Backgrounder:
IOU Violations of the Code of Conduct

California Alliance for Community Energy
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On January 30, the investor-owned utilities (IOUs) filed a joint petition to modify what is known as the "CCA Code of Conduct" by *entirely removing its restrictions against IOU lobbying against Community Choice programs.* In a 24-page filing, they claim their 1st Amendment right to communicate with elected officials regarding formation of Community Choice programs. The petition seeks a "fast track", with comments due March 1, reply comments March 12, and proposed decision June 1, 2018.

Origins of the Code of Conduct

This effort to gut the central provision of the Code of Conduct is the latest in a litany of IOU attempts to undermine Community Choice programs. In fact, the Code of Conduct itself was a response to IOU violations of AB 117, the Community Choice law, passed in 2001, which required that the IOUs cooperate with emergent Community Choice Programs.

There are many egregious examples of PG&E's efforts to prevent formation of MCE Clean Energy (Marin) in 2009-10. These overtly biased actions culminated in PG&E's Prop 16 in 2010, an effort to change the California Constitution to require a 2/3 popular vote to form a Community Choice program. PG&E lost the Prop 16 battle decisively, despite having outspent its opposition by 50 to 1.

After this battle, the Legislature sought to restrain attacks on Community Choice by enacting SB 790, which called for a Code of Conduct by which the IOUs must abide. As stated in SB 790's Introduction:

> *"Electrical corporations (IOUs) have inherent market power derived from, among other things, name recognition among customers, longstanding relationships with customers, joint control over regulated operations and competitive generation services, access to competitive customer information, and the potential to cross-subsidize competitive generation services....*
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> *"The exercise of market power by electrical corporations is a deterrent to the consideration, development, and implementation of community choice aggregation programs; (and)*
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> *"California has a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of community choice aggregation programs."*

The resulting Code of Conduct was enacted by the CPUC in December 2012. It requires IOUs to be neutral toward Community Choice programs in any activity funded with rate-payer funds. Among other things, the Code of Conduct says:

- IOUs cannot use rate-payer funds to "market against" community choice. All IOU communications must be factual and neutral.
- IOUs cannot use confidential customer information against Community Choice programs.
- IOUs cannot offer "conditional services" or other inducements to entice municipalities to reject Community Choice.
- If IOUs wish to express an opinion about Community Choice, they must do so through an "independent marketing division", supported 100% through shareholder funds.
- If IOUs are perceived to act in violation of the Code, the CPUC has an expedited complaint process to adjudicate those claims.

Recent Violations

For three years following CPUC Decision 12-12-036 (issued 12/28/2012) ordering implementation of the Code of Conduct, it appeared that IOUs generally respected the Code (no infractions were reported to the CPUC's expedited complaint mechanism. This changed, however, in December 2015, when San Diego Gas and Electric (SDGE) filed a plan to establish an independent marketing division (IMD). The plan was initially filed as an "Advice Letter" and therefore proposed to go into effect 30-days later.

After multiple revision cycles to meet SB 790 requirements, the CPUC "conditionally approved" SDGE's Plan on April 6, 2017. During the interim period, however, SDGE had taken "anti-Community Choice action" with

ratepayer funds, as documented in the California Community Choice Alliance (CalCCA) March 1, 2017 "Order to Show Cause...why SDGE should not be sanctioned for violating the CCA Code of Conduct by lobbying against CCA programs". CalCCA followed up, asking for a Full Commission Review on April 17, 2017.

Subsequently, the California Choice Energy Authority (CCEA) documented violations of the Code of Conduct by Southern California Edison (SCE) in a letter on September 25, 2017. As CCEA charged, "... SCE's government affairs representatives are actively communicating with local government and community leaders... urging support to.... address the rise of CCA programs." SCE has denied this charge.

In addition, in 2017, the IOUs have separately and collectively violated the spirit and the letter of the Code of Conduct neutrality provisions by creating political entities that speak "freely" against aspects of Community Choice operations and their financial viability:

- "Clean Energy Advisors" – This entity is the official IMD formed by SDGE under the CPUC's conditionally-approved plan (the conditions for which have not actually been met). Nonetheless, this entity has been meeting with businesses and elected officials since some time in 2016.
- "Clear the Air Coalition" – A "third-party" coalition formed by Sempra/SDGE of "like-minded businesses", most of which have been the recipient of SDGE ratepayer-funded grants over the years. This entity spoke recently against Community Choice as "risky" before the County of San Diego's Supervisors in the context of the County's Climate Action Plan--which failed to propose a Community Choice program.
- "Equitable Energy Choice for Californians" – Formed in mid-2017 by the three IOUs to apply pressure on the PCIA proceeding, its "member list" is comprised almost entirely of businesses and non-profits that have been the beneficiaries of rate-payer funds over the years.

Current Status of the IOU Petition to Modify

As mentioned above, on January 30 of this year, the IOUs filed a joint petition to modify the Code of Conduct. The petition claims that removing the lobbying restrictions is essential because local officials have limited access to information to inform their decisions about Community Choice formation and that removing the lobbying restrictions would therefore "advance the public interest".

So far, the CPUC has not responded to the IOU petition to modify. According to CPUC rules, such a petition, to be valid, would have to have been filed within one year of the original rule.

It is worth noting, however, that the CPUC does not have a good track record on this issue: it has not fulfilled the terms of SB790. The Legislature directed the CPUC to conduct annual third-part audits of the IOUs to ensure compliance with the Code of Conduct requirements. To date, after 5+ years, no such audits have been conducted.

In Summary: A Significant Threat

The IOUs seek to remove the Legislature's restrictions on their ability to lobby local officials, customers, and the media. Yet despite these restrictions, the IOUs have continued to lobby against Community Choice and to fund a number of so-called "coalitions" with rate-payer funds--calling in obligations of these IOU beneficiary organizations, if not dispensing current rate-payer funds to them.

Advertising lists of local chambers and community-based neighborhood associations on the side of the IOUs confuses the general public. The manufactured "outcry" about/ against Community Choice undercuts popular support for emerging programs.

The IOU petition to modify poses a significant threat to Community Choice programs. It comes as the IOUs have increasingly violated the Code of Conduct in 2017 without consequences from the CPUC and as the CPUC itself has been on the offensive in 2017 against Community Choice programs.

Should the CPUC act on the IOUs' petition to modify by striking the lobbying prohibitions of the Code of Conduct, it will open the door to widespread, intensive lobbying against Community Choice—a throwback to eight years ago.