most definitely should not be a "single entity" for "implementation" of these goals. This type of command and control is unnecessary, burdensome, expensive and does not achieve optimal decisionmaking. A quotation attributed to General George S. Patton is apropos here: "Never tell people how to do things. Tell them what to do and they will surprise you with

[13] Id.

their ingenuity." The Commission should not consider itself to be the sole repository of creativity and ingenuity. Rather, it should perform the invaluable role of setting policy goals, allowing affected parties to find creative, ingenious and cost-effective methods to achieve those goals and then overseeing the resulting activity.

Yes, "oversight and enforcement" is a proper role for the Commission that it performs well and usually efficiently. DACC would warn the Commission, however, about the risk of having its oversight and enforcement standards be too granular in nature, subjecting affected entities to "make work" that is neither efficient nor necessary.

In conclusion, the Commission has of course over the decades accustomed itself to one-size-fits-all ratemaking. It now must challenge itself to adapt to multi-tiered decisionmaking and diverse methods of achieving its policy goals. This will require tolerance of differing opinions, policies and procedures and a flexibility to focus on seeing the forest and not just the trees.

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

DACC believes the existing general rate case, ERRA and rate design window proceedings perform an adequate role of compensating the utilities for providing the necessary infrastructure. Where technology innovations require additional investment, the existing application process is also needed, such as the action by the Commission at its May 31 meeting to approve the utilities' respective transportation electrification proposals.[14] These methodologies combine to provide the utilities with appropriate compensation, so long as the Commission continues to ensure the ability of interested third parties to participate meaningfully in these proceedings.

3. What are the essential grid operations to make sure California's lights stay on? Who has the requirement to perform the necessary functions? Who establishes the rules and has enforcement authority?

The California Independent System Operator ("CAISO") should be the lead agency to perform these functions. It has the personnel, equipment and managerial skill set to ensure that the lights stay on. Certainly, there is an important role for the Commission to coordinate with CAISO on setting policy goals and procedures applicable to LSEs, such as RA standards.

[14] Transportation Electrification Projects Proposed by San Diego Gas & Electric Company, Pacific Gas and Electric Company, and Southern California Edison Company Pursuant to SB 350 - A.17-01-020, A.17-01-021, A.17-01-022.

Together, CAISO and the Commission can function as a team to determine what functions, policies and procedures are necessary.

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

As a group composed entirely of customers, both of direct access, bundled and in some circumstances, CCA service, DACC is of course concerned that adequate consumer protections are in place and effective. California's existing consumer laws and regulations are intended to protect individuals from deceptive trade practices, such as "bait and switch," pyramid schemes, and telemarketing fraud. Consumer laws also protect people from identity theft, phishing, and other crimes targeting consumers. We believe that the existing statutory consumer protections[15] are quite adequate in that regard, as discussed in the following responses to the subordinate questions on this topic.

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?

As noted above, effective and adequate consumer protection laws already exist. While these laws apply generally to the production, delivery and consumption of a wide variety of products and not simply to electricity, we see no need for there to be a special state entity to perform solely the consumer protection role for electricity. We note also that AB 162 (Statutes of 2009) and Senate Bill 1305 (Statutes of 1997) require retail electricity suppliers to disclose information to California consumers about the energy resources used to generate the electricity they sell. In response to this directive, the California Energy Commission created a user-friendly way of displaying this information called the Power Content Label. This enables customers to easily compare the power content of one electric service product with that of others.

[15] California's Consumers Legal Remedies Act is one of the most comprehensive consumer protection statutes in the country. It prohibits various forms of false advertising, such as misrepresenting the source or quality of goods, or falsely representing used or deteriorated goods as "new." *See*, California Civil Code, Sec. 1750 *et seq*.

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

In the event of a departing load customer involuntary return to bundled service (an event which has not occurred since the Energy Crisis), the Commission has *already* provided that the customers are to be served by the utility at a marginal cost of power so that existing bundled customers are not harmed by the return. This issue is addressed by DACC with greater specificity in Section I above.

This question also implicates the provider of last resort ("POLR") topic. DACC believes that all Californians should have the right to elect from whom they wish to purchase electricity, and what products and services they want. From the smallest studio apartment resident to the largest commercial or industrial customer, choice should be a fundamental right (and, parenthetically, the right not to choose should also be a right, and those customers provided with quality default or provider of last resort service). We would prefer to see the Commission move away from IOUs acting as the POLR and believe the "slice of load" approach developed in other efficiently operated energy markets be considered seriously as a way forward. In this model, non-utility LSEs would bid to be the POLR for a portion of existing utility load. As noted later in the Green Book, "In other jurisdictions that have expanded choice, the Provider of Last Resort is an essential function and providers are fully compensated."[16] California should give serious consideration to the same approach.

