Comments of Local Power
FILED
on ORDER INSTITUTING RULEMAKING
CA PUBLIC UTILITIES COMMISSION
TO IMPLEMENT PORTIONS OF AB117
OCTOBER 2, 2003
CONCERNING COMMUNITY CHOICE AGGREGATION

RULEMAKING 03-10-003

COMMENTS OF LOCAL POWER ON "ORDER INSTITUTING RULEMAKING TO IMPLEMENT PORTIONS OF AB117 CONCERNING COMMUNITY CHOICE AGGREGATION" MAILED OCTOBER 7, 2003

by
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October 21, 2003

Re: Community Choice Proceeding OIR 0310003: Comments of Paul Fenn and Announcement of Intention to Intervene on Behalf of Small Ratepayers, Local Economies, Public Health and the Environment.

Judge Malcolm, Chairman Peevey, members of the California Public Utilities Commission ("Commission") and service list participants:

As original author of California's Community Choice law (Chapter 838, formerly AB117 of 2002, AB9xx & AB48x of 2001, Migden; and Leg Council bill 28934 of 2000, Keeley) I am very pleased to see the Commission take up the state's new Community Choice Aggregation law, and submit these comments on both the OIR and AB117 according to the Commission's posted October 21, 2003 deadline.

As co-author of the nation's original 1993 Community Choice bill (Senate 447, Montigny, became Sec 247, Chapter 164 of 1997), and a technical advisor also to Ohio and New Jersey public officials in drafting their Community Choice laws (Ohio 1999,

New Jersey 2003) under a project funded the Sustainable Communities program of the Surdna Foundation from 1995 to 1999, I have unique knowledge and familiarity with the policy you are now considering. For the past year I have offered cities technical assistance to California municipalities, counties and joint powers agencies in implementing AB117, the most notable of which is the Board of Supervisors of the City and County of San Francisco, and have further expanded the Community Choice business model to include not only bulk power but also renewable energy, conservation and energy efficiency service components. In this capacity I have participated as an advisor on ABB117 for Women's Energy Matters, intervenor in the Commission's ongoing energy efficienecy public benefits charge funds proceeding, R.01-08-028.

On the implementation side I authored San Francisco's 2001 Solar H Bond Authority, Prop H, as part of a proposal to implement Community Choice Aggregation of a solar photovoltaic network network, announced with San Francisco Supervisor and now mayoral candidate Tom Ammiano in May, 2001. With AB117 now law as Chapter 838 and the H Bond Authority approved by voters as part of the City Charter (Section 9.107.8) we are now presenting an implementation ordinance to the Board of Supervisors that will deliver to the Commission both a statement of intent and an implementaion plan pursuant to 366.2(c)(5) and (6) of the Public Utilities Code, requesting certification and an exit fee assignment from the Commission in a timely manner consistent with Section 366.2(c)(7) of the Public Utilities Code. We are seeking to start switching customers over in Spring, 2005 and ask that the Commission prepare to receive ordinances to the same effect in coming months.

Pursuant to Section 366.2(c)(6) of the Public Utilities Code, the commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating Community Choice Aggregation has been filed, within 10 days of the filing. 80 days later the Commission is required to certify receipt of the implementation plan and to assign an exit fee to the Community Choice Aggregator, consistent with Section 366.2(c)(7). We ask that the judge consider this as work performed during the 90-day period unless there is some reason they cannot decide an exit fee mechanism during that period.

Though often critical of the Commission's decisions in both the procurement proceeding and the energy efficiency funds proceedings, I am glad that the Commission has a purpose of "developing the rules required as a precondition to authoritizing community choice aggregation," (p.5) and hope that the Commission will provide substantial and support for the timely implementation of Community Choice Aggregation. I ask you to recognize a major opportunity both to make California's market work for the first time, and also to recognize the even more important opportunity for California to take a truly bold and innovative leap into the solar hydrogen (and load control technologies) future using the superior fire power, contract stability, and lower transaction costs, as well as the integration opportunity for distributed generation and load control technologies that Community Choice Aggregation can finance.

With a competitive system that allows plug-and-play applications for zero emission

energy technologies embedded in longer power-supply contracts to allow life-cycle financing, Local Power is providing a template for communities to deliver not merely RPS compliance (and I also agree that CCA's must comply with the RPS law) but a new kind of electricity based on regionalism: and a new competitive market to provide the services. Just as the creation of regional wireless markets - and the tenders and auctions that followed - spawned the wireless technology revolution, so will the regionalizing nature of Community Choice Aggregation open the long-awaited door to distributed generation - in an informed and orderly manner that involves singnificant cooperation and planning with Pacific Gas & Electric Corp., Edison and Sempra as wires companies and providers of last resort. It is not a takeover, but it is a major change - for the better.

