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Ms. Suzanne Casazza
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Via email: Suzanne.Casazza@cpuc.ca.gov

**RE: Informal Comments of the National Energy Marketers Association on
Retail Choice En Banc Hearing**

Dear Ms. Casazza:

The National Energy Marketers Association (NEM)¹ hereby submits informal comments on the Commission Staff White Paper entitled “Consumer and Retail Choice, the Role of the Utility, and an Evolving Regulatory Framework” and on certain questions posed to the panelists at the Joint CPUC and CEC En Banc Hearing on The Changing Nature of Consumer and Retail Choice in California that was convened on May 19, 2017. With the En Banc Hearing and future expected regulatory proceedings, the Commission has proactively identified significant consumer participation and engagement with Community Choice Aggregation (CCA), rooftop solar and Direct Access (DA) as the potential impetus for restructuring the current utility-rendered commodity service model and regulatory structure. NEM strongly agrees and urges the Commission to capitalize on this opportunity to enhance consumer energy choice. By transitioning the utilities out of the commodity merchant function and allowing the utilities to focus their resources on the core utility monopoly competency of upgrading and maintaining delivery infrastructure, the Commission will accomplish the related goals of improving system reliability and facilitating the achievement of the State’s goals for reduction of greenhouse gas emissions.

I. Comments on Commission Staff White Paper Questions

1. As an increasing number of customers can obtain electric generation service from a variety of sources (including IOUs, ESPs, CCAs, and on-site technologies), how does California ensure that all customers get the benefit of having multiple institutions play an

¹ 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 20th anniversary this year.

important role in helping finance the infrastructure needed to meet the State of California’s GHG strategies, including electrification of transportation and fuel switching in the natural gas industry, while also ensuring that all customers have access to at least basic electric service?

There is an excellent opportunity presented by consumer engagement with ESPs, CCAs and on-site technologies to restructure the current utility default service model in a manner that encourages the maintenance, upgrade and expansion of electric delivery infrastructure. The desired market end state should be the competitive provision of POLR service and the utilities exit from competitive functions. Utilities should be encouraged to focus their resources on their core competency of delivery system reliability. If utilities do not have to divert their finite resources to competitive commodity-related functions as well as monopoly distribution functions, and instead are incented to focus on reliably upgrading and maintaining distribution facilities this should encourage utility delivery system expansion needed to support California’s ambitious goals to reduce greenhouse gas emissions through the renewable energy standard, energy efficiency and zero emission vehicles.

2. What are the roles of the incumbent electric distribution utilities in the future, and what are the means for them to finance their core functions (e.g., distribution service, transmission service, POLR retail service) where some of these services are provided to all electricity customers and some are provided to only some customers (and in some cases may be provided because no other supplier is willing and/or able to provide them)?

The ultimate end goal, and a model employed in other retail choice jurisdictions (see Section II.C. of these comments), is for the utility to exit from the commodity merchant role and for competitive suppliers to act as default service providers. Commodity supply and related services, information and technologies are inherently competitive functions. Allowing the utility to remain in the default service role, and provide other competitive products, can discourage competitive entities from doing so. Additionally, retaining a regulated monopoly in a competitive marketplace inherently distorts the competitive playing field and requires a significant amount of regulatory intervention and oversight to try to ensure a level competitive playing field.

3. Who will be the provider of last resort for customers who don’t seek to make key decisions for themselves, but prefer a simple and reliable bundled service? What agencies are best designed to provide customer protection in this new electric industry structure? What policies and/or authorities are necessary for utility regulators (or others) to assure that all customers - regardless of their supplier of generation and/or delivery service) have access to reliable and efficient electricity supply that also supports California’s economic and environmental goals?

The commodity merchant function is a naturally competitive function. It is not necessary for the utility to act as the POLR because competitive suppliers have the ability and experience to supply these services to customers. Marketers have long been involved in developing and aggregating electric generation supply, and providing utilities with energy as a commodity. The Commission may want to examine the validity of separating the performance of this backstop

role by the need being met, i.e, low income consumers, credit challenged consumers, consumers that do not currently have a competitive supplier.²

4. How does the State of California ensure that the many different players work together to ensure that the State’s electric supply is not only clean but is also reliable, efficient and resilient? For example in light of the changes underway in the State’s electric system, how should the State provide such products and services as ramping power, voltage support, frequency control and managing over-generation? How should the State’s electric system become more resilient (e.g., capable of fending off attacks from physical and cyber threats, as well as speedy recovery from disasters)? How will California’s consumers pay for the many mandated public goods programs, ranging from energy research to providing energy efficiency upgrades and rate discounts for low income customers, which the California legislature has determined are core elements of the State’s electric system?

