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Caldwell, Naomi

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# **Income-Graduated Fixed Charges, Energy Justice, and the Clean Energy Transition**

*Naomi Caldwell*

## ABOUT THE AUTHOR

J.D., Environmental Law and Policy, UCLA School of Law, 2024; B.A., Swarthmore College, 2019. I am extremely grateful to Professor William Boyd who first introduced me to the rich study of energy law, for encouraging me to pursue this project, and for the many hours spent listening, counseling, and offering thoughtful feedback. I also offer my sincere appreciation to Julia Stein for always pointing me in the right direction and to Ruthie Lazenby for being a wonderful resource for sharing insights and talking through the complexities of rate design. Many thanks to those who agreed to be interviewed for this project. And thank you to the editors of the *UCLA Journal of Environmental Law and Policy* who gave excellent advice and asked discerning questions, especially to Annika Krafcik.

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Increasing electrification is key to solving climate change. However, the current system of electricity provisioning is not equal and disproportionately burdens low-income and minority households. To avoid intensifying this inequality, the growing number of incentives aimed at electrification must be coupled with significant structural changes to the electricity system. California’s Income-Graduated Fixed Charge (IGFC) is an example of this type of needed change. First introduced as a provision in Assembly Bill 205, it promises to alter the way consumers pay for electricity by adding an income-based, monthly fixed charge to electricity. It also promises to remedy California’s currently regressive rate design, to lower electricity bills for many customers—most significantly, low- and middle-income customers—and to lower the cost of electricity which would thus incentivize beneficial electrification. However, this uncomplicated portrayal of the IGFC belies the challenges this proposed rate reform has faced. Since AB 205’s passage, the IGFC has been the subject of misinformation campaigns, repeal efforts, and significant public outcry.

This Comment first introduces a framework of energy justice and a brief history of California’s electricity system and energy equity initiatives. This Comment then attempts to offer a cohesive narrative of the IGFC’s inception. It proceeds to follow the IGFC’s development through the California Public Utilities Commission’s Rulemaking procedure and explores the relevant stakeholders involved. This Comment challenges a dominant characterization of the IGFC as rushed, opaque, and unconstitutional, revealing instead that it was the product of years of deliberation, research, and democratic processes. Finally, this Comment attempts to make sense of the implementation concerns, myths, and misaligned actors, including the solar industry, that have surrounded the IGFC. Here, two competing visions of electricity provisioning emerge: one built on the idea of a shared grid and the other built around an individualist, consumer-centric view that prioritizes the conservation ethic over beneficial electrification. Identifying and understanding these conflicting visions will be helpful to understanding and resolving bigger obstacles to achieving a just and clean energy transition.

INTRODUCTION<sup>1</sup>

It is June 29th, 2022, in Sacramento. The Assembly Floor Session is three hours in.<sup>2</sup> Currently under review for concurrence in Senate Amendments is the Budget Committee's AB 205. Assemblymembers listen in anticipation of their cue for their short speaking allotment of two or so minutes. Their priority is to express concern with the bill's proposal to create a reserve fund that would enable fossil fuel "peaker plants"<sup>3</sup> to continue running. As the commentary unfolds, it becomes evident that for many assemblymembers, this would be an unacceptable breach of earlier promises that such plants in their districts would be phased out.<sup>4</sup> The responses are tepid at best, scathing at worst. By the time AB 205 is passed through with fifty-seven ayes and thirteen nos, the bill had been called "lousy," "crappy," and a "a rushed, unvetted, and fossil fuel heavy response."<sup>5</sup> Not once was an objection made or an opinion expressed on AB 205's Section 14. Throughout the floor hearings from June 27th through June 30th, Section 14's proposal to repeal the statutory cap on fixed charges in electricity rates and introduce an income-graduated fixed charge (IGFC) remained unaddressed, quietly passed over and disregarded for the controversy it would soon come to stir.

Since the passage of AB 205, Section 14's IGFC has incited a wide-ranging and increasingly emotional set of reactions from the media, political sphere, and consumers. Briefly, the IGFC proposal would change the way consumers pay for electricity by adding an income-based, monthly fixed charge to electricity

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1. Since this Comment was originally first completed, relevant events have transpired such as another unsuccessful attempt to repeal the IGFC and further rulings from the CPUC laying out plans for the first version of the IGFC. Given the nature of the subject matter as something that continues to be in development, this Comment treats the present tense as January 2024 and remains frozen there in time. For the most recent updates on the IGFC proceeding and its current formulation, see *Demand Flexibility Rulemaking (R.22-07-005)*, CAL. PUB. UTILS. COMM'N, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/demand-response-dr/demand-flexibility-rulemaking> [<https://perma.cc/64G8-WUZF>]; CAL. PUB. UTILS. COMM'N, ENERGY DIVISION FACT SHEET, CPUC DECISION CUTS PRICE OF ELECTRICITY UNDER NEW BILLING STRUCTURE AND ACCELERATES CALIFORNIA'S CLEAN ENERGY TRANSITION (May 9, 2024), [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/demand-response/demand-flexibility-oir/ab205\\_factsheet\\_050824.pdf](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/demand-response/demand-flexibility-oir/ab205_factsheet_050824.pdf) [<https://perma.cc/3BJM-4W4Z>].

2. June 29th Assembly Floor Session (Cal. 2022), <https://www.assembly.ca.gov/media/assembly-floor-session-20220629> [<https://perma.cc/QQ97-RQJA>].

3. Peaker plants are "power plants that run only when the power grid cannot keep up with energy demands." Angely Mercado, *Our Go-to Weapon Against Heatwaves? A Dirty Backup Power Source*, POPULAR SCI. (June 26, 2021), <https://www.popsci.com/environment/peaker-plants-101/> [<https://perma.cc/Y4ZE-QT22>].

4. June 29th Assembly Floor Session, *supra* note 2. Asm. Al Muratsuchi, for example, critiqued how the city of Redondo Beach had been promised that their power plant would be shut down at the end of 2020, but now that promise had been broken twice. He also condemned the bill's proposal for a Strategic Reliability Reserve and conferral of unprecedented power to the Department of Water as causes for extreme concern. *Id.*

5. *Id.*

bills while also significantly lowering volumetric rates, the cost of electricity per kilowatt hour. It is unprecedented in the U.S., and from its inception has had the potential to effect significant change to the current residential electricity rate system in California. Not only would the IGFC encourage beneficial electrification<sup>6</sup> by making it more affordable to use electricity, but it would also redistribute the cost burden shouldered by low-income households as more affluent customers have switched to solar. Despite this, criticism of the IGFC has developed at an exponential rate. Conspiracy theories have emerged about how and why it was introduced in AB 205. Politicians, consumers, and the media alike claim it was conceived behind closed doors for the benefit of profit-seeking utility companies. And solar customers, who have imbued a sense of morality into the decision to conserve energy through investment in solar generation, call out the IGFC for punishing them while subsidizing high energy users.

The negative public discourse surrounding the IGFC threatens its promise to be an important experiment in ratemaking as it moves through the CPUC's Rulemaking procedure. This Comment seeks to answer how a rate reform with equity and decarbonization goals has become the focus of such a charged political and social response and to explore what underlying tensions may explain the forceful, across the aisle attack on a rate reform.

There is currently no well-documented or complete history of the IGFC's inception. This Comment attempts to reconstruct the narrative of where it came from, its purpose, and the shape it has since taken, as well as to identify and understand the conflicting reactions to its passage. This lack of an account of the IGFC's origin has opened the door to myths, misconceptions, and attack campaigns that have grown from this ambiguity. In piecing together the story of the IGFC, this Comment seeks to articulate and comprehend the obstacles that may exist for future bold energy equity initiatives. It is also important to understand this narrative and dispel misconceptions because implementation of the IGFC is currently under consideration in a CPUC Rulemaking procedure that is due to be completed by July 2024.

Part I situates the IGFC in an energy justice framework, exploring multiple conceptions of energy justice principles that are useful for understanding the dynamics involved in the IGFC. It then examines key factors impacting energy justice outcomes. To contextualize AB 205's project, Part II then provides a brief history of California's electricity system and energy equity efforts before sharing visions for a just transition.

Because the information available about the IGFC's origins is scarce and the public discourse around it did not emerge until after AB 205's passage, Parts III and IV seek to fill in the gaps about the IGFC's conception through

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6. Beneficial electrification means "the increased electric use by electrification technologies in off-peak periods when excess grid capacity is available" such that costs become "lower, and incremental generation is clean." Opening Comments of the Solar Energy Industries Association on the Scoping Memo Questions, CPUC Proceeding R.22-07-005 at 7-8 (Dec. 2, 2021).

interviews with key stakeholders who were involved in its formation. Part III introduces AB 205 and outlines the ongoing CPUC Rulemaking procedure regarding the IGFC's implementation, including the Rulemaking's timelines, tracks, live issues, and stakeholders. Despite standing so long as the face of the clean energy transition, the solar industry emerges as a major opponent to the IGFC. The complicated role the solar industry has played in resisting and attempting to neutralize the IGFC suggests that their true interests are in maximizing profits rather than in making renewable energy accessible and advancing the energy transition. Part IV considers the many narratives and misconceptions around the IGFC and offers a revised story of the IGFC's inception, reframing it as the product of years of thoughtful deliberation and open conversations. This Part also constructs a legislative timeline of the IGFC's various drafts and versions to further emphasize its participation in a democratic process where its drafters were aligned in the shared goals of designing new rate structures that would lower costs for low- and middle-income consumers and encouraging beneficial electrification.

Finally, Part V addresses the implementation concerns, myths, misaligned actors, and challenges to rooted paradigms of conservationism that have crystallized since the IGFC's passage. This Part attempts to make sense of and identify existing tensions and conflicting ideologies underlying the reactions to the IGFC. This last task has become increasingly important as these negative reactions threaten the IGFC's integrity and risk diluting its goals. Two competing visions of electricity provisioning emerge: one built on the idea of a shared grid and the other build around an individualist, consumer-centric view that prioritizes the conservation ethic over beneficial electrification. Importantly, identifying the greater socio-cultural sources of resistance to the IGFC and the competing visions of electricity provisioning will help to understand the obstacles to future energy equity and beneficial electrification initiatives that are essential to solving climate change.

## I. FRAMEWORKS FOR ENERGY (IN)JUSTICE.

“This bill would require the fixed charge to be established on an income-graduated basis, . . . so that low-income ratepayers in each baseline territory would realize a lower monthly average bill without making any changes in usage. . . . [I]t is the intent of the legislature to . . . ensure that fixed charges are established to more fairly distribute the burden of supporting the electric system and achieving California's climate change goals through the fixed charge.”<sup>7</sup>

AB 205 mandates an income-graduated fixed charge that guarantees lower monthly bills for low-income ratepayers.<sup>8</sup> The goal is to “more fairly

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7. Assemb. B. 205, 2021–22 Sess. (Cal. 2022).

8. *Id.* As will be discussed further in this Comment, the mechanics of the IGFC proposal—such as how much low-income households will be charged in comparison to

distribute the burden of supporting the electric system.”<sup>9</sup> This provision of AB 205 promises to remedy the current system of regressive electricity rates in California which disproportionately burden low-income households. But before examining the story of AB 205 and the ratemaking proceedings that followed, an introduction of various conceptions of energy justice is in order.

Energy justice is key to solving climate change. A critical component of tackling climate change is decarbonization, which requires cutting greenhouse gas emissions through widespread electrification.<sup>10</sup> However, decarbonizing the power sector and electrifying the rest of the economy raises equity, access, and affordability concerns—especially for communities that have been historically disproportionately burdened by electricity systems. Thus, the project to achieve beneficial electrification cannot happen without first addressing and remedying these equity concerns which are central to energy justice.

This Part provides a framework for the understanding the story of the IGFC. It discusses some of the key conceptions of energy justice, investigating what factors impact energy justice outcomes, and illustrating the various forms and consequences of energy injustice. In the Parts that follow, it is useful to return to the ideas discussed in this Part to better understand how the different phases and actors in the story of the IGFC relate to the project of energy justice. Many principles of energy justice are found in the discourse that went into planning the IGFC, the preparations for its implementation, and the bill language itself.

#### A. *What Is Energy Justice?*

There are numerous and growing conceptions of energy justice, each of which is shaped by the distinct projects, disciplines, and commitments of their authors. One understanding of energy justice offered by Raphael J. Heffron et al. is as a conceptual framework that seeks a just and equitable balance between the competing interests of economics, politics, and the environment, and “seeks to identify when and where injustices occur and how best law and policy can respond.”<sup>11</sup> Johana L. Mathieu later defined energy justice in the context of the work of power systems engineers, proposing a series of energy justice objectives which includes equitable energy system planning and equitable electricity system

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middle and high-income households—are currently being clarified in the CPUC Rulemaking.

