

DOCKETED

Docket Number:	18-IEPR-01
Project Title:	2018 Integrated Energy Policy Report Update
TN #:	223799
Document Title:	Independent Energy Producers Comments on CPUC Draft Green Book
Description:	N/A
Filer:	System
Organization:	Independent Energy Producers
Submitter Role:	Public
Submission Date:	6/13/2018 10:11:07 AM
Docketed Date:	6/13/2018

Comment Received From: Steven Kelly
Submitted On: 6/13/2018
Docket Number: 18-IEPR-01

IEP Comments on CPUC Draft Green Book

see attached comments on Draft Green Book, submitted to Customer Choice Team on June 11, 2018.

Additional submitted attachment is included below.

INDEPENDENT ENERGY PRODUCERS

June 11, 2018

To the California Customer Choice Team:

The Draft Green Book on California Customer Choice (May 3, 2018) raises issues related to the California Public Utilities Commission's (Commission) strategic goals of ensuring affordable electric service, decarbonizing key sectors of the California economy, and maintaining grid reliability given the increasing disaggregation of load among a diverse group of load-serving entities (LSEs) in California. The Independent Energy Producers Association (IEP) is pleased to join the conversation on the issues and questions raised by the Draft Green Book.

The issues that arise from the risk of load departing from the investor-owned utilities (IOUs), and the concomitant risk that some or all load returns to the IOU in the future, are timely and important. Yet, in the context of evaluating options for an evolving electricity market going forward, the Commission should not lose sight of the fact that various rules and practices have been instituted over the years by the Legislature and the Commission to mitigate the kinds of risks associated with an evolving market structure described in the Draft Green Book.

The Commission must be mindful of the necessity of supporting today an environment in which the private sector can continue to provide the vital capital necessary to meet the state's aggressive environmental and energy goals in a cost-effective manner while maintaining grid reliability. The Commission must endeavor to build and retain a policy environment that supports and does not undermine long-term contracting; that protects the sanctity of existing contracts approved by the Commission; and that ensures that developers can enter into long-term agreements with credit-worthy entities. Creating a viable and sustainable environment for financing needed infrastructure at the wholesale level has been and must continue to be a core function of the Commission as it manages the dynamic and constantly evolving energy markets.

Respectively submitted,



Jan Smutny-Jones, CEO and General Counsel
Independent Energy Producers Association

**Comments of the Independent Energy Producers Association (IEP)
on the
Draft Green Book on California Customer Choice**

The Draft Green Book on California Customer Choice (May 3, 2018) begins a conversation about the need to develop a plan to address the current shift in the evolving electricity market.¹ The Draft Green Book identifies core principles guiding Commission regulatory policy: affordability, decarbonization, and reliability.² In the context of assessing the evolving electricity market, the Draft Green Book focuses on the role of the investor-owned utility (IOU), the impact of new market entrants, and the effect of technology creating new choices for consumers/ratepayers.³ Importantly, the Draft Green Book asks the question: “How does the increased customer choice occurring in the electric sector impact California’s ability to achieve its policy objectives of affordability, decarbonization, and reliability?”⁴ The Draft Green Book observes that without a coherent and comprehensive plan, the current policies in place may result in unintended consequences similar to what occurred in the California Energy Crisis of 1999-2001.⁵ In raising complex issues and questions associated with the evolution of the energy markets, the Draft Green Book implies that a new regulatory framework is compelled due to the changing role of customer choice.

IEP is not convinced that a fundamentally new regulatory framework is necessitated by customer choice; although, we welcome the discussion. In the context of discussing issues related to customer choice, including the expansion of Community Choice Aggregations (CCAs)

¹ California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market (Draft Green Book), p. iv.

² Ibid, p. 8.

³ Ibid, p. 19.

⁴ Ibid., p. iv.

⁵ Ibid., p. 5.

and the impact of “shifting load,” the Commission must remain focused on three fundamental realities.

First, the existing regulatory framework generally proved successful supporting billions of dollars in new investment in the energy sector up until the last few years. Unfortunately, wholesale procurement over the past few years has been stalled for reasons unrelated to customer choice and more to do with the unwillingness to act in a timely manner. Yet, this delay is not without a cost. Delay is a material issue for ratepayers because, for example, the availability of tremendously valuable federal renewable energy tax credits is rapidly declining.

