

# CPUC Bias Favoring Monopoly Utilities Against Community Choice



Community Choice energy programs, currently number 19 and growing, are now established throughout California and promise to be the most powerful tool cities and counties have to cut greenhouse gas emissions, scale up renewable energy, and meet community energy and economic development needs. The proliferation of these programs threatens the dominance of the monopoly utilities, and they have been fighting back. Nevertheless, state law requires that the California Public Utilities Commission (CPUC) not only support Community Choice programs, but cooperate with them.

Yet the CPUC has consistently shored up the monopoly utilities against Community Choice in violation of state law and in spite of strongly voiced support for Community Choice by counties and cities throughout the state. As Community Choice programs continue to demonstrate their value, the CPUC has become increasingly prejudicial in its attitude and actions against them.

## A Consistent Pattern of Bias Against Community Choice

In the past few years, the CPUC has exhibited bias against Community Choice in a multitude of ways:

- Explicit statements of bias
- Approving cost shifting and rate setting that undermines Community Choice
- Enabling monopoly utility marketing against Community Choice
- Promoting “Customer Choice” to undermine Community Choice
- Attempting to freeze the establishment of new Community Choice programs
- Weaponizing the Power Charge Indifference Adjustment (PCIA)
- Hamstringing Community Choice procurement of resource adequacy
- CPUC commissioner appointment

Each of these is described below.

### Explicit statements of bias

CPUC President Michael Picker, in a 2016 interview with *Greentech Media*, harshly and inaccurately described Community Choice as “forced collectivization.”

*“One of the bigger shifts that we see at the policy level is, is people, uh, clamoring for these clean community aggregators. If you think that the utilities are a monopoly that it’s, that it’s a throwback to almost a feudal relationship with consumers, these Community Choice program’s are really just a coup. It’s, it’s local governments making decision to carve off a, a piece of the, of the, the uh, customer and sort of in a forced collectivization.”<sup>1</sup>*

Perhaps more revealing is Picker’s view that the prime role of the CPUC is to defend, protect and perpetuate investor-owned, monopoly utilities in the state.

*“So the utilities have had a pretty solid run for a hundred years, of being able to use rates and ratepayer payments as a way to attract cheap capital to buy infrastructure that’s not available in the marketplace and to get the money up front and then to recover it over time...And the question is, where do we need to maintain that monopoly? That’s what my agency does. We award monopolies where there’s not a market and then we protect them against ruinous or calamitous competition. That’s the language that’s embedded in our bone and in our blood from the 1910s. There was a thought that that was the best way to mobilize capital—you created a monopoly and you enforced it.”<sup>2</sup>*

In a few words, he explicitly states what critics of the CPUC have long alleged—that the CPUC is a captive agency, serving monopoly utility shareholders, and putting the investor-owned utility interests ahead of California’s public interest in community-based clean power development.

Notwithstanding Picker’s remarks, both state law and CPUC policy regard Community Choice as a form of community entitlement.<sup>3</sup> Without this option, Californians would indeed be subject to “forced collectivization,” being captive to monopoly utilities that offer no alternative.

### **Approving cost shifting and rate reform that undermines Community Choice**

CPUC has allowed the monopoly utilities to shift many billions of dollars in costs between transmission and generation charges in order to distort the price of electricity. For example, in PG&E’s 2011 General Rate Case, CPUC approved \$3 billion in cost-shifting allocations from the generation portion of the electricity bill to the transmission side of the ledger, directly subsidizing PG&E charges in order to make Community Choice energy suppliers look less price-competitive.<sup>4</sup>

In the same General Rate Case, CPUC commissioners also collapsed California’s landmark conservation incentive rate tier mechanism, undercutting the economics of distributed energy resources like energy efficiency and solar that are installed behind the meter. These behind-the-meter resources are a key aspect of Community Choice programs. Justifying a flattening of the rate structure from five to three tiers in the name of redressing cost-shifting to poor people, the CPUC did nothing to reform a system that directs ratepayer funds from the poor to the rich.<sup>5</sup>

Under the old rules, the more you use, the higher you pay per kWh, rewarding conservation and behind-the-meter strategies that Community Choice programs seek to employ. Under the new system, consumers are lumped into broader tiers that make it harder to realize benefits from reducing energy use.

