

**Comments of the Energy Producers and Users Coalition  
on October 31, 2017 Public Workshop Evaluating  
Regulatory Framework Options for an Evolving Electric Market**

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The Energy Producers and Users Coalition appreciate the opportunity to provide comments on the October 31, 2017 *en banc* Commission workshop moderated by the California Customer Choice Project (Project) to consider a Regulatory Framework Options for an Evolving Electric Market (Workshop).

## **I. INTRODUCTION AND SUMMARY**

California's electric market is evolving rapidly and outpacing changes in the regulatory framework in which it operates. Customer choice "behind the meter" – *e.g.*, distributed energy resources (DER), demand response (DR), energy efficiency (EE) and energy storage – continues to expand. Customer choice "in front of the meter" -- *e.g.*, supplier, resource mix, pricing – continues to gain support from customers and local government. The goal of any changes to the existing regulatory framework should be to facilitate customer choice for all investor-owned utility (IOU) customers, on both sides of the meter, under a framework that provides for consumer protection and serves California's policy goals.

Any regulatory framework for customer choice must maintain affordability and reliability of service without impairing the State's decarbonization goals, as participants repeatedly emphasized during the workshop. The regulatory framework must also advance other goals identified in the workshop: (1) ensuring universal service; (2) supporting innovation; (3) financing the evolution of the grid; (4) transitioning historical utility obligations in a manner that is fair to both remaining bundled and departing customers; (5) providing for competitive neutrality where competition exists; and (6) benefitting local communities, including those communities that are economically or environmentally disadvantaged. The ability to achieve these goals, however, may not depend on the particular regulatory framework, and most of these goals can be achieved in any framework with targeted measures.

Today's California regulatory structure for retail service accommodates partial customer choice on both sides of the meter. Some, but not all, customers enjoy their choice of procurement supplier:

- ✓ Assembly Bill 1890 fostered greater wholesale competition and introduced retail choice as "Direct Access," although new Direct Access is suspended.

- ✓ Assembly Bill 117 created the opportunity for local government to take a stronger role in procuring electricity through Community Choice Aggregation (CCA).
- ✓ Distributed Energy Resources provide customers alternatives to IOU procurement and, in some circumstances, IOU “wires.”

Beyond supplier choice, customers increasingly are interested in choosing the characteristics of their procurement service, such as a 100% renewable portfolio, whether through the IOU or an alternative supplier. Customers also have choices in how they manage their load behind the meter, including participating in DR and EE, with developers continually seeking to further “delight” electricity consumers with innovation.

Customer choice is present and growing in all facets of California’s electricity market. Unlike other states, California has preserved its ability to achieve policy goals as customer choice has grown through requirements that need to be met by ESPs and IOUs alike, nonbypassable charges and other measures. In other words, while the percentage of load served by competitive options in California may be low relative to other jurisdictions with retail choice, California legislators and regulators are ahead of those jurisdictions in finding solutions for associated policy concerns.

Under these circumstances, what questions must the Commission address in considering customer choice? As an initial matter, as President Picker suggested during the workshop, reversing the course of customer choice on either side of the meter is not a rational option; the genie is out of the bottle. To put the genie back into the bottle would require terminating Direct Access and CCA and somehow overriding customers’ legal rights to employ behind-the-meter solutions on their own property.

Taking today’s regulatory structure as it is, three high-level questions come to mind:

- (1) Should California extend to *all* IOU customers a choice of suppliers, ending the State-sponsored discrimination among customers?
- (2) What role should the IOUs play in the market for behind the meter services?
- (3) How can the Commission fairly transition historical utility obligations for bundled and departing load customers?
- (4) How does increased customer choice affect future funding of electric infrastructure and societal benefits?

Beneath these overarching questions lie myriad detailed issues that will need to be addressed as California selects its path to customer choice.

EPUC recommends ensuring a choice of supplier for *all* customers. Today, whether a customer has choice depends upon whether its local government has taken the initiative to create a CCA or whether the customer was able to take advantage of Direct Access before it was suspended. Recognizing that we cannot put the genie of competition back in the bottle, the only way to ensure all customers have comparable choices is to lift the suspension on Direct Access. If the Legislature declines to broaden customer choice of supplier, the Commission should at a minimum provide for customer self-wheeling – an option that is available without further legislation.

EPUC also recommends limiting the utility role behind the meter to ensure development of a vibrant market. The utilities should continue to provide transmission and distribution services and provide service to accommodate behind the meter choices offered by competitive suppliers. Allowing the IOUs to provide behind the meter services where competition is viable, however, may slow the pace at which competitive services take root.

