

# INDEPENDENT ENERGY PRODUCERS

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June 16, 2017

## **Informal Comments of the Independent Energy Producers Association (IEP) Regarding the Commission's Customer and Retail Choice En Banc and White Paper**

In response to the request of President Michael Picker for informal comments on the Customer and Retail Choice En Banc and White Paper (issued June 1, 2017), the Independent Energy Producers Association (IEP) is pleased to provide its comments on the critical topics related to customer choice. Below, IEP provides brief comments on the Staff White Paper, *Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework*. We then respond to questions posed to panelists of the En Banc and circulated for parties' comments by President Picker's request.

### **1) Comments on the Staff White Paper on Consumer and Retail Choice**

The Staff White Paper does a very good job of describing the evolution of our energy markets and policies related to customer choice, while highlighting key issues for the Commission's consideration of trends going forward. IEP appreciates the opportunity to comment on key aspects of the White Paper.

Consideration of various customer choice models is accelerating for a number of reasons: technology innovation fostering distributed resources; policies to aggressively and timely decarbonize the electric grid and other sectors of the economy; consumer desires to separate from

their utility and, thereby, control their electric supply; and rate design that incents consumers to seek alternative energy sources and/or energy providers.

However, given the need felt by some to dramatically alter the electric service system, IEP recommends that the Commission should step back and take a closer look at what works well under current model. The White Paper unambiguously describes the current utility business model:

This new set of developments fundamentally challenges the incumbent regulated utility business model, which depends on: a) borrowing large amounts of money to meet customer needs based on the expectation that IOUs are able to recover their investment through retail rates; b) maintaining highly reliable service at all times and for all customers; c) providing help to low income customers to ensure that everyone has access to basic electricity service; and d) providing quality customer service among other more traditional services. Additionally, utility financing is increasingly being used to pay for new mandates that will help reduce California's greenhouse gas emissions, not just in the electric industry, but also in natural gas, transportation and natural land sectors, as well.<sup>1</sup>

IEP agrees with this description. Moreover, we consider the current public utility model capable of meeting public policy objectives while attracting needed capital, maintaining reliable service, assisting low-income customers to access basic electricity service, and providing quality service at low cost and reasonable rates. In opposing the public utility model, some existing customers may be masking other more narrow interests. Accordingly, prior to dramatically altering this regulatory compact, the Commission should identify what needs to be altered in the current model, rather than completely overturn the existing establishment and risk losing benefits customers currently enjoy.

The White Paper correctly raises the issue of cost allocation between bundled customers and unbundled customers and the inherent complexities that arise from different business models that rely on unbundling.<sup>2</sup> IEP shares the White Paper's assessment of the importance of this

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<sup>1</sup> *Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework*, Staff White Paper, May 2017, p. 5.

<sup>2</sup> *Ibid*, p. 10.

issue. We note, however, that this is not only an issue of cost allocation going forward. Cost allocation of existing contracts is equally if not more important, as the state strives for private sector investment to fuel the transformation to a low-carbon/zero-carbon future.

The California energy model has attracted billions of dollars of private sector capital to meet the state's policy objectives, maintain grid reliability, and ensure universal access to affordable electricity. The vast majority of this invested capital has been a function of long-term contracts between willing Buyers (i.e., regulated utilities) and Sellers. Typically, these long-term contracts derive from competitive procurement practices; they are approved by the Commission; and cost recovery is assured if the contracts are administered in a just and reasonable manner. Moreover, in order to maintain the balance of risks and rewards between the Buyer and Seller over the life of a long-term contract, the contracts are occasionally amended. This model is under attack by some advocates of competitive choice and community choice aggregation. The primary motivation is to undermine the integrity of individual contracts or, alternatively, abrogate them under the guise that the contracts are "over market." In essence, these parties seek to avoid paying for services rendered under contracts entered into on their behalf. The Commission, the CEC, and the CAISO must oppose this effort to undermine the sanctity of existing contracts or risk undermining the financial underpinnings of the capital-intensive electric grid.