### **Enabling monopoly utility marketing against Community Choice**

The CPUC has failed to enforce the Code of Conduct<sup>6</sup> mandated by California legislation, SB 790<sup>7</sup> passed in 2011, in response to monopoly utility attempts to block the formation of Community Choice programs, in violation of the Community Choice law, AB 117.

The intent of SB 790 was to prevent the monopoly utility’s from lobbying against Community Choice programs. It regarded such lobbying as an abuse of their inherent market power and access to customer information. The resulting Code of Conduct was enacted by the CPUC in December 2012. It requires monopoly utilities to be neutral toward Community Choice programs in any activity funded with ratepayer funds.

Yet the CPUC has failed to enforce the Code of Conduct, allowing the monopoly utilities to sidestep its provisions. For example, On August 18, 2016, the CPUC authorized Sempra Energy, the holding company of San Diego Gas & Electricity (SDG&E), to form a new marketing division whose purpose is to oppose Community Choice in San Diego County.<sup>8</sup> This set the precedent for using unlimited “shareholder” funds for attacking nascent Community Choice programs throughout California.

The CPUC has also allowed the monopoly utilities to create a number of third-party political entities that speak “freely” against aspects of Community Choice operations and their financial viability. These front groups include Clean Energy Advisors, Clean Air Coalition, and Equitable Energy Choice for Californians.

Once again, the CPUC has failed to enforce the Community Choice Aggregation law of 2002 (AB 117), which requires the monopoly utilities to cooperate with Community Choice programs, and SB 790 (Leno) passed in 2014 mandating of code of conduct to ensure the lawful implementation, de-politicization, and facilitation of Community Choice programs.

Despite the CPUC’s failure to enforce the law, the investor-owned utilities (monopoly utilities) filed a joint petition with the California Public Utilities Commission (CPUC) on January 30, 2018, to gut the Code of Conduct by entirely removing its restrictions against monopoly utility lobbying against

Community Choice programs.<sup>9</sup> Though the CPUC has not yet responded to the filing, its track record to date has already been to turn a blind eye to monopoly utility lobbying, in clear violation of the Code.

For additional information, see *Position Paper: Support the IOU Code of Conduct: No Rollbacks!*<sup>10</sup>

### **Promoting “Customer Choice” to undermine Community Choice**

In early 2017 the CPUC initiated the Customer Choice Project,<sup>11</sup> which is an effort to stem the growing momentum toward Community Choice programs by promoting the notion that Community Choice is destabilizing the California energy system and will lead the state toward a new energy crisis. CPUC President Picker created the Customer Choice Project Team which organized a number of full-day “expert testimony” sessions and produced a number of written reports over 2017 and 2018. These promoted a retail electricity market framework of “customer choice” in opposition to the public, community-based energy service provider framework of Community Choice: a profit-driven energy system as opposed to a community-driven energy system.

The project, under the slogan of “ratepayer choice,” has drawn an ominous but illusory picture that questions Community Choice viability and stability, suggesting that Community Choice programs are unable to meet reliability standards, and justifying the freeing up of Direct Access and other retail competition to undermine Community Choice. It’s *Final Choice Action Plan and Gap Analysis*<sup>12</sup> released in December 2018 is a roadmap of actions for wiping out Community Choice in California.

For additional information, see *Comments on Customer Choice*<sup>13</sup>

### **Attempting to freeze the establishment of new Community Choice programs**

On December 8, 2017, the CPUC unexpectedly and abruptly issued Resolution E-4907, which sought to impose a de facto two-year freeze on all new Community Choice program launches, including a new set of procedures required to establish a program.

Emerging Community Choice programs were given no notice and only three weeks to file an Implementation Plan (over the Christmas holiday season) to avoid having their initiatives derailed. The resolution and its expedited implementation schedule replaced the normal CPUC proceedings by which stakeholder parties are able to weigh in on proposed regulatory changes.

The impact of Resolution E-4907 would have been to disrupt the process of forming Community Choice programs, costing emerging programs hundreds of thousands of dollars, countless hours of invested labor, and millions of dollars in lost Community Choice revenues.

Resolution E-4907 represented an attempt by the CPUC 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.

Only after the massive uproar that ensued, did the CPUC amend the resolution significantly. But even the amended resolution posed complications for many new Community Choice programs.