As mentioned above, if utilities exit the merchant function and focus their resources on their core competency of ensuring the reliable maintenance of delivery infrastructure this will promote the goal of increasing electric system resilience. The competitive marketplace should be relied upon to supply commodity and commodity-related products, services, information and technologies. A clearinghouse stakeholder entity can be utilized to coordinate market participant activities in a transparent manner, that standardizes transactions and processes, thereby reducing costs for market participants and consumers, in turn.³ The costs of providing mandated public goods programs should be recovered in a competitively neutral fashion, for example, in the form of a nonbypassable charge.

5. How will the State of California provide protection for consumers against predatory actions by providers of electric service or energy technologies in these new policy settings?

Consistent with and subject to the powers granted to the Commission under law, the Commission should consider adopting appropriate marketing and sales practice standards. Toward that end, NEM and its members adopted “National Marketing Standards of Conduct” (attached hereto) to provide a common basis for doing business in the energy marketplace. The business practices delineated in NEM’s National Standards are focused on ensuring the adequacy of disclosures and accuracy of information provided to consumers in the energy shopping process. NEM also adopted a “Consumer Bill of Rights” evincing competitive marketers’ commitment to ethically serve energy consumers. NEM’s Consumer Bill of Rights (attached hereto) proactively addresses the need for clear marketer responsibilities and consumer expectations with respect to appropriate marketing practices. Marketers are keenly interested in providing a superior level of customer service and satisfaction to consumers. This is one of the many ways in which marketers offer added value. Marketers must be acutely aware of and focused on identifying and serving their customer needs. Indeed, a sustainable, long-term business plan can be founded upon nothing less.

² For example, in the Texas electric market, the POLR is assigned to the largest provider by market segment in each utility service territory. Other suppliers may opt-in to serve in that capacity, if they meet the requirements, ahead of the assigned POLR.

³ The Texas ERCOT model is an example of such an entity.

II. Non-Utility Energy Supplier Panel Questions

A. 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?

Utilities are ill-suited for identifying, developing and providing the innovative products and services to meet rapidly evolving consumer demands. Competitive suppliers have been and continue to innovate in the provision of energy commodity and related products, services, information and technologies to consumers. Competitive supplier products run the gamut from fixed, variable and hybrid rate offerings; time-differentiated rate products; heating and air conditioning maintenance programs; green products, energy efficiency products, demand response and other Distributed Energy Resources (DERs). Just as the iPhone is an innovation that could not have been conceived of when Bell first invented the telephone, there will be future innovations in energy-related value-added services that cannot be anticipated or foreseen. Competitive suppliers should be encouraged to pursue these innovations and the regulatory structure adopted by the Commission will impact their ability to do so.

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?

If the utilities exit the commodity merchant function, it should remove anti-competitive barriers to competitive supplier participation in the market. Robust supplier participation in fact requires a cooperative relationship with utilities premised on timely non-discriminatory access to the delivery system as well as timely, non-discriminatory access to data. Timely access to granular data allows competitive suppliers to design and provide more innovative products that are better responsive to consumer needs. Moreover, in a restructured market, competitive suppliers become the utility's best customers. The utilities focus on creating efficiencies and value-added services for suppliers, and in turn, suppliers take on the cost, and risk, of providing competitively-rendered service to end-use customers. This is advantageous for the utilities because they can concentrate their resources on infrastructure reliability.

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?

