

June 16, 2017

Suzanne Casazza
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Informal Comments on Retail Choice Issues

To: California Public Utilities Commission:

On June 1, 2017, President Picker issued a request for informal comments on the Commission Staff's May 9, 2017 White Paper entitled "Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework," as well as issues raised during the May 19, 2017 joint CPUC/CEC en banc hearing on the changing nature of consumer and retail choice in California.

Shell Energy North America (US), L.P. ("Shell Energy") is an energy service provider ("ESP") and a gas marketer that has provided retail gas and electric service to customers in California for twenty years. Shell Energy provides the following responses to the questions presented by President Picker:

I. 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?

Response: In an open and competitive retail energy market, the regulated utility continues to play an important role providing "monopoly" services: primarily, distribution and transmission. Services that can be provided on a competitive basis, including procurement, storage, energy efficiency, demand response, behind the meter solutions, and billing, can and should be provided on an unregulated basis through the competitive market. A customer should be able to choose among competing suppliers in order to obtain a portfolio of products and services that meets the customer's needs at an agreed upon price. LSEs, including CCAs and ESPs, will meet specific statutory or regulatory mandates, including RPS, RA, energy storage and demand response. LSEs should have flexibility in meeting these targets, without being subject to unduly prescriptive requirements.

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)?

Response: The Legislature and the Commission should establish broad policy objectives, along with specific "targets" for RPS, RA, energy storage and demand response. Within these parameters, market participants and customers should have flexibility to select the portfolio of resources to meet the customer's objectives, achieve statewide goals, and satisfy specific environmental and reliability mandates.

C. Should residential customers have access to alternative retail suppliers other than CCAs? If so, describe the types of choices you want to have?

Response: Yes. Over time, all residential customers should have the opportunity to select a competitive retail supplier of energy and related services.

D. One concern about expanding consumer choice is safeguarding consumer[s] 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?

Response: The Legislature and the Commission have adopted comprehensive consumer protection provisions that apply to ESPs serving residential and small commercial customers. While these rules can and should be adjusted periodically to address specific concerns, the Commission can rely upon established rules to protect residential and small commercial customers, and to ensure that costs are not shifted to bundled sales customers when a direct access or CCA customer is returned involuntarily to "default" or provider of last resort ("POLR") service.

In this connection, as the competitive retail market evolves, the utility should no longer serve as the POLR. Instead, a process should be established to assign (or "auction") the POLR obligation to one or more eligible (and financially secure) entities that seeks to provide POLR service in a utility's service area. A competitive process should be established to allow third parties to bid to become a POLR. In a utility's service territory, a POLR should be responsible for securing RA, RPS, energy storage and other products and services on behalf of "default" customers.

II. 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?

Response: The utilities provide a one-size-fits-all service, with the same combination of resources for every customer, regardless of the customer's needs. An ESP, by contrast, works with a customer to develop an energy plan that includes a tailored portfolio of energy, storage, demand response and energy efficiency, all of which can be managed efficiently to meet the customer's needs, in conjunction with the State's policy goals. An ESP's tailored energy resource program for a retail customer may include behind the meter solutions, electric vehicle charging, and/or flexible price hedging to assist a customer in levelizing costs, reducing its load, extending de-carbonization to transportation service, and meeting the customer's "green portfolio" and/or sustainability goals.

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?

Response: As noted above, in an increasingly competitive retail market, the utility will continue to have a significant role as the owner and operator of the monopoly distribution and transmission systems. The utility will continue to provide the "wires highway" over which some competitive options will travel. The utility will provide a transparent platform to facilitate competitive alternatives, and will provide the infrastructure through which competitive solutions can be implemented by customers and their retail providers. The utilities will not, however, compete for "customer share." Rather, registered LSEs and other third parties will offer competitive options in energy, demand response, energy efficiency, and other supply and behind-the-meter services. Eventually, when POLR service is assigned to one or more third parties, the utilities will be limited to providing "wires" service.

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?

Response: This question improperly suggests that the State's environmental goals and reliability needs can be achieved only through centralized control by the Commission. Environmental goals and system reliability can be achieved through the operation of the competitive market, as well. As noted above, when the Legislature or the Commission establishes specific mandates for LSEs, LSEs will meet these requirements or face the

consequences under the enforcement mechanism established by the Commission. The current RA and RPS rules present a good example of how these mandates provide incentives for ESPs and CCAs to comply. Reports show that LSE compliance with the RA and RPS requirements is universally strong. Markets will develop to ensure that system, local and flexible RA capacity are available in sufficient quantity, and that RPS goals are met with new and existing RPS facilities. When product targets are set, and penalties are established for failure to meet these targets, ESPs and CCAs will have the same motivation to meet the requirements that the utilities have today.

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?

Response: Under current rules, an ESP and a CCA must meet the same RA capacity requirement that must be met by a utility. The difference between the treatment of the utility and the treatment of an ESP or a CCA is that the Commission approves a utility's RA capacity contract, including price, and guarantees cost recovery in customer rates. ESPs and CCAs have the same RA capacity obligation as the utilities, but without the cost recovery guarantee. The biggest impediment to a "long term" capacity obligation for a non-utility LSE is that there is no guarantee that a customer will remain with its LSE beyond the next year or two.