9. *Id.*

10. Devon Ryan, *Electrification of the Building Sector*, STAN. WOODS INST. FOR THE ENV'T (Feb. 3, 2020), <https://woods.stanford.edu/news/electrification-building-sector> [<https://perma.cc/JB6N-537J>].

11. Raphael J. Heffron, Darren McCauley & Benjamin K. Sovacool, *Resolving Society's Energy Trilemma Through the Energy Justice Metric*, 87 ENERGY POL'Y 168, 169 (2015), <https://www.sciencedirect.com/science/article/pii/S030142151530077X> [<https://perma.cc/5HE8-W3YC>]. This definition grows from the authors' agenda of introducing a new tool, an “Energy Justice Metric,” that supports the quantitative analysis of energy justice and supports decision-making on energy policy and infrastructure projects. *Id.*

operation and control.<sup>12</sup> She argues that energy justice should be explicitly included in the electrification planning process to mitigate inequities and work towards a just transition.<sup>13</sup> In contrast, the Initiative for Energy Justice (IEJ), a group whose work is informed by its central aim of including frontline communities and communities of color in the movement away from fossil fuels to clean energy,<sup>14</sup> provides a definition grounded in the voices and participation of the communities who are most harmed by existing energy systems.<sup>15</sup> In this way, the IEJ definition lends itself to the work of advocates, approaching energy justice more as a practice rather than as a field of study.<sup>16</sup>

Another way of understanding energy justice is through three key principles of justice: distributional, procedural, and recognition justice. These frameworks appear frequently through academic and legal scholarship addressing energy inequity.<sup>17</sup> From a distributional justice lens, energy justice concerns the spatial, temporal, and societal distributions of energy system benefits, costs,

12. Johanna L. Mathieu, *Algorithms for Energy Justice*, in *WOMEN IN POWER: RESEARCH AND DEVELOPMENT ADVANCES IN ELECTRIC POWER SYSTEMS*, 67, 82 (Jill S. Tietjen, Marija D. Illic, Lina Bertling Tjernberg & Noel N. Schulz eds., 2023). Her conception of energy justice is similarly inspired by her field of research which investigates the environmental, efficiency, and cost implications of electric power systems. The other objectives she names include equitable distributed energy resource (DER) adoption and coordination and equitable electricity rate and demand-side management program design. *Id.* at 72–74.

13. *Id.* at 70–71 (offering the example of residential solar adoption in Connecticut which was “designed to increase access to solar by [low- or moderate- income] homes, [and] has reduced racial and ethnic disparities in solar adoption”).

14. *About the Initiative for Energy Justice*, INITIATIVE FOR ENERGY JUST., <https://iejusa.org/about/> [<https://perma.cc/MWT6-SUKD>]. The IEJ was founded by three lawyers of color and is based in California, New York, and Hawaii. Their values are voice, inclusion, and equity, and their work includes policy research, policy frameworks for city and state policymakers, providing law and policy resources, and community engagement and capacity building. *What We Do*, INITIATIVE FOR ENERGY JUST., <https://iejusa.org/what-we-do/> [<https://perma.cc/5FEH-XDUZ>].

15. SHALANDA BAKER, SUBIN DEVAR & SHIVA PRAKASH, INITIATIVE FOR ENERGY JUST., *THE ENERGY JUSTICE WORKBOOK 5* (2019). The IEJ define energy justice as:

the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on marginalized communities. Energy justice explicitly centers the concerns of frontline communities and aims to make energy more accessible, affordable, clean, and democratically managed for all communities.

*Id.*

16. This is in contrast with the definitions offered by academics and legal scholars which focus on the more theoretical frameworks of procedural and distributive justice. *Id.* at 6 (making note of this distinction).

17. See, e.g., Rohan Best, *Energy Inequity Variation Across Contexts*, 309 *APPLIED ENERGY* 1 (2022) (relying on distributional, procedural, and recognition justice principles of energy justice to explore household energy disparities in the U.S.); Stephen Axon & John Morrissey, *Just Energy Transitions? Social Inequities, Vulnerabilities and Unintended Consequences*, 1 *BUILDINGS & CITIES* 393, 394 (introducing various energy justice frameworks for their case study of an energy transition in Liverpool); Heffron et al., *supra* note 11.



and risks.<sup>18</sup> A question relevant to this approach includes how such costs and benefits are dispersed both physically and in terms of who takes responsibility for them.<sup>19</sup> A procedural justice lens instead focuses on the decision-making processes regarding the planning and delivery of equitable energy outcomes.<sup>20</sup> This approach examines the degree of participation of different actors, how equitable procedures can be used to engage and include different stakeholders in relevant decision-making processes, as well as whether there is full information disclosure to the public.<sup>21</sup> Finally, recognition justice differs from procedural justice through its insistence on the fair representation of individuals and demand for a “deep reflection on which population subgroups suffer from adverse energy outcomes.”<sup>22</sup> Without this framework, “a lack of recognition can therefore occur as various forms of cultural and political domination, insults, degradation, and devaluation” lead to “a misrecognizing—a distortion of people’s views that may appear demeaning or contemptible.”<sup>23</sup> Proponents of these three conceptions of energy justice argue that each framework, either alone or in synthesis with the others, carries its own entry point to addressing problems of energy inequity.<sup>24</sup>

Borrowing from these definitions, and acknowledging their relationships to their authors’ various projects, this Comment offers a notion of energy justice that aims to serve the narrative of how an overlooked bill provision initiated the start of an important experiment in electricity rates and provisioning in California. Here, energy justice means the greater project to achieve the equal distribution of costs and benefits stemming from the electricity system.<sup>25</sup> This project takes the question of how to achieve beneficial electrification and a just transition, and re-centers it on the past and present realities of the harms suffered by marginalized and frontline communities.<sup>26</sup> Because the IGFC explicitly seeks to remedy the disproportionate burden that lower-income households face with

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18. Best, *supra* note 17; Axon & Morrissey, *supra* note 17; Heffron et al., *supra* note 11.

19. Heffron et al., *supra* note 11, at 169.

20. Best, *supra* note 17, at 2.

21. Heffron et al., *supra* note 11, at 170.

22. Best, *supra* note 17, at 2; Heffron et al., *supra* note 11, at 170.

23. Heffron et al., *supra* note 11, at 170.

24. *Id.* at 169 (arguing that the three together are relevant to work with energy infrastructure); Axon & Morrissey, *supra* note 17, at 395 (identifying recognition justice as important for revaluing devalued identities, distributional justice as important for remedying injustice via economic restructuring, and procedural justice as important for promoting substantive public involvement in the production of space); Best, *supra* note 17, at 2. *See also* CHANDRA FARLEY, JOHN HOWAT, JENIFER BOSCO, NIDHI THAKAR, JAKE WISE & JEAN SU, *ADVANCING EQUITY IN UTILITY REGULATION 10* (2021) (also identifying procedural, distributional, and recognition justice as key tenets of equity justice).

25. *See* Mathieu, *supra* note 12; FARLEY ET AL., *supra* note 24, at viii (defining energy equity as “the fair distribution of the benefits and burdens of energy production and consumption”).

26. *See infra* Subpart II.B. for the definition of beneficial electrification and a just transition.

electricity bills, the distributional justice framework becomes relevant for understanding how the IGFC addresses the uneven spread of costs and responsibilities related to the electricity system. The definition of energy justice used in this Comment also draws on the recognition justice framework because so much of the outcry related to the IGFC seems to capture the idea of “misrecognition.”<sup>27</sup> In other words, the loud, acerbic, and largely affluent response to the IGFC seems to derive from a lack of consideration for the frontline communities most burdened by California’s current electricity system.

### B. *Factors Impacting Energy Justice Outcomes*

The work of identifying and analyzing the factors that influence energy justice outcomes is not, and should not be, a purely academic exercise. There are a growing number of projects that participate in the local and global movements towards decarbonization. These projects necessarily involve different forms of energy transitions that carry material and social consequences.<sup>28</sup> Without serious consideration<sup>29</sup> of—and a policy response to—these factors, there is a real possibility that unfolding energy transitions will have the unintended consequence of intensifying existing inequalities for vulnerable communities.<sup>30</sup> This Subpart introduces relevant data points and studies that broadly illustrate the factors involved in energy justice outcomes to serve as context in this Comment.

Energy poverty can be conceived of in terms of energy burden, the proportion of income spent on energy expenditures. To get a sense of the spread of energy burdens across households, the average annual middle-income and high-income households spend five percent and two percent of their annual net income on energy expenditures respectively, while low-income households spend fourteen percent of their annual net income on such expenditures.<sup>31</sup> The disparity worsens with race. Households in communities of color experience energy poverty at rates that are sixty percent higher than those of white communities.<sup>32</sup> Studies that incorporate more technical models have

27. Heffron et al., *supra* note 11, at 170.

28. See, e.g., Axon & Morrissey, *supra* note 17, at 394.

29. This would be a form of recognition justice.

30. See Axon & Morrissey, *supra* note 17, at 394 (first identifying the absence of literature addressing the “socio-spatial implications of low-carbon energy transitions” and how such transitions exacerbate existing inequalities, and then using a case study in the UK to exemplify the pressing need for community engagement when undertaking local energy transitions).

31. Eric Scheier & Noah Kittner, *A Measurement Strategy to Address Disparities Across Household Energy Burdens*, 13 NATURE COMM’NS 288, 292 tbl. 1 (2022) (where low-income households represent income groups falling within 0–30% of the Area Median Income (AMI), middle-income households represent income groups falling within 30–80% AMI, and high-income households represent income groups falling above 80% AMI; also showing, for example, that low-income households with a monthly income of \$510 spend on average \$71 per month on energy).

32. *Id.* at 2. See also Mathieu, *supra* note 12, at 68 n.2 (citing a study revealing that “low-income households and African American households have the highest energy burden

used energy use intensity (EUI) as a metric to understand disparities in energy efficiency across different households with the hope of facilitating targeted energy efficiency interventions. These studies reveal that lower-income and racial and ethnic minority households have higher EUIs,<sup>33</sup> which can be predictive of which households are at the greatest threat of energy poverty.<sup>34</sup>

A recent study offers a similar story of disparity: for each dollar spent on energy usage, low-income households in the United States receive less benefit than do middle and high-income households.<sup>35</sup> One possible explanation for this lies in external, structural factors related to social inequalities, like racial segregation.<sup>36</sup> The U.S. Department of Energy's Grid Modernization Laboratory Consortium released a report that reasoned:

[n]early every equity indicator we can name . . . can be linked to systemic racism and practices that institutionalized it. We can look to racist federal policy such as redlining. . . . Neighborhoods were color-coded green for 'best,' blue for 'still desirable,' yellow for 'definitely declining,' and red for 'hazardous.' Redlining buttressed the segregated structure of American Cities. Most of the neighborhoods (74%) that the Home Owners' Loan Corporation (HOLC) graded as high-risk or 'Hazardous' eight decades ago are low-to-moderate income today. Additionally, most of the HOLC graded 'Hazardous' areas (nearly 64%) are minority neighborhoods now. 'The United States' long, shameful history of discriminatory housing policies and racial segregation is part of the reason why Black families are more likely to live in older, energy inefficient homes that saddle them with higher energy burdens than white families at almost every position in the income distribution.<sup>37</sup>

With these structural factors in mind, it is possible that future beneficial electrification and energy transition efforts will only exacerbate the effects of institutionalized and systemic racism such as is illustrated in the U.S. Department of Energy's report.<sup>38</sup>

There is an urgent need for strong policy measures that directly consider the disparity in the conferral of benefits of the energy transition. Acknowledging and identifying the connection of these structural factors to the sharp disparity in energy outcomes for minority and low-income households not only promises to facilitate appropriate policy responses, but also reframes the

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in the USA”).

33. Mathieu, *supra* note 12, at 70 & nn.14–15.

34. *Id.* at 70 & n.18.

35. Scheier & Kittner, *supra* note 31, at 6 (finding that the net earnings a household receives for every expenditure on secondary energy are lower for low-income household groups in the United States).

36. *Id.* at 7 (“Energy is central to equity and economic prosperity, but the energy system appears to be regressive in that costs accrue disproportionately to those of lower-income levels.”).

37. FARLEY ET AL., *supra* note 24, at 11–12.

38. See Scheier & Kittner, *supra* note 31, at 7.

project of energy justice as one of racial justice.<sup>39</sup> These studies also underscore the force of the idea that “[i]ncome drives the escape from energy poverty.”<sup>40</sup> Equitable utility regulation thus not only needs to be reframed by identifying structural and identity factors involved in energy outcomes, but also must involve a replacement of regressive rate systems with ones that are sensitive to income. This is what the IGFC attempts to do: restructure electricity rates so that low- and middle-income households are contributing significantly less of their income towards electricity.

## II. THE CALIFORNIA CONTEXT

California has developed a somewhat mythical quality as the lauded land of innovative policy and first-of-its-kind environmental regulations. For decades, the state has been a trailblazer in the environmental and energy law space.<sup>41</sup> Language in AB 205 itself calls “California . . . a leader in driving the affordable and equitable transition to a clean reliable energy system and economy.”<sup>42</sup> Yet a closer look at a Californian’s extraordinarily high energy bills complicates this narrative.

