

Draft Position:

Retract CPUC Resolution E-4907



The California Alliance for Community Energy calls for retraction of CPUC Resolution E-4907, as representing an unwarranted, opportunistic attack on Community Choice energy programs on behalf of the state's monopoly utilities.

What is Resolution E-4907?

With this resolution, introduced Friday, December 8, 2017, the CPUC abruptly proposed to expand its oversight over Community Choice energy agencies and impose a two-year suspension on the ability of jurisdictions to launch or join Community Choice programs, including a new set of procedures required to establish a program. The resolution applies to emerging Community Choice agencies that have not filed Implementation Plans by December 31, 2017—during the holiday season—and is to be voted on by the CPUC on January 11, 2018.

Most directly impacted would be Community Choice initiatives in San Diego County, Orange County, large parts of Los Angeles County, Central Coast counties, and Central Valley counties, to name a few. Resolution E-4907 would disrupt the process of forming Community Choice programs, costing these initiatives hundreds of thousands of dollars and countless hours of investment, and millions of dollars in lost Community Choice revenues.

The pretext for this resolution is an asserted double-procurement of what is called short-term resource adequacy capacity by Community Choice agencies and their respective incumbent monopoly utilities, due to mis-aligned forecasting of load requirements. This resolution and its expedited schedule replace the normal CPUC proceedings by which stakeholder parties are able to weigh in on proposed regulatory changes.

Why Should E-4907 be Retracted?

The Alliance's opposition to Resolution E-4907 and our call for its retraction are based on the following considerations:

1. The Resolution is an Abuse of CPUC Power

The resolution represents an end-run around the normal public proceedings used by the CPUC, which solicit input from stakeholders on regulatory matters. The resolution timeline is extremely short for public engagement: comments are due December 29 in the middle of the holiday season. What's more, emerging Community Choice programs were given no notice and only three weeks to file an Implementation Plan to avoid having their initiative derailed. Furthermore, there is already an open rulemaking process on resource adequacy procurement at the CPUC, which is following a more reasonable timeline.

This all seems to be an explicit effort to avoid scrutiny of any of the CPUC's assertions. In fact, the resolution claims confidentiality of the relevant data (it is "market-sensitive"), to justify its not providing a factual case.

Furthermore, the timing and haste of the process suggest that the CPUC has something to hide: that it is attempting to overstep the bounds of its legal authority and more directly regulate

Community Choice. Withholding certification and mandating operational timeframes, both of which impact the viability of a new Community Choice program, violate the spirit and intent of the Community Choice law, AB 117, and the limited jurisdiction it gives the CPUC over Community Choice agencies. All this suggests a deeper abuse of authority.

The resolution therefore represents more than an effort to address a perceived technical problem; it uses that problem as a pretext for a far-reaching, conscious, sneak attack (over the holiday season) on Community Choice.

2. A Pattern of CPUC Bias Against Community Choice

The resolution represents another instance in an orchestrated effort by the CPUC over recent years to undermine Community Choice energy—one escalating under Michael Picker, as President of the CPUC. CPUC bias against Community Choice in favor of the state’s monopoly utilities has included explicit statements of bias, cost shifting and rate-setting that undermines Community Choice competitiveness, imposition of escalating Power Charge Indifference Adjustment (PCIA) fees, enabling of utility marketing against Community Choice, and bias in CPUC Commissioner appointments. These are all documented in [*CPUC Bias Favoring Monopoly Utilities Against Community Choice*](#).

Picker’s CPUC has ratcheted up the attack on Community Choice. Most notable is the proceeding to dramatically increase the bond required to implement a new Community Choice program and the *en banc* meetings—in February, May, and October—in which Community Choice has come under fire. In these sessions, “customer choice” (an implied return to the ruinous days of deregulation) has, in an end run around the state legislature, been counter-posed to Community Choice. Picker’s CPUC has thus marshalled opponents of Community Choice to argue the threat it poses to California’s electricity system. Picker, himself, has created and leads a Customer Choice Committee within the CPUC, which is attempting to stem the rapid expansion of Community Choice among California cities and counties.

What emerges is a clear picture of a CPUC dedicated to protecting the interests of the monopoly utilities from the democratic will of California’s residents and businesses to pursue Community Choice energy.

