

VIA ELECTRONIC MAIL

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Suzanne.Casazza@cpuc.ca.gov**Subject: South San Joaquin Irrigation District's Response to President Picker's Request for Informal Comments on the Customer and Retail Choice En Banc and Energy Division Staff White Paper**

Dear Ms. Casazza:

South San Joaquin Irrigation District ("SSJID") submits these Informal Comments in response to Commission President Picker's June 1 Request for Informal Comments on the Customer and Retail Choice En Banc ("En Banc") and CPUC Staff White Paper titled "Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework" published May 9 ("White Paper"). SSJID appreciates this opportunity to comment and to remind the Commission that for over a century, municipalization has been, and remains, an attractive and viable option for communities to express their choice of retail electric providers.

No discussion of retail electric service options within California should ignore the service that California local publicly owned electric utilities ("POUs")¹ currently provide, and, as evidenced by SSJID's actions, that municipalization offers as an alternative to service from an investor-owned utility ("IOU"). Presently POUs serve approximately 25% of the electricity load in California. In addition, more than 70% of Californians receive some form of utility service (electricity, water, natural gas) from some form of municipal or regional utility. Inexplicably, the White Paper and En Banc Panelist Questions fail to recognize municipalization as a retail choice.

I. INTRODUCTION

SSJID is a "Special District," formed in 1909 pursuant to the Wright-Bridgford Act, the predecessor of the California Water Code, for the purpose of providing a reliable, economic

¹ Cal. Pub. Util. Code § 224.3 provides the statutory definition of "local publicly owned electric utility."

source of irrigation water for the cities of Escalon, Ripon and Manteca, and portions of unincorporated San Joaquin County. Electric consumers resident within the SSJID service territory are currently provided service by Pacific Gas and Electric Company (“PG&E”) and Modesto Irrigation District.

Special Districts in California are local units of government established by the residents of an area to provide a service not offered by a county or city. SSJID operates under the direction and control of its Board of Directors, the members of which are elected by, and ultimately answerable to, the voters in the District. SSJID currently provides irrigation services to approximately 3,100 customer accounts; sells at wholesale treated water to the cities of Tracy, Escalon, Manteca, and Lathrop; sells raw water to the City of Ripon; and through its ownership interests in hydroelectric generating facilities, is also engaged in the wholesale electric business.

SSJID is currently seeking to expand its utility service and provide retail electric service to the approximately 38,000 electric customers resident within its service territory who are currently being provided electric service by PG&E. In December 2014, SSJID obtained approval from the San Joaquin County Local Agency Formation Commission for a change of organization to provide retail electric service within its service territory. SSJID currently has pending in San Joaquin County Superior Court a proceeding seeking to condemn and acquire the electric facilities PG&E is using to serve these customers.² If successful in the condemnation action, SSJID intends to provide its retail electric customers rates at levels 15% lower than PG&E’s and offer electric service that is subject to local control enhanced transparency.

II. COMMENTS ON WHITE PAPER

The White Paper acknowledges that California policymakers have relied on the State’s 34 POU’s “as enablers of a number of key public policy initiatives, ranging from the procurement of renewable energy to providing low-income Californians with subsidized electricity.”³ Nonetheless, as emphasized above, the En Banc and White Paper are nearly silent on the important role POU’s have served historically, and should be expected to continue to serve, as an alternative to service by an IOU. Municipalization remains a powerful expression of a community’s collective decision to transition from an IOU to public power with regard to both the procurement and distribution functions.

The White Paper focuses almost exclusively on community choice aggregation (“CCA”). CCAs also represent an important alternative to IOU service, but importantly they perform only the procurement function, retaining for the IOU the distribution or “wires” responsibility. Thus,

² San Joaquin County Superior Court Case No. STK-CV-UED-2016-0006638 filed July 7, 2016 by South San Joaquin Irrigation District against Pacific Gas and Electric Company.

