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The California Wind Energy Association, Independent Energy Producers Association, California Biomass Energy Alliance, Large-scale Solar Association, American Wind Energy Association's California Caucus, Geothermal Resources Council, and the California Low Carbon Fuel & Energy Coalition (collectively, the "Renewable Energy Parties") are pleased to provide comments on the May 2018 draft paper entitled "California Customer Choice: An Evaluation of Regulatory Framework Options for an Evolving Electricity Market" (referred to as the "Green Book").

## I. INTRODUCTION & SUMMARY

The draft Green Book presents an overarching question for public consideration: "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?"<sup>1</sup> It states that "we are deregulating electric markets through dozens of different decisions and legislative actions, but we do not have a plan. If we are not careful, we can drift into another crisis."<sup>2</sup>

While the situation in which California finds itself – namely, an increasingly fragmented electric industry – is not the result of a "plan," it does result from robust legislative deliberations over all key market elements. While leaving room for some interpretation, the statutes are relatively clear. A paradigm shift may be occurring in the electric sector, but the Renewable Energy Parties believe that it is nevertheless the Commission's responsibility to prevent a "drift into another energy crisis." Indeed, the Commission has all necessary power to prevent such an outcome, and the draft Green Book does not suggest otherwise.

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<sup>1</sup> Green Book, p. iv.

<sup>2</sup> Green Book, pp. iii and 5.

The question is: will the Commission use its ample authority to address any ambiguities that, left unaddressed, could lead to another energy crisis? These ambiguities have already led to an energy market rife with uncertainty due to customer load migration, potential cost-shifting and jurisdictional ambiguity. As a result, procurement and development of new, low-cost renewable energy projects have largely stalled, and the continued operation of many existing renewable energy facilities is at risk.

Decarbonization has been fundamental to California's energy policy for over a decade. The Commission's primary concern should be how to achieve decarbonization while maintaining an electric system that remains affordable and reliable for all California households and businesses, particularly the most vulnerable ones. Achieving full decarbonization – particularly the last 20% – will not be easy and costs must be considered, as about four in ten Californians are living in or near poverty.<sup>3</sup> The Commission should never lose sight of the importance of minimizing total costs, and equitably spreading those costs, along the way. To this end, as discussed below, the Renewable Energy Parties recommend the following:

- The Commission should exercise its authority and make the necessary hard choices within its many open proceedings to address the concerns raised in the draft Green Book.
- The Commission should assess how its own policies may be contributing to less affordable electric service and identify necessary course-corrections to minimize overall costs and eliminate cost-shifting. The Commission should also commit itself to comparing supply-side and demand-side resources on a consistent basis, prioritizing resources that most cost-effectively achieve California's carbon-reduction goals. And it should evaluate load-migration-related stranded costs based on the facts and the evidence, resulting in charges that have an appropriate influence on customer choice, be it positive or negative.
- The Commission should recognize and address the risk that some LSEs will not be able to shoulder their share of the RPS and GHG emission mandates in the near-term. If California is to achieve the 40% RPS target by the end of 2024, we estimate that some 9 GW of new utility-scale renewables will need to be on line. The Commission must develop a backstop plan to ensure that the state's goals will be achieved, with a trigger point in the near term.

## II. DISCUSSION

### A. The Commission Has the Authority and Responsibility to Address All Stated Concerns – It Need Only Fulfill Its Statutory and Constitutional Obligations.

The draft poses a long list of “fundamental questions”<sup>4</sup> that the California Customer Choice Team subsequently asked the parties to address in comments, requesting parties to also propose

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<sup>3</sup> “Just the Facts: Poverty in California,” Public Policy Institute of California (October 2017).

<sup>4</sup> Green Book, pp. 5-6.

“recommended solutions” on topics of primary interest.<sup>5</sup> The questions that pertain directly to the Green Book’s stated concerns of affordability, reliability and avoiding another “energy crisis” relate to ongoing CPUC proceedings that are already aimed squarely at addressing these concerns.<sup>6</sup> Each of these proceedings includes thousands of pages of Commission scoping decisions, rulings and parties’ comments. The paper does not suggest that the Commission lacks constitutional or statutory authority to address the concerns it raises within these proceedings. Therefore, the Renewable Energy parties decline here to repeat the comments each of our organizations has made in these various proceedings.

