



East Bay Clean Power Alliance
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Subject: Defend Community Choice from CPUC Attacks

Attachment: Backgrounder Roll Back the CPUC Attack by California Alliance for Community Energy

January 14, 2019

East Bay Clean Power Alliance writes today to sound the alarm about serious threats to Community Choice--and to East Bay Community Energy, in particular--and to urge this Board to take bold and decisive action to respond to these threats.

We understand that that the EBCE Staff have been working overtime to deal with the drastic financial repercussions of the recent CPUC decision on the PCIA. But that effort cannot hold back the long-term damage that will result from that decision if allowed to stand, nor from the wave of other impending anti-Community Choice actions currently being considered by the CPUC and the California State legislature.

Not only have Community Choice programs been saddled with a dramatic immediate and long-term increase in the PCIA, but, as Melissa Brandt has outlined at Board meetings, there is a proposed decision at the CPUC that would take away Community Choice procurement rights for Resource Adequacy and place that function in the hands of the investor-owned utilities. Beyond that, there is proposed 2019 legislation (AB 56, Garcia), that would lead to centralized procurement for Community Choice programs rendering them irrelevant. Any of these threats if realized, will kill the promise of Community Choice -- that of empowering communities to take control of energy decisions to build a more just and resilient energy future.

Locally, we are devastated that in response to the PCIA increase, EBCE staff has proposed cutting funding for Local Development Business Plan (LDBP), the heart of our advocacy for an Alameda County Community Choice program. Though it would be attractive to think that this is only a temporary delay in implementation of the LDBP, the PCIA increase is not temporary and is slated to get worse. That fact, combined with realization of the other threats, portends that the cut would be fatal to the LDBP, and likely EBCE as well.

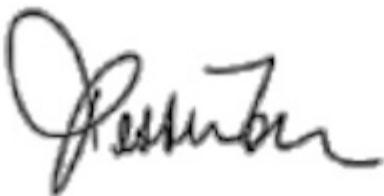
There are currently 19 operating Community Choice programs throughout California that according to CalCCA represent more than 8 million people. The local elected State legislators from Community Choice jurisdictions outnumber those that are not. Community Choice has grown quickly because a public alternative to the private utilities enjoys great popularity and offers the promise of significant benefits to communities. Hence there is a strong constituency for fighting back against the CPUC attack on Community Choice.

Regulatory or legislative actions that would wipe out Community Choice programs would also upend California's electricity system at the same time that the investor-owned utilities, particularly PG&E (currently a criminal enterprise), are vulnerable to collapse due to malfeasance around infrastructure maintenance.

Community Choice supporters are fighting back, and we need our elected representatives to join us! We are asking EBCE Board of Directors to take strong action in support of the fight to save Community Choice. For example:

- Push CalCCA to appeal the CPUC's PCIA Decision 18-10-016. CalCCA applied for a rehearing and has standing to take action at the 1st District Court of Appeals when the CPUC denies the rehearing.
- Support the forthcoming campaign of the California Alliance for Community Energy to demand that the CPUC's PCIA decision be suspended.
- Lobby Alameda County's state legislative representatives to support the East Bay community and EBCE in defending Community Choice. This includes being ready to sponsor and support legislative remedies to the current attacks on Community Choice.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jessica Tovar', written in a cursive style.

Jessica Tovar, East Bay Clean Power Alliance

Backgrounder: Roll Back the CPUC Attack on Community Choice



California’s 19 Community Choice energy programs provide important economic and environmental benefits to their communities. They are leading the state in meeting its climate goals and represent a compelling public alternative to the state’s faltering private monopoly utilities.

Yet Community Choice is under attack by the California Public Utilities Commission (CPUC)—as it strives to rescue the monopoly utilities!

The Issue

In the aftermath of California’s devastating fires over the past two years, the CPUC has begun bailing out the state’s monopoly utilities (Pacific Gas & Electric, Southern California Edison and San Diego Gas & Electric) for their liability in sparking the fires. In doing so, they throw a lifeline to derelict and, in some cases, criminal private utility corporations. These regulators intend to pass billions of dollars in fire damages onto California ratepayers. At the same time, the CPUC has escalated its attacks on the public, Community Choice energy service providers that stand as our best alternative to the monopoly utility model.

In October, the CPUC approved a dramatic increase in Power Charge Indifference Adjustment (PCIA) fees. The purpose of the PCIA is to shield the state’s monopoly utilities from financial losses when customers depart to more attractive Community Choice programs. Instead of requiring the monopoly utilities to compete with Community Choice programs, the CPUC allows these utilities to simply recover their losses through PCIA fees levied on those Community Choice customers.

The PCIA poses a major threat to Community Choice programs and the community benefits and community governance model that they represent. The CPUC’s PCIA action is contrary to state law, obstructs progress toward the state’s climate goals, and fails to protect the state’s electricity ratepayers.

