

THE LAW OFFICES OF
JEREMY D. WEINSTEIN
A PROFESSIONAL CORPORATION

June 16, 2017

President Michael Picker
California Public Utilities Commission
505 Van Ness Ave
San Francisco, CA
94102
Email to Suzanne.Casazza@cpuc.ca.gov

Re: Request Of President Michael Picker For Informal Comments On The Customer
And Retail Choice En Banc And White Paper

Dear President Picker:

In response to the above request, I submit these comments in my personal capacity as a California citizen, taxpayer, and electric ratepayer.

I. 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?

In contrast to the investor-owned utilities (IOUs), which for now have substantial assets and investment grade credit ratings, often Community Choice Aggregators (CCAs) do not own assets other than customers who can flee quickly. The CCAs often have large purchase commitment liabilities. Participating municipalities generally do not guaranty the CCA obligations.

Therefore, I ask that you not focus on “bad” actors, so much as “improvident” ones. Some CCAs may be improvidently taking on large obligations now, while credit is freely extended by generators anxious to get into the CCA market. Eventually that free credit will dry up. CCAs and their participating cities are making arguments and developing expectations based on current business practices. These practices will change. “We receive credit and are therefore creditworthy” is a fallacy.

II. 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?

When asking “should,” please also ask “can.” Revenue from remaining customers in areas too poor to form CCAs,¹ and the CCA payments, may not be enough

¹ and from rejected CCA customers. At the Feb. 1, 2017, CPUC en banc hearing, a CCA representative said defaulted customers are “put back” to the IOU. If a customer defaults due to bankruptcy, that is

for the IOUs to remain in business, much less attract and keep the necessary talent now being poached in changing markets. It is not realistic to expect IOUs to be providers of last resort in the long term if they don't have enough money. Please consider how distribution infrastructure will be maintained and who will pay for it if the IOUs fold, and what will happen if the CCAs cease to be extended free credit from generators after the IOUs have been crippled. I fear California residents will end up with lower power quality because of unmaintained distribution infrastructure, with poorer cities suffering the most. I don't want to end up having to pay taxes to maintain the distribution infrastructure because the CPUC took out the IOUs.

IV, 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?

In the 2001 energy crisis, poor regulatory design led to inevitable collapse. Under that system, all sellers took losses due to any buyer not paying. As the utilities were prohibited from hedging energy price exposures, their creditworthiness deteriorated due to unlimited price risk. That price risk materialized. As prices rose, sellers knew they would share in any losses to any of the unhedged buyers. All buyers therefore took on the credit of the weakest buyer.² The risk premium of prudent credit management pressured prices higher. The system collapsed exactly as its design dictated. As the authorizing law, AB1890, passed the Assembly unanimously in 1996, no political scapegoat was available other than the Governor. Enron and the power marketers became the convenient "bad actors" for the regulators and legislators who had given us the deeply flawed structure.

And now, sixteen years later, you are asking about "bad actors." Had the utilities been permitted to hedge their risks, Enron trading strategies would have had minimal impact on the IOUs. But they weren't. A restaurant that lets customers pay whatever they want goes out of business because of a flawed business model, not because of "bad actors" not paying for their meals. Likewise, the price and availability of credit for CCAs will eventually normalize. If a system is changed into a market, one should expect the system to behave like a market. A real market, not the fantasy that pre-2001 policy makers thought would result from artificially crippling the largest participants.

The key lesson not yet learned from California's past, but which should be, is that legislators and regulators should take responsibility and engage in proper regulatory design now, rather than search for culprits later. Credit was the problem last time and it is not being adequately considered this time. I hope for competent, common-sense regulatory design not favoring any special interest or agenda over ratepayers and taxpayers. I did not see unaligned taxpayers or residential ratepayers represented on any panel at either of the two en bancs. The Office of Ratepayer Advocates works for you.

probably not possible due to Section 366 of the Bankruptcy Code. In any event, serving bankrupt and defaulted customers will not strengthen the IOUs.

² For more details, please see Weinstein, *Inside California's Power Crisis*, Energy & Power Risk Management, Mar. 2001 (avail. at <http://jweinsteinlaw.com/pdfs/Weinstein-%20Inside%20California's%20Power%20Crisis-%20EPRM%20Mar.%202001.pdf>)

The Utility Reform Network has an agenda, and it's not about ratepayers like me, even if I am forced to pay TURN's expenses in my rates.³ Please try to think of and consider the real, unfiltered interests of taxpayers and ratepayers.

Your comments at the joint session were excellent and thoughtful. Please encourage competent regulatory design.

Thank you for the opportunity to comment.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Jeremy D. Weinstein', with a long, sweeping underline that extends to the right.

Jeremy D. Weinstein

cc: State Senator Steven Glazer
State Assembly Member Catherine Baker

³ "Late in the evening, Larry [Summers] leaned back in his chair and offered me some advice ... He teed it up this way: I had a choice. I could be an insider or I could be an outsider. Outsiders can say whatever they want. But people on the inside don't listen to them. Insiders, however, get lots of access and a chance to push their ideas. People – powerful people – listen to what they have to say. But insiders also understand one unbreakable rule: they don't criticize other insiders. I had been warned." John Cassidy, *Elizabeth Warren's Moment*, New York Review of Books, Vol. 61 (no. 9), 22/5–4/6/14, pp. 4–8, cited in Yanis Varoufakis's excellent book about the Greek debt crisis and European financial system design, "Adults in the Room," Introduction, fn. 1 (2017).