If the Commission is not willing to go so far as to end utility procurement for commercial and industrial load completely, DACC believes that commercial and industrial customers should have an unfettered right to "opt-out" of utility procurement and pre-pay their relevant power charge indifference amount ("PCIA") obligations in order to be relieved from them going forward. Such a proposal has been made in R.17-06-026, for which a decision is expected later this year.

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?

As noted above, the right "not to choose" should also be respected. Anyone who has taken the time to read and digest the Green Book (or DACC's and other parties' comments) has a

[16] Green Book, at p. 58.

demonstrated interest in electricity issues. Green Book readers are policy wonks who care about all the issues attendant to the generation, supply and delivery of electric power. However, a significant segment of California electricity customers find other topics of greater interest, are not interested in choice, only care that the light turns on when a switch is thrown and therefore should have the absolute right to ignore the specific details of their utility service. This does not mean, however, that they will be "left behind."

While these individuals may not have all the options available to customers that opt for choice, in this case, not making a decision is effectively the same as making one. The main role of the Commission in this regard should be to function as an information resource so that customers that desire information should be able to find it quickly and efficiently on the Commission's website. There, information should be presented clearly and explicitly with a minimum of industry jargon that might cause readers' eyes to glaze over. Making information available and easily understandable is all the protection that is needed. After that, customers should be allowed to make (or not make) their own choices.

5. 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?

DACC believes that the IOUs should be directed to liquidate, sell forward, or take other appropriate steps to address the above-market (stranded) costs associated with their current out-of-market resources that are in excess to the resources needed to serve their bundled load. This issue is under consideration in the PCIA rulemaking, R.17-06-026, where parties have made various proposals. DACC's witness Mark Fulmer, of MRW & Associates, made the following proposal in his testimony on behalf of DACC and the Alliance for Retail Energy Markets:

> There are two fundamental drivers that necessitate a comprehensive review of the IOUs' portfolio management practices. First, the IOU's have contracted for and/or own more generation than they need to serve their bundled load. This oversupply is a function of the fact that CCAs are growing and the IOUs are no longer the load serving entity (LSE) for that load. Second, the IOUs have simply over-procured, either as a result of compliance with State-ordered programs (e.g., BioMAT) or, in the case of San Diego Gas & Electric (SDG&E), procurement of

renewable power in excess of its RPS requirement. Third, due to the timing of their purchases of renewable resource PPAs, many of those resources carry costs that are significantly above current market prices.

I do not dispute that the IOUs should be allowed to fairly recover stranded costs from the customers for whom the purchases were made, but that are now departing IOU service. However, given the magnitude of the ongoing departure of load from IOU service, the IOUs' portfolios need to be "right-sized" to meet the needs of the load it is expected to continue to serve, and to ensure the stranded cost charges paid by the departing load are as low as possible, while protecting their bundled customers from unfair cost shifts.

I believe that there are steps the IOUs can and should take to manage their supply portfolios in these changing market conditions. First, they should pursue liquidating contracts to bring down their excess supply. This would entail negotiating with the PPA counterparties to arrive at a fixed-priced buy out amount that essentially sets the level of stranded cost associated with the remainder of the term of those contracts. I would expect this buy-out would be akin to a calculation of the present value of the expected contract revenue stream minus the expected price the project owner could receive elsewhere for the power and associated attributes, e.g., RPS, Resource Adequacy (RA) capacity, ancillary services, energy storage credits). This would provide certainty as to the costs that would need to be paid by bundled and departing customers which could be amortized in bundled customers' rates and departed load PCIA charges over an appropriate period (e.g., the liquidated contracts' remaining term had the contract not been liquidated.)

Second, an alternative to liquidation of contracts would be for the IOUs to divest their excess resources (whether PPAs or utility-owned generation) to counterparties for terms that achieve value greater than simply delivering the excess energy into the day-ahead market administered by the California Independent System Operator (CAISO), which is the current practice, thus minimizing overall stranded costs.

DACC fully endorses these recommendations. The amount of both traditional and renewable generation that is excess to reasonable projections of utility bundled load should be liquidated so

that any associated stranded costs can be ascertained with certainty rather than subject to either the current PCIA methodology or any successor mechanism that may be come out of the deliberations in R.17-06-026.

