Analysis of SB 612

California Alliance for Community Energy
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The California Community Choice Association (CalCCA), with Senator Portantino and 14 coauthors, has introduced Senate Bill SB 612. The California Alliance for Community Energy (the Alliance) appreciates the intentions of this bill to add new sections to the Public Utilities Code that would "ensure fair and equal access to the benefits of legacy resources held in IOU [investor-owned utility] portfolios and management of these resources." At the same time, we believe the bill fails to rectify the crippling impact of ever-increasing Power Charge Indifference Adjustment (PCIA) fees[1] on the state's Community Choice energy programs.

The bill draws from the California Public Utilities Commission (CPUC) PCIA Proceeding, Working Group 3 report issued a year ago, on which the CPUC has so far failed to act. The context of Working Group 3 and SB 612 is the dramatic increase in PCIA fees levied on Community Choice customers (for example, 600% since 2013 in PG&E territory). These fees have posed an existential threat to some Community Choice agencies and have severely limited the ability of others to develop the innovative programs needed to address climate change and to fulfill the promise of Community Choice to meet community energy needs.

To what extent does SB 612 confront the fundamental drivers behind escalating PCIA fees and provide a solution that qualitatively reduces PCIA fees and the threat they pose?

Main Provisions of SB 612

SB 612 sets out to adopt four main provisions of the PCIA Working Group 3 report, as represented by CalCCA. We discuss each of these below, responding to preliminary language in the bill with our initial commentary:

1) **"Allows CCAs (Community Choice Agencies) to access the products that they are paying for in the PCIA." --** We take this to mean that Community Choice agencies would be offered IOU energy resources for which Community Choice customers have paid—through PCIA fees—costs of production that exceed the market value of those resources—what are called the above market costs of production. These PCIA-eligible resources would be offered by the IOUs to Community Choice agencies on a voluntary basis (similar to the current offer of nuclear and large hydro) and at a benchmark price to be established by the CPUC. The impact on PCIA fees paid by Community Choice customers would be limited; it would depend on how much of this energy is bought by Community Choice agencies and on how much the CPUC's market price benchmark reduces the above-market costs of production of the corresponding resources.
2) **"Creates a market price benchmark for GHG-free products which will help shrink the PCIA." --** The bill delegates determination of the market price benchmark for nuclear, large hydro, and renewable energy to the CPUC. Yet the CPUC has shown no proclivity to date toward shrinking the PCIA. Rather, the CPUC has actually been the driver of dramatic increases in the PCIA. This history makes us question whether any CPUC-set market price benchmark will significantly shrink the PCIA, especially in relation to the large above-market costs of production of utility owned generation and renewable energy contracts signed many years ago. For example, Diablo Canyon nuclear power has yearly above market costs of production of over $1 billion/year and growing.
3) **"Creates a process for those products Community Choice Agencies elect not to take to be sold on the CAISO wholesale market." --** The proposed process simply requires the IOUs to offer these products to the wholesale market in an annual solicitation. Any revenues that might result would lower the estimation of above-market costs of production used to calculate the PCIA. While this would be an improvement over the current approach of assuming these products have zero market value, it is difficult to quantify the impact on the PCIA. This is because the relatively large above-market costs of production of utility owned generation and renewable energy contracts could dwarf the impact.

[1] PCIA fees are calculated as the cost of production of IOU-owned generation and wholesale energy contracts minus the current market value of those energy resources. In other words, the above-market costs of production of these resources.

4) **“Creates a process for the IOUs to work with contract holders to renegotiate or buy out these legacy contracts in an effort to reduce costs.” –**The proposed process simply requires the IOUs to conduct a request for offers from parties to the existing electricity purchase agreements, in the hopes that some would be willing to modify these contracts to reduce the IOUs above-market cost of production. The first request would not take place until January 1, 2023—two years from now—assuming the rules have been finalized by then, and would take place thereafter every two years. Because any contract modifications must be agreeable to the selling parties, there is little indication that such a voluntary process would alter the PCIA in any significant way.

Alliance Perspectives

The Alliance represents a statewide grouping of Community Choice advocates and organizations. As firm believers in the mission and ability of Community Choice entities to lead California into the climate-safe energy system of the future, we have seen CPUC decision after decision come down in furtherance of IOU interests at the expense of Community Choice programs. Since 2016 we have tracked the development of the PCIA as the regulatory weapon of choice to shackle Community Choice and undermine its potential to serve community energy needs.

In our view, both the Working Group 3 report and SB 612 reflect a process that protects IOU interests at the expense of the needs of Californians. SB 612 might have some marginal impact, but it does not appreciably or predictably reduce PCIA fees. As such it does not represent the qualitative reduction in PCIA needed for Community Choice agencies to provide leadership in addressing California’s climate challenges.

For example, the preliminary bill language has the following specific shortcomings:

- SB 612 continues reliance on CPUC process to set the specific rules, terms and enforcement mandates needed for implementation. As such, there is no guarantee of any reduction in above-market costs on both bundled and unbundled customers.
- SB 612 leaves measures to reduce the PCIA in the hands of the CPUC, the holders of above-market renewable energy contracts, and the unpredictable whims of the CAISO market.
- SB 612 does basically nothing to minimize the substantial contribution of utility-owned generation costs to the PCIA, leaving in place a perverse incentive for the IOUs to game the system.
- SB 612 does not enhance transparency in the IOUs’ valuation of stranded assets. It does not address the “confidentiality protection” used by the IOUs to value these assets to their own advantage, allowing them to continue to game the PCIA.
- SB 612 will require a considerable amount of political capital in the context of a challenging legislative year. At the end of the effort, there is still no guarantee of any substantial benefit in reduction of the PCIA.

Conclusion

While SB 612 might have some marginal impact, it fails to neutralize the PCIA as the IOU’s weapon of choice against Community Choice and all Californians. It does not provide Community Choice agencies the financial relief they need to lead in developing community energy resilience and equitable, sustainable energy development needed to successfully combat the climate crisis.

For this reason, the Alliance will not take action in support of SB 612. Stronger legislation is needed.

To eliminate the threat of the PCIA requires legislation that would terminate the PCIA at a fixed date, place a fixed cap on the PCIA till then, and prohibit the IOUs from shifting additional above-market energy costs onto ratepayers.