This Part provides a brief history of California’s public utility regulation. It highlights major changes to the state’s electricity system as well as the state’s record of energy equity efforts. Finally, drawing on recent research and policy proposals, this Part offers a vision of what a just transition should and does look like: prioritizing equity outcomes through strong rate reform.

### A. *A Brief History of California’s Electricity System and Energy Equity Efforts*

Modern day utility companies and the state and federal regulatory agencies that oversee them have their origins in a long history and tradition of public utility principles.<sup>43</sup> One such principle is the duty to serve. While public utilities have frequently possessed exclusive monopolies or franchises over the service they have provided, this also came with a reciprocal responsibility to serve the public. Just as importantly, these early public utilities were guided by the principle that when the nature of a business is “clothed with the public interest,” it

39. See Ed., *Energy Justice Towards Racial Justice*, 5 NATURE ENERGY 551 (2020).

40. Scheier & Kittner, *supra* note 31, at 4 (explaining that income drives the escape from energy poverty because middle- and high-income households spend significantly less of their income on energy costs than do low-income households).

41. See, e.g., *California Leads Fight to Curb Climate Change*, ENV’T DEF. FUND (June 29, 2023), <https://www.edf.org/climate/california-leads-fight-curb-climate-change> [<https://perma.cc/G9UW-GHZQ>]; *California Is a Leader on Environmentalism*, ECONOMIST (June 20, 2019), <https://www.economist.com/special-report/2019/06/20/california-is-a-leader-on-environmentalism> [<https://perma.cc/J994-S9U8>].

42. Assemb. B. 205, 2021–22 Sess. (Cal. 2022).

43. JOEL B. EISEN ET AL., ENERGY, ECONOMICS AND THE ENVIRONMENT 36 (5th ed. 2020) (citing *Tripp v. Frank*, 100 Eng. Rep. 1234 (1792)).

is subject to regulation.<sup>44</sup> However, a longstanding debate continues over how much regulation is optimal versus how much should be left to the market.<sup>45</sup> These principles are helpful to return to when examining current issues in energy systems and utility provisioning. The role of government in protecting consumers by regulating prices is relevant to the story of the IGFC, as is the notion of a utility company's duty to operate in the best interest of the public.

At the end of the 20th century, California began to deregulate and fully restructure its electricity retail market.<sup>46</sup> The energy crisis of the early 2000s quickly led the state to abandon further restructuring and opt instead for its current hybrid model of electricity regulation.<sup>47</sup> In a hybrid model, utilities buy wholesale electricity from independent power producers through organized markets and provide retail service to customers via a monopoly franchise. For the most part in California, vertically integrated investor-owned utilities (IOUs) operate the electricity distribution system and provide retail service via this monopoly franchise.<sup>48</sup> The three major IOUs in California are Pacific Gas and Electric (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE).<sup>49</sup> California, Minnesota, and a few other Midwestern states follow this model.<sup>50</sup>

California has been an innovative leader in clean energy and electricity reform for decades.<sup>51</sup> Most recently, California heralded in the introduction of time-of-use rates. These are rates that vary with the time of day.<sup>52</sup> Time-of-use rates encourage customers to shift their electricity usage from high- to low-priced time periods, thereby diffusing pressure on the grid.<sup>53</sup> Pilots for

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44. *Munn v. Illinois*, 94 U.S. 113, 133 (1876).

45. EISEN ET AL., *supra* note 43, at 14–16 (introducing public interest theory, public choice theory, and the economic view as three different takes on market power versus regulation).

46. MICHAEL COLVIN ET AL., CALIFORNIA CUSTOMER CHOICE: AN EVALUATION OF REGULATORY FRAMEWORK OPTIONS FOR AN EVOLVING ELECTRICITY MARKET 3 (Rohimah Moly ed., 2018).

47. *Id.* at 3–4.

48. *Id.* at 1–2.

49. See *Utilities*, CAL. ISO, <http://www.caiso.com/about/Pages/IndustryInsights/IndustryLinks/Utilities.aspx> [<https://perma.cc/WX7H-6JY4>].

50. This is in contrast with (1) a traditional cost of service model, adopted by about a third of the states and involves vertically integrated IOUs owning and operating generation, transmission, and distribution as well as providing retail service via a monopoly franchise, and (2) a fully restructured model, adopted by thirteen states and where wholesale electricity is provided by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs), distribution companies operate distribution, and the Retail Electric Providers (REPs) compete for retail service. See EISEN ET AL., *supra* note 43, at 530, 683–84, 769.

51. See, e.g., *supra* note 41 and accompanying text.

52. *Electric Rates*, CAL. PUB. UTILS. COMM'N, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-rates> [<https://perma.cc/EL3Y-N6HA>].

53. Herman K. Trabish, *California Utilities Prep Nation's Biggest Time-of-Use Rate Rollout*, UTIL. DIVE (Dec. 6, 2018), <https://www.utilitydive.com/news/>

time-of-use rates began in California in 2003 and 2004 and are now being deployed on a mandatory basis for the state's electricity customers. Other states have since followed suit.<sup>54</sup>

Despite this tradition of innovation, electricity rates in California have consistently risen over the past eight years.<sup>55</sup> In some service territories, rates have increased by almost 10% each year.<sup>56</sup> In 2020, electricity expenditures in California were 55% higher than in the rest of the country,<sup>57</sup> and in this past year, California was the state with the third highest retail price of electricity after Hawaii and Connecticut.<sup>58</sup> With the current rate system in place, these rates are projected to continue growing rapidly.<sup>59</sup> A significant portion of these high costs are driven by the maintenance needed for, and harm caused by, California's aging and dangerous power lines.<sup>60</sup> Even with low-income and affordability programs in place, the current electricity system is regressive because low-income households shoulder a significantly higher burden of these maintenance costs. California low-income households spend four to seven times as much on electricity as a proportion of their income compared to the highest incomes households despite using only half as much energy as the highest income households.<sup>61</sup>

California electricity rates are regressive because utilities recover their costs primarily through high volumetric rates. Volumetric rates are the rates charged per usage of electricity as opposed to the additional monthly fixed charge which, until the passage of AB 205, was capped at just \$10 per month.

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california-utilities-prep-nations-biggest-time-of-use-rate-roll-out/543402/ [https://perma.cc/6CGL-GR5R].

54. CHARLES RIVER ASSOCS., *IMPACT EVALUATION OF THE CALIFORNIA STATEWIDE PRICING PILOT 4* (Mar. 16, 2005); AM. PUB. POWER ASS'N, *MOVING AHEAD WITH TIME OF USE RATES 5* (2020).

55. Sierra Club, R22-07-005, 3 (2023) (opening brief submitted on Jan. 23, 2023).

56. *Id.*

57. Jim Cooper, *Working Families Should Not Subsidize Renewable Energy*, CALMATTERS (Sept. 19, 2020), <https://calmatters.org/environment/climate-change/2020/09/working-families-should-not-subsidize-renewable-energy/> [https://perma.cc/ZK55-2X6F].

58. *California State Energy Profile*, ENERGY INFO. ADMIN., <https://www.eia.gov/beta/states/states/ca/rankings> [https://perma.cc/9FHF-D46Q]. California has the highest natural gas residential prices, and in 2022, it had the second highest. Although also note that at the same time, California uses less energy per capita than all states but Hawaii. *Id.*

59. Pub. Utils. Comm'n California, R.22-07-005 (2023) (Administrative Law Judge's ruling on 1/17/23 providing guidance for Phase 1 Track A proposals and requesting comments on a consulting services proposal).

60. Darren Fraser, *California Revamps Electricity Rates Based on Income*, SUN GAZETTE (July 6, 2023), <https://thesungazette.com/article/news/2023/07/06/california-revamps-electricity-rates-based-on-income/> [https://perma.cc/Q4SG-E4VX].

61. *Income-Graduated Fixed Charge Workshop (R.22-070005, Phase 1 Track A)*, CAL. PUB. UTILS. COMM'N, (Nov. 29, 2022) <https://cpuc.webex.com/recordingservice/sites/cpuc/recording/db97d1725235103bbf7700505681cc94/playback> [https://perma.cc/W3BD-RB9X] (enter password "IGFCwkshp1122"; the relevant discussion is in the introduction by Lewa Tesfai, the CPUC's Deputy Executive Director for Energy and Climate) (as expressed by President of the CPUC Alice Reynolds speaking in the introduction).

Volumetric rates have been steep because utilities have placed most of their fixed costs in these usage charges.<sup>62</sup> Currently, utilities have customers pay for wildfire and climate change mitigation efforts, among other expenses,<sup>63</sup> in these fixed costs on top of the actual cost to provide electricity.<sup>64</sup> For instance, since 2017, PG&E customers have blamed the utility for over thirty wildfires, the cost of which the utility has simply deferred by having customers pay higher bills.<sup>65</sup>

Two major problems arise from California's current system of regressive electricity rates. First, as more high-income households have switched to solar and thus stopped paying for the fixed costs embedded in volumetric rates, the fixed costs of remaining utility customers have increased. Solar customers have essentially shifted these costs to low-income households thus increasing their already high cost of electricity. This creates a cross-subsidy effect. Second, high volumetric rates directly interfere with the state's goals of beneficial electrification and decarbonization. The more expensive it is to use electricity, the less likely customers are to invest in electric appliances.<sup>66</sup> Fortunately, proposed solutions to these problems have been robustly discussed as part of bigger conversations about what a just energy transition could and should look like.

## B. *Visions for a Just Transition*

Drawing on the various conceptions of energy justice,<sup>67</sup> a just energy transition is one that centers people and communities and aims to equitably redistribute the benefits and burdens of the energy system.<sup>68</sup> The following

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62. Kenneth W. Castillo, *Today's Rate Designs Are Defective. How Can Utilities Better Recover Their Fixed Costs, and From Whom?*, UTIL. DIVE (Nov. 22, 2022), <https://www.utilitydive.com/news/-utility-fixed-rate-design-demand-charge-solar-costello/634213/> [<https://perma.cc/V65Z-DJKV>].

63. Cal. Pub. Utils. Comm'n, 2022 Senate Bill 695 Report (2022), at 9 (identifying other areas of increasing cost pressures as growing transmission, distribution, infrastructure, and operational costs).

64. Sam Ribakoff, *California Utility Regulator Eyes Progressive Fee to Lower Electricity Bills*, COURTHOUSE NEWS SERV. (Apr. 26, 2023), <https://www.courthousenews.com/california-utility-regulator-eyes-progressive-fee-to-lower-electricity-bills/> [<https://perma.cc/8YG7-BLC2>].

65. Fraser, *supra* note 60.

66. See BORENSTEIN ET AL., PAYING FOR ELECTRICITY IN CALIFORNIA: HOW RESIDENTIAL RATE DESIGN IMPACTS EQUITY AND ELECTRIFICATION 5 (2022) [hereinafter BORENSTEIN ET AL. (2022)] (arguing that higher electrification costs negatively impact decarbonization efforts because they make it more expensive to adopt and use electric vehicles and appliances).

67. See discussion of various principals and conceptions of energy justice in *supra* Subpart I.A.

68. This equity-centered approach has existed in the energy policy space for a while in different forms. For instance, in 2000, California adopted SB 89 which required the state to include environmental justice strategies as part of its mission statement. CA SB 89 (2000). Shortly afterwards, California passed more legislation that mandated the CPUC to include environmental justice goals into its decision-making processes. See FARLEY ET AL., *supra* note 24, at viii. In 2021, the Justice40 initiative was created by the Biden-Harris Administration with the goal of investing more in "disadvantaged communities . . . most impacted by climate

proposals, one of which strongly inspired the IGFC, imagine just transitions that would align with the IGFC's purpose to bring about beneficial electrification, decarbonization, and energy equity.

Given the current volume of carbon emissions that come from energy use in the United States,<sup>69</sup> electrification is a powerful means for achieving decarbonization goals and combating climate change. Other ways to achieve the same ends are more complex, including switching to clean hydrogen fuels and biofuels or adopting new technology that better captures air pollution.<sup>70</sup> But the most popular and widely accepted idea for decarbonization policy is that “[a]ll roads point to electrification.”<sup>71</sup> Recent joint ventures between utility and electric vehicle companies are just one example of the growing anticipation and planning for the all-electric future.<sup>72</sup> California has also almost completely decarbonized its electricity supply,<sup>73</sup> meaning that it is possible to use electricity from renewable resources to power and thus decarbonize transportation and buildings.

Yet the current system of electricity rates is hostile to achieving electrification. There is an urgent need for rate reform. Such reform must lower volumetric rates to encourage beneficial electrification and also introduce an equitable rate structure<sup>74</sup> such that electrification is possible for customers across all income groups.