EPUC observes that the question of transition cost determination should not discourage customer choice, but should drive the Commission toward broadening customer choice. “Transition” costs have been a California regulatory fixture for the last two decades, and the Commission has substantial experience in addressing these types of costs. The only way to eliminate this problem is to *actually and fully transition* to customer choice, including ending IOU procurement and replacing it with a regulated “provider of last resort.” While the evolution will result in transition costs, the costs can be identified and addressed once and for all, rather than allowing the IOUs to continue to build stranded costs into their portfolios.

The Commission’s most challenging task is to address the potential impacts of customer choice on rates and on funding for wires infrastructure and social benefits. These impacts will be driven by behind the meter choices that result in a reduced reliance on the IOU grid or “islanding” – choices that lie beyond the Commission’s jurisdiction. There is no simple solution. The answer, however, lies not in attempting to

restrict competition but in making the utilities' wires services cost-competitive and attractive to customers.

## **II. RECOMMENDATIONS**

### **A. Expand Customer Choice on Both Sides of the Meter**

Several workshop participants suggested that customer choice expansion should take place behind the meter, but not in front of the meter. They argued that much of the innovation is occurring behind the meter, and competition and choice will drive further innovation. They further argued that, in contrast, expanding customers' right to choose their procurement supplier threatens the Commission's goals of reliability and decarbonization.

EPUC agrees that customer choice behind the meter is important to foster continuing innovation in DER solutions and customer load management tools. Customer choice should not, however, be kept behind the meter. Providing a choice of supplier on the utility side of the meter facilitates greater self-determination by customers, whether their focus is on electricity costs, pricing structures or the type of resources used to serve their demand. Importantly, expansion of supplier choice is necessary to ensure that *all* customers have the right to choose their own commodity supplier, ending the current discrimination effected by Public Utilities Code §365.1. To effectively foster customer choice and mitigate the ongoing transition cost risk, IOU procurement should be ended, and a regulated provider of last resort should be developed.

There is no reason to believe that expanding supplier choice will impair the reliability or California's ability to achieve its environmental goals. While supplier choice requires coordination of resources among more LSEs to ensure reliability, it does not prevent achieving reliability goals. Public Utilities Code §380 places the same resource adequacy requirements on all LSEs and thus provides the Commission the tools necessary to ensure reliability. Similarly, supplier choice does not impair achievement of California's decarbonization goals. The Legislature imposed the same renewable portfolio standard on all LSEs under §454.52. Moreover, to the extent the State continues to rely on IOU customers to subsidize transportation electrification, that

funding – wherever derived – can be targeted to all customers within a service territory, whether through the IOU or the customers' CCA. In fact, CCAs have already begun to offer these programs to their customers.<sup>1</sup>

In assessing regulatory frameworks, the Commission, in coordination with the Legislature, should not draw a boundary at the customer meter, enabling choice behind the meter but foreclosing it in front of the meter. All customers should have equal choice on both sides of the meter. Broadening customer choice should not impair the State's ability to achieve its policy goals through targeted measures.

## **B. Secure Policy Goals Through Targeted Measures**

The Commission's identified policy goals remain achievable with the expansion of customer choice. Indeed, as noted above, California's ability to meet some goals – reliability and decarbonization – have already been secured by the Legislature or the Commission. Other goals discussed below, including affordability, universal service, consumer protection, transition of historical obligations, and innovation – similarly can be achieved through targeted measures.

As California seeks to secure these goals, however, EPUC urges the Commission and Legislature to consider the impacts of the practice of annually collecting billions of dollars from ratepayers in utility surcharges to fund societal benefit programs. As discussed in Section D, continuing to use the IOU as a vehicle for funding objectives more appropriately funded by State taxes may be the cause of a death spiral for utility service the Commission fears.

### **1. Affordability, Universal Service and Consumer Protection**

There is no reason to conclude that supplier choice will result in higher prices for customers or deprive customers of electric service. If a regulated "provider of last resort" is put in place, with an obligation to serve any customers dissatisfied with other alternatives, the Commission can protect consumers and mitigate any perceived risk to electricity prices, universal service and consumer protection. Moreover, the Legislature has granted the Commission a measure of jurisdiction over the protection of consumers

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<sup>1</sup> See, e.g., Sonoma Clean Power Drive EverGreen program <https://sonomacleanpower.org/drive-evergreen/>.

choosing Direct Access or Community Choice Aggregation.<sup>2</sup> Finally, the Commission's current policy of funding electric service and energy efficiency for low-income residents through a nonbypassable wires charge will ensure continued funding.

## **2. Fair Transition of Historical Utility Obligations**

Transitioning historical utility obligations will be an issue regardless of the regulatory model California chooses. This Commission, however, has had two decades of experience to consider and address these issues. The need to address or the complexity of stranded costs thus should not deter the Commission from broadening competition.