³ White Paper at 4.

the White Paper should have included the POU or municipalization alternative in its assessment of the various issues relating to customer retail choice.

The White Paper's primary focus is on six areas: i) resource planning; ii) ensuring reliability; iii) ensuring all customers pay their fair share; iv) ensuring universal access; (v) rate design; and (vi) consumer protection. The POU retail alternative replicates the benefits the White Paper attributes solely to ESPs, CCAs, and distributed generation. In particular, the POU retail alternative similarly preserves the local autonomy, added flexibility, and innovation associated with local laboratory concepts that make these newer services models attractive to many constituencies. The White Paper itself acknowledges that POUs typically have the flexibility to experiment with innovative rate design, new electric services, and pilots that will advance the State's RPS, GHG reduction, and other energy policies and goals.

Not only does municipalization offer the same benefits as the retail alternative the White Paper assesses, the POU retail alternative is also, importantly, subject to the same forms of regulatory requirements to which IOUs, CCAs, and ESPs are subject.

First, with respect to best ensuring customers of POUs reliable and cost-effective procurement, Public Utilities Code Section 9621⁴ imposes upon POUs an Integrated Resource Plan ("IRP") requirement demanding the same resource planning and reliability requirements that Public Utilities Code Section 454.52⁵ requires of IOUs, CCAs, and ESPs.⁶

The entity ensuring compliance with the IRP requirements is different for POUs as the IRPs for POUs are developed and approved by their respective governing boards and verified by the California Energy Commission ("CEC").⁷ In contrast, the IOUs and other retailers of electricity are to have their IRPs reviewed by this Commission. However, the substantive requirements are essentially the same.

Second, with respect to best ensuring that POUs meet the state's renewable goals, POUs must adopt renewable procurement plans that meet virtually the same RPS requirements as IOUs, CCAs, and ESPs.⁸ Additionally, POUs are subject to long-term RPS contracting requirements mandated by Public Utilities Code Section 399.13. Similar to IOUs, POUs are subject to a 10-year limitation on excess procurement.⁹ Furthermore, Public Utilities Code

⁴ Cal. Pub. Util. Code § 9621 requires POUs with an annual electric demand exceeding 700 gigawatthours to adopt an IRP by January 1, 2019, and update that plan at least once every five years. Many of the requirements in Section 9621 are parallel to the requirements of Section 454.52, and Section 9621 expressly cross references Section 454.52(a)(1)(D)-(H).

⁵ Cal. Pub. Util. Code § 454.52.

⁶ Compare Cal. Pub. Util. Code §§ 454.52(a)(1) and 9621(b).

⁷ Cal. Pub. Util. Code § 9621(b); Cal. Pub. Util. Code § 9622.

⁸ Compare Public Utilities Code Sections 399.30(c) and 399.11.

⁹ See Cal. Pub. Util. Code § 399.30(c)(3); see also Cal. Pub. Util. Code § 399.30(d)(1).

399.30(o) invests the CEC with the authority to enforce the provisions of renewable energy resources procurement plans adopted and implemented by POUs.

Third, the Legislature has imposed Resource Adequacy (“RA”) obligations on POUs akin to those it imposes on IOUs. Public Utilities Code Section 9620 directs POU to prudently plan for resource adequacy,¹⁰ a planning responsibility which is the functional equivalent of the Public Utilities Code Section 380 resource adequacy requirements imposed on IOUs. Similar to the manner the CPUC is required to adopt resource adequacy requirements for IOUs, governing boards are directed to adopt the planning reserve margins for their respective POUs.¹¹

Fourth, POUs are also similar to IOUs by serving the imperative function as the Provider of Last Resort (“POLR”), imposing on POUs the additional responsibility to ensure universal access and protect its consumers.

Accordingly, the POU structure has all of the benefits of innovation and flexibility attributed to ESPs, CCAs and distributed generation as well as all of the assurances of universal access, consumer protection, and regulatory oversight requirements associated with IOUs.