In 2021 and 2022, two reports both prepared by Next 10 and the Energy Institute at Haas, UC Berkeley<sup>75</sup> significantly informed the discourse leading

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change, pollution, and environmental hazards.” *What Is the Justice40 Initiative?*, U.S. DEPT OF TRANSP., <https://www.transportation.gov/equity-Justice40#:~:text=What%20is%20the%20Justice40%20Initiative,%2C%20pollution%2C%20and%20environmental%20hazards> [<https://perma.cc/DD3E-FAHU>].

69. For the breakdown of total energy consumed in the United States organized by end use, see Nadja Popovich & Brad Plumer, *A Key Part of America's Plan to Slash Carbon Emissions: Plug in (Almost) Everything*, N.Y. TIMES (Apr. 14, 2023), <https://www.nytimes.com/interactive/2023/04/14/climate/electric-car-heater-everything.html> [<https://perma.cc/4DDB-F4HV>].

70. *Id.*

71. *Id.*

72. See Robert Walton, *How Utilities Are Partnering With GM, BMW, Lyft and Others in the Auto Sector to Accelerate EV Adoption*, UTILITY DIVE (Sept. 6, 2023), <https://www.utilitydive.com/news/utilities-are-partnering-with-auto-companies-gm-bmw-lyft-ford/652698/> [<https://perma.cc/T2SF-M223>].

73. One third of California's power comes from renewable generation and almost two-thirds from carbon-free sources. BORENSTEIN ET AL., DESIGNING ELECTRICITY RATES FOR AN EQUITABLE ENERGY TRANSITION 3 (2021), <https://www.next10.org/sites/default/files/2021-02/Next10-electricity-rates-v2.pdf> [<https://perma.cc/5GAH-AFAD>] [hereinafter BORENSTEIN ET AL. (2021)].

74. See, e.g., Jordan Folks, *Designing Equitable Rate Structures*, OP. DYNAMICS, <https://opiniondynamics.com/designing-equitable-rate-structures/> [<https://perma.cc/SG2P-SV35>] (“An equitable rate structure is one that does not require any customer segment to carry a disproportionate portion of the cost to serve while ensuring the service provider is able to meet grid demand and recoup the cost of energy procurement and delivery.”).

75. See BORENSTEIN ET AL. (2022), *supra* note 66. See also BORENSTEIN ET AL. (2021), *supra*



up to the creation of the IGFC provision in AB 205.<sup>76</sup> The 2021 report, *Designing Electricity Rates for an Equitable Energy Transition*,<sup>77</sup> shared findings that informed the authors' rate reform and policy proposals. For instance, the report found that California's high electricity prices are set two to three times higher than the marginal cost of electricity.<sup>78</sup> This "misalignment between price and cost creates problematic incentives"<sup>79</sup> by deterring customers through the allusion that it is expensive to turn on the lights when really, much of the cost of electricity comes from fixed costs, like wildfire prevention.<sup>80</sup> Additional findings include that low- and middle-income households carry the greater burden of electricity costs through the cross-subsidy effect of wealthier households switching to solar.<sup>81</sup> The report then proposed two alternative ways to cover the cost of electricity in California, identifying an income-based fixed charge as more "politically feasible" than using tax revenues to cover certain costs.<sup>82</sup> The

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note 73, at 2 ("Next 10 is an independent nonpartisan organization that educates, engages and empowers Californians to improve the state's future," and "[t]he Energy Institute at UC Berkeley's Haas School of Business helps create a more economically and environmentally sustainable energy future through research, teaching and policy engagement").

76. One legislative secretary to Governor Gavin Newsom stated that while these ideas were already being discussed, their office did collaborate and consult with some of the Next 10 authors. Interview with a Legis. Sec'y at Off. of California Governor Gavin Newsom (Oct. 18, 2023). *Compare with* Interview with TURN staff attorney (Oct. 20, 2023) (crediting Severin Borenstein with "launching" this idea). These interviews and the other interviews referenced in this Article were conducted by the Author. Interviews were conducted throughout October 2023. Interview transcripts and notes are on file with the Author. *See also* Joint Testimony of the Joint IOUs Describing Income-Graduated Fixed Charge Proposals, CPUC Proceeding R.22-07-005 at 7 (Apr. 7, 2023) (crediting the Next 10 Research and Berkeley Haas as key in inspiring the conceptual development of AB 205).

77. *Id.*

78. *Id.* at 4-5. The author's estimate of the marginal cost of electricity accounts for both the cost of additional electricity as well as the potential increases in transmission and distribution capacity costs, the cost that would come with the need for more generation capacity, and the cost of greenhouse gas (GHG) emissions. *Id.* These values are added into the marginal cost to account for the added costs that would come with higher usage from policy aimed at increasing electrification. *See also* Severin Borenstein, *Electricity Pricing and the Social Cost of Carbon*, ENERGY INST. BLOG (June 20, 2023) <https://energyathaas.wordpress.com/2023/06/20/electricity-pricing-and-the-social-cost-of-carbon/> [<https://perma.cc/924A-PQQC>] (advocating for tying prices to the SMC of electricity).

79. BORENSTEIN ET AL. (2021), *supra* note 73, at 4.

80. As well, the report's analysis reveals the lack of transparency around cost recovery for wildfire mitigation, advocating for a decoupling of wildfire mitigation costs (which are projected to be a significant driver of electricity prices in the future) from transmission and other fixed cost categories to make it easier to make policy decisions about wildfire mitigation cost recovery. *Id.*

81. *Id.* at 7. This cross-subsidy effect results from the shift of fixed costs, which are recovered in the high volumetric electricity prices, to the remaining customer base of non-solar residential users whose bills then increase to accommodate the shrinking customer base. *Id.*

82. *Id.* at 5. The rate proposals are based on Bonbright's four principles regarding how to design an income-based fixed charge (efficiency, cost recovery, equity, and feasibility,

authors offer four possible pathways to implementing an income-based fixed charge as well as sample rate structures.<sup>83</sup>

The 2022 report, *Paying for Electricity in California: How Residential Rate Design Impacts Equity and Electrification*,<sup>84</sup> builds on the 2021 report by using the three major IOU's billing data from over eleven million California households to analyze the "implications of the current residential electricity prices for equity and for electrification of vehicles and homes."<sup>85</sup> The report looks at increases in residual cost burden<sup>86</sup> across household, finding that while "California's current electricity pricing regime assigns a greater share of residual costs to higher-income households, . . . lower-income households pay much more as a fraction of their annual income on average, so much so that the effective electricity tax is more regressive than the state sales tax."<sup>87</sup> The authors discuss how this regressive, effective electricity tax increases operating costs for electric appliances and vehicles and thus works against the state's decarbonization efforts.<sup>88</sup> The goal should instead be to lower volumetric electricity prices to in turn send price signals for beneficial electrification.<sup>89</sup> The authors conclude that there is a dire need for residential electricity rate reform and again offer the solution of an income-based fixed charge.<sup>90</sup>

Another useful framework for imagining what a just transition should look like is offered by Professor William Boyd who calls for a revitalized conception of the public utility.<sup>91</sup> He argues that achieving a low carbon future requires public participation and a shared political choice. To do so, he

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where efficiency means "a tariff with volumetric prices that are as close to social marginal cost as possible"). *Id.* at 34 (citing JAMES C. BONBRIGHT, *PRINCIPLES OF PUBLIC UTILITY RATES* (1961)).

83. *Id.* at 37–42.

84. BORENSTEIN ET AL. (2022), *supra* note 66.

85. *Id.* at 4.

86. The authors define the residual cost burden as "the difference between the amount the customer pays on their bills and the incremental cost to the utility providing that household with power." *Id.*

87. *Id.*

88. *Id.* at 5.

89. *Id.* See also Curt Barry, *Groups Debate California Income-Based Charges' Decarbonization Effect*, INSIDE EPA.COM (June 15, 2023), <https://insideepa.com/daily-news/groups-debate-california-income-based-charges-decarbonization-effect> [<https://perma.cc/8SLG-NDFE>] (emphasizing the need to lower electricity bills for low-income households in order to encourage the adoption and use of electric appliances and vehicles).

90. BORENSTEIN ET AL. (2022), *supra* note 66, 23–30. An additional benefit of lowering volumetric rates and implementing an income-based fixed charge system would be to decrease the volatility of household electricity bills since customers would be able to better anticipate their monthly bill, thus decreasing bill shock and leading to fewer customers who cannot make payments. Severin Borenstein, *Rebalancing Rates for Electrification and Equity*, ENERGY INST. BLOG (May 1, 2023), <https://energyathaas.wordpress.com/2023/05/01/rebalancing-rates-for-electrification-and-equity/> [<https://perma.cc/7PQ7-C3JV>].

91. William Boyd, *Public Utility and the Low-Carbon Future*, 61 UCLA L. REV. 1614, 1710 (2014).

advocates for the return of the public utility as the “social control of business”<sup>92</sup> to assist with the planning, coordination, investment, and innovation required in this project that the market alone may not be able to achieve.<sup>93</sup> His proposal is relevant to the underlying themes of California’s IGFC. The IGFC essentially proposes the exercise of stronger regulation on the part of the CPUC, removing some of the bite from consumer choice, and consumer wealth, and taking back a bit more “social control of business.”<sup>94</sup> This framework is especially pertinent as a foil for the current culture of electricity consumers who, in valuing themselves as individuals making moral choices about energy usage, can be understood as born from decades of leaving too much to market forces.

These proposed pathways forward offer a hopeful vision of viable pathways for a just transition, one that AB 205’s IGFC has the potential to help forge. As Professor Boyd writes, “prices (and the price system) are political.”<sup>95</sup> Although the ensuing ratemaking proceedings and implementation of the IGFC may tell another story, the frameworks for a just transition leading up to the passage of AB 205 reveal that changes to the residential electricity rate system have the power to not only achieve beneficial electrification and decarbonization, but also to work towards energy equity and protecting those most harmed by the current rate system.

### III. AB 205’S BOLD PROPOSAL

*“Today, lower- and moderate-income customers, on average, pay a greater percentage of their income towards their electricity bill relative to higher income customers. The[se] [IGFC] proposals result in meaningful bill savings for these customers, with no change in usage.”*<sup>96</sup>

Assembly Bill 205 (2022) provides “a unique opportunity to implement a progressive fixed charge that can help align residential rate design with the state goals of prioritizing affordability, equity, and beneficial electrification.”<sup>97</sup>

After a 72-hour window of contested review by the June 2022 California legislative session, AB 205 passed. Because it was introduced as a trailer bill,<sup>98</sup>

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92. *Id.* at 1616 n. 2 (“The phrase ‘social control of business’ was a common one in early twentieth-century discussions of the proper role of government in managing the economy”).

93. *Id.* at 1619, 1658, 1710.

94. See also William Boyd & Ann E. Carlson, *Accidents of Federalism: Ratemaking and Policy Innovation in Public Utility Law*, 63 UCLA L. REV. 810 (2016) (developing idea of ratemaking as a policy tool through socializing costs).

95. William Boyd, *Ways of Price Making and the Challenge of Market Governance in U.S. Energy Law*, 105 MINN. L. REV. 739, 747 (2020).

96. Joint Testimony of the Joint IOUs Describing Income-Graduated Fixed Charge Proposals, *supra* note 76.

97. Opening Testimony of Mohit Chhabra and Sylvie Ashford, Sponsored by the Natural Resources Defense Council and the Utility Reform Network, Addressing Options for an Income-Graduated Fixed Charge, CPUC Proceeding R.22–07–005 at 1 (Apr. 7, 2023).

98. For a definition of a trailer bill, see *Glossary of State Budget Terms: Trailer Bill*, CAL BUDGET & POL’Y CTR., <https://calbudgetcenter.org/resources/glossary-of-state-budget-terms/>

there was not the same amount of time for review and discussion regarding AB 205 as would have been afforded a policy bill. Review of the congressional floor hearings and interviews with budget committee members suggest that there was no live discussion of the income-graduated fixed charge provision during the recorded hearings.<sup>99</sup> Not one person commented on it. The debate focused instead on the implications of the bill's other provisions. This silence is surprising for two reasons. First, the IGFC proposes a change to the electricity rate system that is unprecedented in the United States. Second, a vocal post-passage discourse has developed which is characterized by acerbic critiques and attempts to repeal the bill.

This Part discusses AB 205, its scope, and the reforms it introduces with a focus on the income-graduated fixed charge provision. This discussion will contextualize the IGFC provision as an important experiment in ratemaking that tries to fix some of the structural problems with the current electricity system and ensure access and affordability. This Part will then introduce the ongoing CPUC Rulemaking tasked with formulating and implementing the IGFC by July 1, 2024. This will include a discussion of the key stakeholders, issues, and procedural questions involved in the proceeding.