While it might be tempting to believe that continuing to limit procurement choice will make the disposition of utility obligations easier, it will not. Had Direct Access been permitted to continue in the wake of the energy crisis, any stranded costs identified under AB 1890 in the late 1990s would likely have been worked out of the utility portfolios by now. Because Direct Access was suspended, however, the IOUs continued to procure long-term resources for a larger group of customers, creating more stranded costs. And potential stranded costs continue to build, year after year after year.

If California continues with the "hybrid" retail market, we will likely revisit the cycle of stranded costs repeatedly as the utilities continue to procure resources. The only long-term solution is to open the doors fully and permanently to procurement competition and remove the utilities from the procurement function. Stranded costs will need to be addressed, but the Commission and stakeholders will not face a future of perpetually examining these issues.

## **3. Innovation**

Innovation on both sides of the meter will continue to be driven largely by California's practice of subsidizing new technologies, both by direct incentives and by mandating market demand. For example, the Legislature's enactment of the Renewables Portfolio Standard – for all LSEs – has unquestionably driven investment in renewable technologies and projects. Likewise, incentives provided by the Commission

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<sup>2</sup> Pub. Util. Code §§394 *et seq.*

or the Energy Commission for research and development under the Electric Power Investment Charge program continue to drive new technologies. Neither of these key drivers hinges on the extent of competition behind or in front of the customer meter.

In addition, restricting competition has the effect of placing ratepayers at risk for innovation. If the utilities are the primary procurers of innovative technology, ratepayers are at risk for the utilities' judgment on the effectiveness of the technology; ratepayers, directly, or their competitive service providers will be in a better position to evaluate the value of innovative technologies for their own application.

### **C. Facilitate Self-Wheeling**

If the Legislature is not inclined to extend customer choice in front of the meter to all customers, the Commission could wade incrementally into greater customer choice by permitting self-wheeling. Self-wheeling would allow a customer to take excess energy produced by DER at one location and transmit the energy, using utility wires, for its use at another location. Self-wheeling would broaden the range of choices currently available to customers, allow customers to optimize the use of existing DER, and increase and rationalize investment in DER. Self-wheeling would not exacerbate the risks to infrastructure and societal benefits funding, since it requires the use of the IOU grid.

No change in statute is required to enable self-wheeling. Section 365.1 currently prohibits "direct transactions." Direct transactions are defined in §331(c) as "a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services." In other words, a direct transaction is a retail *sale* made under *contract*. The transmission of electricity produced by a customer for its own use elsewhere is not a sale and would not be done under contract, falling outside of the statutory definition of direct transaction.

EPUC encourages the Commission, at a minimum, to take this incremental step toward greater customer control of costs and resources.

#### **D. Addressing the Loss of IOU and Grid Load**

Decarbonization of the electric grid will depend, in part, on success in promoting EE and clean DER technologies. That success, however, will naturally result in a decline of load served by the utility grid. As grid use declines, the cost of utility infrastructure and societal benefits will be spread over fewer kW and kWh, creating the proverbial “death spiral.” The only certain way to mitigate the death spiral risk is to foreclose customers’ behind the meter choices – a solution that is antithetical to the State’s decarbonization goals and likely unconstitutional.

Beyond this extreme measure, there are no simple solutions. One obvious point, however, is that the Commission should not administer rates and services in a way that drives customers from the grid. The Commission must dedicate more resources and staff to ensuring just and reasonable rates – its original central mission – rather than dedicating the majority of its resources to serving the State’s environmental goals. Tougher choices in utility rate cases must be made.

Continuing the practice of shifting costs into nonbypassable charges is not the answer, since placing costs on wires services will only encourage customers to “island” to avoid them. The risk of islanding will only increase as the cost of storage technology declines and availability increases. Instead, shifting the cost of societal benefit programs back to where they rightly belong – the State’s General Fund – could reduce the economic incentive for customers to disconnect entirely from the grid.

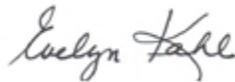
Beginning the process of making utility distribution service more attractive and cost competitive with behind the meter options should be the Commission’s starting point in approaching this problem. Extending Direct Access to all customers and supporting Community Choice Aggregation would be a reasonable first step, creating other options for customers to exercise self-determination that may mitigate the risk of load departing utility wires services entirely.

### **III. CONCLUSION**

EPUC requests that the Commission, in coordination with the Legislature, extend Direct Access to *all* customers, removing the State-administered discrimination among customers. At a minimum, this Commission can and should facilitate customer self-

wheeling of DER output. In addition, the Commission should limit or preclude utility participation in the market for behind the meter solutions where non-utility competition is present or is likely to develop. Finally, the Commission should begin to mitigate the death spiral risk by focusing its attention on ensuring that utility rates are reasonable and enhancing the availability of grid-based customer choice.

Respectfully submitted,

A handwritten signature in cursive script that reads "Evelyn Kahl".

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