3. An Overblown Resource Adequacy Solution

All load-serving entities in California are required to procure short-term electric generating capacity, in proportion to their load, to help meet the state’s need for reserve capacity. This is called a resource adequacy requirement.

If an emerging Community Choice agency procures resource adequacy capacity based on its expected load and the incumbent monopoly utility does the same for that departing load, then that amounts to a double procurement of such capacity. This can cause an apparent shortage of such capacity on the market, resulting in artificially high prices or even the building of new un-needed capacity. It can also mean stranded assets for the monopoly utility as the Community Choice load departs, and those costs would be “shifted” to the remaining customers in their service territory. Nevertheless, the resolution does not present information to demonstrate the severity or urgency of this problem.

The issue of double-procurement of resource adequacy capacity is not new in California and has been successfully resolved without resorting to the draconian measure represented by the suspension of new Community Choice implementations. The solution is simply for the monopoly utility to procure the short-term capacity in the first operational year of a Community Choice program, and then be refunded for those costs by the Community Choice agency. There is already precedent for this approach in California with respect to long-term resource adequacy capacity and also with respect to expansion of the Direct Access program (see [Decision 10-03-022](#)), in which the new load serving entity purchases the already procured capacity from the utility.

In other words, the resolution is totally out of proportion to the perceived (but unsubstantiated) problem: it's using a blow-torch to light a candle.

4. Community Choice is the Chosen Model

Community Choice is the will of the people. Since the passage of the Community Choice enabling legislation, AB 117 in 2002, the people of California have fought off multiple attempts by the monopoly utilities to undercut community control of energy decision-making. Despite being out-spent by several orders of magnitude, we defeated Proposition 16 in 2010, which would have ended Community Choice in the state. Similarly, in 2014, with a 200-member strong coalition, we fought off AB 2145, the monopoly utility bill to kill Community Choice. And last year, we fought legislative attempts, such as SB 813 and AB 726, to hamstring Community Choice and imperil the authority of local jurisdictions to make decisions about their electrical power. Prior to being defanged thanks to community outcry, SB 813 was an effort to expand the CPUC's regulatory authority over Community Choice agencies. What failed in the legislature, the CPUC is now attempting to achieve by fiat.

Community Choice represents the possibility, through the creation of democratic public agencies, to develop local renewable energy resources to meet the environmental, economic, and social justice needs of our communities. Our future, in the face of climate change, lies in strengthening that model.

There are nine operational Community Choice energy agencies serving customers in California. Nine other programs are set to launch in 2018, and 16 other jurisdictions are in the process of forming Community Choice programs. Soon Community Choice agencies will serve more than half the electrical load in California.

It is crucial that as we move into 2018, that we follow through on the right choice for California, one that rejects the failed monopoly utility model and the collusion of Picker's CPUC to prop it up.

A Call to Action

We call on members of our communities, their local elected representatives, and their representative in the state legislature to vocally reject this power grab, which would enact a *de facto* freeze on Community Choice. We call for the retraction of Resolution E-4907 and for reaffirming public process over administrative fiat.

We urge organizations and individuals to flood CPUC commissioners with protests of Resolution E-4907. We urge organizations and individuals reach out to their local city councils and county

supervisors and urge them to voice their opposition, and for all these parties to contact their State legislative representatives and urge them to demand that CPUC Commissioners retract E-4907.

This opposition can take the form of writing letters on organizational and government letterhead and showing up on January 11 for a protest rally at CPUC headquarters. We encourage organizations to sign on to our California Alliance for Community Energy position, and we are setting up an on-line platform for sending a letter to CPUC Commissioners and State legislators on your behalf. We intend to push this public opposition beyond the December 29 deadline for formal submissions by official parties.

Beyond this specific protest, the coming year will challenge us to defend Community Choice against other regulatory and legislative challenges. The success of Community Choice will depend not only on countering instances of the CPUC's abuse of power in favor of the monopoly utilities, but to address other key Community Choice issues: the regionalized market proposals introduced last year, which would undermine Community Choice, and the current transmission access charge allocations, which fail to recognize the value of local distributed energy assets in avoiding transmission line costs.

This is a very large agenda, but one grounded in the needs of our communities. Join us.