Besides, we already had a *de facto* core/noncore systemk under AB1890 because after only three months all the suppliers pulled out of the retail customer market saying the marketing costs of acquiring individual small customers was too high. Given that during the 1998-2000 period of Direct Access no one but the very largest commercial, industrial and government entities, most of them also buying in groups, were ever served, instituting a Core/Non-core system will only repeat the same lousy outcome, except that it will also drive up the rates for the vast majority of customers, who happen to be small. That is a net loss.

The Commission should take a middle path between the core/non-core proposal of Governor-elect Schwarzenegger and the re-monopolization policy of Governor Davis, who placed so much hope in restoring the state's monopolies. These are both the kinds of policies that make the voters angry. A middle path is better than either deregulation or reregulation. Community Choice Aggregation is the key to economic bypass for businesses as well as residents alike. Efficiencies are created not only by purchasing together, but by load balancing and systems integration. With local and regional Community Choice aggregations we add further *new additional* efficiencies - fewer control areas to cross being one example, among many: solar photovoltaic real-time peak-shaving *a la* San Francisco being another.

We have already seen what core/non-core "deregulation" achieves: a cynical policy that liquidates the common energy purchasing pool upon which the electric industry was built (and would otherwise remain), separating large customers from small in the name of cheaper power for the large. It is corporate welfare inmuch the same way that re-regulation is a different kind of corporate welfare. Core/Noncore will only ghettoize the small consumers who are 85% of customers but purchase 15% of the power, while allowing the 15% who purchase 85% of the power in a market that has already been tried and failed. That was Direct Access.

It is critical that this Commission recognize that the market manipulation of 2000-1 was caused in a chain reaction when the competitive retail market failed just a new months after it opened in 1998. Enron said it is not worth the marketing costs to find small customers, and the rest of the competitive suppliers agreed. But the state leadership, lost in its own rhetoric, acted as if nothing was amiss; when it was pointed out that less than 5% of ratepayers were participating in the new market a year after it opened, CPUC

lawyers pooh poohed "consumer choice" and revised history by calling the spot markets "the market." This denial quietly pushed 95% of the world's fifth largest economic into spot market power, a predictably collusion-prone, overcentralized environment.that set the stage for collusion the same way a ghetto sets it for petty crime.

Local Power wishes to answer Judge Malcolm's request for opinions on treating this as a rate case, but it is not entirely clear on what the implications are of treating this is a rate case, as Chapter 838 says nothing about a rate case. It would be a narrow construction of 0310003 to say that the Commission is setting rates when in fact it is specifically *not* setting rates. Instead, as the OIR observes, " AB 117 appears to make the CCA responsible for ratemaking, customer rights and obligations, customer protection, universal access, reliability, and equitable treatment of all customer classes." As the OIR observes, "AB117 does not define any role for the Commission in creating a CCA or authorizing its activities." (p.4) but merely creating policies to facilitate the transactions and ensure state policy goals in addition to ensurikng that public goods charge funds are cost-effectively spent whether by CCAs, or those who serve them.

Among its primary roles assigned by AB117, the Commission must assign an exit fee to a Community Choice Aggregation before the ordinanace awards contract to the new ESP. Secondarily, the Commission must assign public goods charge funds to an aggregation; though this is not specified in AB117 it is implied by the requirement in Section 381.1 of the Public Utilities Code that requires any administrator of the energy efficiency funds to serve local needs of a Community Choice Aggregator if for some reason it is not chosen to adminsiter the fund. In order to have effective competitive solicitations to ESPs, Community Choice Aggregators need to know what subsidies and surcharges/exit fees are going to be attached to any given implementation plan. This will be largely the result of resource decisions, as bulk power transactions will have a nonbypassable exit fee whereas under existing Commission solar exit fee regulations certain forms of new renewable energy development, energy efficiency and conservation are exempted from paying the per kilowatt hour exit fees. In addition, CPUC funds for large scale renewables, some CEC funds, and federal subsidies must be positively identified to know how any given bidder's bid compares to PG&E, Edison or Sempra.