Second, “shifting” load and/or customer choice and not new phenomena. Because of this risk, the Legislature enacted legislation and the Commission adopted regulatory policies to address shifting load among jurisdictional load-serving entities (LSEs), the responsibilities of jurisdictional LSE in procuring resources to meet grid reliability and statewide public policy goals (e.g., Renewables Portfolio Standard (RPS), storage, Tree Mortality), and cost-allocation mechanisms in those instances where electrical corporations are directed to procure on behalf of all benefitting customers whether bundled or not. For example, the Commission has adopted a policy to ensure just and reasonable allocation of procurement costs borne by electrical corporations in light of shifting load.⁶ The Commission has a policy to address deficiencies in jurisdictional LSE procurement needed to ensure grid reliability and/or meet specified statewide public policy objectives and allocate the costs appropriately.⁷ Moreover, the Commission has an on-going proceeding to revise its adopted Power Charge Indifference Adjustment (PICA) mechanism for allocating on a non-bypassable basis to departing load the above market costs of

⁶ Decision (D.) 16-09-044, September 29, 2016.

⁷ In D.08-09-012, the Commission implemented new-generation non-bypassable charges (NBCs). New generation includes generation from both fossil fueled and renewable resources contracted for or constructed by the investor-owned utilities after January 1, 2003. Specific charges are determined for customers of investor-owned utilities that choose direct access (DA), CCA, municipal departing load (MDL), and customer generation departing load (CGDL).

IOU procurement on behalf of bundled customers going-forward.⁸ Accordingly, policy mechanisms exist today to address the effects of shifting load. Undoubtedly, these policy mechanisms will be refined over time. Accordingly, the risk of load-shift now and in the future need not be a barrier to timely investment and procurement today.

Third, electricity markets are capital intensive and, therefore, premised on credit. Yet, credit issues can limit the scale of investment due to the risk tolerance of market participants seeking to contract on a long-term basis. For example, metrics for CCAs such as their unrestricted cash reserves, continued ability to generate annual free cash, low and consistent opt-out rates, and governing documents are all critical to obtaining an investment-grade equivalency.⁹ Moreover, a limited appetite for contracts with sub-investment grade counterparties can lead established developers to pull out of California, or cause power purchase agreement prices to be higher than for an investment-grade off-taker. Similarly, tax equity investors, banks providing debt, and equity investors who ultimately own the new projects must all evaluate the off-taker for its ability to pay under a contract and “charge” (in the form of higher return requirements) for low credit scores, in the same way that a subprime mortgage is charged higher rates than a prime mortgage. Accordingly, market participants must evaluate the procurement and rate-setting practices of the CCA – because if a CCA over-procures (even during certain hours) or executes poor contracts or chooses projects in poor locations, it could end up paying out more than it is taking in.

Ultimately, newly formed load-serving entities including CCAs may not have the track record to support long-term investment/contracting needed to achieve statewide policy costs in a viable and cost-effective manner. Typically, it takes some time for newly formed LSEs to acquire the requisite credit rating to support the investment needed to meet the core principle

⁸ Rulemaking 17-06-026.

⁹ Moody’s Rating Action: Moody’s assigns Baa2 issuer rating to Marin Clean Energy. 16 May 2018.

goals. For example, while Marin Clean Energy (MCE) formed in December 2008 and released its Implementation Plan in 2009, MCE only recently (2018) received a credit rating from a reputable credit agency. This is a positive development and a reflection of solid management and performance. Yet, even in the situation where solid management is present, it can take a while for a newly formed CCA to acquire the requisite credit rating to support substantial, long-term investment. In conditions such as this, bridging the desired procurement using competitive solicitations conducted by electrical corporations or other credit-worthy entities may be just, reasonable, and very cost-effective. It will also be necessary to avoid losing momentum building cost effective and reliable wholesale renewable generation. This generation will be necessary to meet climate change goals in an affordable manner.

The Draft Green Book raises important questions and issues related to the expansion of customer choice. For example, how do choice models ensure consumer protection? How do choice models support innovations driven by customer demand? Do choice models ensure universal service and/or leverage needed and/or preferred investment? Are choice models competitively neutral? Do choice models impact and benefit local communities? These are intriguing questions, but uncertainties related to how customer choice is to be implemented (and regulated) in the future should not become a barrier to timely action now.