For additional information, see *Position Paper: Retract Resolution E-4907*.<sup>14</sup>

### **Weaponizing the Power Charge Indifference Adjustment (PCIA)**

Early in 2017 the CPUC allowed PG&E to nearly double the Power Charge Indifference Adjustment (PCIA) fee imposed on Community Choice customers in its service territory.<sup>15</sup> The PCIA is a mechanism for reimbursing the monopoly utilities for losses resulting from electricity procured on behalf of load that has departed to Community Choice programs.<sup>16</sup>

Commissioner Florio and other commissioners admitted in their remarks that the PCIA had to be doubled because the CPUC had failed to ensure reasonable pricing in PG&E’s contracts for complying with the renewable portfolio standard (RPS).<sup>17</sup> By contrast, years earlier, under CPUC President Michael Peevey,

the Commission delayed utility proposals for long-term contracts that would have essentially blocked Community Choice energy programs from accessing renewable power.<sup>18</sup> The current Commission's subsequent approval of what it knows to be gold-plated (high-priced) over-procurement of renewables contracts is a reversal of the CPUC's earlier stance.<sup>19</sup>

In a particularly flagrant failure of CPUC oversight, the Commission approved in March 2016 continued forbearance of highly priced power from the Ivanpah solar power facility, treating it as an "unavoidable" cost, and allowing it to contribute to higher PCIA fees.<sup>20</sup>

In October 2018, rejecting the findings of a more than year-long proceeding, CPUC commissioners decided on a new PCIA methodology that would dramatically increase PCIA fees. It is the latest evidence of the CPUC's historic failure to coordinate utility procurement with Community Choice programs to avoid anti-competitive impacts on such programs. The October 2018 decision undermines the viability of Community Choice programs and their ability to deliver environmental and economic benefits to the communities they serve. It represents a full-scale attack on Community Choice, using the PCIA as a weapon to obstruct California's migration to a more decentralized and reliable renewable energy model.

For additional information, see *PCIA: Oppose CPUC Undermining of Community Choice*<sup>22</sup>

### **Hamstringing Community Choice procurement of resource adequacy**

In November 2018, CPUC issued a draft decision on "Resource Adequacy" that directs monopoly utilities to serve as central buyers for Community Choice programs for meeting local resource adequacy requirements. These requirements are set by state law and are intended to ensure that all electricity providers have contracted for enough extra capacity to adequately handle unanticipated shortages of supply.

The driver of this draft decision is the assumption that a problem exists in meeting reliability requirements under current procurement procedures. This assumption is not based on any study, but on undocumented, generalized alarms raised by the CPUC's Customer Choice project (discussed elsewhere in this paper) and commercial motivated resource proposals.

The mechanism envisioned for this central buyer system in the CPUC's draft decision is extremely convoluted, but what it boils down to in practice is that Community Choice programs would have no real control over how to meet their local resource adequacy requirements. That decision would be in the hands of the monopoly utility acting as the central buyer. Community Choice programs would have no incentive to use local distributed energy resources like energy efficiency or storage to address resource adequacy, for example, by reducing peak loads. It would undermine Community Choice programs' ability to invest in distributed energy resources, since it would be difficult to realize the financial benefits associated with local resource adequacy procurement.

In short, the CPUC's draft decision would hamstring Community Choice programs' efforts to best use local distributed energy resources, while at the same time encouraging the central buyer monopoly utility to meet resource adequacy requirements through procurement of fossil fuel electricity generation.

### **CPUC commissioner appointments**

In March 2016, *Consumer Watchdog*, a non-profit, progressive organization which advocates for taxpayer and consumer interests, asked the Fair Political Practices Commission to investigate whether a member of Governor Brown's staff, former PG&E Senior Vice President of Public Affairs Nancy McFadden, had a conflict of interest by holding stock in her former employer.<sup>26</sup> According to the complaint, McFadden reportedly hand-selected a list of potential CPUC appointees for the Governor, resulting in previous appointments, as well as current CPUC President Picker.

(During her tenure at PG&E, McFadden led PG&E's \$50 million effort to pass Prop 16 in 2010. Prop 16 would have changed the California Constitution to require a two-thirds majority to establish Community Choice energy programs, making it virtually impossible. Would it not be surprising, therefore, for McFadden's list of CPUC Commissioner candidates to be biased against Community Choice?)

