



November 13, 2017

California Customer Choice Staff
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Via email: customerchoice@cpuc.ca.gov

RE: Post-Workshop Comments of Infinite Energy and Veteran Energy

Dear California Customer Choice Staff:

Infinite Energy, Inc. ("Infinite Energy")¹ hereby submits its responses to the post-workshop questions following the California Choice Informal Public Workshop that occurred on October 31, 2017.

The state of California is the second largest state in terms of electric consumption – second only to Texas, which has, since the turn of the millennium, dramatically benefitted from a competitively restructured electric market. California, due to the famous efforts of Art Rosenfeld, has set the standard for reducing increases in demand – maintaining a nearly flat per capita electric use for over 30 years. This is an unprecedented achievement, especially considering the fact that California's population nearly doubled and its gross domestic product increased by an order of magnitude in that time.

The Commission and Choice Staff now have the opportunity to embark on an undertaking of equal significance: a restructuring California's electric industry that will bring to California's citizens and businesses the benefits of a fully competitive market. Unlike per capita usage, the rates paid by California consumers have not remained low compared to other states. In August 2017, California's residential consumers paid the seventh highest price per kWh (topped only by four of the smaller northeastern states, Alaska, and Hawaii), while California's commercial customers paid the third highest price (topped only by Alaska and Hawaii). Restructuring California's electric market will allow

¹ Infinite Energy was formed in 1994 to serve the growing wholesale and retail natural gas markets. Initially focused on wholesale trading and serving Florida commercial and industrial gas customers, Infinite Energy was an active party from the onset of Georgia's retail natural gas restructuring and is one of the three original Georgia natural gas marketers still active in that market. The company has since expanded its retail gas operations into New York and New Jersey, formed an affiliate named Infinite Electric which has served the Texas retail electric market for over seven years, and is a proud affiliate of Veteran Energy, a Texas retail electric provider that partners with veteran support organizations through the company's THE POWER TO GIVE BACK™ program (<https://www.veteranenergy.us/the-power-to-give-back/>). Infinite Energy possesses decades of experience in diverse retail energy markets, and appreciates this opportunity to share that experience with the California Public Utilities Commission ("Commission") and the California Customer Choice Staff ("Choice Staff").

the monopoly utilities to focus exclusively on safe and reliable distribution while it will allow fully competitive retailers to bring efficiency, lower prices, innovation, and improved customer service to California. This is the next, best step in the evolution of California’s electric industry.

With the above in mind, Infinite Energy respectfully submits these comments and responses to the post-workshop questions. We look forward to joining with other stakeholders from every facet of the industry to help the Commission and Choice Staff with these important discussions.

White Paper Scoping Questions

Question 1.	The California Customer Choice project has three principles and eight key questions when considering customer choice (see below) in California and other markets. Are there any additional questions that the project should be considering? Why?
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Infinite Energy agrees with the National Energy Marketers Association (“NEM”) that an additional question for the project to consider is “How does this choice model encourage consumer and competitive supplier participation in the market?” In addition to the reasons raised by NEM for the inclusion of this question, Infinite Energy adds that its experience in other markets has made clear that market participant engagement in a market is crucial to the success of that market. Critically, the terms “participant,” “engagement,” and “participation” should be broadly construed when considering this question. Key to full consideration of this question are a number of items including, but not limited to:

- Access to information – Available information should include pricing, product features, and terms of service information for shopping customers; historical usage and profile information that allow retailers to offer customized rates, billing, and product options and both retailers and third parties to offer consulting and value-added services; utility rate and tariff information for customers and retailers alike; information regarding the role of aggregators, brokers, and consultants (“ABCs”), distributed generation, and other services and service providers in the market, including the services they provide and fees they charge. The Commission and Change Staff should consider when and how certain kinds of information – utility tariffs and usage information – can benefit from standardized language, format, and presentation. Supplier and ABC contracts, however, should not be standardized, but appropriate rules should be drafted to ensure that key information – charges and fees, rescission rights, the presence or absence of early termination fees – is presented clearly and fully.
- Standardization of Monopoly Operations – Utility and grid operator practices and policies should be standardized to the maximum extent possible. In Texas, for example, all Transmission Distribution Utilities (“TDUs”) in the competitive ERCOT market provide retail delivery service in accordance with standardized terms and conditions as set forth in the Texas Public Utility Commission’s pro forma retail delivery tariff². While each TDU’s rates are individually calculated, and each may have different charges or services based on their particular circumstances, the format, organization, terminology, and basic terms and conditions are identical for all TDUs. This creates incredible efficiencies for regulators, suppliers, consultants,