#### A. *What is AB 205 and the IGFC?*

AB 205 includes a broad scope of energy related items for the 2022 Budget Act. A few recurring themes appear in the Legislature's findings and declarations that precede each item and reveal the motivating concerns behind the bill. These themes include recognition of the intensifying weather events from climate change,<sup>100</sup> a strongly articulated anxiety about such weather crises' threat to California's grid reliability and affordability,<sup>101</sup> and finally, a call to action for Californians to find a solution for a clean energy future that does not sacrifice grid reliability.<sup>102</sup> AB 205 then mandates a diverse series of statutory changes that could achieve these goals, each of which is supported by a breadth of policy tools and programs. These statutory changes range from an updated California Arrearage Payment Program (CAPP) that addresses unpaid

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[<https://perma.cc/QP7U-7GUZ>] (“Trailer bills that meet the requirements of *Proposition 25 (2010)* can be passed by a simple majority vote of each house of the Legislature and may take effect immediately upon being signed by the governor or on a date specified in the bill. Trailer bills are generally distinct from *policy bills* and resolutions that propose *constitutional amendments*.”) (emphases in the original). Trailer bills are different from policy bills because they receive less exposure as they do not go through the policymaking process. They usually involve urgent measures and go into effect the minute they are assigned. Often, what is included in a trailer bill signals the Governor's priorities to the legislation via the budget since the Governor leads the development of the budget, has the power to sign or veto budget, line items, and any bills in a budget package.

99. See June 29th Assembly Floor Session, *supra* note 2.

100. Assemb. B. 205, 2021–22 Sess. (Cal. 2022).

101. *Id.*

102. *Id.*

electricity bills incurred during the pandemic to the creation of the Long Duration Storage Program at the California Energy Commission (CEC), which would give financial incentives to projects that “deploy innovative energy storage systems to the electrical grid.”<sup>103</sup>

Meanwhile, the most surprising changes introduced by the bill relate to the fixed charge. California’s IGFC for electricity would be the first of its kind in the United States. Not only would it significantly change how consumers pay for electricity, it would also introduce an equity-centered approach to rate recovery that simultaneously contributes to the goal of beneficial electrification. The legislature’s intentions in writing this provision are evident in its findings that “(a) many electric costs which are currently recovered on a volumetric basis do not actually depend on the amount of electricity consumed by individual electric customers, and (b) that this mismatch between cost causation and retail rates is leading to rate volatility and inequities among customers.”<sup>104</sup>

The fixed charge provision works as follows. First, AB 205 repealed the \$10 fixed charge cap for residential IOU customers.<sup>105</sup> Then, following a note that authorizes the CPUC to adopt a new fixed charge are three key requirements that together serve to keep the CPUC from veering too far from the drafters’ intentions. Any approved fixed charges must:

- (1) Reasonably reflect an appropriate portion of the different costs of serving small and large customers.
- (2) Not unreasonably impair incentives for conservation, energy efficiency, and beneficial electrification and greenhouse gas emissions reduction.
- (3) Are set at levels that do not overburden low-income customers.<sup>106</sup>

The third of these guidelines is the most potent. Any change to the fixed charge must have at its center the goal of not further burdening the low-income customers whose utility bills already exhaust high proportions of their income. The subsequent income-graduated provision makes this goal explicit, stating that “[t]he fixed charge shall be established on an income-graduated basis with no fewer than three income thresholds so that a low-income ratepayer in each baseline territory would realize a lower average monthly bill without making any changes in usage.”<sup>107</sup> In implementing a new fixed charge, there is no loophole for keeping things as they are or ignoring the current burden that

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103. *Id.* at 1–2.

104. Pub. Utils. Comm’n California, R.22–07–005 *supra* note 59 (citing to Sec. 14 of Assemb. B. 205, Findings and Declaration for PU Code Section 739.9).

105. Assemb. B. 205, 2021–22 Sess. (Cal. 2022). The \$10 fixed charge cap had been in place and untouched for almost a decade. See Alexis Wodtke, Opinion, *Why Your Utility Bills Could Be About to Skyrocket in California*, S.F. CHRON. (Oct. 31, 2023), <https://www.sfchronicle.com/opinion/openforum/article/california-utility-bills-18429004.php> [https://perma.cc/TR8K-JFGS].

106. Assemb. B. 205, 2021–22 Sess. (Cal. 2022).

107. *Id.*

low-income households face. To do so would violate the law as the outcome achieved must result in lower monthly bills for low-income ratepayers.

B. *Tracking the CPUC Proceedings: Procedural Tracks, Live Issues, and Stakeholders.*

Although AB 205 was signed into law on June 30, 2022, the CPUC has until July 1, 2024, to authorize a new fixed charge for residential rates.<sup>108</sup> This two-year window has allowed the CPUC to conduct a thorough rulemaking proceeding that involves working with major utility companies and other stakeholders to resolve questions of statutory interpretation and to figure out the mechanics of implementing an IGFC.<sup>109</sup>

1. Procedural Tracks.

The CPUC's Rulemaking has been divided into two tracks. Track A seeks to establish an income-graduated fixed charge for residential rates for all investor-owned electric utilities. Track B aims to expedite the adoption of demand flexibility rates<sup>110</sup> for large IOUs and update existing rate design principles for all electricity rates.<sup>111</sup>

In Track A, the Administrative Law Judge posed two questions to the parties asking what costs should be recovered through the fixed charge and what income thresholds should be established.<sup>112</sup>

108. *Id.*

109. See *Demand Flexibility Rulemaking (R.22-07-005)*, *supra* note 1.

110. Demand response refers to changes in electricity consumption by customers in response to either economic or reliability signals. Cal. Pub. Utils. Comm'n, *Demand Response*, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/demand-response-dr> [<https://perma.cc/SA4L-2F52>] ("Economic signals come in the form of electricity prices or financial incentives, whereas reliability signals appear as alerts when the electric grid is under stress and vulnerable to high prices."). The main goals of demand response programs are to alleviate the need for future fossil fueled power plants, to reduce the 'peakness' of aggregate demands, and to change customer electricity consumption patterns by providing customers with better electricity price information. Matteo Muratori, Beth-Anne Schuelke-Leech & Giorgio Rizzoni, *Role of Residential Demand Response in Modern Electricity Markets*, 33 RENEWABLE & SUSTAINABLE ENERGY REVS. 546, 550 (2014). Demand flexibility is a form of demand response that "uses communication and control technology to shift electricity use across hours of the day while delivering end-use services (e.g., air conditioning, domestic hot water, electric vehicle charging) at the same or better quality but lower cost." PETER BRONSKI ET AL., *THE ECONOMICS OF DEMAND FLEXIBILITY* 5 (2015). While demand response works mainly through the utility or grid operator manipulating wholesale market signals and through bilateral contracts, demand flexibility is driven by customer choice and behavior in response to more time sensitive retail prices. *Id.* ("The current paradigm of demand response is focused on providing traditional generation services with flexible demand. In contrast, demand flexibility can offer a broader value proposition that is customer focused.")

111. Order Instituting Rulemaking to Advance Demand Flexibility Through Electric Rates, CPUC Proceeding R.22-07-005, COM/ARD/mef (Nov. 2, 2022).

112. *Id.* at 3-4 (referencing questions 1(b) and 1(c)).

The resolution of these questions bears directly on the IGFC's ability to fulfill its ambitious equity and beneficial electrification goals. If the CPUC settles on too low of a fixed charge, the desired effect of incentivizing customers to switch to electric appliances and vehicles would be negated. As well, if the CPUC chooses income brackets that are stratified in a way that does not significantly shift the burden of electricity payments from low-income households to high-income households, then even if electricity bills for low-income households decrease, the rate system might remain regressive. This would create further obstacles to beneficial electrification, especially for low-income households. The stakes of the CPUC's rulemaking are thus not insignificant. If the CPUC decides to implement a tepid IGFC, millions of dollars would then be spent on a rate reform carrying energy equity outcomes and electrification effects of marginal consequence.

Given the novelty of the IGFC proposal and the significant number of consumers and stakeholders impacted by this rate reform, the CPUC's Rulemaking proceeding has involved a lengthy briefing process involving over seventy-five parties.<sup>113</sup> The parties have submitted thousands of pages of proposals, testimony, and exhibits,<sup>114</sup> and the CPUC has run workshops for public comment and education.<sup>115</sup>

## 2. Live Issues and Stakeholders.

On April 7, 2023, the nine original parties to the CPUC Rulemaking submitted their opening testimony addressing options for an IGFC.<sup>116</sup> Many

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113. See *Service Lists for R2207005*, CAL. PUB. UTILS. COMM'N, [https://ia.cpuc.ca.gov/servicelists/R2207005\\_91041.htm](https://ia.cpuc.ca.gov/servicelists/R2207005_91041.htm) [<https://perma.cc/PBB7-92ZL>].

114. The first round of party comments responding to the scope and main issues of AB 205 came in July and August, and then another round in December and January. Briefs responding to questions of statutory interpretation were filed in January and February of 2023. Opening and rebuttal testimony regarding the fixed charges, opening and reply comments on the implementation pathways, and administrative law judge rulings have been filed through the months since then. See MATTHEW FREEDMAN, TURN, INCORPORATING INCOME-BASED FIXED CHARGES INTO CALIFORNIA ELECTRIC RATES 13 (Oct. 14, 2023) (on file with Author) (laying out the timeline of filings).

115. See, e.g., *Income-Graduated Fixed Charge Workshop (R.22-070005, Phase 1 Track A)*, *supra* note 61 (Ankit Jain, a Senior Analyst at the CPUC, responding to questions of this nature). Note that in June 2023, Administrative Law Judge Wang bifurcated the rollout of the IGFC into two phases to respond to concerns about income verification. The first phase would not require income verification and instead rely on existing low and moderate-income assistance programs to help customers verify incomes and receive a lower fixed charge. Later, there would be a second version requiring income verification of all customers. Track A Opening Brief of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, CPUC Proceeding R.22-07-005, at 2-3 (Oct. 6, 2023).

116. U&E Fixed Charge Briefing Memorandum from Legislative Staff 2 (2023) (on file with Author). The nine original entities are: TURN/NRDC filing together; the Sierra Club; Solar Energy Industries Association (SEIA); Public Advocates Office (PAO); Pacificorp; Liberty Utilities; Joint IOUs; California Environmental Justice Alliance (CEJA); and Bear

of the proposals are not controversial in the sense that they acknowledge and affirm AB 205's explicit equity justice and decarbonization goals. Many are also similar in offering more moderate proposals for an IGFC. These middle-ground proposals underscore the values of the parties behind them and their goal of achieving a progressive yet pragmatic rate design. However, it is the extreme proposals—those that either advocate for fixed charges near or below the previously capped charge of ten dollars,<sup>117</sup> or advocate for a fixed charge set at \$418<sup>118</sup>—that best help to reveal the tensions and competing interests underlying the parties' positions.

Most of the proposals offer three income tiers, with the highest income-household assigned a fixed charge of no more than \$100 a month. The parties who fall into these middle-range proposals include The Utility Reform Network (TURN),<sup>119</sup> the Natural Resources Defense Council (NRDC), and the three major IOUs.

TURN and the NRDC filed a joint opening testimony with three income tiers (low, middle, high).<sup>120</sup> The projected bill impacts for customers under their plan suggest that low-income households would realize monthly bill savings, middle-income households' bills would be impacted in a de minimis way, and only high-income households' bills would increase.<sup>121</sup>

The NRDC and TURN anticipate positive electrification impacts from their proposed rate structure. Coupled with higher fixed costs, they propose lower volumetric rates which will in turn decrease electric operating costs for heat pumps and electric vehicles. To illustrate, the existing electric operating costs for coastal non-California Alternate Rates for Energy (CARE) and

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Valley Electric. *Id.*

117. See *infra* note 132.

118. CEJA proposed \$418 as the highest fixed charge to be assigned to household incomes of over \$5 million. Prepared Track A Opening Testimony of Tyson Siegele on Behalf of the California Environmental Justice Alliance, CPUC Proceeding R.23-07-005 (Apr. 7, 2023), <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/demand-response/demand-response-workshops/advanced-der--demand-flexibility-management/track-a-reply-testimony/r2207005-ceja-siegele-track-a-reply-testimony.pdf> [<https://perma.cc/KP4J-JGGT>].

119. TURN is a nonprofit, consumer advocacy organization dedicated to making sure Californians have affordable clean energy through legal advocacy. See *About Us*, TURN, <https://www.turn.org/about-turn> [<https://perma.cc/Z5NT-4WDE>].

120. Opening Testimony of Mohit Chhabra and Sylvie Ashford, *supra* note 97, at 1. For the details of one version of their plan, see FREEDMAN, *supra* note 114, at 15 (the low tier of CARE and FERA customers would pay a fixed charge of \$5 a month, for instance, while the high tier of those with annual household incomes greater than \$150,000 would be about \$62 a month).