6. 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?

DACC members want to see California evolve quickly towards an open competitive market, utilizing either an ERCOT or PJM market model. We believe the future market structure that will function best from a customer perspective is one in which the investor-owned utilities function exclusively as conduits for transactions between market participants to get electrons from the source of supply to the appropriate delivery points. We do not want the IOUs competing for generation services, whether conventional or sustainable power. DACC believes there is an inherent conflict of interest between offering a monopoly delivery service and the ideals of a competitive generation market.

When monopolies are permitted to perform services in both the supply and delivery areas, their inherent market power (and the power of the monopolist's brand, built at ratepayer expense) stymies and frustrates the development of a vibrant competitive market. The contrary situation exists when choice is an essential function of the market model.

For example, the ability for all California customers to select their natural gas supplier has been available since the 1990s. The vast majority of large commercial and industrial customers have enjoyed and actively secured their natural gas supply from competitive suppliers. DACC members have been able to utilize risk management options and have competitive pricing choices to meet specific objectives and protect against the volatility of IOU supply rates.

However, the penetration of competitive supply into the Core residential and small commercial market has been small. A truly competitive market where the IOU moves out of the supplier role would encourage the implementation of fuel switching, new renewable products and services offered, and a surge in GHG reduction due to customer awareness and choice. Similar possibilities exist regarding the competitive electricity market.

For the electricity market, a check of the Commission's website reveals 21 registered electric service providers in California,[17] several of which are different subsidiaries of the same company, and many of which are not actually active in the California marketplace. Contrast that with the Texas Electricity Market Profile contained in Appendix II to the Green Book, which states there are 86 retail electric providers ("REPs") in the state and a footnote indicates, "While 2016 EIA Form EIA-861 data only lists 86 REPs, Report to the 85th Texas Legislature on the Scope of Competition in Electric Markets in Texas states as of Sept 2016, 109 REPs were operating in ERCOT." Similarly, PJM lists literally hundreds of members categorized as "Other Suppliers" who provide retail electric services to end-users.[18]

Furthermore, the Texas Commission actively facilitates and encourages competition on its website. Customers' smart meter data and other key information is readily made available to prospective suppliers. A Texas resident or business may enter its zip code at Power to Choose, "the official and unbiased electric choice website of the Public Utility Commission of Texas," which allows all electric providers to list their offers for free and encourages customers to, "Compare offers and choose the electric plan that's right for you."[19] By entering the Dallas ZIP Code of 75001, consumers immediately obtain detailed pricing and terms and conditions for 257 plans. But by no means are such plans only available to residents of Texas' major cities. Enter the 76442 ZIP Code for Comanche, Texas (population 4,206) and information on 230 plans appears!

Similar-sized California towns would be Jackson, in Amador County (population 4,651), Buellton, in Santa Barbara County (population 4,828) or Del Mar in San Diego County (population 4,161).[20] The residents of Jackson, Buellton and Del Mar (served respectively by PG&E, SCE and SDG&E) can find no information on the Commission's website with detailed pricing and terms and conditions of service from multiple suppliers. Of course, the residents of these towns don't have 200-plus plans to choose from. Except for the very few that may have direct access service or the possibility of future CCA service, these residents have precisely one (1) service option available to them – utility bundled service.

[17] https://apps.cpuc.ca.gov/apex/f?p=511:1:0::NO:::
[18] http://www.pjm.com/about-pjm/member-services/member-list.aspx
[19] http://www.powertochoose.org/en-us/
[20] http://www.togetherweteach.com/TWTIC/uscityinfo/05ca/capopr/05capr5.htm

An excellent question for the Commission to consider would thus be:

Why should Comanche, Texas residents have so many more choices and options available to them than residents of Jackson, Buellton and Del Mar, California?

This should then be followed by asking:

What can the Commission do to actively encourage and facilitate customer choice?

It is a bit disheartening that these questions are not explicitly raised and that the Green Book tends to view customer choice through the prism of it being a "problem" rather than an "opportunity." Of course, the fact that the Commission's website when it comes to retail choice is brief and unhelpful simply reflects the fact that California has a hollow and pale imitation of a competitive market. The cap on DA, the fact that the monopoly IOUs are the sole source of supply for all customers without DA or CCA options and the extraordinarily inflexible stranded cost charges that continue to grow and accrue to customer utility accounts all conspire to render California an unfriendly environment for many competitive energy suppliers and new business in general.