I. COMMENTS ON EN BANC PANELIST QUESTIONS

A. Panel Discussion: What Customers Want

- A. In this ‘future’ retail electric system, how do you see the role for the regulated utility evolving and what role do consumers’ choices play in achieving broad public policy goals?*
- B. As technology and customer engagement evolves, what regulatory models do you believe are best suited to allow customers to make the choices they want while ensuring that all necessary investments are made to achieve California’s environmental and reliability goals? Do you think that the CPUC should react to it over time, or attempt to shape its direction (and conditions)?*
- C. Should residential customers have access to alternative retail suppliers other than CCAs? If so, describe the types of choices you want to have?*
- D. One concern about expanding consumer choice is safeguarding consumer from bad actors, what consumer protections need to be in place going forward? Are there any specific conditions, beyond essential consumer protections, that should be imposed on non-Utility load serving entities that want to serve the residential market? Should consumer protections be limited to for-profit entities and not CCAs? Should the regulated utilities always be available as a provider of last resort?*

¹⁰ Effective in 2006, Assembly Bill 380 added Sections 380 and 9620 to the California Public Utilities Code to apply to IOUs and POUs, respectively.

¹¹ See, e.g. Cal. Pub. Util. Code § 9620.

For the reasons stressed previously, residential customers within California have had for over a century a retail service alternative, besides CCAs, to the IOUs. The above questions mistakenly ignore the existence of POU, focusing instead purely on the differences associated with IOUs on the one hand, and ESPs, CCAs, and distributed generation on the other. For instance, in response to subpart (D.) the POU serves as the exclusive POLR within its service territory; an IOU has no legal right or obligation nor physical capability to be available as the POLR for the POU customer

As stressed previously, service from a POU through municipalization has been and remains a proven, attractive and viable option that warrants assessment in any policy discussion regarding consumer options and electric retail choice. Providing guidelines and rules offering consumers the necessary level playing field to choose municipalization should be part of this discussion.

The POU retail alternative enables a community, including and especially residential customers, to opt for a non-IOU distribution company that can focus on the particulars of its geography, climate, and industries, and need not be concerned with achieving some balance among its disparate customer groups as must an IOU serving over 10 million people across essentially all of Northern California. For example, SSJID might focus on more innovations in the agricultural sector and for agricultural customers as a means to meet the State's broad policy goals. SSJID's intended municipalization will also enable it to provide greater focus on economic development-related and electricity access issues than PG&E has been able to provide for the approximately 40,000 customers PG&E currently serves in SSJID's intended service territory.

POUs that are locally controlled and locally accountable are also in the best position to ensure that as technology and customer engagement evolves, customers are in control of their destinies. POU retain some of the same central planning functions associated with the big IOUs that ensure the necessary investments in adequate infrastructure to achieve California's environmental and reliability goals, but given their smaller size and more local focus are able to react more quickly and stay more focused on their constituents' needs in ways more broadly than even CCAs that can only focus on procurement.

The White Paper and En Banc should have included the POU retail alternative in its assessment of issues relating to customer retail choice.

B. Panel Discussion: State of Customer Choice in California

- A. *Having heard from the customer panel, what value or services does your company/organization offer customers that is distinct from the distribution utility? Are there specific innovations in tariffs or services that you are better equipped to provide than the traditional utilities?*

