

May 7, 2019



The Honorable Lorena Gonzalez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, CA 95814

RE: AB 1362 (O'Donnell) – Code of Conduct – OPPOSE

Dear Assemblymember Gonzalez,

The California Alliance for Community Energy writes to voice our strong opposition to AB 1362.

The Alliance is a statewide advocacy organization that speaks to the interests of California ratepayers and communities regarding Community Choice energy programs. We work to support and defend Community Choice programs that advance local clean energy resources for the environmental, economic, and social justice benefit of our communities.

AB 1362 would make a mockery of the Code of Conduct that governs Investor-Owned Utilities (IOU) with regard to Community Choice energy programs. It was the history of IOU actions against Community Choice—contrary to the provisions of the Community Choice law, AB 117 (2002)—that necessitated the Code, which was mandated by SB 790 (Leno, 2011).

AB 1362 would require the CPUC to “implement the code of conduct....equally across all electrical corporations..” and “...prohibit the code of conduct... from inhibiting communications between a load-serving entity and a local government entity”. In other words, AB 1362 reverses AB 790, when, in fact, the Code needs to be strengthened.¹

The pretense of “equal treatment” overlooks several core aspects of the historical antagonism of the IOUs to Community Choice.

- **The Code was set up to ensure and enforce IOU neutrality** – Community Choice energy programs represent the first significant threat to the IOUs' monopoly. The introduction to SB 790 describes the disparities in market power between IOUs and Community Choice entities, disparities which remain true today:
*“Electrical corporations (IOUs) have inherent market power derived from, among other things, name recognition among customers, longstanding relationships with customers, ...access to competitive customer information..”*² We would add that today, in contrast to the geographically-smaller Community Choice programs, IOUs also have protected customer communications via the billing mechanism, and financial stability from decades of guaranteed rates of return, none of which are enjoyed by Community Choice providers.
- **The Code defines “lobbying” very narrowly** – The IOUs' wish to repeal the Code of Conduct was articulated in their Petition to Modify, filed with the CPUC in January, 2018, wherein they specifically asked to repeal the lobbying restrictions. Under the Code, “‘lobbying’ is defined asCommunicate(ions) with public officials or the public...for the purpose of convincing (them) not to participate in...a community choice program.”³ Per the Alliance's Position Paper:

1 See “Our Position on the IOU Code of Conduct, October 2018, posted [here](#).

2 [Bill Text SB 790](#), Section 2, subsection (c).

3 CPUC D.12-12-036, decision implementing the Code of Conduct (attachment 1), at A1-2 Code of Conduct, Rule 1b (definition of “Lobby”). Decision available [here](#).

“The Code, therefore, defines lobbying by intent. If it is the intent of the IOU to dissuade audiences from the formation of a Community Choice program, it is by definition engaged in the kind of non-neutral activity the Code of Conduct is meant to prohibit.”⁴

The counter is also true. If the IOU is *not* intending to dissuade any audience –press, customers, municipal officials – from forming a Community Choice program, then that communication is not prohibited under the Code of Conduct.

- **Municipal officials already DO have access to “complete and accurate information”**– Municipal officials considering formation of a Community Choice program already have access to myriad specialized consultants, Community Choice managers and other experts to inform their decisions and neutral information from IOUs. In spite of the Code of Conduct IOUs' have been observed when providing testimony in public regarding Community Choice formation as they over-state the risks and minimize the benefits of these programs.⁵

California now has 19 operational Community Choice programs in 160 communities across California, serving 11 million customers. These programs are leading the state in meeting the State’s aggressive greenhouse gas reduction targets and in demonstrating a successful decentralized alternative to the state’s faltering private monopoly utilities. They are developing innovative community-based distributed energy resource programs, steps essential to sustainably meeting California’s climate goals and to securing equitable economic and social benefits for our communities.

AB 1362 is an effort to undermine the growth and momentum of Community Choice in California.

The California Alliance for Community Energy views AB 1362 as an effort to reverse the Legislative wisdom in SB 790. Weaknesses in the Code and its CPUC enforcement⁶ notwithstanding, the Code of Conduct is meant to serve an important function—to prevent the worst abuses of IOU market power against all new, smaller entrants into the newly diverse clean electricity “ecosystem.”

We urge the Appropriations Committee to validate the Legislature's intent in SB 790 and vote to Oppose AB 1362. Thank you very much for your consideration.

Sincerely,



Al Weinrub
Coordinator, California Alliance for Community Energy

Cc:

Jay Dickenson, Chief Consultant, Assembly Committee on Appropriations

Members of the Assembly Committee on Appropriations

Assemblymember Chris Holden, Chair, Assembly Committee on Utilities and Energy

Kellie Smith, Chief Consultant, Assembly Committee on Utilities and Energy

Members of the Assembly Committee on Utilities and Energy

4 Op. Cit., page 2.

5 Op.Cit.p.2-3

6 See for example, CACE Code of Conduct Position Paper, pages 2-4.