The Draft Green Book highlights three core principles governing its administration, namely affordability, decarbonization, and reliability in that order. Yet, the Draft Green Book questions how to achieve these goals absent new authorities and/or a new “plan” to address the evolving market structure.¹⁰ IEP questions this key assumption. Importantly, the Commission

¹⁰ “Without a coherent and comprehensive plan, the current policies in place may drift California to an unintended outcome and breakdown in services like the Energy Crises.” *Draft Green Book*, p. 5. “New rules will need to be formulated by the CPUC under current law and -- in certain instances -- legislative guidance may be necessary.” *Draft Green Book*, p. 55.

has the authority to act in a timely manner to achieve the goals of affordability, decarbonization, and reliability:

- **Affordability.** The Commission currently is required to ensure that jurisdictional LSEs adhere to integrated resource plans designed to achieve very specific outcomes related to long-range state policy goals and objectives.¹¹ The Commission currently is required to ensure that jurisdictional LSE assess the relative cost-effectiveness of resources considered in integrated resource planning, RPS, etc.¹² The Commission currently is empowered the Commission to apply least-cost/best-fit practices when fostering energy investment in renewables.¹³
- **Decarbonization.** The Commission currently is empowered to ensure that all jurisdictional LSEs and/or retail sellers file integrated resource plans to support key policies designed to realize, among other things, statewide decarbonization goals.¹⁴ All retail sellers are subject to the RPS; all load-serving entities are subject to greenhouse gas

¹¹ PU Code Section 454.52(a)(1): “Commencing in 2017... [the Commission] shall adopt a process for each load-serving entity ... to file an integrated resource plan, and a schedule for periodic updates to the plan, *to ensure that load-serving entities do the following*: ... (A) Meet the greenhouse gas emission reduction targets established by the State Air Resources Board... (B) Procure at least 50 percent eligible renewable energy resources by December 31, 2030... (D) Minimize impacts on ratepayers’ bills. (E) Ensure system and local reliability. (F) Strengthen the diversity, sustainability, and resilience of the bulk transmission and distribution systems, and local communities. (G) Enhance distribution systems and demand-side energy management. (H) Minimize localized air pollutants and other greenhouse gas emissions...” [emphasis added.]

¹² PU Code Section 400: “The commission and the Energy Commission shall do all of the following in furtherance of meeting the state’s clean energy and pollution reduction objectives: ... (c) Where feasible, authorize procurement of resources to provide grid reliability services that minimize reliance on system power and fossil fuel resources and, *where feasible, cost effective, and consistent with other state policy objectives*” [emphasis added].

¹³ The RPS statute requires utilities to select renewable resources that are least-cost and best-fit. Costs include the cost of the renewable energy generation as well as any indirect costs due integration of the resource and needed transmission investment. In addition, IOUs consider the benefits of the energy and capacity value. “Best fit” criteria address their system needs and RPS portfolio needs. (See D.04-07-029, D.08-12-058, D.11-04-030, D.12-11-016, and D.14-11-042 for more information.)

¹⁴ PU Code Section 454.52(a)(1): “Commencing in 2017, ... the commission shall adopt a process for each load-serving entity, as defined in Section 380, to file an integrated resource plan... to ensure that load-serving entities do the following: (A) Meet the greenhouse gas emission reduction targets established by the State Air Resources Board...”

(GHG) reduction targets established by the California Air Resources Board.¹⁵ In addition, the Commission has the authority to direct procurement through electrical corporations or credit-worthy central procurement entities, if available, to ensure compliance with specific state public policy objectives (e.g. RPS, Tree Mortality, etc.) , and the costs of any such procurement may be allocated on a non-bypassable basis to beneficiaries.¹⁶

¹⁵ PU Code Section 399.15(a): “In order to fulfil unmet long-term resource needs, the commission shall establish a renewables portfolio standard *requiring all retail sellers to procure a minimum quantity* of electricity products from eligible renewable energy resources ...” [emphasis added.]

PU Code Section 399.16: “(c) In order to achieve a balanced portfolio, *all retail sellers shall meet the following requirements* for all procurement credited toward each compliance period: (1) Not less than 50 percent for the compliance period ending December 31, 2013, 65 percent for the compliance period ending December 31, 2016, and 75 percent for each compliance period thereafter, of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (1) of subdivision (b). (2) Not more than 25 percent for the compliance period ending December 31, 2013, 15 percent for the compliance period ending December 31, 2016, and 10 percent for each compliance period thereafter, of the eligible renewable energy resource electricity products associated with contracts executed after June 1, 2010, shall meet the product content requirements of paragraph (3) of subdivision (b).” [emphasis added.]

