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California Customer Choice Staff  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Via email: [customerchoice@cpuc.ca.gov](mailto:customerchoice@cpuc.ca.gov)

**RE: Post-Workshop Comments of the National Energy Marketers Association**

Dear California Customer Choice Staff:

The National Energy Marketers Association (NEM)<sup>1</sup> hereby submits comments on the post workshop questions asked in furtherance of the California Customer Choice Informal Public Workshop that was convened on October 31, 2017. The workshop engaged a number of stakeholders in providing information about regulatory frameworks to provide for enhanced energy competition and consumer participation in the retail marketplace for Commission consideration. NEM submits that the Commission has a unique opportunity to design and implement a best in class competitive retail energy market that encourages suppliers to offer a diverse array of innovative energy products to all consumers. This stems from the Commission's own experience with direct access, the information and experience to be gleaned from other jurisdictions that have implemented retail energy choice, as coupled with the Commission's

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<sup>1</sup> The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting, and power line technologies. NEM is celebrating its 20<sup>th</sup> anniversary this year.

national leadership in clean and renewable energy policy, including distributed energy resources. NEM previously filed informal comments on the Retail Choice En Banc Hearing issues and hereby incorporates those comments by reference here.

### **White Paper Scoping Questions**

- 1) The California Customer Choice project has three principles and eight key questions when considering customer choice in California and other markets. Are there any additional questions that the project should be considering? Why?**

NEM suggests that an additional question for the project to consider is: “How does this choice model encourage consumer and competitive supplier participation in the market?” The regulatory framework that is ultimately adopted will have to accomplish numerous important public policy goals, which are expressed in the eight Key Questions in Considering Customer Choice. However, if the regulatory framework does not permit informed consumers to shop in an expeditious, streamlined manner, then it will not succeed in supporting retail market development and providing the desired consumer benefits. Likewise, if the regulatory framework does not permit cost-effective and efficient market entry, investment and participation for competitive suppliers, then it will not succeed in supporting retail market development and delivering the desired consumer benefits. This proposed additional question is meant to be inclusive of the recommendation that the regulatory framework minimize artificial, unnecessary barriers to supplier participation in the market who are poised and eager to offer consumers expanded product choices, increased price competition and an improved customer service experience. This concept is distinguishable from the issue of competitive neutrality included in Question 6.

- 2) **The California Customer Choice Project is reviewing several markets as key examples of how customer choice operates under different regulatory frameworks. These markets include:**
- a. **New York**
  - b. **Texas**
  - c. **Illinois**
  - d. **United Kingdom**
- Are there other markets, either domestic or international, that you think would be an important model for California to consider as a regulatory framework option? Why?**

As discussed in NEM’s informal comments on the Retail Choice En Banc hearing, the preferable model for a regulatory framework is one in which utilities exit from the commodity merchant role and in which competitive suppliers act as default service providers, thereby permitting utilities to focus their resources on their core competency of ensuring the reliable maintenance and upgrade of delivery infrastructure. This regulatory framework is exemplified by the Texas electricity market.

- 3) **What published resources do you recommend the California Customer Choice team review in addressing key questions for evaluated markets?**

The Public Utilities Commission of Texas publishes a biannual report entitled “Scope of Competition in Electric Markets,”<sup>2</sup> that it submits to the Texas Legislature, with the most recent report having been issued in 2017.<sup>3</sup> The report includes information on the current status of electric competition in the state as well as updates on retail market and wholesale market proceedings and issues that have been resolved over the years, which would be a valuable and objective resource in addressing questions about that regulatory framework.

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<sup>2</sup> Available at: <http://www.puc.texas.gov/industry/electric/reports/scope/Default.aspx>

<sup>3</sup> Available at: [http://www.puc.texas.gov/industry/electric/reports/scope/2017/2017scope\\_elec.pdf](http://www.puc.texas.gov/industry/electric/reports/scope/2017/2017scope_elec.pdf)

**4) What specific statutes should the California Customer Choice team review when considering customer choice as discussed during the workshop?**

The specific statutes to review include those imposing a cap on direct access participation (AB1X and SB695); those allowing for the creation and implementation of Community Choice Aggregation (AB117 and SB790); and imposing exit fees on shopping customers (the Power Charge Indifference Adjustment – AB1X, AB117, SB790 and SB350). To the extent possible, opportunities for expanding direct access under current law, such as is permitted within the CCA framework,<sup>4</sup> should be explored for expeditious implementation pending any legislative changes that may be needed. Likewise, the ability to minimize unnecessarily punitive exit fees as permitted under current law, and as coupled with strategies to prudently manage and minimize utility procurement expenditures and costs, should be explored.