- B. As retail choice grows, whether through the growth in CCA programs, customer adoption of DERs, or reinstatement of full direct access, what do you see as the role for the regulated utility and where do you see your company/organization competing and cooperating with the utility?*
- C. As competition evolves and as competitive suppliers and technologies presumably supply greater shares of customers' electric energy needs, what regulatory models do you believe are best suited to promote competition while ensuring that all necessary investments are made to achieve California's environmental goals while maintaining reliability? Why?*
- D. What are important authorities that the CPUC should maintain or gain in the future to regulate the supply and resource adequacy portfolios as heavily for non-IOU suppliers as it does for IOUs? Should all retail sellers be required to procure long-term system and local capacity, or should the utilities continue to bear this responsibility? Are there other types of investments that should be made by the utilities or the ISO rather than by competitive suppliers representing many distributed decision makers?*
- E. Should the cap on retail choice be lifted? If so, for all customers or only for non-residential customers? Without any limits whatsoever? Should retail choice be available to residential customers in CCA territories? Who should bear the provider of last resort in any particular area?*
- F. Does the utility business model need to change fundamentally to accommodate greater choice? If so, in what ways? For example, should the utilities eventually become pure distribution providers with no retail function?*
- G. What role do you see yourselves as competitive suppliers playing in the provision of service to low-income and hard to serve customers? How do we ensure that these customers receive the same level and cost of service as higher income and easier to reach customers?*

Again, these questions fail to recognize the POU structure as a retail choice alternative to continued service to a community by an IOU. The questions also err by being framed exclusively as a comparison between service by regulated and unregulated facilities. POUs are, of course, regulated entities, regulated by their respective governing boards and the CEC. POUs are also directly accountable to their customers through the vote.

As described above, the RA obligations of POUs are analogous to those imposed on IOUs. Public Utilities Code Section 2836 further demonstrates the analogous characteristics of the RA obligations Sections 380 and 9260 impose. It provides that an energy storage system may be used to meet the resource adequacy requirements established by a POU pursuant to Section 9620¹² and the resource adequacy requirements established for a CPUC-jurisdictional load-serving entity pursuant to Section 380.¹³

¹² Cal. Pub. Util. Code § 2836.4(b).

¹³ Cal. Pub. Util. Code § 2836.4(a).

Furthermore, the Section 9620 “prudence” requirement obligates the local regulatory authority of each POU to proactively implement a formalized resource adequacy plan incorporating principles of risk management and other procurement policies. Accordingly POUs have adopted formal procurement plans and resource adequacy plans through city council and board resolutions.¹⁴

In terms of reporting requirements, Section 9620 requires each POU to provide to the CEC any information that the CEC determines is necessary to enable it to evaluate the POU’s progress in meeting the requirements of Section 9620(e).¹⁵

In all accounts, POUs are subject to regulatory oversight enabling the POU structure to continue to serve as a valid retail choice alternate to IOUs that should not be disregarded.

C. Panel Discussion: Investor-Owned Utility Perspective on Current State of Retail Electricity Market and Coming Changes

- A. *In this ‘future’ retail electric system, how do you see the role for the regulated utility evolving and what, if any, functions should be preserved for the regulated utility support achieving State policy goals? Do you see some form or another of retail “choice” as inevitable, in part as a result of technology changes like DERs? If so, do you prefer to see public policy (including policies adopted by the CPUC) react to it or drive it?*
- B. *What regulatory models do you believe are best suited to promote competition while overseeing distribution utilities as their roles change? Should the CPUC have the clear authority to regulate the supply and resource adequacy portfolios as heavily for non-IOU suppliers as it does for IOUs? Are there other types of investments that should be made by the utilities (or the ISO) rather than by competitive suppliers representing many distributed decision makers?*

SSJID has no comments in response to these questions at this time.

¹⁴ See, e.g. Appendix B-1-B-3, Selected Resource Adequacy Narratives of California Energy Commission Progress Report on Resource Adequacy Among Publicly Owned Load-Serving Entities in California (May 2008), available at <http://www.energy.ca.gov/2007publications/CEC-200-2007-016/CEC-200-2007-016-SF.PDF>.

¹⁵ Cal. Pub. Util. Code § 9620(e) states that “The Energy Commission shall report to the Legislature, to be included in each integrated energy policy report prepared pursuant to Section 25302 of the Public Resources Code, regarding the progress made by each local publicly owned electric utility serving end-use customers in meeting the requirements of this section.”