In general, the regulatory model best suited to promote competition, achieve State environmental goals, maintain reliability and protect consumers, is one in which the utility is focused on, and incented to, use its resources on its core delivery infrastructure functions and in which consumers are served by a competitive supplier for energy commodity and related products, services, information and technology. The Texas retail electric market is an example of this competitive market model that has delivered significant benefits to consumers. Texas law required that all

electric customers have the option of choosing a competitive supplier by January 1, 2002.⁴ The electric utilities were required to unbundle their business activities into three entities: a wholesale power generation company, a retail electric provider (REP), and a transmission and distribution company.⁵ When competition began on January 1, 2002, standard offer service was transferred to the affiliated REP of the utility company, to provide service at the Price to Beat, which could be adjusted twice per year for fuel cost changes. Affiliated REPs were prohibited from offering competitive rates to residential and small commercial customers in the utility service territory, other than as the standard offer provider, until 40% of residential and small commercial customer load had chosen a competitive supplier. The temporary Price to Beat mechanism expired at the end of 2006. Provider of last resort service is rendered by competitive providers on a customer class-specific basis. Marketers serving customers in Texas perform their own billing and customer care.

Likewise, Atlanta Gas Light exited the merchant function in 1999. Georgia's Natural Gas Competition and Deregulation Act of 1997 permitted gas utilities to elect to exit the merchant function upon a showing that sufficient competition existed in their service territory. Once the determination was made that market conditions were sufficiently competitive, customers that had not chosen a marketer were randomly assigned to one based on the marketer's market share at the time.

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 the competitive suppliers representing many distributed decision makers?

Competitive market forces, rather than regulatory intervention, should be permitted to identify and meet the need for new capacity resources. Regulatory mandates inevitably lead to higher costs than competitive market-based supply and demand-side investments. Competitive market participants are expert at controlling supply-related risks, and they do so without the requisite guaranteed return of and return on utility investments, the risks of which are borne by captive ratepayers.

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?

Yes, the cap on retail choice should be lifted for all customers. It should also be available in CCA territories. The POLR function should be performed by a competitive supplier.

⁴ Texas Utility Code Ann. Section 39.102.

⁵ Texas Utility Code Ann. Section 39.051.

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?

Retaining the utilities in the role of POLR presents multiple barriers to customer choice and supplier participation in the retail market. When utilities act as POLR in an otherwise competitive marketplace, the following significant inequities occur:

- Retaining a regulated monopoly in a competitive marketplace inherently distorts the competitive playing field and requires a significant amount of regulatory intervention and oversight to try to ensure a level competitive playing field;
- A regulatorily-determined price will always be a poor proxy for a true market-based price as it suffers from timing lags, reconciliations, lack of transparency, and does not reflect the full costs of providing 24/7 no-notice commodity service;
- Utilities have multiple unfair competitive advantages as incumbent monopoly commodity providers because they have instant market share without customer acquisition costs as well as guaranteed cost recovery without the risks faced by their competitive supplier counterparts in the market;
- Retaining a utility in the merchant function requires the complex and controversial process of unbundling of costs and allocation to competitive and non-competitive functions to avoid the unfair subsidization of utility commodity pricing;
- By its very nature, characterizing the utility price as the default service “Price to Compare” distorts the consumer perception of what constitutes value in the competitive marketplace, particularly when evaluating products of different time duration and/or with other value-added characteristics;
- Commodity supply and related services, information and technologies are inherently competitive functions. Allowing the utility to remain in the default service role, and provide other competitive products, can discourage competitive entities from doing so;
- The presumption that consumers who have not selected a competitive supplier have made an affirmative decision to receive service from the utility is unwarranted and an unfair advantage to the utility. The presumption that a consumer must initiate service with the utility before it can shop is a significant barrier to retail market development and should be eliminated; and
- So long as the utility is in the POLR role there will be a group of consumers that will fail to shop, even when it is in their best economic interest to do so.

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?

Low-income consumers should be permitted and encouraged to shop for energy and energy related products, services, information and technologies. Energy shopping can be especially significant for these customers because energy expenditures comprise a larger portion of the budgets for low income consumers as compared with other households. In this regard, the task of educating all consumers about the value of energy choice is an on-going obligation of all stakeholders.

III. Conclusion

NEM appreciates this opportunity to submit informal comments on the Retail Choice En Banc Hearing and looks forward to future opportunities to assist the Commission in pursuing a new market vision for the State of California.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Craig Goodman", with a long horizontal flourish extending to the right.

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