We highlight the importance of a few key proceedings:

- **Resource Adequacy.** After some delay, the Commission has teed up its ongoing proceeding to address reliability on a multi-year basis (R.17-09-020). This provides an opportunity for the Commission to maintain system reliability while incentivizing the orderly retirement of unneeded resources and reducing costs without disrupting customer choice options.
- **Resource Planning.** The Commission has adopted an Integrated Resource Planning (IRP) process in R.16-02-007 that should evolve to ensure that the resource plans of all load-serving entities (LSEs) add up to an optimal overall portfolio that meets the state’s decarbonization goals while maintaining system reliability and minimizing overall costs. The initial IRP decision asserts the Commission’s broad authority and responsibility over the planning of all LSEs, as well as some aspects of procurement – namely, system integration and reliability resources, and the terms and conditions of renewable energy contracts.<sup>7</sup> The Commission need only act effectively on that authority to guard against the affordability, decarbonization, and reliability concerns raised in the Green Book that could result from fragmented decision-making within a centrally operated grid.

As discussed below, the Commission must ensure that IRP serves as the umbrella proceeding that informs and guides interrelated proceedings, including distributed energy resource and RPS procurement proceedings. It should define the methodologies and assumptions used in all other Commission proceedings to compare the costs and benefits of

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<sup>5</sup> May 21, 2018, email from the California Customer Choice Team to the parties.

<sup>6</sup> For example, while the Green Book poses as a key question “Who is the Provider of Last Resort?” (Table 5) and laments that “Current law does not define a provider or supplier of last resort for the energy sector” (p. 19), the Commission has since adopted a Decision in R.03-10-003 that established reentry fees and financial security requirements applicable to community choice aggregators (CCAs), as required by Public Utilities Code Section 394.25(e). The Decision states that “Reentry fees include utility administrative costs and procurement costs resulting from a mass involuntary return of CCA customers to utility service, and the financial security requirements must cover those potential costs.” The premise of these fees and requirements is that customers will be smoothly returned to the utilities if the CCAs fail.

<sup>7</sup> CPUC D. 18-02-018 (February 9, 2018) at p. 26-29.

all resources – both supply and demand side – on a uniform basis. Further, procurement requirements identified in the IRP must be binding on all LSEs.

- **Cost-shifting.** The Commission is in the throes of a process<sup>8</sup> to update, in the face of substantial load departures to Community Choice Aggregators (CCAs), the Power Charge Indifference Adjustment (PCIA) methodology to ensure that the costs of resource procurements that were incurred on behalf of all customers are not shifted onto the customers of investor-owned utilities (IOUs) as load migrates to non-IOU load-serving entities. The state has been meeting its Renewables Portfolio Standard (RPS) targets and dramatically driven down the cost of renewable energy technologies as a result of IOU purchases; all customers benefit from this success, and all should continue to share equitably in covering the costs. The Commission must get the PCIA right, based on the facts and the evidence, which will then have an *appropriate* influence on customer choice, be it positive or negative.
- **Protection of existing contracts.** Importantly, the contracts that enabled renewable energy development under the RPS must be honored and kept intact both as a matter of fairness and to maintain the financial sector's confidence in making ongoing investments in California.

**B. To Promote Affordability, the Commission Should Reflect on Its Own Decisions and Identify Needed Course-Corrections to Minimize Costs and Eliminate Cost-Shifting.**

Despite the draft Green Book's major stated concern over "affordability," there is no discussion of what that means, how it should be measured, and what policies bear specifically on that concern. We believe the complexity of the current situation merit Commission introspection regarding how its own decisions have contributed to less affordable electric service.

The draft Green Book notes that the CPUC's charter requires that "All charges made by public utilities must be just and reasonable" and that various legislatively mandated programs implemented by the Commission are aimed at reducing electricity costs for low-income residents.<sup>9</sup> The Commission does not otherwise have a mandate to ensure "affordability."<sup>10</sup> Nevertheless, by seeking to achieve statutory goals while minimizing costs and preventing cost-shifting – as, indeed, the law requires<sup>11</sup> -- the Commission can promote affordable utility rates and bills. The final version

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<sup>8</sup> R.17-06-026.

<sup>9</sup> Green Book, p. 8.