On December 28, 2016, the Governor Brown appointed as commissioners two of his top aides: Martha Guzman Aceves and Clifford Rechtschaffen.<sup>27</sup> Together with Picker, this puts Brown's former staffers in the majority of the Commission. As commissioners, they have intensified the bias of the CPUC against Community Choice, most recently in joining Commissioner Carla Peterman in supporting the harsh, last-minute October 2018 substitute PCIA decision (discussed elsewhere in this paper), which overturned nearly two years of careful consensus-building to attack Community Choice.

## **Why Does CPUC's Bias Against Community Choice Matter?**

The CPUC bias favoring monopoly utilities against Community Choice is a matter of great concern for the people of California. Instead of the CPUC serving to protect the public interest by regulating the monopoly utilities, the CPUC is rather protecting the monopoly utilities by subverting the public interest.

When the CPUC attacks Community Choice programs, it undermines California's strongest leaders and champions for achieving the state's clean energy goals, for creating the twenty-first-century energy system, and for addressing the climate crisis. Rather than simply competing in the market that the CPUC and monopoly utilities have defined, Community Choice programs are redefining the market, accelerating development of distributed energy resources, democratizing energy, advancing equity, and lowering carbon emissions.

California's new Community Choice program players are not only providing greener power at lower rates, they are leaders in technological innovation. Among their new offerings are dynamic and customized retail rates for key accounts, targeting customers for distribution grid services, planning based on advanced metering infrastructure and smart meter data, collaborating with distribution utilities to build microgrids, and developing distributed energy resources (DERs) to reduce the need for fossil fuel peaker plants.

Community Choice programs are also best suited to strengthening our communities, especially those most negatively impacted by the fossil fuel economy. Community Choice is a vehicle for providing community benefits through local development of renewable energy resources: local investments, clean energy jobs, community retention of energy wealth, social justice, resilient and sustainable communities.

The CPUC, however, rather than accelerating the energy system of the future, is working to maintain the status quo, the outmoded, dangerous, and faltering monopoly utility system.

The CPUC's bias matters. It is hurting Community Choice and our communities by undercutting the most powerful vehicle cities and counties have to reduce their greenhouse gas emissions, scale up clean renewable power, provide for equitable and sustainable development, and ensure that energy decisions rest primarily and democratically in the hands of local communities.

For more information on the California Alliance for Community Energy,  
contact: [info@cacommunityenergy.org](mailto:info@cacommunityenergy.org)

To join the Alliance, go to: <http://cacommunityenergy.org/#join>

## End Notes

<sup>1</sup> *California's Distributed Energy Future 2016* "Fireside Chat: Michael Picker, President, California Public Utilities Commission" video of interview <http://www.greentechmedia.com/multimedia/view/fireside-chat> at 12:38-13:38 minutes.

<sup>2</sup> *California's Distributed Energy Future, Fireside Chat*, March 16, 2016: 10:32 to 12:27  
<http://www.greentechmedia.com/multimedia/view/fireside-chat>

<sup>3</sup> Public Utilities Code Section 366.2(a)(1) provides that "customers *shall be entitled to aggregate their electric loads* as members of a community choice aggregator." See also D.04-12-046 in R.03-10-003, December 16, 2004.

<sup>4</sup> CPUC, "Decision Regarding Residential Rate Design" Decision 11-05-047 May 26, 2011 (Issued 6/2/2011) in Application 10-03-014. (Filed March 22, 2010)  
[http://docs.cpuc.ca.gov/PublishedDocs/WORD\\_PDF/FINAL\\_DECISION/136349.PDF](http://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/FINAL_DECISION/136349.PDF)

<sup>5</sup> CPUC, *Loc. Cit.*, p 57. See also Sierra Club California, Testimony of Paul Fenn for California Public Utilities Commission - PG&E General Rate Case 2010, Phase II Application: 10-03-(U39M) , Exhibit No.: (PG&E-4), October, 2010.