Regarding Commission, carbon reduction, and load-serving entities, see PU Code Section 454.51 which directs the Commission to do all the following: “(a) Identify a diverse and balanced portfolio of resourced needed to *ensure a reliable electricity supply* that provides optimal integration of renewable energy in a *cost-effective* manner. The portfolio shall rely upon zero carbon-emitting resources to the maximum extent reasonable and be designed to *achieve any statewide greenhouse gas emissions limits established pursuant to the California Global Warming Solutions Act of 2006*... (d) *permit* community choice aggregators to submit proposals for satisfying their portion of the renewable integration need identified in subdivision (a). If the commission finds this need is best met through long-term procurement commitments for resources, community choice aggregators *shall also be required* to make long-term commitments for resources. The commission *shall approve* proposal pursuant to this subdivision if it finds all the following...” [emphasis added.]

¹⁶Regarding the RPS, PU Code Section 399.13 states the following: “(a)(3) The commission shall direct each retail seller to prepare and submit an annual compliance report [regarding RPS compliance] ... (f)(1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for electricity products from eligible renewable resources to satisfy the retail seller’s renewables portfolio standard procurement requirements.... (2) ... the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.”

Regarding Tree Mortality, “The commission shall ensure that the costs of any contract procured by an electrical corporation to satisfy the requirements of this section are recoverable from all customers on a nonbypassable basis.” PU Code Section 399.20.3(f)

- **Reliability.** The Commission has authority to impose resource adequacy (RA) obligations on jurisdictional LSEs.¹⁷ The Commission’s RA program is “backstopped” by the California Independent System Operator (CAISO) such that when individual LSEs with an RA procurement obligation are found deficit and they fail to cure the deficiency, the CAISO is authorized to cure any deficiencies and allocate the costs to beneficiaries.¹⁸

As described above, the Commission is a critical actor with authority and power: its power is not dormant and reactionary as sometimes suggested in the Draft Green Book. These authorities are inherent in the Commission’s constitutional role, and the Commission’s constitutional responsibilities are not altered by the growth of customer choice models.¹⁹ Yet, by design and/or happenstance, regulatory inertia at the Commission is becoming a barrier to timely investment at the wholesale level in needed infrastructure essential to maintaining reliability while pursuing decarbonization in a cost-effective and affordable manner. Further delay in cost-effective, wholesale procurement to meet the Commission’s objectives while a new plan and/or regulatory framework is implemented will simply exacerbate the situation.

In light of the evolving electricity market, the Draft Green Book issues a “call to action” to avoid outcomes such as occurred in the mid/late 1990s.²⁰ Yet, one of the most significant acts taken by the Commission (and other agencies) in the early 2000s was the adoption of the Energy

¹⁷ The CPUC adopted a Resource Adequacy (RA) policy framework (PU Code section 380) in 2004 to ensure the reliability of electric service in California. PU Code Section 380 states: (a) The commission, in consultation with the Independent System Operator, *shall establish resource adequacy requirements for all load-serving entities.* (b) In establishing resource adequacy requirements, the commission shall achieve all the following objectives: (1) *Facilitate development of new generating capacity and retention of existing generating capacity that is economic and needed.* (2) *Establish new or maintain existing demand response products and tariffs that facilitate the economic dispatch and use of demand response that can either meet or reduce an electrical corporation’s resource adequacy requirements, as determined by the commission.* (3) *Equitably allocate the cost of generating capacity and demand response in a manner that prevents the shifting of costs between customer classes.* (4) *Minimize enforcement requirements and costs.*

¹⁸ CAISO Tariff Section 43.1 ff.

¹⁹ “A city, county, or other public body may not regulate matters over which the Legislature grants regulatory power to the Commission.” Article XII, Section 8, Constitution of California.

²⁰ Draft Green Book, p. 19.

Action Plan and specification of the so-called resource “Loading Order”.²¹ The Loading Order was not overly prescriptive, yet it fostered the timely expansion of thousands of MWs of new, “clean tech” resources. After the Loading Order was adopted, developers could anticipate procurements and develop new projects accordingly. Prices for preferred resources dropped dramatically, which was good for consumers. The electric grid was significantly de-carbonized, which also was good for consumers. California became a world leader in new, clean energy infrastructure.