**Panel Follow-Up Questions – Market Perspectives**

**1) What are the most compelling examples of successful implementation of customer choice that you heard during the Market Perspectives panel?**

The most compelling example of successful implementation of customer choice during the Market Perspectives Panel was the Texas market model as explained by Darrin Pfannenstiel of Stream. The presentation provided emphatic evidence that the Texas retail market structure, under which the utilities have exited the commodity merchant function, has provided significant benefits to consumers. Those benefits include over one hundred retailers participating in the marketplace to provide consumers with over four hundred products; an approximate 60% reduction in rates since the introduction of competition; robust customer shopping in all

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<sup>4</sup> See, e.g., Remarks of Ron Perry, CEO, Commercial Energy, at Retail Choice En Banc Hearing.

customer classes; extensive availability of price comparison information and consumer education resources; and an exceedingly low complaint rate.

**2) Given some of the pitfalls illustrated by the panelists, how might California best avoid or mitigate these issues?**

NEM suggests that the pitfalls discussed by the panelists are largely caused by the retention of the incumbent utility monopoly as a direct competitor with other competitive suppliers in the marketplace, such as is the case in New York, Illinois and the UK. Markets that do not require the incumbent utility monopoly to exit the commodity merchant function have all experienced related market development difficulties as a direct result. This is caused by incumbent utility market power and economies of scale coupled with inadequate utility delivery rate unbundling and lack of market-based pricing signals to consumers. While there have been regulatory efforts undertaken in numerous jurisdictions to level the playing field under those circumstances, the numerous and distinct advantages of the incumbent utility monopoly are difficult to overcome when they are permitted to compete in the retail marketplace. It inhibits competitive supplier market entry and participation and limits the ability of suppliers to offer competitive prices, products and innovations against artificially understated utility monopoly rates.

**3) What are the motivations and entities driving customer choice in California? How are they similar or different from the other markets?**

Two decades ago the movement toward energy choice was begun by large consumers looking to manage and reduce energy costs. That remains true today, as evidenced by large consumer participation in direct access in which consumer demand exceeds the cap. The movement for energy choice in California is now also driven by mass market consumers, as evidenced by the proliferation of CCAs in the State. Large and mass market consumers are demanding customer

choice to exercise preferences for competitively-priced renewable energy options and innovations as well as electricity products and services that allow them greater control of their usage and budget. The motivations and entities driving customer choice in California are reflective of the digital age in which we live. Consumer sophistication, technological savvy and experience as informed shoppers has grown exponentially with the advent of the internet. Consumers can now shop electronically for all manner of products and services and have those orders filled instantaneously, or nearly so. They can shop for products and services that are supportive of and consistent with their ideological beliefs, be it environmentally-friendly goods, charitable endeavors, community-related and the like. What is exciting, and what the Commission has implicitly recognized in opening this inquiry, is that the technology now exists, and is constantly being improved, to allow competitive suppliers to provide these innovative energy products and services, such as distributed energy resources, to consumers in an unprecedented way. Only competitive markets are nimble enough to rapidly respond to ever-evolving consumer preferences and desires. The regulatory framework ultimately adopted by the Commission should enable competitive suppliers to deliver on these consumer demands.

### **Panel Follow-Up Questions – Shark Tank**

- 1) After reviewing the “shark tank” presentations, what are the “must haves” as California considers regulatory framework options to manage the transition associated with customer choice? What is the most compelling vision of customer choice as presented in the shark tank?**

As explained in response to the Market Perspectives Panel Question 1 above, NEM believes the *most compelling choice of regulatory framework involves the utilities exit from the merchant function and focus on its core function of ensuring reliable delivery infrastructure.* Additional “must haves” in a successful regulatory framework include:

- **Market-Based POLR Pricing** – In order for consumers to make informed, rational energy purchasing decisions, and to engage in price-responsive demand behavior, they must be able to see and respond to market-based pricing.
- **Reasonable Consumer Protection Requirements** – NEM and its members developed and adopted a “Consumer Bill of Rights”<sup>5</sup> to serve as a foundation for doing business with consumers that have the right to choose their energy supplier and receive delivery of their energy supply from a reliable utility delivery system. These rights include access to energy products and services that provide what they promise and are presented and described in clear and understandable language; accurate price and usage information; terms and conditions written in plain language; explanation of how to terminate a contract and at what cost; and a fair and timely complaint resolution process.
- **Reasonable Supplier Licensing and Marketing Standards** – NEM and its members developed and adopted “National Marketing Standards of Conduct”<sup>6</sup> that set forth a list of practices that form a common basis for doing business in today’s energy marketplace. These business practices pertain to competitive supplier marketing and sales activities, supplier agents, customer enrollment, customer contracts and complaint resolution.
- **Efficient and Cost-Effective Means to Enroll Consumers** – Competitive suppliers must be allowed to market to and acquire customers on an efficient and cost-effective basis. Traditional means of customer enrollment, including door-to-door

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<sup>5</sup> Available at: [http://www.energymarketers.com/Documents/Consumer\\_Bill\\_of\\_Rightsfinal\\_formatted.pdf](http://www.energymarketers.com/Documents/Consumer_Bill_of_Rightsfinal_formatted.pdf)

<sup>6</sup> Available at: <https://www.energymarketers.com/Documents/ACF74.pdf>

sales, telephonic enrollment and internet enrollment are evolving with technology, and should be permitted to do so.

- **Expeditious Consumer Switching Timeframes** - Customer energy choice must be easy to execute. The ability to switch energy suppliers is the ultimate consumer protection. Choice should not be complicated or expensive. True measures of a competitive market are the number of customers that have choice, and the number of customers that, in fact, exercise choice.
- **Consolidated Billing of Utility Delivery Charges and Competitive Supplier Charges** – Consumers prefer to receive a single consolidated bill for utility delivery charges as well as for competitively-provided energy products and services.
- **Timely Competitive Supplier Access to Data** - Competitive suppliers need timely access to granular data in order to design and provide innovative products that are responsive to consumer needs. A streamlined mechanism must exist by which competitive suppliers can obtain billing quality data for all of their customers, with customer authorization. Customers should be able to authorize third party providers to have access to their information, and the access should be free of charge.
- **Consumer Education** – Consumer education is a critical component to a well-functioning market. Consumer education is a key component to supporting customers’ ability to meaningfully exercise choice in the retail energy marketplace. Competitive suppliers provide consumers with energy shopping information at many points of contact and in many formats, and welcome the opportunity to engage with potential and current consumers about questions they may have. This is

fundamental to forming a long-term relationship with a satisfied customer. Consumers also rely on and trust the Commission as a source of objective energy choice information. A robust consumer shopping website is an excellent education tool. Utilities should also be called upon to provide information about energy shopping opportunities through, for example, informational mailings and their websites.

- **Requirements for Prudent and Aggressive Management of Stranded Costs** - So long as utilities are permitted to remain in competitive functions, it will require sub-optimal regulatory fixes to try to limit or mitigate the impact of the ratepayer-backed, risk-free participation of a utility monopoly in a market in competition with at-risk entities. Continuing utility procurement activities that result in increasing stranded costs and allowing the recovery of those costs from departing customers not only punishes consumers that shop for energy, thereby slowing migration and the development of functional retail markets, but it also encourages utilities to continue to invest in competitive services thereby further increasing future stranded costs. In the end, society will pay a far higher transition cost, the longer utilities remain in competitive lines of businesses.
- **Provision of Regulatory Certainty to Encourage Supplier Entry, Investment and Market Participation** - Regulatory certainty as to the timing and terms of the expansion of retail choice will permit competitive suppliers to make investments to participate in the marketplace and to develop innovative products and services to serve consumers of all sizes. Investment capital must have both political and

financial certainty in order to be competitively deployed for the benefit of consumers.

- **Wholesale Market Design Must Be Compatible with Retail Choice** – The wholesale and retail markets are interconnected. Wholesale market rules should be coordinated with the functioning of the retail market, including the resource adequacy construct. This will become increasingly important as more consumers choose to participate in CCAs and direct access.

**2) As California considers potential updates to its regulatory framework on customer choice, it is possible that certain existing rules or statutes may need to be reconciled. Are there any “must change” and/or “must not change” statutes? What are these rules and statutes and why?**

See Response to White Paper Scoping Question 4 above.

## **Conclusion**

NEM appreciates this opportunity to submit these comments on the post workshop questions and looks forward to future opportunities to assist the Commission in pursuing a new market vision for the State of California.

Respectfully submitted,

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