

# CPUC Bias Favoring Monopoly Utilities Against Community Choice



Community Choice energy programs are now being 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 needs regarding energy services. The proliferation of these programs threatens the dominance of the monopoly utilities. State law requires that the California Public Utilities Commission (CPUC) not only support Community Choice programs, but enforce utility cooperation with such programs.

Yet the CPUC has repeatedly shored up the investor-owned monopoly utilities against Community Choice competition in violation of state law and in spite of strongly voiced support for Community Choice by counties and cities seeking to implement such programs 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.

The CPUC has exhibited bias against Community Choice in a number of ways:

- Explicit statements of bias
- Approval of cost shifting and rate setting that undermines Community Choice
- Power Charge Indifference Adjustment (PCIA) fees
- Enabling utility marketing against Community Choice
- CPUC Commissioner appointments

Each of these is described below.

## Explicit statements of bias

CPUC President Michael Picker, in a 2016 interview with *Greentech Media*, harshly 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 CCA’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>2</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>3</sup>*

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<sup>2</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>3</sup> *California’s Distributed Energy Future, Fireside Chat*, March 16, 2016: 10:32 to 12:27

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 these remarks, both state law and CPUC policy define Community Choice as a form of customer choice.<sup>4</sup> Without this option, Californians would indeed be subject to “forced collectivization,” being captive to monopoly utilities that offer no alternative.

### **Approval of 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>5</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>6</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.

### **Power Charge Indifference Adjustment (PCIA) fees**

Earlier this year 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>7</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.

Commissioner Florio and other commissioners admitted in their remarks that the PCIA had to be doubled because the CPUC had failed to keep PG&E’s contracts for complying with the renewable portfolio standard (RPS) reasonably priced.<sup>8</sup> By contrast, years earlier, under CPUC President Michael Peevey, the Commission delayed utility proposals for long-term contracts that would have essentially blocked

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<http://www.greentechmedia.com/multimedia/view/fireside-chat>

<sup>4</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>5</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>6</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>7</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>8</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.”

Community Choice energy programs from accessing renewable power.<sup>9</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>10</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 that contributes to PCIA fees.<sup>11</sup>

The recent doubling of the PCIA fees is the latest evidence of the CPUC's failure to coordinate utility procurement with Community Choice programs to avoid anti-competitive impacts on such programs. This CPUC bias against Community Choice programs undermines their viability and their ability to deliver environmental and economic benefits to the communities they serve, and obstructs California's migration to a more decentralized and reliable renewable energy model.<sup>12</sup>

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

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>13</sup>

Under current state law, the monopoly utilities have been prohibited from using ratepayer funds to attack Community Choice programs. However, in an end-run around the law, the CPUC's decision allows SDG&E's parent company, Sempra Energy, to market against Community Choice using unlimited "shareholder" funds, setting a new precedent for attacking nascent Community Choice programs throughout California.

According to the San Diego Energy District Foundation, the CPUC's biased decision does not "apply sufficient counterweight to the tremendous imbalance of market power, name recognition, customer and airwave access enjoyed by the electrical corporations in comparison with new Community Choice programs."<sup>14</sup> Nicole Capretz, Executive Director of the San Diego-based Climate Action Campaign said, "SDG&E has made clear they'll stop at nothing to stifle the voices and the freedom of choice for families

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<sup>9</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>10</sup> "The objective of AB 117 in requiring CCAs to pay a CRS is to protect the utilities and their bundled utility customers from paying for the liabilities incurred on behalf of CCA 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>11</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>12</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>13</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>14</sup> San Diego Energy District Foundation, letter to California Public Utilities Commission President Michael Picker and Commissioner Michael Florio, 11 Jul. 2016. [http://www.localcleanenergy.org/files/CACE-SDED%20letter%20on%20SDG%26E%20Marketing\\_07.11.16.pdf](http://www.localcleanenergy.org/files/CACE-SDED%20letter%20on%20SDG%26E%20Marketing_07.11.16.pdf)

and businesses who want better energy options to save money, clean the air, and create a brighter, healthier future with home grown clean power.”

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.

On December 27, 2016, the CPUC rejected SDG&E’s plan for compliance with the earlier CPUC authorization, saying that the utility provided insufficient information to judge its separation from ratepayer funding.<sup>15</sup>

### **CPUC Commissioner appointments**

This past March, *Consumer Watchdog*, a non-profit, progressive organization which advocates for taxpayer and consumer interests, has 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>16</sup> According to the complaint, McFadden reportedly hand-selected a list of potential CPUC appointees for the Governor, resulting in previous Commissioners, as well as President Picker.

In 2010, during her tenure at PG&E, McFadden led PG&E’s \$50 million effort to pass Proposition 16. Proposition 16 would have changed the California Constitution so as to make it virtually impossible to establish Community Choice energy programs by requiring a two-thirds popular majority. It would not be surprising, therefore, for McFadden’s list of CPUC Commissioner candidates to be biased against Community Choice.

On December 28, 2016, the Governor replaced commissioners Florio and Sandoval, whose terms were expiring at the end of the year. Brown appointed two of his top aides: Martha Guzman Aceves and Clifford Rechtschaffen.<sup>17</sup> Guzman Aceves currently works as a deputy legislative affairs secretary, where she focuses on natural resources, environmental protection, energy and food and agriculture. Rechtschaffen is a senior adviser on climate, energy and environmental issues. Together with Picker, this puts Brown's former staffers in the majority of the Commission.

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<sup>15</sup> CPUC Letter to SDG&E, December 27, 2016.

<https://www.documentcloud.org/documents/3249486-SDG-amp-E-AL-3008-E.html>

<sup>16</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>17</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>