Once the POLR obligation is "auctioned" or otherwise competitively assigned to third party providers, a long term RA capacity obligation may be included as a part of POLR service. In addition, as the competitive retail market expands, all LSEs will have the opportunity to access new and existing capacity that ensures system reliability.

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?

Response: The cap on direct access participation should be lifted entirely for non-residential customers. Commercial and industrial customers are sophisticated and should have the opportunity to manage their own energy costs. Currently, through direct access, many businesses and organizations such as universities, community colleges, K-12 schools, retail companies, government facilities, fast-food chains, supermarkets, technology companies, food processors, and others have taken control of their electricity needs and associated costs. The ability to choose direct access should be made available to all of the businesses and institutions that are vital contributors to California's economy.

Historically, competition has led to the development of innovative energy products and services. Competition has been and continues to be the best means to improve efficiency and promote environmentally friendly policies, while reducing costs for consumers. No limit should apply to the level of non-residential customer participation in the direct access program. In addition, all residential customers should be allowed to participate in direct access. The Commission has adopted mechanisms, including the PCIA, CTC, CAM, direct access switching rules and other nonbypassable charges that ensure against cost-shifting when customers migrate from bundled sales service to competitive service options.

As noted above, the POLR function should be assigned based on a competitive process, with one or more POLRs selected in each utility's service area. The POLR should be required to serve any customer that does not affirmatively choose direct access, or that opts-out of CCA.

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?

Response: Yes. As noted above, the utility business model should be modified to draw a bright line between utility services that are provided on a monopoly basis, and other, competitive services that are provided by third parties, including but not limited to unregulated affiliates of the utilities. Establishing a line of demarcation between "utility" functions and "competitive" functions is not new to the Commission. The Commission established the affiliate transaction rules to ensure, among other things, that ratepayers do not subsidize the competitive, unregulated activities of utility affiliates. The Commission has acted in several instances to prohibit or limit the entry of a utility into a competitive service or product area. In several cases, the Commission has imposed restrictions on the manner by which utilities may compete in a new or competitive market to ensure that the utility does not gain an undue competitive advantage.

In a restructured competitive market, the Commission should establish which services must be provided by the utility because the services can only be provided by a monopoly. Other products and services should be left to the competitive market. In this connection, in a competitive market environment, "pilot" programs for EV charging, demand response and other potentially competitive activities should be undertaken by third party providers, with incentives offered to customers that participate in these programs. As with rooftop solar, energy storage and behind the meter energy management programs, such pilot programs can be offered by third parties without unnecessary regulatory intervention. Utility involvement should be limited to facilitation of the competitive and innovative pilot programs offered by third parties.

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?

Response: “Low income” customers make up a substantial portion of the residential energy market in California. This segment of the market provides opportunities for innovation among competitors, many of which will choose to serve the broad residential customer market. It should not be assumed that low income residential customers will be ignored when competition is permitted in the residential retail energy market.

Subsidies that are provided to low income customers must be reflected in all other customers’ distribution and transmission (wires) charges, not the “generation” charge. Because all customers will have access to competitive opportunities, competitive products should be provided to all customers on a level playing field. Any subsidies and incentives provided to low income customers should be reflected in other customers’ nonbypassable wires charges.

III. 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?

Response: The role of the regulated utility should and will evolve in a competitive retail market. Today, the Commission permits -- indeed encourages -- the utilities to participate in potentially competitive markets (DERs, demand response, electric vehicle charging) in order to kick-start these markets in the pursuit of State policy goals (e.g., GHG emission reductions). The utilities take advantage of these opportunities by leveraging their existing customer relationships (and ratepayer dollars) to offer new products and services.

Instead of relying on the utilities (using ratepayer dollars) to kick-start customer participation in these competitive markets, the Commission should provide market participants with the tools and the opportunity to grow on their own, without barriers. By allowing the market to operate efficiently, the Commission will avoid the expenditure of ratepayer dollars to subsidize a utility’s participation in the development of new programs. The Commission can advance the State’s GHG emission reduction goals through a competitive model if the Commission is willing to allow the market to work. In this way, the Commission will be “proactive” rather than “reactive” in pursuit of green energy goals and retail choice.

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?

Response: The Commission should maintain regulatory authority over utility decisions and investments regarding distribution and transmission. Regulation of these “monopoly” activities must be designed, however, to foster competition in other areas, such as DER, siting of RPS generation projects, and location of EV charging stations. The Commission should not regulate the utilities’ transmission and distribution functions in a vacuum. Investments and decisions regarding distribution and transmission must be responsive to market forces and must be made by the utilities in a manner that enables competition in areas that are necessary for service reliability and the achievement of GHG emission reduction goals. The utilities should be part of the planning process for the siting of new facilities, but the utilities should not provide or finance resources outside the wires business.