This means, of course, that all end-users have fewer supply options and higher costs with limited risk management options than would exist in truly competitive markets as demonstrated across North America. The result is that students at our universities, patients at our hospitals and customers that shop at retail establishments all must pay more. And why? So that we can maintain the polite fiction that monopoly providers have individual customer interests at heart and can deliver power most efficiently? Neither of those sentiments reflect the reality of the California marketplace.

DACC believes that all California end-users should have freedom when considering energy suppliers and have choice on whatever non-IOU supplier services meet market needs under the term and product structure desired. While our constituency is not residential, we believe that residential customers also should have the freedom of choice and the right to consider DA to meet their needs. Small residential aggregators, for example, would be incentivized to promote residential fuel switching from natural gas to electricity lowering GHG and can facilitate the development of residential energy storage, rooftop solar, local solar fields, and community solar, if desired by customers. Most important, however, is that IOUs should be relieved of the responsibility to procure for commercial and industrial load that opt out of utility services.

DACC believes that there is absolutely no evidence that IOUs have ever done a good job of procurement or the implementation of demand side management programs to meet customer-specific needs. On the other hand, there is much evidence -- the fact that space under the DA cap has been filled for so long and that there has been so little migration back to bundled service – to show that customers prefer ESP suppliers over the IOUs to meet their needs. We simply do not believe that that IOUs understand how to meet customer risk profiles when developing generation plan.

Another area where DA customers do not favor IOU service relates to the fact that CAISO has issued new guidelines for the IOU tariffs for Peak, Partial Peak, Off Peak and a new Low Off Peak. The IOUs, with Energy Division concurrence, has done everything possible to delay implementing these new tariff windows. Thus, both bundled rate payers (and DA for T&D tariffs) are getting price signals that encourage energy use or conservation at the wrong times of day. When the pricing in IOU tariffs does not match the actual grid stress or actual real time energy pricing, the system is not functioning as efficiently as it should.

Furthermore, DACC members strongly believe that allowing IOU procurement for commercial and industrial load causes increased prices, reduced transparency and negative impacts on customer energy goals. Instead, DACC members believe that the IOUs do not procure efficiently and that high utility costs discourage use of California's clean energy. IOU procurement (and over procurement) is wasteful and thus has a very negative impact on California's residential, commercial and industrial customers. As noted above, we would prefer to see the Commission move away from IOUs acting as the POLR and believe the "slice of load" approach developed in other well-operating energy markets should be considered seriously as a way forward.

If the Commission is not willing to go so far as to end IOU procurement for commercial and industrial load completely, DACC believes that commercial and industrial customers should have an unfettered right to "opt-out" of IOU procurement and pre-pay their PCIA obligations in order to be relieved from them going forward. Customers who elect to "opt out" in this manner should pay market-based rates, and all other associated charges, if returning to utility service, for whatever period of time is required to ensure bundled utility service customers are not harmed as the utility determines how to serve the new marginal load. This will ensure that remaining bundled customers are not affected and forestall any potential gaming by customers trying to arbitrage

competitive market fundamentals and utility pricing practices. DACC members want a market that allows customers to take risk and develop a risk management approach specific to a customer's needs. Many customers are comfortable with risk, know how to manage it and believe that partnering with their ESP suppliers provides significant benefit compared to monopoly IOU practices.

DACC therefore strongly endorses the concept of moving toward the model of having the IOUs serve as a platform for other electricity suppliers, as exists in other markets, here and abroad.

III. Observations & Future Considerations

A. Affordability: Customers Need Information, Protection and Guaranteed Service

The Green Book discussion in Part V begins by stating that, "California needs a clear long-term vision for its regulatory framework to address the state's system requirements and policy goals beyond short-term fixes to stabilize immediate issues."[21] DACC strongly concurs. Its discussion on Affordability further states that, "Customer engagement and price transparency are critical to keep rates low in competitive markets," followed by "Educational campaigns for consumers and regularly updated data on prices are needed to support customer engagement and market transparency"[22] In view of this supposed focus on the need for transparency (with which DACC firmly agrees), it is highly surprising that the Texas market that provides the greatest price transparency and customer information, as discussed in Section II.D.6. above, is not mentioned as a positive exemplar. Telling California regulators that they can learn from Texas may be a bit of an uphill battle, but the Commission would do well to look at the information provided Texas end-users and contrast it with its own website information.