D. “Big Think Presentation” on the Future of Retail Electricity Service

- A. *Are there any urgent steps that the CPUC, the CEC and/or CAISO need to take over next 12-18 months to begin changing the role of the utility and the structure of regulation?*
- B. *Two kinds of customer choice are accelerating: customer-sited DERs and retail choice (either through CCAs and/or through other customer-driven processes). Do you see this as inevitable, or not? Do you think that the CPUC should react to it and/or adopt policy changes to shape it, or some of both?*
- C. *What entity should have final responsibility for ensuring California meets its 2030 clean energy and climate goals?*
- D. *What changes do each of these trends require of the distribution utilities and the regulatory framework? What are implications for resource procurement, long-term reliability and renewable integration particularly in view of the state’s aggressive climate goals? What changes, if any, in the way utilities earn their profits are necessitated by the growth in these kinds of departing loads?*
- E. *Are the current CPUC and CAISO market rules adequate to ensure that non-utility retail sellers contribute a fair share to renewable integration and long-term reliability needs?*
- F. *How do you see the role for the regulated utility evolving and what, if any, what functions should be preserved for the regulated utility support achieving State policy goals?*
- G. *What key lessons learned from California’s past and other restructuring efforts (CA Gas De-regulation, NY, HI, TX, UK) are particularly relevant as California plots the course forward?*

First, governing boards of POUs can and should have significant responsibility for ensuring California meets its 2030 clean energy and climate goals, while serving as mini-laboratories for the State. Giving these governing boards such responsibility is appropriate given that Article XI, Section 7 of the California Constitution specifically tasks POUs with the authority to make and enforce ordinances and regulations. Furthermore, Article XI, Section 9 invests POUs with the general authority to establish public works and provide for their operation and regulation.

Enabling POU governing boards to have this important responsibility for ensuring California’s clean energy and climate goals also provides communities choosing the POU retail alternative easy access to participate in the POU decision-making process. POUs are fundamentally different from IOUs as they are non-profit, governmental agencies and subject to the open meeting requirements of the Brown Act.¹⁶ The CEC serves and would continue to serve as a successful regulatory backstop to ensuring those clean energy and climate goals are met pursuant to Section 399.30.¹⁷

¹⁶ Cal. Gov. Code §§ 54950-54963.

¹⁷ Cal. Pub. Util. Code § 399.30(0) provides that the CEC must “adopt regulations specifying procedures for enforcement of this article.” This authority is clarified by Section 399.30(p)(1): “Upon a determination

Second, with regard to the adequacy of current Market Rules, the CAISO market design proposals respect the jurisdiction of both the CPUC and applicable “Local Regulatory Authorities” (for POU, the local governing boards and City councils) to establish the overall planning reserve margins applicable to their jurisdictional entities.¹⁸ Further, CAISO market rules have ensured that POU have traditionally contributed their fair share to renewable integration and long-term reliability needs.¹⁹ Accordingly, the current Market Rules are adequate to ensure that POU contribute their fair share to renewable integration and long-term reliability.

III. CONCLUSION

Thank you very much for the opportunity to comment. We would be happy to supply any other supporting or clarifying information that would be helpful.

Sincerely,

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/s/

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by the Energy Commission that a local publicly owned electric utility has failed to comply with this article”

¹⁸ See CAISO MRTU Tariff at Section 40.2.2.1., available at http://www.caiso.com/Documents/Section40_ResourceAdequacyDemonstrationForAllSCsInTheCAISOBAA_asof_Mar10_2017.pdf

¹⁹ For example, CAISO Tariff Sections 40.2.2 and 40.10.5.1 requires that all load serving entities including POU submit monthly and annual plans demonstrating sufficient Resource Adequacy and Flexible Resource Adequacy Capacity procurement, available at: http://www.caiso.com/Documents/Section40_ResourceAdequacyDemonstrationForAllSCsInTheCAISOBAA_asof_Mar10_2017.pdf