




TOWN OF FAIRFAX

STAFF REPORT

January 16, 2018

TO: Mayor and Town Council

FROM: Michele Gardner, Town Clerk 

SUBJECT: Ratify Vice Mayor Coler's letter in opposition to the California Public Utilities Commission (CPUC) Draft Resolution E-4907, which would expand the CPUC's regulatory oversight over Community Choice Aggregation

RECOMMENDATION

Ratify Vice Mayor Coler's letter.

DISCUSSION

Vice Mayor Coler has asked that the Council consider ratifying the attached letter, dated January 5, 2018, in opposition to CPUC Draft Resolution E-4907. It was sent to the California Public Utilities Commission in time for their January 11th meeting, when the resolution was scheduled to be considered. The letter is based on the template circulated by the League of California Cities.

ATTACHMENT

Letter to CPUC dated January 5, 2018



TOWN OF FAIRFAX

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(415) 453 - 1584 / FAX (415) 453-1618

January 5, 2018

Michael Picker, President, California Public Utilities Commission
Commissioner Carla J. Peterman
Commissioner Liane M. Randolph
Commissioner Martha Guzman Aceves
Commissioner Clifford Rechtschaffen
505 Van Ness Avenue
San Francisco, CA 94102

RE: Oppose California Public Utilities Commission Draft Resolution E-4907

Dear President Picker and Commissioners:

On December 8, 2017, the Executive Director of the California Public Utilities Commission (“the Commission”) issued Draft Resolution E-4907 (“Draft Resolution”). The Draft Resolution proposes to significantly expand the Commission’s oversight of the Community Choice Aggregation (“CCA”) implementation process. I urge you to oppose this Draft Resolution as a violation of due process and existing law regarding the Commission’s review of CCA implementation plans. CCAs are expanding because localities are eager to take a more active role in California’s climate change fight. I urge the Commission to embrace the opportunities CCAs offer to deepen and broaden California’s efforts to combat climate change.

The Draft Resolution Raises Significant Due Process Concerns

[I, or organization] recognize the challenges the Commission faces as more CCAs launch. However, the CPUC must follow appropriate processes and procedures in developing significant new rules. The Draft Resolution lacks factual evidence and legal arguments and is an inappropriate means of resolving the issues raised in the Draft Resolution. These issues should be considered in a formal regulatory proceeding so that all stakeholders, including the CCAs and local governments, are ensured due process and to ensure compliance with AB 117 (2002).

The Draft Resolution allows only 20 days for stakeholders to respond to the substance of the resolution. Under normal conditions, this 20-day period is a short timeframe in which to address any proposed Commission decision. The Executive Director, however, without any prior notice

to affected stakeholders, chose to issue this resolution in the heart of the holiday season. The Executive Director's decision is highly prejudicial, and minimizes public input on issues that affect the extensive planning efforts of numerous communities throughout California.

The Resolution's reliance on confidential data is also problematic as it undermines transparency in Commission decision-making. Given the history of PG&E's anti-CCA activities, the use of secret data supplied PG&E is especially troubling. The Commission has instituted expanded access to data within the PCIA docket (R.17-06-026) in recognition of concerns over transparency and access to data that impacts CCAs. The Resolution's claims that data must be kept confidential directly undermines the progress the Commission has made in fostering a more open and collaborative process to address all parties' concerns over the current structure of the PCIA.

The Draft Resolution Would Impose a CCA "Freeze" and Raises Significant Substantive Concerns

Timing issues aside, the Draft Resolution itself poses significant due process and jurisdictional concerns. The Draft Resolution envisions a dramatic departure from the Commission's existing oversight of CCAs. It undermines the statutory authority of a CCA's Board of Directors to implement and enroll new CCA communities. It further disregards the substantial investments local governments have made to diligently, responsibly, and expeditiously establish their CCAs as a critical means to combat climate change in partnership with state efforts as envisioned in AB 32.

The Draft Resolution is an improper *de facto* freeze on CCA implementation. The legislature considered a statutory freeze on CCA implementation in the past session and ultimately decided against it out of recognition of the successful steps local governments are taking to responsibly develop programs suited to their constituents' needs in ways that support affordability, reliability, decarbonization and social equity. It is inappropriate for CPUC staff to now attempt to forcibly implement a freeze. Adoption of the resolution would unreasonably delay new communities from joining or forming CCAs. The delay would inhibit CCAs from collecting timely revenue to recoup the vast implementation expenditures made to date based on the Commission's current CCA implementation timeline. This delay could lead to significant cost burden borne by local government.

The Commission's Concern Regarding Resource Adequacy Should Be Addressed in the Resource Adequacy Proceeding (R. 17-09-020)

Since the primary policy issue raised in the Draft Resolution concerns Resource Adequacy ("RA"), the Commission should use the existing RA proceeding or initiate a rulemaking to

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address CCA-related implementation issues. All interested parties must have equal opportunity to engage, provide and examine evidence, and form legal arguments to ensure any resulting policy complies with statute and is based on a robust record. To put forth a resolution within a month's time is highly inappropriate and should not be entertained by the Commission.

Furthermore, the Draft Resolution failed to establish a record of evidence beyond the market sensitive data provided by PG&E, which claimed the existence of stranded assets without examination by another party. Before the Commission adopts the sweeping changes proposed in the Draft Resolution, the Commission must develop a robust factual record to justify the proposed interference with CCA implementation and substantiate the assertions upon which these changes are based.

I respectfully request that you vote "no" on the Draft Resolution. If the Commission wants to take action on the issues raised in the Draft Resolution, it needs to do so in an existing or newly initiated Commission proceeding.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara Coler", written in a cursive style.

BARBARA COLER

Vice Mayor