<sup>10</sup> Utility-regulation expert Scott Hempling addresses the relationship between regulation and affordability in his June 2012 essay, "'Affordable' Utility Service: What Is Regulation's Role?" Available at <http://www.scotthemplinglaw.com/essays/affordable-service>. The Commission may benefit from reviewing Hempling's various essays on effective regulation. See <http://www.scotthemplinglaw.com/about>.

<sup>11</sup> For example, P.U. Code Section 454.52(a)(1), establishing the Integrated Resource Planning process, requires the CPUC to ensure that load-serving entities "minimize impacts on ratepayers' bills," among

of the Green Book should examine the Commission's track-record on minimizing costs and address how the Commission's ongoing proceedings will bear on utility rates and bills. We highlight a few important topics:

- **Net Energy Metering.** The Commission's Net Energy Metering (NEM) 2.0 decision continued to rely on \$0.25/kWh retail rates as the basis for applying bill credits for rooftop solar systems instead of on the net benefits of those resources. While the Commission promised, in its NEM 2.0 decision, to consider the costs and benefits associated with customer-sited generation in 2019, it nevertheless assumed in its inaugural IRP analysis and decision looking out to 2030 that NEM rates will continue at the current level. As the Commission's IRP analysis showed, costs will increase by at least \$682 million/year if adoption of customer-sited generation continues based on NEM 2.0 rates, compared with wholesale generation.<sup>12</sup> While DERs will continue to play a role in the market, payments should reflect the net benefits provided by these resources.
- **Advanced Procurement.** While the Commission has vigorously promoted DERs, it has simultaneously allowed the market for far lower-cost utility-scale renewables to languish. (The weighted average procurement cost for RPS contracts in 2017 was \$0.047/kWh,<sup>13</sup> while the current cost range for utility-scale technologies is \$0.03/kWh - \$0.11/kWh.<sup>14</sup>) Importantly, the Commission has, thus far, missed an important opportunity to significantly reduce customer costs by directing procurement to occur before valuable federal tax credits expire. The Commission's hesitation in this regard fails to meet the statutory IRP directives to "minimize[e] impacts on ratepayer bills" and "promote the efficient achievement of state energy policy objectives."<sup>15</sup> The Commission should remedy this failure in its upcoming decision addressing a Petition for Modification of D.18-02-018 related to Diablo Canyon's closure and/or in the Preferred Resource Plan phase of the IRP proceeding late this year.
- **Planning.** In the IRP proceeding, the Commission adopted a greenhouse gas (GHG) Planning Price for DERs that is significantly higher than the GHG Planning Price for supply-side

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other goals. P.U. Code Section 366.2(a)(4) requires that the implementation of a community choice aggregation program "shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation."

<sup>12</sup> R.16-02-007, *Ruling Seeking Comment on the Proposed Reference System Plan and Related Commission Policy Actions* Ruling, Attachment A, PDF-page 202. (September 19, 2017.) The \$682 million figure is very conservative, as it is based only on higher installation costs and does not reflect net metering rates.

<sup>13</sup> CPUC, *2018 Padilla Report* (May 1, 2018). Available at: [http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About\\_Us/Organization/Divisions/Office\\_of\\_Governmental\\_Affairs/Legislation/2018/MASTER%202018%20PADILLA%20REPORT\\_FINAL.pdf](http://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/Office_of_Governmental_Affairs/Legislation/2018/MASTER%202018%20PADILLA%20REPORT_FINAL.pdf).

<sup>14</sup> *Lazard's Levelized Cost of Energy Analysis – Version 11.0*, p. 2 (unsubsidized; costs are lower with U.S. federal tax subsidies, p. 4). The range reflects most of the utility-scale renewable energy technology options in the Lazard analysis, including solar PV, geothermal, biomass direct and wind.

<sup>15</sup> P.U. Code Sections 454.52(a) and 454.51(d), respectively.

resource planning in LSE IRPs. This creates a bias, unrelated to a resource's ability to mitigate GHG emissions, that threatens to raise customer rates and bills.