B. Reliability: Operating the Grid Safely while Ensuring Reliable and Resilient Service Requires Oversight

The Green Book discussion first notes the need to ensure that reliability and safety requirements are rigorously met and that the lights must stay on while adhering to high safety standards, regardless of who serves as the primary LSE. This is certainly true. However, the following statement that, "As CCAs or other competitive providers become a larger portion of the

[21] Green Book at p. 56.
[22] Ibid.

electricity market, the quandary becomes who is responsible to ensure that these requirements are met for all of California's citizens"[23] is puzzling. The Green Book states at several places that the responsibility for grid safety lies with the IOUs.[24] The suggestion here that an increased role for CCAs or other competitive providers will somehow negate that principle is illogical and not justified or explained.

This section next seems to float the idea of a central buyer for reliability, saying, "If a central buyer has the responsibility to maintain reserves for reliability and the liability for the safe delivery of electric service, there must be adequate compensation" and "As LSEs become more diverse, a centralized procurement process may help ensure that reliability requirements are met…"[25] The central buyer concept has been teed up for consideration in a May 22 proposed decision in Track 1 of the Resource Adequacy proceeding, R.17-09-020.[26] The May 22 PD cites two Energy Division approaches to a local multi-year RA requirement, "one with the utilities acting as a central buyer, and one with the LSEs responsible for meeting their own local and sub-local RA requirements." DACC believes the concept of a central buyer for resource adequacy may be worth exploring, if it could actually serve to provide more efficient procurement, reduce stranded costs, and assist with meeting essential state policies. However, DACC would be highly concerned if the Commission was to adopt a utility-centric model that simply emulates the current CAM system. The CAM system simply imposes less efficient utility buying costs on ESPs and CCAs and destabilizes their own procurement planning. The Commission should not adopt a central buyer approach that is simply "CAM on steroids."

The Reliability discussion also observes that, "As part of the implementation of AB 1890, the CPUC separated out the major aspects of the utility electric bill, including generation, transmission and distribution, and public purpose programs as major categories. These general categories are still in place today. It may be appropriate to re-examine if bill-related elements are in the correct category to ensure bill integrity and to promote the level of transparency achieved in

[23] Id, at p. 57.
[24] *See*, e.g., "The IOUs are also responsible for grid safety and resilience…" at pp. 19. *See*, also, "Every outcome contemplated and analyzed by this assessment relies on the basic proposition that the utilities will continue to provide the fundamental backbone services of electric delivery to customers along with ensuring the safety and reliability of that delivery," at p. 25.
[25] Green Book, at pp. 57-58.
[26] The May 22 Proposed Decision in the proceeding states at p, 28, "Therefore, parties should propose central buyer structures for multi-year forward procurement of local RA in their Track 2 testimony."

other markets."[27] DACC totally agrees that a major re-examination is needed of utility billing practices that all too often confuse generation-related costs that should be borne solely by bundled customers with transmission and distribution charges that are appropriately charged both to bundled and departing load. Identifying the correct categories for utility expenses is critical to ensure that the Commission's policies on cost incurrence are scrupulously observed.

IV. Other Issues – Independent System Operator and Micro-Grids

The Green Book Request for Comments also sought input on, "Topics related to customer choice that were not covered." DACC offers additional comments on the need for further focus on the operation of "micro-grids" in the California competitive market.

A. What is the Issue?

The issue of concern is a limitation on the scope of the Draft Green Book, specifically the fact that it focuses exclusively on the energy procurement function, while excluding questions regarding distribution grid ownership and operation. The scope of the Draft Green Book should be expanded to include questions regarding an Independent Distribution System Operator and non-utility ownership and operation of "micro-grids" in California.

B. The Limitation on the Scope of the Green Book is Unnecessary

The draft Green Book is a commendable effort to take stock of the many ways in which electric customers served by California IOUs are being afforded alternatives in terms of their choice of energy suppliers. It represents the start of a thoughtful effort by the Commission to develop a policy framework to guide this evolution in electric utility service. As it stands, however, the Green Book incorporates an unnecessary limitation on the scope of the inquiry the Commission is undertaking.

Specifically, in discussing the future role of the investor-owned utilities, the Green Book states (at p. 6) that "[u]nder all visions of the future, the IOUs continue to provide distribution, transmission and other grid services…"[28] By this simple declaration, the Draft Green Book appears to exclude from further consideration the prospect of independently owned and operated

[27] Green Book, at p. 59.
[28] Id at p. 6.