Most importantly at first, the Commission must decide what consitutes "APPROPRIATE BILLING DATA" under the definition in the ordinance. The statute specifies that "APPROPRIATE" includes data to establish patterns of usage : this is the basic standard of data that we need to design and install energy efficiency, solar photovoltaic, conservation, storage, and load management systems that have measurable load reductions at the interval meter and substation level. Community Choice is not just purchasing bulk power contracts off the grid: as Section 381.1 establishes that Community Choice Aggregators may apply to administer energy efficiency programs. The point is for a city council, county board of supervisors or joint powers authority to be able to compare an ESP's bid to PG&E's existing service - including multiple service components - and decide whether to pass the ordinance switching participants to the new Electric Service Provider. A first step from the Commisison would be to request a list of all utility billing and load data fields in possession of the utilities, make a copy of it and

prepare to make it available to Community Choice Aggregators: an action that could be undertaken as a load data audit to ensure that secure and anonymous use of essential microgrid load data to allow for targetting peak loads in a real time environment. With no distribution-only metering tariff in place and net metering capped at 1% of a utility's peak load, peak shaving under real time metering will be the safest and most rational use of solar and other load management systems in a Community Choice package. This kind of creativity is what Community Choice offers that no utility has ever offered.

The Commission should reject Governor Davis' quiet policy of rebuilding Pacific Gas & Electric, Southern California Edison, and Sempra into the monopolies they once were, by asking the Commission to approve new long-term procurement plan contracts (and exit fees?) by the bankrupt and bailed out utilities - and through the "re-regulation" bill. Putting ratepayers on the hook after what has happened is really no better than the core/noncore system being proposed, and we paid $50 billion for this. "Reregulation would be the ultimate betrayal of the public, residents and businesses that have already paid the monopolies dearly in many $ billions for forfeitting their monopoly status, the "grand bargain" of AB1890 of 1996. When Governor Davis signed Assembly Bill 57 on the same day he signed AB117, he placed the Commission in the position to commit the hostile act of re-instituting *de facto* monopoly by putting every California resident and business *back* on the hook for utility power contracts throughout California. If approved, AB57 contracts will prove the ultimate political scandal of scandals in the annals of California's energy crisis. With many of these utility contracts being with new natural gas burning plants, and both Alan Greenspan and Spencer Abraham predicting a dramatic natural gas hike in 2004-5 - PG&E already promising a 30% gas hike for its gas customers - the Governor's path of approving new long-term utility contracts would amount to the bailout of all bailouts with the benefit of foresight atttached. Not that it hasn't been done before but there has been a recall after all.

I call upon you to stop this madness and take a positive new direction that joins consumers rather than ghettoizing them, makes them invest in exciting new innovation and sustainability, and gets California on a truly positive and leading policy direction.

The peculiar innovation of Community Choice is separating control from ownership. Community Choice does not require acquisition of utility wires, nor ownership of any generation assets, nor even title to power contracts; it is a risk-minimizing instrument compared to public power, which operates as a wholesaler in addition to investing in power plants and wires. The OIR errs early on in characterizing AB117 as "permitting cities and counties to *purchase and sell electricity* on behalf of utility customers in their jurisdictions" (I., Summary, CPUC 0310003) as this misleads people into calling CCA a Power Wholesaler. This is incorrect. Community Choice Aggregators are not wholesalers except perhaps in extrarodinary circumstances. In Ohio, where Community Choice now constitutes 93% of the competitive market, or in Massachusetts, this assumption of risk is shouldered by the practice of requiring the Electric Service Provider to provide insurance to cover the cost of returninging aggregated customers involuntarily to the investor-owned utility: a practice provided for in Section 394.25(e) of the Public Utilities Code. While law does not forbid the purchase and sale of electricity, it does not require this

method, and no Community Choice Aggregator in the nation has every chosen the risker wholesaler option, formerly known as "Community Access." Under Community Choice the distributed generation facilities are designed, built operated and maintained under the ESP's insured rates.

So you have this last opportunity to make the competitive system work through a local public process: it has a dramatic record of clean power success after just a few years, and truly a phenomenal proposal by a Democratic Supervisor in San Francisco to take green energy development to the next level. Please recognize this. I urge you not to commit consumers to the poorly regulated holdings of what are now unregulated energy holding companies (PGE Corp, Edison Internatonal, Sempra) with affiliate companies in other states and countries. It will not do to declare PG&E a "local" company, when this "company" just got away with transferring many billions of dollars to its unregulated affiliate company, (National Energy Group) in Bethesda, Maryland - just before ringfencing it from regulated PG&E's assets, and after which the regulated company declared bankruptcy. I urge you to observe how dangerous a policy it would be not only to tolerate this kind of corporate behavior but to actually *reward* it with AB57 contracts that lock in their customers to captivity (non-economic bypass from additional "exit fees") *yet again*.