The Integrated Distributed Energy Resources (IDER) proceeding is addressing the costs and benefits of DERs for planning purposes. While it is entirely appropriate for the unique benefits of DERs, such as locational benefits, to be considered in this proceeding, the Amended Staff Proposal presently under consideration proposes to apply societal values to DERs without applying those same values to utility-scale renewables which produce the same GHG and air quality benefits at a much lower cost. This is contrary to the IRP statute and will raise customer costs. The Commission should reject this proposal and, instead, compare resources on a consistent basis as part of the IRP process so that the state achieves its various goals at least cost. Without a course correction in this proceeding, the IDER decision could lead to decisions in various other DER proceedings that promote high-cost resources that are simply not justified in comparison to utility-scale resource options.

### **C. The Draft Green Book Ignores the Risks Associated with Load Migration to the Achievement of Future RPS and GHG Goals.**

The draft Green Book obscures the importance of the RPS program in the achievement of the state's clean energy goals to date and in driving down renewable energy costs through competition among utility-scale generators; meanwhile, it over-emphasizes the contribution of DERs without mentioning the higher cost of these resources.<sup>16</sup> Given the importance of the RPS in meeting the state's climate goals at an affordable cost, the paper does not properly address the risks associated with CCAs taking on the responsibility of achieving future RPS goals which, in turn, support the state's GHG-reduction goals. Nor does it discuss measures that could ameliorate these risks.

The draft Green Book misleadingly asserts that "the IOUs are forecasted to meet their 50% RPS target by 2020, which is ten years ahead of schedule,"<sup>17</sup> suggesting that we are coasting comfortably toward achieving the 50% requirement. The assertion fails to recognize that the utilities may hit 50% only because they are rapidly losing load to CCAs.<sup>18</sup> The suggested progress is an illusion.

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<sup>16</sup> This is particularly true in the front section, see p. 4, and on pp. 10-13. For example, in noting that "large and small renewable power plant developers now produce more than 20,000 megawatts (MW) of renewable generation in the state," no mention is made of the fact that most of this capacity is utility-scale generation developed either under the RPS policy or subsidiary programs such as ReMAT or under earlier policies now supported by RPS contracts. The capacity figure also ignores out-of-state utility-scale generation serving California. Moreover, wholesale renewable energy generation accounts for most of state's renewable energy supply as compared to generation from behind-the-meter DER facilities. The draft Green Book does not – but should -- discuss the relative average cost of renewables under the various wholesale and distributed energy programs.

<sup>17</sup> *Ibid.*

<sup>18</sup> That is, the denominator of the fraction that produces the 50% figure has plummeted.

Meanwhile, the paper ignores concerns surrounding achievement of the 33% or 50% RPS goals because “operational CCAs are projected to meet or exceed RPS procurement obligations through 2020” (emphasis added).<sup>19</sup> A main concern with CCAs presently is that they do not possess the same level of creditworthiness as the utilities and there is uncertainty surrounding when and whether recently formed CCAs will obtain creditworthiness.<sup>20</sup> A lack of creditworthiness impedes financing of capital-intensive renewable energy facilities. Further, and related, there is no mention in the draft Green Book of the fact that the CCAs’ RPS compliance has, to date, relied heavily on short-term purchases of existing out-of-state resources and on the front-end of new projects built under long-term utility contracts.<sup>21</sup> In stark contrast, starting in 2021, LSEs will be required to procure 65% of their RPS resources under long-term contracts. In adopting this requirement, the Legislature appropriately recognized that long-term contracts will be required to truly make a difference in decarbonization (i.e., result in “additionality”) because they foster new renewable energy projects and major capital investments to maintain existing ones. Finally, the draft Green Book’s Table 2 curiously shows that the “Annual RPS Positions” (% of portfolio that is RPS compliant) of all but one operational CCA is forecasted to fall significantly between 2017 and 2018, with many falling well below the 2020 RPS goal of 33%.

By our estimation, on the order of 9 GW of new utility-scale renewables must be on line by 2024 for the state to achieve its 40% RPS target in that year. (This figure will be affected by the use of banked renewable energy credits, distributed energy resources and whether about 1,500 MW of existing in-state renewable energy resources not presently under long-term contract continue to operate.<sup>22,23</sup>) These resources provide diversity that supports grid reliability; they also support local communities and provide important public and decarbonization benefits apart from the electric system. While some or all CCAs may well ultimately develop the financial strength necessary to shoulder – and even exceed – the state’s ambitious climate change goals, it is not clear to the Renewable Energy Parties that all, or even most, of the CCAs scheduled to become operational over

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<sup>19</sup> Green Book, p. 10.