121. *Id.* at 19. For instance, CARE/FERA customers would save \$8–10 a month with version one and \$15–18 a month with version two. Middle-income households would experience bill impacts of \$3–7 a month with version one and de minimis average bill impacts with version two. High-income households would experience bill impacts of \$3–7 a month with version one and average bill increases of \$24–26 a month with version two. *Id.*



non-Family Electric Rate Assistance (FERA)<sup>122</sup> customers of PG&E to use electric space heating, water heating, and electric vehicles averages \$1,764 a month. With the new rates, the electric operating costs (including fixed charges and volumetric rates) for the same services would average \$1,513 a month, thus offering \$251 in savings. Similar savings would be achieved for the PG&E's coastal FERA and CARE customers with projected savings of \$112 a month.<sup>123</sup> Given TURN's history of protecting consumers from high electricity bills, their desire to ensure bill protection for all customers could explain their collaboration with NRDC in offering a more moderate proposal.<sup>124</sup>

The three major IOUs also proposed a range of IGFCs that were slightly higher than the NRDC and TURN proposal.<sup>125</sup> While the IOUs can and have been easily demonized as rent-seekers interested only in maximizing profits,<sup>126</sup> the IOUs' rate design proposal is arguably quite progressive because it does considerably shift costs to high-income households. Even so, the fixed charges the IOUs proposed for CARE and low-income households are three times higher than those proposed by the NRDC and TURN. This would seem to dilute the stronger effect of the higher high-income fixed charges and suggests that the IOUs would be recovering a higher revenue with higher fixed charges across all income tiers. Yet the IOUs' proposal is still restrained by the requirements of AB 205 that the IGFC lead to lower bills for lower-income households. As SDG&E CEO Caroline Winn shared, "When we were putting together the reform proposal, front and center in our mind were customers who live paycheck to paycheck, who struggle to pay for essentials such as energy, housing and food."<sup>127</sup>

At the other end of the spectrum, the Solar Energy Industries Association (SEIA) proposes very minor changes to the current system of electricity rates.<sup>128</sup> SEIA and other groups from the solar industry make up a large portion of the

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122. CARE and FERA are two existing programs that offer discounted rates to low-income households. See Cal. Pub. Utils. Comm'n, *CARE/FERA Program*, <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/care-fera-program> [<https://perma.cc/65P2-GTRR>].

123. *Id.* at 21.

124. See *infra* note 204 and accompanying text for Professor Borenstein's take on this issue.

125. For more details on the fixed charges proposed by the IOUs, see FREEDMAN, *supra* note 114, at 16.

126. See *infra* Part V.A.4. (discussing the villainization of the utility companies by the public in part because of wildfire liability and the ensuing costs deferred to consumers).

127. *SDG&E Submits Rate Reform Proposal Designed to Stabilize and Lower Energy Bills*, SDGE (Apr. 10, 2023), <https://www.sdgenews.com/article/sdge-submits-rate-reform-proposal-designed-stabilize-and-lower-energy-bills> [<https://perma.cc/7MBH-DL39>].

128. See also Public Advocates Office Prepared Testimony on Rulemaking to Advance Demand Flexibility Through Electric Rates – Income Graduated Fixed Charge Rate Design, CPUC Proceeding R.22–07–005 (Apr. 7, 2023) (also proposing a lower fixed charge although complemented by another proposed policy tool, California Climate Credits, that would in effect, and unlike SEIA's proposal, better serve low-income customers).

vocal contingent resistant to AB 205's IGFC.<sup>129</sup> SEIA proposes an inconsequential decrease in volumetric rates and fixed charges that remain below the previous statutory cap.<sup>130</sup> For them, modifying the fixed charges for residential rate schedules is only a small step in advancing the state's electrification efforts and "should not be expected to play a major role in rate designs that promote electrification."<sup>131</sup> Rather, they believe that high fixed charges only provoke one response from residential solar customers: "to leave the system entirely."<sup>132</sup>

SEIA's statements addressing the impact of the fixed charges on solar customers reflect the organization's interests as the national trade association for the U.S. solar industry and contextualize the insignificant changes they proposed for the IGFC system.<sup>133</sup> Solar customers will be directly affected by the IGFC. If they must pay a high fixed charge, the solar industry worries that this will cut against the incentives that drew many of their customers to invest in solar.<sup>134</sup> This fear of how the IGFC will impact their business and profits seems to be behind SEIA's proposal. Further opposition campaigns have their roots in the solar industry and anxieties about how the IGFC will impact solar customer's bills, as discussed in the next Subpart.<sup>135</sup>

The opening testimonies of the remaining major stakeholders include proposals from smaller electric utility companies, like PacifiCorp, who call for the CPUC to leave room for variation within the final IGFC structure, and an energy justice-centered proposal from the California Environmental Justice Alliance (CEJA) whose proposal includes ten income brackets based on the divisions of California's personal property tax liability.<sup>136</sup> Despite the varia-

129. See *infra* Part V.A.2. (exploring the solar industry's opposition to the IGFC).

130. Prepared Direct Testimony of R. Thomas Beach on Behalf of the Solar Energy Industries Association ii, CPUC Proceeding R.22-07-005 (July 14, 2022) ("Fixed charges by definition do nothing to encourage the stated goal of this rulemaking."), <https://docs.cpuc.ca.gov/PublishedDocs/SupDoc/R2207005/5907/505462900.pdf> [<https://perma.cc/WJ7C-ZTH4>].

131. *Id.*

132. *Id.* For instance, SEIA proposes for PG&E a fixed charge of \$4.93 for CARE customers, \$745 for FERA customers, and \$9.09 for all others. *Id.* at 22. SEIA also advises the CPUC to avoid adopting fixed charges that are specific to any type of distributed energy resource (DER), suggesting that the CPUC should instead focus on investing in DERs. SEIA even goes so far as to say that the goals of recent solar net metering tariffs would be counteracted by a solar-specific fixed charge.

133. *About SEIA*, SOLAR ENERGY INDUS. ASS'N, <https://www.seia.org/about> [<https://perma.cc/9JSL-J4WL>].

134. See also *infra* Part V.A.2.

135. See *infra* Part V.A.2.; FLAGSTAFF RSCH., ASSESSMENT OF FIXED CHARGE PROPOSAL (June 1, 2023) (report originally included as attachment to an email from "a Bay Area resident"; thousands of copies of which were sent to various individuals in the California Budget Committee), <https://clean-coalition.org/wp-content/uploads/2021/07/Flagstaff-Fixed-Charge-Whitepaper.pdf> [<https://perma.cc/9JLR-ZQN6>].

136. See Pacificorp: Direct Testimony of Robert M. Meredith, CPUC Procedure R.22-07-005 (Apr. 7, 2023), and Prepared Track A Opening Testimony of Tyson Siegle on Behalf of the California Environmental Justice Alliance, *supra* note 118, at 11-13 (CEJA

tions across proposals, taken together they “reflect[] a major shift in rate design priorities.”<sup>137</sup>

Since the original proposals were submitted, the ensuing parties’ filings have continued to refine proposals and respond to feedback from the Administrative Law Judge and each other. The biggest task has been reaching an agreement on the number of income tiers, the income ranges for each tier, the values of the proposed fixed charges, and the new volumetric rate of electricity. Because many parties’ proposals are based on technical data, a lot of the filings have included extensive data on energy usage and its variability at a regional, climate, and household level.

While previously “the reduction of electricity use through conservation and energy efficiency was prioritized regardless of whether that was environmentally responsible,”<sup>138</sup> this Rulemaking has notably been centered on achieving beneficial electrification and energy equity through an IGFC. This goal alone is significant. Still, what some might call a radical rate reform might more appropriately be understood as a pragmatic effort to solve multiple structural and equity problems embedded in the current California rate system.

#### IV. NOT SO MUCH SMOKE IN THE ROOM: DEBUNKING THE IGFC’S INCEPTION

*“The state’s entire budget process is mostly theater, because the real budget is negotiated behind closed doors by the governor and legislative leaders. That’s when backroom deals become “amendments” to the blank bills. These ‘budget trailer bills’ nearly break the sound barrier as they fly through the Legislature and land on the governor’s desk, and by the time you find out what’s in them, it’s too late.”*<sup>139</sup>

Since AB 205 passed and throughout the development of the CPUC Rulemaking, the public discourse on the IGFC includes an astonishing range of tones and critiques. Often scathing, and less often hovering between skepticism and wariness, the anger and upset that has grown around the IGFC has led to the construction of a cynical account regarding the bill’s inception. In this version of the story, the narrative of AB 205 and its IGFC proposal involves secret agendas and closed doors. This sentiment has been shared across interest groups ranging from disgruntled assemblymembers, established energy economists, and the solar industry, to what would seem to be a majority of electric utility consumers across all household income tiers.

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is a statewide, community-led alliance that works to advance policy solutions to promote environmental justice and build and protect healthy communities).

137. Pub. Utils. Comm’n California, R.22–07–005, *supra* note 59.

138. *Id.*

139. Susan Shelley, Opinion, *California’s Absurd Energy Policies*, L.A. DAILY (Apr. 22, 2023), <https://www.dailynews.com/2023/04/22/californias-absurd-energy-policies/> [<https://perma.cc/RQS6-K6W4>].

Despite the lack of published information tracking the origins of AB 205, this Part challenges the dominant narrative and conspiracy theories that have proliferated around the inception of the IGFC. After first exploring the debates around the IGFC and its origins, this Part will then present a revised history that challenges current narratives regarding the IGFC's passage. Drawing on primary sources and conversations with participating individuals and stakeholders, this Part maps out the actors, conversations, and proposals involved in the formation of the IGFC. This Part shows that the standard narrative around the IGFC is wildly exaggerated. What emerges instead is a picture of a more thoughtful, longstanding debate about how to use ratemaking as a policy tool that can advance the state's decarbonization goals while also correcting the energy injustices wrought by the current electricity system.

Understanding how AB 205 and its IGFC provision were passed serves the important role of dispelling misconceptions about the legislative process that are now complicating the development of the IGFC.<sup>140</sup> Furthermore, the IGFC provision is an important experiment in ratemaking. If it can avoid dilution through the CPUC Rulemaking procedure, the IGFC could help make significant strides in the two projects of energy justice and beneficial electrification. Thus, understanding how this bill was passed may provide a helpful roadmap for future legislative projects that support a clean and just energy transition.

#### A. *Conspiracies and Misconceptions*

Regardless of its content, AB 205 was guaranteed to receive backlash simply for being a trailer bill.<sup>141</sup> The nature of a trailer bill's expedited legislative review process has been the source of recent reproach regarding the alleged misuse of this type of fast-tracking to pass liberal agendas with fewer opportunities for critical feedback.<sup>142</sup> This character of AB 205 and the context of trailer bills in California's recent legislative history are helpful to explaining at least some of the vitriolic responses to AB 205 and its IGFC provision. However, the story that has come to dominate news outlets and spark further uneasiness among consumers and other affected parties is one of legislative conspiracies and abuse of the legislative process. While many consumer- and

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140. See, e.g., Letter From Twenty-Two California Assembs. to Alice Busching Reynolds, President of the CPUC (Oct. 23, 2023) (available at Camille Von Kaenel & Blanca Begert, *Problems in Paradise*, POLITICO, <https://www.politico.com/newsletters/california-climate/2023/11/02/problems-in-paradise-00125158?nname=california-climate&nid=00000189-315c-d8dd-a1ed-797dc9f10000&nrid=704da4cd-5504-4fc3-9ed9-61002c020156&nlid=2745178> [<https://perma.cc/XZ29-EV7Q>]) (repeating misconceptions around the IGFC as harmful to low-income households and calling for a pause in its rollout).

141. See *supra* note 98 and accompanying text. See also Dan Walters, *California Senate Takes Rare Stand Against Misuse of Budget 'Trailer Bills'*, CALMATTERS (June 12, 2023), <https://calmatters.org/commentary/2023/06/california-misuse-budget-trailer-bills/> [<https://perma.cc/2SGX-G4XP>].

142. *Id.*

industry-level versions of how the IGFC came to be are vocalized in the criticisms of the IGFC,<sup>143</sup> the account of one Budget Committee consultant illustrates how ingrained some of the misconceptions and mystique around the legislative process have become.<sup>144</sup>

His account raised a few additional notable points of context. First, in 2020 and 2021, Los Angeles was experiencing a series of rolling blackouts caused by an unreliable energy system.<sup>145</sup> The fire danger was high. The significant consumer switch to solar and considerably hotter fall seasons in more recent years also contributed to a sense of alarm for utility companies who were dealing with the problem of not generating enough electricity for three to four hours a day for a three to four month period every year.<sup>146</sup> AB 205 thus grew from this conjuncture of energy system problems that escalated in 2021 and revealed the electricity system's susceptibility to shutting off large parts of the grid.