² <http://www.puc.texas.gov/agency/ruleslaws/subrules/electric/25.214/25.214.pdf>

and consumer advocates.³ It also dramatically simplifies any disputes that may arise between market participants concerning a given TDU's tariff – due to the standardized structure of TDU tariffs, rulings and judgements apply equally to all; ratemakings are simplified due to universal familiarity; customers moving between service areas benefit from the uniformity of monopoly services. Likewise, all wholesale, operational, settlement, and retail transactions are coordinated by the Electric Reliability Council of Texas under protocols openly developed by working groups composed of diverse market participants and ultimately approved by the PUC's Staff. The protocols, transactions, and requirements are the same regardless of which participants are involved – while each participant has its own software and processes, all transactions flow through and are compliant with those of this central clearinghouse. By requiring that all monopoly or otherwise unavoidable services are standardized, openly established, and subject to public scrutiny, Texas market participants are ensured a level playing field, cost-effective operations, regulatory certainty, and accessible forums for dispute resolution and market improvement.

- Supplier Consolidated Billing – in every restructured energy market that has failed to eliminate utility billing, competition has either faltered or outright failed. Conversely, the two markets which have eliminated utility billing – Texas and Georgia – are unparalleled successes. When the supplier maintains the direct billing relationship with the customer, the customer is always certain of who their provider is, what rates they are being charged, whether they've been switched, and for what services they are being billed. “Slams” become minor inconveniences that are quickly detected and, through the central clearinghouse, quickly corrected in a manner that has no impact on the customer; “cramming” becomes impossible. Furthermore, consolidated billing and purchase of receivables by utilities in other markets have proven to cause consumer confusion, allow for abuses by bad players, and resulted in a proliferation of issues that do not exist in supplier-billed markets. The ability to issue timely, accurate, and compliant bills should be considered one of the primary, minimum requirements to operate as an energy supplier.
- Commission-Managed Online Shopping Portal – critical to ensuring that customers are sufficiently informed, engaged, and confident is the availability of a Commission-managed online shopping portal that provides information about shopping, rates, options, and customer rights. The portal should present current rate offerings from approved suppliers, which will not only ensure that customers are receiving up-to-date information about rates in a manner that allows “apples-to-apples” comparison, but also confirmation that the suppliers are certified by the Commission. Crucially, Commission Staff can monitor offerings on the site to ensure that suppliers' offerings meet the Commission's disclosure requirements. Commission Staff will also be able to monitor visitor and click-through statistics, which provides crucial information about shopper engagement. When such a portal is paired with smart meter data, customer options proliferate and the full benefits of vigorous competition accrue.

³ Georgia's retail gas market is served by a single utility – Atlanta Gas Light – which creates a similar efficiency: all tariff and operational protocols are housed under a single roof, so all such market activity is standardized.

Question 2.	The California Customer Choice Project is reviewing several markets as key examples of how customer choice operates under different regulatory frameworks. These markets include New York, Texas, Illinois, and the United Kingdom. Are there other markets, either domestic or international, that you think would be an important model for California to consider as a regulatory framework option? Why?
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Regarding electric markets, Infinite Energy recommends that the Commission and Choice Staff focus on the Texas market. Regarding key examples of retail choice in previously regulated energy markets, Infinite Energy suggests that the Commission and Choice Staff also review the Georgia natural gas market. While there are significant differences between electric and gas markets, from the rate-making, retail choice, transition, customer protection, and provider of last resort/regulated provider perspective, many of the key issues are the same. Over nearly twenty years, the Georgia Public Service Commission has overseen a successful, vibrant market that has and continues to achieve all the hallmarks of a successful competitive market: full unbundling of monopoly utility services from competitive supply and merchant functions, appropriate customer safeguards and market development, fair ratemaking for the utility, many choices for consumers, rigorous standards for supplier market entry, reliable and efficient service, both regulated and competitive solutions for low-income customers, and a low complaint rate.⁴