Finally, the White Paper notes that cost recovery for the energy infrastructure historically has been dependent on a volumetric rate structure (\$/kWh) based on electricity sales. In light of diminishing sales due to behind-the-meter generation, energy efficiency, slow economic growth, departing load, etc., the White Paper notes the risks associated with relying on volumetric sales as the primary means of cost recovery of investment, including risks to achieving climate goals.<sup>3</sup> IEP shares these concerns. The Commission, however, has the tools to mitigate these risks. One

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<sup>3</sup> Ibid, p. 5.

tool is the authority to pass-through to all beneficiaries, on a non-bypassable basis, the costs of infrastructure procured by regulated LSEs and approved by the Commission. Shifting cost-recovery from a primarily volumetric-based rate structure (\$/kWh) to a primarily demand-based rate structure (\$/kW) may be perfectly just and reasonable given statutory obligations, the importance of attracting infrastructure investment at the lowest cost to consumers, and the importance of providing a measure of certainty regarding the cost recovery of these investments in a dynamic, ever-changing electric sector.

## **2) Comments on Customer and Retail Choice En Banc**

In addressing the questions posed to panelists at the En Banc, IEP is responding to a limited set of questions of significant interest to the independent power community; however, the order of the questions to which we respond may not follow the order presented in the En Banc agenda.

### **Comments Related to the Future of Retail Electricity Service**

#### **A. Are there any urgent steps that the CPUC, the CEC and/or CAISO need to take over next 12-18 months to begin changing the role of the utility and the structure of regulation?**

The agencies and the CAISO should address the dichotomy between retail (state) and wholesale (federal) regulation and jurisdiction. Clear roadmaps are needed to guide needed investment, and these roadmaps must include the regulatory/jurisdictional boundaries to address (a) what rules apply, (b) which regulatory entity has enforcement authority over the rules, and (c) what are the penalties for non-compliance of any rules.

#### **B. Two kinds of customer choice are accelerating: customer-sited DERs and retail choice (either through CCAs and/or through other customer-driven processes). Do you see this as inevitable, or not? Do you think that the CPUC should react to it and/or adopt policy changes to shape it, or some of both?**

IEP does not see the “distributed model” or the customer-choice model as inevitable.

While innovation is driving opportunities, rate design appears to be the primary factor in determining outcomes. For example, arguably rate design (e.g., avoidance of the full retail rate) has had more to do with the rapid growth in behind-the-meter (BTM) solar installations than technology innovation driving down the cost-curve for rooftop PV. The Commission should react to these changes in a measured and reasonable manner. As noted above, it is not abundantly clear that the existing regulatory compact/model is ineffective in best achieving statewide policy objectives such as de-carbonization while maintaining grid reliability at low cost.

**C. What changes does each of these trends require of the distribution utilities and the regulatory framework? What are implications for resource procurement, long-term reliability and renewable integration particularly in view of the state’s aggressive climate goals? What changes, if any, in the way utilities earn their profits are necessitated by the growth in these kinds of departing loads?**

The integrated resource planning (IRP) regulatory framework becomes increasingly difficult to implement in an environment characterized by disaggregated loads. Moreover, the IRP framework becomes difficult to accurately represent the existing world let alone forecast the evolving conditions that will govern supply and resource balance, maintain grid reliability, achieve public policy objectives, etc. Due to the increasing complexities, the IRP risks becoming a barrier to timely decision-making on needed infrastructure, particularly the large-scale infrastructure that is cost-effective to consumers as a whole but may not be cost-effective in a world of disaggregated demand.

**D. Are the current CPUC and CAISO market rules adequate to ensure that non-utility retail sellers contribute a fair share to renewable integration and long-term reliability needs?**

It may be too early to tell whether the current rules are adequate to ensure that non-utility retail sellers will contribute their share to renewable integration and long-term reliability needs. All CPUC-jurisdictional LSEs have common RPS and RA obligations. Yet, the RA obligations currently are short-term in nature (i.e., one year forward), and the LSEs such as the ESPs and

CCAs (i.e., non-IOWs) do not have the same regulatory requirements related to meeting long-term reliability needs. These conditions suggest a number of outcomes, including the following:

(a) low-cost, transmission interconnected resources including renewables will increasingly face barriers to development due to disaggregated load and short-term procurement time horizons, and (b) an increasing risk of a procurement/reliability gap occurring in the mid-term (e.g., 3-5 years forward) due to planning/procurement focus on one-year forward (e.g., RA) and 10-year forward (e.g., LTPP/IRP) timeframes.