<sup>6</sup> [CPUC decision implementing the Code of Conduct](#) (Amendment 1)

<sup>7</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201120120SB790](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB790)

<sup>8</sup> Draft resolution E-4874 approving this action at the CPUC in Rulemaking 12-06-013  
<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M163/K188/163188681.PDF>; results of August 18, 2016 CPUC meeting confirming approval of E-4874, agenda item #51.  
[https://ia.cpuc.ca.gov/agendadocs/3382\\_results.pdf](https://ia.cpuc.ca.gov/agendadocs/3382_results.pdf)

<sup>9</sup> <https://cleanpowerexchange.org/wp-content/uploads/2018/02/R1202009-Joint-PFM-of-D.12-12-036.pdf>

<sup>10</sup> California Alliance for Community Energy, *Position Paper: Support the IOU Code of Conduct: No Rollbacks!*, October 2018  
<http://cacommunityenergy.org/our-position-on-the-iou-code-of-conduct-october-2018>

<sup>11</sup> CPUC, *California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electric Market*  
<http://www.cpuc.ca.gov/customerchoice/>

<sup>12</sup> CPUC, *Final Choice Action Plan and Gap Analysis, December 2018*  
[http://www.cpuc.ca.gov/uploadedFiles/CPUC\\_Public\\_Website/Content/Utilities\\_and\\_Industries/Energy\\_-\\_Electricity\\_and\\_Natural\\_Gas/Final%20Gap%20Analysis\\_Choice%20Action%20Plan%2012-31-18%20Final.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Energy_-_Electricity_and_Natural_Gas/Final%20Gap%20Analysis_Choice%20Action%20Plan%2012-31-18%20Final.pdf)

<sup>13</sup> California Alliance for Community Energy, *Comments on Customer Choice*, March 2018  
<http://cacommunityenergy.org/wp-content/uploads/2018/03/Comments-of-CA-Alliance-for-Community-Energy-11.28.17.pdf>

<sup>14</sup> California Alliance for Community Energy, *Position Paper: Retract Resolution E-4907*, December 2017.  
[http://cacommunityenergy.org/wp-content/uploads/2017/12/CACE-E-4907-Response\\_final.pdf](http://cacommunityenergy.org/wp-content/uploads/2017/12/CACE-E-4907-Response_final.pdf)

<sup>15</sup> <http://www.sfchronicle.com/bayarea/article/PG-E-looking-to-raise-fee-on-green-energy-6690280.php> and  
<http://www.sfgate.com/bayarea/article/Customers-of-clean-energy-programs-hit-with-fee-6705978.php>

<sup>16</sup> California Alliance for Community Energy, Letter to CPUC Regarding PCIA, March 2, 2016.  
<http://cacommunityenergy.org/wp-content/uploads/2016/03/CACE-PCIA-position-3-2-16.pdf>

<sup>17</sup> CPUC transcript, Thursday, December 17, 2015 9:30 a.m. San Francisco, Item 16 "Adopting PG&E Company's 2016 Electric Procurement Cost Revenue Requirement Forecast."

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<sup>18</sup> Docket # R.01-10-024, Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development. At their meeting on December 18, 2003, public outcry over long-term contracts led Peevey to remove the long-term component from his proposed decision, and the Commission voted to extend existing procurement contracts through 2004 only.

<http://www.local.org/CPUC110024.html> and <http://www.local.org/ragecpuc.pdf> .

<sup>19</sup> “The objective of AB 117 in requiring Community Choice Programs to pay a CRS is to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of Community Choice Program customers. Our complementary objective is to minimize the CRS (and all utility liabilities that are not required) and promote good resource planning by the utilities” (Decision D.04- 12-046 in CPUC Rulemaking R.03-10-003, p.29).

<sup>20</sup> Herman K. Trabish, “Ivanpah CSP facility nabs more time to ramp up output, avoid default,” March 18, 2016.

<http://www.utilitydive.com/news/ivanpah-csp-facility-nabs-more-time-to-ramp-up-output-avoid-default/415886/>

<sup>22</sup> California Alliance for Community Energy, *PCIA: Oppose CPUC Undermining of Community Choice*, September 2018

<http://cacomunityenergy.org/action-alert-oppose-cpuc-undermining-community-choice/>

<sup>26</sup> “Jerry Brown aide had interest in siding with PG&E, group says,” *San Francisco Chronicle* March 15, 2016.

<http://www.sfgate.com/news/article/Jerry-Brown-aide-had-interest-in-siding-with-6892181.php>.

<sup>27</sup> Rob Nikolewski, “Two new commissioners for the CPUC,” *San Diego Union Tribune*, December 29, 2016

<http://www.sandiegouniontribune.com/business/energy-green/sd-fi-cpuc-changes-20161229-story.html>