Today’s arduous, litigious, and highly complex planning process has stalled procurement and investment, particularly at the wholesale level where the most cost-effective resources reside. We note that the last decision authoring procurement in the context of long-term planning occurred in the 2014 Long-Term Procurement Plan (LTPP) proceeding. The last procurement authorizing RPS-eligible procurement in the context of a proceeding formally adopting an RPS Plan occurred in 2014. The Commission needs to return to a relatively predictable, “steady-state” planning and procurement cycle of wholesale resources characteristic of the successful 2005-2015 timeframe. The Commission must avoid the deleterious effects of “boom and bust” procurement cycles which characterize the state of procurement at the Commission today.

Finally, while acknowledging the importance of grid reliability as a core principle guiding the Commission, the Draft Green Book does a disservice by listing reliability after affordability and decarbonization when highlighting the Commission’s core principles. As a practical matter, the relative value of affordability and decarbonization compared to reliability

²¹ Preferred Resources are defined in the State’s Energy Action Plan II, at 2, as follows: The loading order identifies energy efficiency and demand response as the State’s preferred means of meeting growing energy needs. After cost-effective efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, we support clean and efficient fossil-fired generation.”

will quickly pale in the minds of the ratepayers and consumers if electricity is not available when and where needed. The electric sector will decarbonize given current practices and the Commission will accomplish decarbonization in an affordable manner if its procurement policies and practices adhere to least-cost and best-fit (LCBF). Yet, the political consensus supporting decarbonization policies will unravel quickly if the electric grid becomes unreliable to meet the real-time needs of Californians. The Commission must institute reliability as the first Core Principle among equals.

Next Steps: Actions Needed *This Year* to Achieve Goals

The Commission can and should take several steps now to lead California forward while emphasizing reliability, affordability, and decarbonization. While the Draft Green Book serves as a “call to action” for the Legislature, energy agencies, the CAISO, stakeholders, and communities to join in the conversation,²² the Draft Green Book implies that little action can or should occur today pending additional legislative authorities to clarify key roles, goals, and objectives. This conclusion is misplaced. First, the Commission has ample authority today (as discussed elsewhere) to ensure that all LSEs are contributing their fair share with regards to meeting near-term resource adequacy needs and the state’s long-term decarbonization goals in an integrated manner. Second, waiting for legislation may not be the appropriate answer given that legislation is seldom unambiguous. Moreover, new legislation typically triggers regulatory proceedings among one or more agencies to interpret the intent of the legislature and establish policy direction. Proceedings such as these often take months to complete.

²² Draft Green Book, p. 55.

IEP recommends that the Commission do the following this year to ensure timely and cost-effective progress toward long-term planning goals while cognizant of the Commission's core principles:

1. *Authorize jurisdictional LSEs to procure at least 3,000 MWs of RPS-eligible resources to maintain steady progress toward the decarbonized grid of 2030.*

IRP modeling and assessments indicated a significant need for additional renewables to meet 2030 decarbonization goals. Competitive solicitations repeatedly reveal the cost-effectiveness of these wholesale resources. Many of these resources are expected to be operational in the 2021-2025 timeframe, but that will not happen absent procurement of RPS-eligible resources in the next six to twelve months. Direct jurisdictional LSEs to procure their fair share of these resources. As needed, employ backstop, centralized procurement mechanisms to fill deficiencies, recognizing that the benefits and costs of such procurement will be allocated to all beneficiaries on a just and reasonable basis.

2. *Adopt a multi-year forward RA Framework to ensure grid reliability.*

Thousands of MWs of capacity have retired over the past few years. Thousands more are expected to retire before 2025 (e.g., once-through-cooling units, Diablo Canyon Nuclear Generating Station). Meanwhile, customer choice expansion raises uncertainties regarding "who is doing what." The current one-year forward RA mechanism to ensure grid reliability is insufficient, as evidenced by the increasing reliance on out-of-market procurement to ensure grid reliability. Moreover, it fails to provide any transparency as to how well positioned the state is to assure grid reliability given the expected changes in the near term. A multi-year forward RA framework will help remedy these growing problems. The Commission needs to act this year to adopt a multi-year RA framework of three to five years.

3. *Adopt a mechanism to allocate the costs and benefits of utility, centralized, and/or backstop procurement to all benefiting load.*

The Commission currently employs several tools to allocate procurement costs to benefitting load in a just and reasonable manner (i.e., CAM, PCIA, CTC, etc.). Moreover, the Commission is considering refinements to its PCIA mechanism. The Commission must adopt a just and reasonable cost allocation mechanism in 2018 as scheduled.

Respectfully submitted, June 11, 2018.

Independent Energy Producers Association (IEP)