Given these energy system concerns, the Governor's office and the legislature agreed there was a need to build more redundancy and capacity into the electric grid. A tension arose in these conversations about the best way to build in this redundancy. On one end of the conversation were advocates for building more natural gas power plants, while those on the other end called for more investment in building energy storage systems and batteries to deal with the growing gaps in the energy grid.<sup>147</sup> The Governor was very involved in addressing this issue. Given that the Governor has a lot of power to move the budget forward, the Governor's commitment to addressing the energy crises emerging from the rolling blackouts and wildfires seems to explain why the IGFC provision and the other energy capacity building initiatives of AB 205 were included in a budget trailer bill.

So far, this rendition of the context leading up to AB 205 is not controversial. However, the relation of the IGFC provision to the rest of the bill and concurrent energy agenda items is more contested. In the view of this Budget Committee consultant, the proposed fixed charge was included to help pay for the cost of the redundancy of building extra powerplants and keeping some online as backup (i.e. the peaker plants) since making these changes would not be free and would require increasing the revenue requirements of the electric utility companies. Notably, a big controversy at the time of the summer

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143. For a discussion of these criticisms, see *infra* Part V.A.

144. Interview with Assembly Budget Comm. Consultant #1 (Oct. 2, 2023).

145. *Id.*

146. For more on this usage and generation mismatch, see Stephen J. Bronner, *The Duck Curve: What Is It and Is It a Problem?*, CNET (Aug. 22, 2023), <https://www.cnet.com/home/energy-and-utilities/the-duck-curve-what-is-it-and-is-it-a-problem/> [<https://perma.cc/7JSA-BV23>].

147. According to the Assembly Budget Committee Consultant, most of these conversations focused on the question of nuclear plants and fossil fuel plants versus electrification. Interview with Assembly Budget Comm. Consultant, *supra* 144.

2022 legislative session was that Governor Newsom wanted to keep the Diablo Canyon nuclear plant online for five more years even though it was supposed to be decommissioned. According to the Budget Committee consultant, there was no conversation about the IGFC during AB 205's 72-hour window of review; the legislative hearings for AB 205 instead focused on these issues around the peaker plants.

When asked about how the IGFC came to be, a Budget Committee consultant shared two of his contentious hypotheses. According to his first theory, the Governor's office needed a way to sell the proposal to keep paying for and running Diablo Canyon<sup>148</sup> along with additional peaker plants. A far-reaching energy justice provision provided an appetizing solution. Slated to be the first of its kind, the IGFC promised to provide an attractive distraction from and counterbalance to the uproar that would be certain to follow the Diablo Canyon and peaker plant proposals. His second theory captures the sentiment behind much of the outcry against the IGFC. According to this theory, the radical IGFC was slipped into AB 205 and meant to be overshadowed, and thus preserved, by the loud discord concerning the bill's creation of a Strategic Reliability Reserve (SRR) that would enable the continuance of the peaker plants.

These two theories are opposing, as one relies on the assumption that the IGFC would be so controversial during AB 205's review that it would cause a distraction while the second relies on the assumption that the other provisions would dominate the conversation and make it possible for the IGFC provision to stay intact and unnoticed. Perhaps there is some truth in both theories. Passing laws entails a certain level of gamesmanship and strategy. Maybe both possible outcomes were seen as helpful ways to ensure the survival of the IGFC provision. But it could be more simply—as is supported by further conversations and primary sources—that existing efforts to address the equity and incentives issues inherent in the current rate structure came to a head at this time of heightened grid strain and were thus woven in as part of AB 205's greater capacity building project.<sup>149</sup>

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148. Ultimately, in late August 2022, with the passage of SB 846, the California legislature authorized the Governor to have the option to seek funding to keep Diablo Canyon running for another five years. But this decision did not confer him the power to do so without first seeking out federal funding. Catherine Clifford, *California Lawmakers Vote to Extend Diablo Canyon Nuclear Plant Operations as State Battles Energy Emergency*, CNBC (Sept. 1, 2022), <https://www.cnbc.com/2022/09/01/california-lawmakers-vote-to-keep-diablo-canyon-nuclear-plant-open.html> [<https://perma.cc/Y3W4-UE3W>]. In his letter to the California State Assembly, Governor Newsom wrote “[t]he bill does not facilitate the renewal or extension of any permit for expiring powerplants,” making it clear that further steps would have to be taken once the bill was passed before such plants could be granted approval to continue running. *Messages From the Governor: Signing Message—Assembly Bill No. 205*, CAL. LEGIS. ASSEMBLY DAILY J. 5657, 5962 (June 30, 2022).

149. See *infra* Part.IV. (challenging the misconceptions and conspiracies around the IGFC and instead presenting it as a well-thought out, carefully planned rate reform). A staff

Many contest these two theories. Importantly, they have been rejected by other individuals involved in the legislative process, including staff in Governor Newsom's office.<sup>150</sup> But it remains valuable to consider how at least one insider has perceived the processes involved in lawmaking and the successful passage of a major change to the ratepayer system as it sheds light on how similar characterizations may have developed in public discourse from the outside looking in.

Another contextual viewpoint for consideration is that over the course of the three years coming out of the pandemic, a lot of policy decisions were made without robust conversations, hearings, or review processes. This may be in part because the pandemic got rid of in-person meetings and because then, all of a sudden, a massive amount of money from the state was available in the budget that had never been there before.<sup>151</sup> As a scramble ensued to apply for and access this new wave of funding, there seems to have been subsequently less time spent deliberating the details of projects and policy proposals.<sup>152</sup> As the Budget Committee consultant described the situation, not a lot of people have been able to keep up with this fast-paced flow of conversation and funding. For him, this also explains how the IGFC provision was completely skipped over during AB 205's review at the end of June 2022. No one complained. No one said anything. In the fog of a heated debate regarding the rest of AB 205, no one had any idea what they were getting into with the IGFC.<sup>153</sup>

Furthermore, because the solar industry and other IGFC opponents were surprisingly absent or silent during the AB 205 floor hearings, their current vocal reactions can be understood as an attempt at trying to now have the debate that should have taken place during the June legislative session. California Budget Committee members, among other legislative employees, have since received

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attorney with TURN critiqued this reading of events because as he remembers things, it was not until the end of the legislative session in mid-late August that language about Diablo Canyon started to surface—nobody was talking about Diablo Canyon in June. Furthermore, the groups that had been supporting IGFC were strongly opposed to the Diablo Canyon initiatives and believed SB 846 was a terrible bill. Interview with TURN staff attorney, *supra* note 76. On the other hand, even those who dispute this conspiracy acknowledge that the IGFC provision was thrown in late and that AB 205 received expedited review even for a trailer bill. See Interview with CPUC staff (Oct. 12, 2023).

150. See *infra* note 261 and accompanying text.

151. See, e.g., GOVERNOR GAVIN NEWSOM, GOVERNOR'S BUDGET SUMMARY 2022–23 TO THE CALIFORNIA LEGISLATURE REGULAR SESSION 51 (May 2022) (describing the historic \$15 billion climate resilience investments in the 2021 Budget Act).

152. One example provided of this very fast and high-level review process is the current initiative to build a giant middle-mile broadband project. Only one hearing was held to review the project proposal before seven million dollars were approved for investment. See Interview with Assembly Budget Comm. Consultant #1, *supra* note 144; *State of California Middle-Mile Broadband Initiative*, CA.gov, <https://middle-mile-broadband-initiative.cdt.ca.gov/> [<https://perma.cc/9H8J-X3KF>].

153. Interview by the Author with Assembly Budget Comm. Consultant #1, *supra* note 144.

thousands of copies of emails calling for the repeal of the “Utility Tax” as it was “passed in three days without any public hearings or discussions.”<sup>154</sup> The solar industry and other IGFC opponents seem to rely on the trope of conversations occurring in a smoky room as a way to paint the passage of AB 205 as “undemocratic and opaque.”<sup>155</sup> This framing has become the common thread in the criticism of many parties and stakeholders.<sup>156</sup> As will be discussed further in Part V.A, this characterization of how AB 205 was formulated is harmful since it undermines the legitimacy of the democratic legislative process.<sup>157</sup>

#### B. *A Rate Change That Was Years in the Making*

The following discussion attempts to present a history of the IGFC’s inception that is grounded in years of research, analysis, and conversations about how to remedy the regressive electricity rate system while also incentivizing consumers to make the switch towards electrification. This retelling of events is based on interviews with individuals from the CPUC, Governor Newsom’s office, and TURN who each have robust experience in the utility reform and ratemaking space and also have been involved in some way with either the groundwork leading up to the passage of the IGFC or the current CPUC Rulemaking procedure.<sup>158</sup> Contrary to the theories explored above, the narrative that emerges here is one of deliberate action, open dialogue, and democratic lawmaking.

The work to find a fairer way to distribute costs across different residential customers to address affordability concerns is not new. California electric rates have been regressive for a while. Many inequities have existed in rate design since the electricity crisis in the early 2000s. This was a big part of conversations that took place in the few years leading up to the passage of AB 327 in 2012 which authorized time-of-use rates for residential customers and up to a ten dollar monthly fixed charge for residential ratepayers.<sup>159</sup>

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154. Email from Bay Area resident to Assembly Budget Comm. Consultant #1 (on file with author with the attachment FLAGSTAFF RSCH., *supra* note 135).

155. *Id.*

156. For a discussion of similar commentary and reactions, see *infra* Part V.A.

157. See *infra* Part V.A. (discussing how harmful these narratives are to the democratic legislative process).

158. See Interview with TURN staff attorney, *supra* note 76; Interview with CPUC staff, *supra* note 149; Interview with a Legis. Sec’y at Off. of California Governor Gavin Newsom, *supra* note 76..

159. *Assemblymember Henry Perea Speaks on AB 8 and AB 327*, PLAN. REP. (Nov. 8, 2013), <https://www.planningreport.com/2013/11/08/assemblymember-henry-perea-speaks-ab-8-and-ab-327> [<https://perma.cc/5329-9986>]. “In 2013, AB 327 (Perea, Ch. 611, Statutes of 2013) permitted the CPUC to adopt, beginning Jan 1, 2015, a ‘fixed charge for the purpose of collecting a reasonable portion of the fixed cost.’ The statute capped the fixed charge at \$10 per residential customer per month. The CPUC never adopted this charge.” U&E Fixed Charge Briefing Memorandum from Legislative Staff, *supra* note 116, at 1. Between 2012 and 2020, the CPUC and relevant stakeholders spent many years figuring out TOU and phasing it in over the years. During this time, the CPUC considered establishing a minimum



And unlike what IGFC critics suggest, the concept behind the IGFC was also not new nor hastily formed when introduced in AB 205.<sup>160</sup> While consumer groups, environmental groups, and the CPUC had historically been opposed to fixed charges,<sup>161</sup> the idea of increasing fixed charges had been bandied about in general rate cases for years. Dating back to 2016, the CPUC energy division staff had been looking into the fixed costs in the utility system, the taxonomy of costs, and exploring how to bifurcate costs and reach a new conception of a fixed charge. A 2016–17 PG&E ratemaking case even considered the idea of implementing a new and higher residential fixed charge.<sup>162</sup> Even earlier, a 2012 CPUC decision for the Consumer Federation of California considered and discussed what costs would be eligible for recovery as fixed charges—although it was not implemented.<sup>163</sup>

The CPUC energy division staff explain the CPUC's previous resistance to fixed charges as follows. Previously, proposed fixed charges were modestly set to recover only the fixed cost related to customer access to the grid. These proposals for fixed charges remained under the existing statutory cap of ten dollars. Thus, for the CPUC, it didn't seem like moving forward with those versions of a fixed charge would be a strong tool for rate reform goals nor that there was a compelling economic basis for it. The concern then, and one that remains now, is the size of the fixed charge—whether it would be too small to make it worth the expense to implement, or whether it would be so large that it would be out of line and become a way for the utility companies to protect themselves from competition and revenue requirements. Depending on how a fixed charge is set, it can very easily become an anti-competitive mechanism. Conversely, a well-crafted fixed charge can level the playing field regarding the cross-subsidy effects of the rapid adoption of solar distributed energy resources (DERs). To the extent that a higher fixed charge will enable

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bill but decided to do a fixed charge of \$5 for CARE customers and \$10 for non-CARE customers. Interview with a Legis. Sec'y at Off. of California Governor Gavin Newsom, *supra* note 76.

160. As reiterated by CPUC energy division staff, the concept of a fixed charge from a purely economic theory perspective makes sense and is not controversial. The concern instead has been about what the size of non-volumetric costs would be and what non-marginal costs should be baked into rates. Interview with CPUC staff, *supra* note 149.

161. See *supra* Part III.B.2 (regarding the Joint IOU's and the NRDC and TURN's previous opposition to an IGFC).

162. Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of IOUs' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations, CPUC Decision 15–07–001, ALJ/JMO/JMH/cdl/mal/ar9 (July 13, 2015). This idea was ultimately rejected with the rationale that adopting a new fixed charge should be put off until certain criteria was met.