Given that California's Community Choice Aggregators will seek to switch customers in Spring 2005 and will be anywhere between two and fifteen years long, the Commission should not consider approval of contracts that would procure electricity on behalf of their aggregated ratepayers, whether in San Francisco or over sixty other communities statewide. AB57 cannot be interpreted to preempt AB117 . I think it is hard to justify the argument that the state needs to enter in to long term contracts for volatile gas-fired generation so that ratepayers can get a better deal! The Commission should not purchase in a manner that constrains competitive supply through ESPs; and which would also backfire with more natural gas -based electric rate shocks in 2005-6, just when San Francisco is ready to get out of this mess.

I am also here, therefore, with a degree of disapproval and alarm at the inconsistency of the Commission's recent and current policies, not only in relation to neglecting to leave Community Choice Aggregators adequate time to prepare energy efficiency funds applications pursuant to Section 381.1 of the Public Utilities Code in its ongoing 2004-5 solicitation, but particularly in relation to the Commission's other proceeding to put ratepayers *back* on the hook again for *new* monopoly power contracts (in ongoing utility procurement proceeding R..01-10-024).

With the Community Choice Rulemaking now in progress, it is critical that The Commission not approve procurement contracts that will impose any exit fees on ratepayers departing under Community Choice Aggregations. Some kind of triage is needed to not block the early adopters like San Francisco while preparing for the second wave a year or two later. Many California cities, counties and joint power agencies have passed resolutions declaring their intention of implementing CCA, and asking the Commission not to approve contracts that would impose exit fees on them for departing

as early as January 2005.

The Commission should not approve new utility long-term procurement aggrements with unregulated third parties in a manner that will impose any new exit fees on them. Chapter 838 is already law and the Commission is required to accommodate this law in all of its policies. It will not do to decide utility procurement separately from Community Choice Aggregation, because utility procurement directly harms Community Choice Aggregator's customers chances of departing. Rulemaking 01-10-024 is also subject to the requirements of AB117; just as energy efficiency funds should be rethought in terms of a regional system, so should utility procurement be redesigned to maximize availability of competitive supply rather than locking the wholesale market down in captive ratepayers when we have an opportunity to get some competition out of them.

I have said again and again in the Commission's various proceedings including the inter-agency action plan, that approving any contracts on behalf of San Francisco directly dilutes the pool of available competitive supply for Community Choice Aggregators (CCAs). This would violate the language of Section 366. (a) of the Public Utilities Code that "the commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers."

Part and parcel of "facilitating direct transactions for Community Choice Aggregations" is not approving contracts that will cause new exit fees for these cities, at a minimum. A revolving load departure schedule could be created under which San Francisco and others could depart starting January 2005, with the next phase departing a year later, and so one.

In terms of defining general terms, a CCA,which is a local democracy representing ratepayers, should NOT be treated as the same as ESP, which is a private, for-profit corporation. While the CCA aggregates, the ESP provides the comparable service to the utility, not the CCA. Because CCA's represent consumers rather than operating as suppliers, they are placed in a less conflicted position to invest in technolgies that reduce consumption of energy and thus reduce the profits of the suppliers. The CCA's decide what the community wants, the ESP bids to provide the service for a decade and then leave (or win the next bid). Before I called this policy "Community Choice" I called it "Community Electricity Franchising" because it resembles the municipal franchise. Because CCA's are governed by ordinance as per Section 366.2(c)(10) and (11) of the Public Utilities Code, a local public process subject to sunset ordinances and meeting laws rather than internal agency solicitations maximizes both public official accountability and maximizes the public education and participation benefit of public hearings to decide how much to invest in solar or energy efficiency. This is an integrated resource planning opportunity that the Commission should not miss. You must understand how important this is opportunity is: an opportunity of greater scope than core/non-core or re-regulation by FAR. Electricity as an industry is the single greatest public policy opportunity to stop climate change and other dramatic and public health and security benefits to humankind; and solving the energy crisis without selling it out complete is job number 1 on California's Energy Crisis. Do not miss this opportunity.

There are other matters I will raise at the workshop and prehearing conference. I look

forward to working with Judge Malcolm, Chairman Peevey and the members of the Commission in the coming years.

Respectfully,

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October 21, 2003

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