The dramatic increase in PCIA fees is the most serious of a number of escalating actions by the CPUC to shore up the monopoly utilities against Community Choice competition. It comes in the face of growing support for Community Choice by counties and cities across the state, while the monopoly utilities demonstrate their inability to address community needs, especially climate change. As Community Choice programs increasingly demonstrate their value in this regard, the CPUC has become more prejudicial in its attitude and actions against Community Choice.

These actions include the following: approving cost shifting to undermine Community Choice, allowing monopoly utility marketing against Community Choice, promoting “customer choice” retail markets, trying to freeze new Community Choice programs, attempting to impose limits on Community Choice procurement prerogatives, and, now, mandating a dramatic increase in the PCIA. These actions represent a consistent pattern of bias against Community Choice in favor of the monopoly utilities, as documented in our [CPUC bias](#) paper.

In the case of the PCIA, the dramatic increase in fees has already begun to undermine Community Choice programs and is likely to have devastating impact on them over time: It threatens both their near-term and long-term financial viability, while propping up the state’s failing monopoly utilities. That makes the dramatic PCIA hike contrary to California’s Community Choice law, which requires a level playing field for all electricity providers.

What's at Stake

The CPUC's consistent pattern of bias against Community Choice—and this latest attack in particular—is contrary to the best interests of the people of California, for a number of reasons:

- It violates AB 117 (2002), by which the Legislature created the Community Choice option for local governments. Under that law, the CPUC has a responsibility to ensure a level playing field for competition among all providers.
- It stands to jeopardize California's work to address climate change. California now has 19 operational Community Choice programs in 160 communities across California, serving 11 million customers. [Community Choice programs are far ahead of the monopoly utilities in meeting the State's aggressive greenhouse gas reduction targets.](#)
- It undermines and delays our transition to a sustainable renewable energy economy. Community Choice programs are developing innovative community-based distributed energy resource programs, steps essential to meeting climate goals and securing economic and social benefits for communities.

As the California firestorms of 2017 and 2018 have shown, the stakes in this issue go well beyond the narrow question of PCIA charges. It goes to the importance of Community Choice as a community-driven, public alternative to the private, monopoly-controlled utility model—an alternative to the model in which the public bears all the electricity system risks (the losses) while the benefits (the profits) are privatized.

The CPUC's attack on Community Choice creates a dangerous situation for California. The CPUC is propping up an outmoded, centralized, private monopoly electricity model—and derelict, vulnerable, collapsing, and in some cases even criminal, corporate enterprises—while attacking the innovative, decentralized, public alternative that California needs to achieve a sustainable energy future.

PCIA Basics

The PCIA is an on-going fee imposed by the CPUC on customers of Community Choice energy programs.

It is a departing load charge: it requires Community Choice customers to compensate the monopoly utilities for renewable and brown power contracts the utilities incurred for customers who have since departed to Community Choice programs. This is energy that the monopoly utilities bought but can no longer sell at comparable prices. According to statute, this monetary “loss” to the monopoly utilities must be calculated as the difference between the actual unavoidable costs of procurement minus the current market value of these stranded energy resources.

Regrettably, the determination of the PCIA charge is anything but transparent. It relies on monopoly utility information that is not public. As such, it is not known if monopoly utility procurement costs are unavoidable or incurred fairly, how these were calculated, or how the market value of these “stranded” energy resources is established.

The PCIA hits Community Choice programs with unpredictable and growing charges. These charges undermine the competitiveness of Community Choice programs relative to the monopoly utilities, threatening the stability and financial viability of these programs.

For Community Choice customers, PCIA charges continue indefinitely. No matter how long ago a customer became enrolled in a Community Choice program, the monopoly utility will continue to pass on charges for electricity that the customer is not using and for which the customer receives no value. In what other commercial enterprise are departing customers forced to pay indefinitely for a product or service they are no longer using? Do electric car owners have to pay Chevron for every gallon of gasoline they no longer buy?

The PCIA results in much higher electricity rates for the utility's non-Community Choice customers as well. That's because the PCIA covers the utilities' losses, so they have no incentive to do better. California's average residential electricity rate is [52% higher](#) than the national average. In fact, the PCIA has created a

perverse incentive for these utilities to enter into excessive, costly, long term electricity contracts: they can milk their customers while using the resulting high PCIA fees to both cover their losses and undermine their primary competitors, Community Choice energy programs.

CPUC's Implementation of PCIA

The CPUC's PCIA implementation has consistently favored the monopoly utilities. This has led to calls to [phase out the PCIA entirely](#) or to at least reform it to ensure a level competitive playing field, as called for by AB 117, the Community Choice law.

In June 2017, after nearly doubling PCIA fees in 2016, the CPUC began an examination of possible PCIA reforms. Monopoly utilities, Community Choice programs and advocates, and many other parties participated; comment rounds, workshops, extensive financial modelling, have all been part of this proceeding. On August 1, 2018, Administrative Law Judge Stephan Roscow issued a "[Proposed Decision](#)," which represented a balance of interests in the methodology used to figure the PCIA fees.