Unlike the partially-restructured markets in which utilities remain in the merchant function⁵, or those improperly restructured markets which have allowed integrated generator-retailers to both generate and sell electricity⁶, Texas and Georgia have the unique experiences of fully restructured electric and natural gas markets – giving their Commissions and Staffs insight into the actual differences between fully-regulated and fully-restructured markets. In the case of partially-restructured markets, much activity – including that of the Commission and Staff of the regulatory agency that oversees the market, the system operator and utility, the competitive suppliers and customers, and customer advocates – is spent addressing issues caused by the incompletely unbundled service of the utility and the incompletely competitive market. Regulators and other market participants spend significant resources in utility rate cases still dominated by commodity costs, which themselves are often obfuscated by accounting and processes related to operations and merchant functions unrelated to the utility’s core role as the monopoly provider of energy distribution. Utility market power on both the retail and wholesale sides of the market, as well as its simultaneous control over and participation in system

⁴ The Choice Staff should pay particular attention to each market’s solution to the question of how to provide universal service in a competitive market. Texas’ approach is to assign a Provider of Last Resort (“POLR”) by service class and utility, based on market share. Other providers may elect to become voluntary POLRs. The role of the POLR is to provide service in cases where a customer’s supplier exits the market unexpectedly. Georgia’s approach is to issue a bid for the role of Regulated Provider (“RP”). The role of the RP is to provide service to low-income and other customers who require it. In both cases, the service is subject to additional regulations and may be subsidized by a service fund. Infinite Energy will be happy to produce a report on the two options for the Commission and Choice Staff’s consideration. Infinite Energy does not believe that the incumbent utilities should retain or participate in any commodity procurement or provision responsibilities and that the Commission should consider options such as assignment or bidding to competitive suppliers for this role.

⁵ i.e., New York, Illinois, PJM.

⁶ United Kingdom, Australia.

balancing and operations, detracts from the potential gains in efficiency and economics that restructuring would otherwise bring.

For these reasons, Infinite Energy respectfully suggests that the California Customer Choice Project focus first on the “Full Competition Model” exemplified by Texas and Georgia – two highly successful markets with nearly two decades of experience and lessons learned – to determine what works and why. Only then should other markets be reviewed in detail – to determine what doesn’t work and why.

Question 3.	What published resources do you recommend the California Customer Choice team review in addressing key questions for evaluated markets?
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The Texas Public Utility Commission evidenced unparalleled foresight in presenting, alongside its rules, a history of its orders – including summaries of stakeholder comments – for every revision and change implemented since the advent of competition in that market. The history of each rule is available at <http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx> – the current rule is available by clicking the hyperlink for the section number of the rule; the history of the rule is available by clicking the hyperlink for the title of the rule. This allows the Choice Staff to see not only the current state of Texas’ regulations but how and why the Commission developed the rules the way they did. Thus, every step in their evolution is available for consideration when crafting California’s rules.

Similarly, the current ERCOT Market Guides⁷ and Nodal Protocols⁸ are an invaluable resource developed over nearly two decades of electric restructuring. The ERCOT membership⁹, committees and groups¹⁰, and the highly active Staff of the Public Utility Commission, ensure that the Market Guides and Nodal Protocols reflect an open, transparent, reliable market. For any state considering transitioning to a successful and reliable competitive market, these documents are a cheat sheet developed, tested, refined, and retested by a vast number of experts and highly engaged market participants responsible for the smooth operation of an electric market with a generating capacity of over 76 thousand MW and serving over 24 million people. And as with the Texas Commission’s rule, much of the history is available.

Question 4.	What specific statutes should the California Customer Choice team review when considering customer choice as discussed during the workshop?
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Infinite Energy agrees with NEM’s response to this question. In addition, Infinite Energy recommends that the Choice Team work with the stakeholders involved in Nevada’s restructuring effort, as the proximity and potential for combined operations between the markets is significant. Both California and Nevada will benefit greatly to the extent that their efforts are synchronized.

Panel Follow-up Questions – Market Perspectives

⁷ Available at <http://www.ercot.com/mktrules/guides>.

⁸ Available at <http://www.ercot.com/mktrules/nprotocols>.

⁹ Comprised of consumers, cooperatives and municipals, generators, power marketers, retail electric providers, and investor-owned utilities.

¹⁰ For an organizational chart and additional information, see <http://www.ercot.com/committees>.