Light-handed regulation of non-utility LSEs continues to be appropriate as the competitive retail market expands. Non-utility LSEs will be required to meet statutory mandates, but non-utility LSEs should be allowed great latitude in the manner by which they serve their customers. Non-utility LSEs and their customers should be allowed to negotiate the terms and conditions of a customer’s retail service. Because non-utility LSEs are not guaranteed cost recovery, it is in their interests to offer competitive retail options in order to allow them to recover their costs.

IV. “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?

Response: First, the Commission must lay the foundation for expansion of direct access. Among other things, the Commission should signal to the utilities that their long-term procurement must take into account the reality that the utilities will not serve a large portion of their current bundled sales market within the next few years. Upon adoption of a competitive market structure, the utilities’ long-term planning and procurement should be limited to resources necessary to meet the RA planning reserve margin for their current bundled sales load. If the utilities’ long-term resource planning is limited, once the utilities’ bundled sales load migrates to competitive supply alternatives, the utilities will not be saddled with excess capacity (and costs). For this reason, and as the competitive retail market expands, the only long-term contracts the utilities should be entering into should be for a small fraction of their existing load.

Second, the Commission should establish a process through which one or more POLRs is selected to take over the procurement role in each utility service territory beginning in 2020. By 2020, the cap on direct access participation by non-residential customers should be lifted by the Legislature. One or more POLR in each utility service territory should assume the portfolio development function currently held by the utility. As a part of the transition to a third party POLR framework, the Commission should establish a mechanism to enable a POLR to take assignment or otherwise assume the obligations of the utility under existing long term contracts.

Third, the Commission should establish a mechanism to identify and calculate “stranded costs” associated with each utility exiting the procurement market. Each utility will be able to assign and/or sell some, but not all of the capacity the utility currently holds to serve its bundled sales customer load. Moreover, each utility will assign and/or sell some or all of its capacity at prices that are below the cost of the contracts. The Commission should have a mechanism in place to address the stranded utility costs that result from a transition away from utility procurement for “default” customers.

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?

Response: As noted above, acceleration of customer choice is inevitable. Whether or not the Legislature removes the cap on direct access participation, customers will “vote with their feet” by making decisions that provide greater choice, including CCA, DERs, demand response, and energy efficiency. The Commission would be prudent to get out in front of this market transformation, so that the Commission can adopt procedures that facilitate customer choice while ensuring that customers and suppliers meet statutory mandates.

C. What entity should have final responsibility for ensuring California meets its 2030 clean energy and climate goals?

Response: The Commission, along with the CEC and the ARB, are responsible for establishing requirements that all LSEs must meet in order to achieve the State’s clean energy goals. Once these requirements are established, each LSE bears responsibility to achieve the mandates. For those mandates over which the Commission has jurisdiction, the Commission will enforce the requirements and penalize LSEs (including POLRs) that do not meet the requirements.

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?

Response: In a competitive environment, responsibility for acquiring energy, capacity, RPS and energy storage shifts from the utilities to multiple LSEs, including the POLRs. The Commission will continue to establish and enforce an LSE’s requirement to ensure sufficient capacity to meet specific RA, energy storage and RPS obligations for their contracted customer load. The number of LSEs will expand, however, and the capacity obligations will be more disbursed. The combination of many LSEs’ diverse supply/capacity portfolios will strengthen the overall capacity environment and encourage the development of new resources.

RPS integration will be addressed through the CAISO, including new products that are developed by the CAISO to achieve RPS integration. The CAISO will manage the grid to ensure that RPS supplies can be accommodated. All customers will be responsible for the costs of grid integration through charges imposed by the CAISO on all suppliers.

Finally, the utilities will continue to earn their “profits” under the same model that exists today. The utilities will earn a return on (and a return of) capital invested in distribution and transmission assets, and other capital assets that are a part of their monopoly utility function. As the utilities have made clear, they do not make a profit on the purchase and sale of energy and capacity. As the capacity obligation migrates to other parties, the impact on the utilities’ profit will be limited.

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?

Response: Yes. All customers pay for the products and services used by and provided by the CAISO to integrate RPS supplies and maintain long-term reliability. This will not change as the role of the utility changes in a more competitive retail market framework.

F. How do you see the role for the regulated utility evolving and what, if any, . . . functions should be preserved for the regulated utility [to] support achieving State policy goals?

Response: As noted above, the regulated utility role will continue to evolve as more utility functions are opened to competition. The utility will exit the capacity market. The utility will cease participation in supply-side demand response programs, and the utility will limit its investment in energy storage to those projects that are necessary to support transmission and distribution. The utility may or may not continue to provide the billing function, depending on how the market is structured.

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?

Response: California’s restructured natural gas market provides a good example of how the utility’s commodity procurement for large (noncore) non-residential customers can transition completely to competitive unregulated suppliers. An open and competitive retail electric market structure has been successful in Texas. A similar retail electric approach can be implemented in California.

Shell Energy looks forward to discussing these issues in greater detail in upcoming proceedings.

Sincerely,

A handwritten signature in blue ink, appearing to read "John W. Leslie". The signature is fluid and cursive, with a long horizontal stroke at the end.

John W. Leslie
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Attorneys for Shell Energy North America (US), L.P.