Shortly thereafter, on August 14, CPUC Commissioner Peterman issued a competing "[Alternate Proposed Decision](#)," which rejected the recommendations of the year-long PCIA proceeding and strongly supported the interests of the monopoly utilities. On October 11, 2018, despite strong opposition from [CalCCA](#), the [California Alliance for Community Energy](#), [three prominent mayors](#), [120 local public officials](#), and at least [eight state legislators](#), CPUC commissioners unanimously approved Peterman's alternative proposal and instituted a PCIA methodology that will dramatically increase PCIA fees.

The CPUC's PCIA decision was published on October 19, 2018. It represents an aggressive attack on Community Choice programs by passing the losses from mismanaged procurement practices of the monopoly utilities onto Community Choice customers.

The following are some of the main deficiencies in the CPUC's PCIA decision, as argued in a number of applications filed for a rehearing of the decision:

- It increases PCIA charges by including utility-owned generation as allowed procurement costs, which is contrary to the Community Choice law, AB 117;
- It fails to provide an absolute cap on PCIA charges, eliminating the predictability and stability of PCIA charges that is essential for Community Choice planning and viability;
- It increases PCIA charges dramatically by instituting a methodology that incentivizes monopoly utilities to maximize losses by procuring at high costs and selling off stranded resources cheaply or not at all, and then passing on the resulting losses to Community Choice customers.

These points are spelled out in the rehearing applications filed by the following parties: [CalCCA](#), [Protect Our Communities-Utility Consumers Action Network](#), [Penninsula Clean Energy-MCE- Sonoma Clean Power](#), [Large- and Direct Access Customers](#).

Bottom line: the CPUC decision shifts costs from monopoly utilities onto Community Choice. In the words of the California Community Choice Association (CalCCA), the decision deals a "[devastating blow](#)" to Community Choice programs, both existing and planned.

Current Status

Several organizations, including CalCCA, have filed applications for a rehearing of the October decision, citing unsubstantiated findings, process irregularities, and violations of law. The CPUC had sixty days until January 19, 2019 to consider these applications. Having taken no action, the PCIA Decision remains in force.

Estimates are that PCIA fees will increase by 20-50% for existing programs. Meanwhile the monopoly utilities are announcing reductions in energy charges (not delivery charges) this spring. Combined with the

PCIA increases, this will undermine the financial viability of many Community Choice agencies. Those that survive will, [according to CalCCA](#), “do so only by cutting the programs that have been essential to accelerating the state's transition to a zero carbon future and furthering the state's economic justice policy goals.”

The CPUC decision has already had the following negative impacts on Community Choice programs:

- Aborted or delayed programs – A new Community Choice program in San Luis Obispo/Morro Bay aborted its launch. Desert Community Energy (San Bernadino) has delayed its launch.
- Increased electricity rates – Both CleanPowerSF and Valley Clean Energy (Davis) have been forced to increase customer rates, undermining their competitiveness.
- Curtailed local investment – East Bay Community Energy plans to cut \$13 million from its 2019 budget, including allocations for local renewable energy development; Monterrey Bay Community Power has pulled its distributed energy resource (DER) procurement entirely

In their application for rehearing this decision, the Protect Our Communities Foundation and Utility Consumers Action Network argued that the CPUC must “stay” implementation of the PCIA methodology until the legal issues are resolved. [Their application](#) stated that “the consequences of the Commission's errors, individually and collectively, are enormous.” The motion cites a host of substantive deficiencies in the decision. These include ignoring statutory guidance limiting authorized costs, misinterpreting the law, not substantiating findings with fact, and ignoring evidence in the record that supports lower PCIA fees.

Our Position: Roll Back the CPUC Attack

In March 2016 the California Alliance for Community Energy called for [phasing out the PCIA](#), citing a number of ways it fundamentally undermines the purpose and viability of Community Choice programs.

Now, in response to this latest CPUC attack, we find it imperative to defend Community Choice as a compelling public alternative to the state’s failing monopoly utility model.

Strong action is both essential and timely to protect and continue the progress that Community Choice has made. We propose action on two fronts:

- First, to oppose any implementation of a PCIA structured to disadvantage Community Choice programs *vis a vis* the monopoly utilities.
- Second, to create conditions under which Community Choice can flourish. We insist on a level playing field—fairness for all players—and recognition of the centrality of our communities in the transition to a renewable energy economy.

The Alliance is opposed to implementation of any PCIA that disadvantages Community Choice programs *vis a vis* the monopoly utilities. We also oppose PCIA charges that undermine the ability of Community Choice programs to deliver environmental, economic, and social justice benefits to the communities they serve.

Community Choice is our best alternative to a failing system of “regulated” monopoly utilities. We demand a roll back of the CPUC attack on Community Choice and support for a balanced, impartial system within which our communities can build the energy future that serves them best.

For more information on the California Alliance for Community Energy,
contact: info@cacommunityenergy.org

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