"micro-grids" in California, or further exploration of the role of an Independent Distribution System Operator in operating such micro-grids. Later, under a heading that reads "Poles and Wires Are Not Customer Choices," the Draft Green Book reiterates that "[e]very outcome contemplated and analyzed by this assessment relies on the basic proposition that the utilities will continue to provide the fundamental backbone services of electric delivery to customers . . ."[29]

Thus, the Draft Green Book merely assumes continuing monopoly ownership and operation of the distribution grid by the investor-owned utilities. As currently written, the Green Book would not allow stakeholders to come forward with proposals for alternative models for operating the distribution grid. This omission needs to be remedied. The scope of the Draft Green Book should be expanded to include consideration of non-utility ownership and operation of distribution infrastructure.

In particular, the Commission should explore how increased development of "micro-grids" in California, together with an Independent Distribution System Operator, could help California meet both operational and environmental goals. With respect to operations, Commission staff has referred to "the famous California Duck Curve" and emphasizes the challenge of addressing "transmission limitations and system flexibility needs such as resources required for reliability to incorporate renewables and to provide sufficient generation during high ramping periods such as when the sun sets and demand increases."[30] With respect to the environment, the Green Book repeatedly acknowledges the critical role played by the Commission in achieving California's goal of deeper decarbonization of the electric sector. Indeed, "decarbonization" is identified in the Draft Green Book as one of three "core principles" for the Customer Choice initiative. In both of these respects, micro-grids and an Independent Distribution System Operator should be on the table for consideration.

Large commercial and institutional customers that receive power at transmission levels already own their distribution infrastructure. Coupled with distributed energy resources ("DER") and advanced controls, these customers have the ability to support decarbonization as well as support grid reliability. An example of this is the University of California at San Diego, and their ability to manage their load and DER to support the local grid during the wildfires of 2007. During that event SDG&E asked big customers for help in keeping the grid up. UCSD curtailed load,

[29] Id at p. 25.
[30] Id at p. 17 and fn. 44.

especially electric chillers, and cranked up generators, going from 4 megawatts of imports to 3 megawatts of exports in only 10 minutes.[31] DACC believes that the ability for more third parties to own distribution infrastructure will accelerate the implementation of DER technologies demonstrated at UCSD and other microgrids.

We urge Staff to reconsider its assumption about continued monopoly ownership and operation of the distribution grid by the investor-owned utilities. The scope of the Green Book should be expanded to include consideration of an Independent Distribution System Operator that would independently and intelligently operate zero- and low-emission micro-grids within the service territories of the investor-owned utilities. The scope also should include the prospect of non-utility ownership and operation of micro-grids in California.

In summary, the scope of the Green Book should not be limited to the energy procurement function alone, but also should include alternative approaches to distribution infrastructure ownership and operation.

V. Conclusion and Summary

DACC thanks the California Customer Choice team for its extensive efforts to examine and discuss the growth in competitive option and the implications for customers and for achieving the state's goals. DACC has offered comments herein in an effort to support the concept of choice and rebut some of the Green Book's discussion which seems to view choice as more of a problem than an opportunity. Also, attached hereto as an Appendix is a brief summary of certain areas that in our view need correction, since the Request for Informal Comments specifically asked for parties to identify possible misstatements. In conclusion, DACC would welcome further discussion of the points made herein and the opportunity to interact with the California Customer Choice team both at the planned *en banc* and thereafter.

[31] *See*, https://www.greentechmedia.com/articles/read/byrom-washom-master-of-the-microgrid#gs.E7qCe_M

Appendix

Corrections to Misstatements

In the Request for Informal Comments on the Green Book Draft that accompanied its issuance, it is stated that the California Customer Choice team seeks input on corrections to misstatements. DACC offers a few examples here:

Page	Misstatement	Correction
viii	The listing for Figure 2 showing the changes in DA load over time is identified as "DA Load Served by the IOUs"	This should be changed to "DA Load Over Time"
2	Figure 1: California's Energy Policy Timeline neglects to mention the 2009 passage of SB 695 and the resulting reopening of direct access under an expanded cap	This should be corrected in the final report.
18	"Direct Access" providers can offer service to anyone within the service territory of an electric utility.	ESPs may serve only residential customers with the exception of those that are grandfathered since the Energy Crisis. Furthermore, the cap on DA also severely limits the ability to serve.
19	With greater choices (CCAS, NEM, Direct Access, and rooftop solar) and disaggregation of supply, current safety controls and protocols become more difficult to fund and to coordinate in times of crisis.	The prior sentence notes that "The IOUs are also responsible for grid safety and resilience, during normal operations and catastrophic events." The addition of choice does not make these efforts more difficult to fund.