Question 1.	What are the most compelling examples of successful implementation of customer choice that you heard during the Market Perspectives panel?
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For the many reasons stated above, the Texas market is the most compelling example of successful implementation of customer choice (as well as the utility unbundling, wholesale market design, and operational structures necessary to successfully implement meaningful customer choice). Respectfully, Infinite Energy contends that the other markets reviewed during the Market Perspectives panel have not, in actuality, implemented customer choice – successful or otherwise. As long as utilities provide commodity supply (which is invariably subsidized in one or more ways) and perform the billing function on a consolidated basis, customer choice is reduced to little more than occasional, opaque opportunities for short-term rate savings (in the best of cases) and teaser rates followed by high variable rates (in the majority of cases)¹¹. With the exception of Illinois’ ongoing efforts to enable supplier consolidated billing and address operational inequities, partially restructured markets such as New York have not seen the benefits of competitive energy restructuring – in fact, the opposite – not because competition doesn’t work, but because the market changes implemented by these jurisdictions are incomplete and flawed. These furtive, unfinalized movements towards restructuring result in hybrid markets that suffer from all the weaknesses of regulated markets while introducing new problems that can only be solved by full restructuring. Worse, they actually prohibit the innovation, price competition, customer service improvements, operational efficiencies, and rate-making simplification that fully restructured markets such as Texas and Georgia have enjoyed.

Question 2.	Given some of the pitfalls illustrated by the panelists, how might California best avoid or mitigate these issues?
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In addition to its responses to the above questions, Infinite Energy recommends that the Commission and Choice Panel clearly differentiate and enforce market roles. The first distinction is between unavoidable monopoly services (i.e., natural and thus exclusive monopoly transmission and delivery services) and competitive services. Every service that can be offered competitively should and must be made strictly competitive – with whatever rules and requirements needed to ensure reasonable customer protection and system reliability. The second distinction is to define market power and determine how to ensure that it does not accrue based on relationships or control of a system. Appropriate rules and oversight must be established to ensure that no party market segment is able to abuse their role in the market. The third distinction is between those matters which can only and thus must be addressed preemptively or proactively by Commission rules and other out-of-market regulatory actions and those which can and thus should only be addressed by the market and market participants working together in an open forum (c.f., the description of ERCOT working groups, above).

Finally, Infinite Energy respectfully points out that the Commission and Choice Panel are proposing a full-fledged paradigm shift in how electricity is sold, regulated, balanced, and consumed in California.

¹¹ Markets which allow generators to be retailers under a single corporate entity experience their own issues – market power if not outright market manipulation, as evidenced by current scrutiny in both the United Kingdom and Australia.

Full commitment is required. Consumers must be educated and prepared for this change. Commission staff must be prepared for the changes in their responsibilities, as well as the changes in the nature of ratemaking and complaints received, especially during the first few years after restructuring. CAISO must be prepared to take on a new role as intermediary between generators, retailers, and the utilities that connect the investments of the former to the customers of the latter. Generators and utilities must likewise be prepared for the changes made to the market, and empowered to perform their roles and to earn reasonable rates of return that ensure continued investment in California.

Question 3.	What are the motivations and entities driving customer choice in California? How are they similar or different from the other markets?
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Infinite Energy cannot speculate regarding the motivations of specific entities; however, regarding fully-restructured markets where roles are clearly defined, we can state the following with confidence:

- Consumers want to see savings, greater choices, and the ability to choose their provider;
- Suppliers and generators want to see regulatory certainty; markets that are stable, competitive, and assign costs appropriately; and the opportunity to earn a reasonable return on their entrepreneurial efforts;
- Utilities want to see regulatory certainty and a reasonable return on their investments in infrastructure, safety, and reliability;
- Regulators, consumer advocates, and government agencies want to see a transparent market that features reliability, customer agency, low rates, innovation, and green choices.

These are the key desires of each group – and they are *not* in conflict. While there will be differences of priority or preferred execution between and even within groups, open access and customer choice works in large part by creating markets where participants can find mutually-beneficial solutions. The Commission and Choice Staff can minimize or avoid the perpetually unresolvable conflicts which plague the incompletely restructured markets mentioned previously by clearly establishing the distinctions laid out in the response to the previous question. When each market segment and participant understands its role and what is expected, each can focus on working collaboratively with other segments and participants to create an efficient, functional market.