**E. How do you see the role for the regulated utility evolving and what, if any, what functions should be preserved for the regulated utility support achieving State policy goals?**

The Commission needs to consider what, if any, role a Procurement Entity will have in the evolving market. In that context, the Commission should consider what, if any, role a regulated utility might play as a Procurement Entity. The utilities bring to the marketplace unique skills, experiences, and credit profiles that can help lower costs to consumers.

**F. What key lessons learned from California's past and other restructuring efforts (CA Gas De-regulation, NY, HI, TX, UK) are particularly relevant as California plots the course forward?**

- "Perfect Planning" can be the enemy of the good.
- Nothing evolves as planned.

**Comments Related to the State of Customer Choice in California**

**A. As retail choice grows, whether through the growth in CCA programs, customer adoption of DERs, or reinstatement of full direct access, what do you see as the role for the regulated utility and where do you see your company/organization competing and cooperating with the utility?**

Assuming the absence of a formal Procurement Entity, the absence of a forward capacity market, and the continual expansion of customer choice (through CCA, DA, NEM, etc.), the Commission should consider a role for the regulated utility as Provider of Last Resort.

**B. As competition evolves and as competitive suppliers and technologies presumably supply greater shares of customers' electric energy needs, what regulatory models**

**do you believe are best suited to promote competition while ensuring that all necessary investments are made to achieve California’s environmental goals while maintaining reliability? Why?**

See answer to A., above.

**C. What are important authorities that the CPUC should maintain or gain in the future to regulate the supply and resource adequacy portfolios as heavily for non-IOU suppliers as it does for IOUs? Should all retail sellers be required to procure long-term system and local capacity, or should the utilities continue to bear this responsibility? Are there other types of investments that should be made by the utilities or the ISO rather than by competitive suppliers representing many distributed decision makers?**

Currently, CPUC-jurisdictional LSEs have a 1-year forward RA obligation. The Commission should impose on all CPUC-jurisdictional LSEs a multi-year forward RA Reporting Obligation in which LSEs would be required to report all RA procurement (e.g., contracts, owned) covering at least the 1-5 year timeframe. The LSEs would have an obligation to make a showing that they have procured a specified percentage of the forecasted RA need over the 5-year forward timeframe.

**Comments Related to the Investor-Owned Utility Perspective**

**A. In this ‘future’ retail electric system, how do you see the role for the regulated utility evolving and what, if any, functions should be preserved for the regulated utility support achieving State policy goals? Do you see some form or another of retail “choice” as inevitable, in part as a result of technology changes like DERs? If so, do you prefer to see public policy (including policies adopted by the CPUC) react to it or drive it?**

See answer to A., above related to the State of Customer Choice in California.

**B. What regulatory models do you believe are best suited to promote competition while overseeing distribution utilities as their roles change? Should the CPUC have the clear authority to regulate the supply and resource adequacy portfolios as heavily for non-IOU suppliers as it does for IOUs? Are there other types of investments that should be made by the utilities (or the ISO) rather than by competitive suppliers representing many distributed decision makers?**

The Commission should have and arguably does have the authority to regulate the supply and resource adequacy portfolios of all CPUC-jurisdictional LSEs. While the exercise of this authority need not be exactly the same as that exercised over IOUs, the authority should be

exercised in a comparable manner to ensure compliance with CPUC-established resource adequacy obligations. As noted above, IEP believes that this obligation should entail a multi-year forward reporting obligation at a minimum to determine whether LSE procurement practices appropriately balance the risk (costs) and reward (reliability) desired by the Commission.

Respectfully submitted,

A handwritten signature in black ink that reads "Steven Kelly". The signature is written in a cursive style with a large, looping "y" at the end.

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