<sup>20</sup> Only one CCA, eight-year-old MCE, has achieved a credit rating, having been awarded a Baa2 rating from Moody’s a few weeks ago. Moody’s notes that, among other factors, having to pay higher “transition fees” (i.e., an increase in the PCIA) could lead to a credit downgrade. See *California Energy Markets*, “Marin Clean Energy Assigned Moody’s Credit Rating,” p. 10. (May 18, 2018.)

<sup>21</sup> While several CCAs have recently signed a number of contracts with renewable energy developers, the reality is that Lancaster Choice Energy and Sonoma Clean Power obtained no energy from renewable energy projects constructed to meet their demand in their first two and three years of operation, respectively, and MCE obtained approximately five percent or less of its energy from renewable energy projects constructed to meet its demand in its fourth, fifth and six years of operation. See “Correction to Comments of Sempra Services in Response to Questions Regarding Customer Choice Workshop” (January 8, 2018).

<sup>22</sup> Many (if not most) 1970s and ’80s-vintage resources – including biomass, geothermal, small hydro and wind resources – are faltering. The 1,500-MW figure was calculated based on expired contracts in the CPUC’s database “RPS Executed Projects: Public Data,” available at: [http://www.cpuc.ca.gov/RPS\\_Reports\\_Data/](http://www.cpuc.ca.gov/RPS_Reports_Data/).

<sup>23</sup> Below, we request that the CPUC assess the need for new resources to meet RPS requirements and the ability of all LSEs to meet this need.

the next few years will establish sufficient creditworthiness in time to support the near-term long-term contracting necessary to support new renewables development. Moreover, a stable and sustained market in long-term contracts is necessary to keep existing resources operational in the face of exceedingly low wholesale market prices.

The final version of the Green Book should recognize the possibility – whether slight or substantial – that some CCAs will not be able to shoulder their share of the RPS mandate. The Renewable Energy Parties believe that addressing this risk requires the CPUC to do more than point to projected 2020 RPS compliance by the few, more-established CCAs. Rather, the Commission should undertake a comprehensive analysis of each LSE's portfolio and the likelihood of timely compliance with RPS and GHG requirements, and to develop forecasts reflecting the risk that 2020 and later RPS requirements, including long-term contracting requirements, will not be met. Given the multi-year development timeframes for utility-scale renewables, the fact that we are a mere 2.5 years away from the 65% long-term contracting requirement is cause for immediate action. The Commission must not depend on unsubstantiated declarations that CCAs and ESPs will comply with requirements. It must instead develop a backstop plan to ensure that the state's goals will be achieved, with a trigger point in the near term.

There are numerous possible options for such a backstop plan. TURN has outlined three of them:

- all LSEs could coordinate on joint procurement via a master long-term contract with proportional offtake obligations for each LSE;
- each IOU could procure on behalf of all LSEs in their service territory with net costs and benefits fully allocated to all customers; or
- a state agency or CPUC-regulated third-party procurement entity could enter into long-term contracts with all costs and benefits fully allocated to customers of all LSEs.<sup>24</sup>

The final Green Paper should tee up this issue for a decision as part of the Commission's adoption, in the IRP proceeding, of the "Preferred System Plan" early next year.

### **III. CONCLUSION**

Given the ample authority that the Commission possesses to address the concerns in the draft Green Book, the Renewable Energy Parties respectfully recommend that the Commission focus on the open proceedings before it to ensure that the state's decarbonization goals are met cost-effectively while maintaining system reliability. If the Commission believes that it needs more authority, it should make specific recommendations to the Legislature. Importantly, as discussed above, this will require near-term action to ensure that the state's fast-approaching RPS goals are met.

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<sup>24</sup> R.16.02-007, TURN Comments on Energy Division Staff Proposal for Implementing Integrated Resource Planning, p. 19 (June 28, 2017). The proposals were made in the context of developing large new, system-level resources required to achieve an optimal portfolio, but they are appropriate to consider in this context as well.



Respectfully,



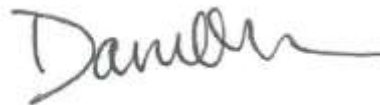
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