Panel Follow-up Questions – Shark Tank

Question 1.	After reviewing the “shark tank” presentations, what are the “must haves” as California considers regulatory framework options to manage the transition associated with customer choice? What is the most compelling vision of customer choice as presented in the shark tank?
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Infinite Energy agrees with NEM’s response to this question and expands as follows:

- Market-Based [transitional] POLR Pricing – during the initial period following restructuring, default pricing should be fully market-based and clearly signaled so customers can make informed decisions.

- Reasonable Consumer Protection Requirements – the Commission should resist the urge to define every aspect of the relationship between consumers and their chosen providers; strong rules applying to key customer protection concerns (slamming, cramming, disconnection, discrimination) should be established – however, suppliers should be given as much flexibility as possible in how those expectations are met.
- Reasonable Supplier Licensing and Marketing Standards – licensing standards should be demanding enough to ensure that suppliers serving California consumers possess the financial integrity and technical expertise to ensure reliable, compliant service; marketing standards should put suppliers on notice to not lie, cheat, or steal while minimizing unnecessary compliance costs and avoiding artificial restrictions on valuable product offerings. The Commission should be skeptical of the notion that a very large number of suppliers is always better – in markets with lax entry requirements, outfits with insufficient experience or resources have proliferated, causing countless complaints and incalculable damage to the industry.
- Efficient and Cost-Effective Means to Enroll Consumers – enrollment requirements should reasonably ensure that the supplier has captured and documented the customer’s affirmative consent; the transactions and requirements for submitting switch and move-in requests to utilities should be standardized.
- Expeditious Consumer Switching Timeframes – smart meters and other technological means should be implemented to ensure that customer choices are facilitated as quickly as possible; regulatory language and utility protocols should not impose unnecessary delays on the execution of customer choice.
- Timely Competitive Supplier Access to Data – data is crucial to supplier billing, rate offerings, and settlement. Any delay, incompleteness, or inaccuracy in data results in unnecessary costs for consumers and the suppliers that serve them. Customers should be fully empowered to authorize supplier and third party access to historical and current usage data.
- Consumer Education – as discussed above, consumer education and access to shopping information is critical to any successful market. An early investment will result in significant payoffs as customers who understand and are prepared for choice will be empowered to make confident and informed decisions.
- Requirements for Prudent and Aggressive Management of Stranded Costs – stranded costs invariably result in some of the greatest burdens on consumers, regulators, and the market during restructuring. The Commission should take immediate action to begin limiting the accumulation of costs which will become stranded upon restructuring, and stranded costs should be addressed in a uniform, expeditious manner throughout the restructuring process.
- Provision of Regulatory Certainty to Encourage Supplier Entry, Investment and Market Participation – on both the retail and wholesale sides, regulatory certainty is key to stable, successful markets. Regarding retail, licensing requirements and customer protection rules should be clear, uniform, and rigorously enforced – rule changes should be considered only once it is confirmed that the current rules are insufficient to address the concerns in question.

Regarding wholesale, market protocols should be designed, implemented, and executed in a manner that ensures that out-of-market regulatory activity does not deter investment.

Infinite Energy also reiterates the Policy Recommendations of Mark Pruitt of The Power Bureau, LLC (Page 8, Illinois Market Review), specifically:

- Focus on ensuring transparent market price signals for consumers.
- Cost of service is not a rate class issue – it’s an account issue.
- Apply costs in a manner consistent with wholesale market design.
- Consumers can only respond, so facilitate the data > information > decision process.
- Expel (not censure) bad actors – retail and wholesale market participants should be allowed to enter the market but must be shown the door at the first indications of acting in bad faith.

Question 2.	As California considers potential updates to its regulatory framework on customer choice, it is possible that certain existing rules or statutes may need to be reconciled. Are there any “must change” and/or “must not change” statutes? What are these rules and statutes and why?
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Please see Response to White Paper Scoping Question 4, above.

The Commission and Choice Staff face one of the most significant proposals in Californian history, one that will affect every citizen and business in California. We believe that few choices can benefit a state more than the choice to restructure its electric industry – but that choice must be made and implemented carefully. Towards that end, Infinite Energy is committed to assisting the Commission and Choice Staff by participating in these discussions and providing whatever information we have available. Please do not hesitate to contact us with any questions.

Sincerely,


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