163. See *id.* See also Order Instituting Rulemaking on the Commission's Own Motion to Conduct a Comprehensive Examination of IOUs' Residential Rate Structures, the Transition to Time Varying and Dynamic Rates, and Other Statutory Obligations, CPUC Procedure R.12–06–013, at 12 (June 21, 2012) (“The Commission agreed that fixed charges would both negatively impact low-usage customers and reduce the incentive for conservation.”).

a reduction of volumetric rates, a successful fixed charge system also promises to send strong electrification signals.

The challenge in achieving this is that the size of the fixed charge for middle- and high-income households would have to be high enough as to bring volumetric rates close enough to marginal costs. At the same time, the lowest tier fixed charge would have to adequately account for the equity concern facing low-income households who are lower usage and often without DERs to defray electricity costs. According to CPUC staff, they have been interested in implementing higher fixed charges for a while as they contemplated the best way to introduce an equity component.<sup>164</sup> They had been more actively looking at and discussing what a higher fixed charge might look like for the year preceding AB 205's passage with academics, including the authors of the Next 10 reports, Meredith Fowley and Severin Borenstein. The CPUC highlighted their Next 10 paper at its February 2021 affordability en banc hearing.<sup>165</sup> Committed to finding a more equitable rate structure, the CPUC initiated an affordability proceeding on this issue and would have continued to keep exploring it but for the surprising appearance of AB 205's IGFC provision.<sup>166</sup> For them, this legislative authorization was the key that unlocked their ability to move forward with an equity-centered plan for a fixed charge rate system.

Meanwhile, for the better part of 2020 through 2022, the main concern for utilities coming out of the pandemic related to increasing electricity rate and bill affordability. About two billion dollars in customer arrearages<sup>167</sup> had accumulated during this time because of customers not being able to afford to pay utility bills. Simultaneously, utility companies were facing pressure to avoid disconnecting customers for non-payment. Additional apprehension came from the rising electricity rates and bills driven significantly by the higher costs utility companies faced from infrastructure investments and wildfires. Around this time, the CPUC held a number of public en banc workshops highlighting

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164. Approximately 35–40 percent of the state was hovering around low-income status which meant that a lot of consideration had to go into figuring out how a new rate design could address equity concerns. On one hand, rates couldn't be so low that utilities were unable to recover their revenue requirements. But conversely, if the goal was for low-income households to invest in solar, DERs, and EVs, affordability was a huge concern. Furthermore, if the cross-subsidy effect of solar adoption was not cured, the possibility of a death spiral felt increasingly unavoidable. Thus, the fixed charges were something that had made sense from a policy perspective for a while. Interview with CPUC staff, *supra* note 149.

165. Concurrent to these initiatives in 2021 and 2022 was the publication of the two Next 10 reports which have been credited to varying degrees for some of the design ideas included in AB 205. The consensus seems to be that it was considered as an important part of the deliberations, with the recognition that policy is not made in a vacuum, so the ultimate framework proposed was a marriage of multiple ideas. *See supra* note 76 and accompanying text.

166. *See* Interview with CPUC staff, *supra* note 149.

167. Interview with a Legis. Sec'y at Off. of California Governor Gavin Newsom, *supra* note 74.

these concerns regarding the growing trajectory of rates and bills and opening up space to facilitate public dialogue.<sup>168</sup>

As electrification became a top priority, a new focus was given to figuring out how to protect customers most impacted by rate redesign while also working towards achieving electrification goals. The years 2020–21 reflected a window of time where the focus was on identifying the problem, while 2022 was a time for focusing on solutions and what to do to mitigate, avoid, delay, and redistribute the associated costs. From these initiatives, then, a growing interest in advancing a new system of fixed charges emerged. While the concept of modifying fixed charges to include more non-usage related costs has been implemented by utility companies across the country,<sup>169</sup> the important question would become figuring out the income-graduation, the fixed charges, and the composition of the fixed versus variable costs in California.

### C. *Legislative Timeline*

The momentum around equity-centered rate reform leading up to 2021 reveals the more robust conceptions of the IGFC that were likely already underway when the sentence-long version of AB 205 was first introduced on January 8, 2021.<sup>170</sup> Many of the conversations and research efforts addressed above took place between AB 205's introduction and its first minor change on February 18, 2022.<sup>171</sup> Given that the published amended versions of AB 205 leading up to its passage jump from one-sentence bill language in its February 18 assembly amendment to a fully developed bill in its next amended iteration on June 26, the following timeline of the discourse around the IGFC illustrates its transformation between those two versions. Mapping this timeline is important because it shows that, unlike how critics of the IGFC portray its passage as hasty and void of opportunities for review, the actual legislative process involved in passing AB 205 included ample opportunities for revisions and review. The shaping of the IGFC was logically born from the conversations of the preceding years and was shaped throughout the spring of 2022 by those parties and stakeholders most experienced and well-versed in ratemaking policy.

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168. See, e.g., June 1st Assembly Budget Subcommittee No. 3 on Climate Crisis, Resources, Energy, and Transportation (Cal. 2022), <https://www.assembly.ca.gov/media/assembly-budget-subcommittee-3-climate-crisis-resources-energy-transportation-20220601> [<https://perma.cc/WQZ9-6XPA>] (detailing how “[t]he CPUC has hosted public dialogues two-years running about affordability”). See also Cal. Pub. Utils. Comm’n, 2022 Senate Bill 695 Report (2022), at 10–11 (“The En Banc included detailed stakeholder proposals on actions that could be undertaken to reduce utility costs and revenue requirements as well as.”).

169. Most utilities around the country do have higher fixed charges so the concept of coupling this with lowering volumetric rates is nothing new. However, this specific income-graduation of three tiers or more is novel in the U.S.

170. Assemb. B. 205, 2021 Reg. Sess. (Cal. 2021). (Version: Introduced Jan. 8, 2021) (The one sentence was: “It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2021.”).

171. *Id.*

The governor usually proposes a budget on January 10th in anticipation of a mid-May budget revision intended to incorporate feedback. During this period, mention of the IGFC in the documented analysis and summaries of AB 205 was scant and the degree of discussion that was held around it varied depending on who was asked.<sup>172</sup> It was during this time in late spring of 2022 that the CPUC first got the drafted language for AB 205, although they had heard about it prior and knew it was coming.<sup>173</sup>

A series of published budget revisions from May suggest that the focus of the Budget Committee was not the IGFC but the other provisions of AB 205.<sup>174</sup> For instance, the Budget Committee's May 17th administrative write-up of the budget change proposal focuses significantly on the goal of building in grid redundancy and capacity coming out of periods of extreme heat, wildfires and droughts that had driven electricity bills up sharply.<sup>175</sup> In the fifteen-page report, just three short paragraphs address the proposed fixed charge.<sup>176</sup>

Because the actual updated trailer bill draft was not distributed until the day after the May hearing, a "rare" second hearing in June was held.<sup>177</sup> According to Budget Committee staff, and corroborated by a recording of the hearing, there was no opposition to the fixed charge provision at all.<sup>178</sup> In fact, over the

172. This conclusion is based on documents and opinions shared during the interviews with the Author, as well as the few relevant and publicly available documents on the Governor's and Budget Committee's websites.

173. Interview with CPUC staff, *supra* note 149. Unlike in the past where the CPUC would be handed the draft of major bills much earlier, AB 205 was shared with the CPUC staff late in the process. *Id.* (expressing that "[a] lot became apparent to us late breaking"). Still, the design behind the IGFC was something energy division staff had been looking at and discussing with academics for over a year, including with Professor Borenstein. *Id.* (explaining that the CPUC highlighted his paper during a February 2021 affordability en banc hearing and further explored the IGFC idea through the affordability proceeding R-8-07-006, which they were going to keep exploring but for the arrival of AB 205).

174. See GOVERNOR'S BUDGET SUMMARY 2022-23 TO THE CALIFORNIA LEGISLATURE REGULAR SESSION, *supra* note 151, at 63 (within a sixteen-page summary, including only one high-level overview of the fixed charge proposal with no mention of income graduation); U&E Fixed Charge Briefing Memorandum from Legislative Staff, *supra* note 116, at 1.

175. State of California Budget Change Proposal (May 17, 2023) (available at [https://esd.dof.ca.gov/Documents/bcp/2223/FY2223\\_ORG3360\\_BCP6164.pdf](https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG3360_BCP6164.pdf) [<https://perma.cc/DSN2-UF24>]).

176. Unlike the final version of the bill's language which mandates that any fixed charge be income-graduated, at this stage it seems like the income-graduated component was only one avenue under consideration. *Id.*

177. U&E Fixed Charge Briefing Memorandum from Legislative Staff, *supra* note 116, at 1.

178. June 1st Assembly Budget Subcommittee No. 3 on Climate Crisis, Resources, Energy, and Transportation, *supra* note 168. Yet, there is evidence of concern about how much the fixed charge rate would be. The published agenda for the hearing lists potential questions from the CPUC which, while not raised at the hearing, include queries into equity effects of the fixed charge, the range of fixed charges that would be permissible under the trailer bill, and how the utilities plan to verify income. Agenda for Assembly Budget Subcommittee No. 3 on Climate Crisis, Resources, Energy, and Transportation 4 (June 1,

course of the over three-hour hearing, there was only brief mention of the IGFC that was more of an acknowledgement of its presence in the bill than an analysis of any of its complexities that would become future points of contention.<sup>179</sup>

The only notable change during this time was that the original language of AB 205 proposed by the Governor's office was amended to the bill's current mandate for at least three income levels instead of using the existing binary of CARE and non-CARE customers.<sup>180</sup> While these amendments were not made during the recorded hearing on June 1, they likely transpired during the behind-the-scenes meetings with budget and policy committee staff in the weeks leading up to June 26th.<sup>181</sup>

On June 26th, AB 205 was put into print as amended in the Senate.<sup>182</sup> The next day, the Assembly held a three-hour hearing during which the only two mentions of AB 205 occurred at the end during the time reserved for public comments. And the two individuals who spoke on AB 205 did so only to critique a different provision of AB 205 regarding the SRR, not the IGFC.<sup>183</sup> Finally, AB 205 was voted on by the Legislature on June 29th. Preceding the vote, parties still were silent on the IGFC.<sup>184</sup> The focus and critique remained centered on the establishment of a SRR. Those who spoke also expressed frustration with the expedited review process characteristic of trailer bills. Assemblymember Al Muratsuchi's statements capture these sentiments. He shared, "This is a crappy trailer bill that was dumped on us late Sunday night and we have to vote on this three days later. . . . It is a rushed, unvetted and fossil fuel heavy response."<sup>185</sup> The dialogue about AB 205 continued in this fashion, focused only on critiquing the implications of the SRR.

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2022), <https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/June%201-%20Sub%203%20Energy%20May%20Revision%20Informational%20Hearing.pdf> [<https://perma.cc/SBQ4-TF5A>].

179. Instead, the focus of the conversation was on the Strategic Reliability Reserve and reviewing the significant percent of the budget that would be going towards grid reliability goals. See June 1st Assembly Budget Subcommittee No. 3 on Climate Crisis, Resources, Energy, and Transportation, *supra* note 168.

180. Although it is unclear when before June 26 this amendment was made.

181. Note that behind the scenes meetings with budget and policy committee staff also could have involved discussion of and revision to the IGFC provision. Interview with Budget Comm. Consultant #2 (Oct. 24, 2023).

182. Assemb. B. 205, 2021 Reg. Sess. (Cal. 2021). (Version: Amended in Senate June 26, 2022).

183. Assembly Budget Committee Hearing, Senate Third Reading (June 27, 2022), <https://abgt.assembly.ca.gov/sites/abgt.assembly.ca.gov/files/June%2027%20Analyses%20Packet.pdf> [<https://perma.cc/NYT4-KHDJ>] ; Senate Committee on Budget and Fiscal Review, Summary of AB 205 (June 27, 2022) (available on file with Author); June 27th Assembly Budget Committee Hearing (Cal. 2022), <https://www.assembly.ca.gov/media/assembly-budget-committee-20220627> [<https://perma.cc/R343-CKAW>].

184. June 29th Assembly Floor Session, *supra* note 2.

185. *Id.* Asm. Muratsuchi was upset primarily because the SRR would allow the continued operation and funding of a fossil fuel power plant in his community of Redondo Beach. *Id.*

On June 30th, Governor Gavin Newsom signed AB 205 into law. In his letter to the California State Assembly, published in the *Assembly Daily Journal*, the Governor affirmed the bill's goal to "maintain reliability through extreme climate events and a rapid energy transition while accelerating efforts to get clean generation and storage online."<sup>186</sup> He did not mention the IGFC.

Many individuals interviewed about the AB 205 timeline noted that the quality of the conversation often feels disappointing when a trailer bill comes up in these committees.<sup>187</sup> The vessel of the trailer bill itself, in addition to the particular politics of the IGFC provision, thus also contributed to the feeling that there was insufficient review of the proposal.

The solar industry was notably absent from these hearings, a mistake which explains the strength of their vocal reaction following AB 205's passage.<sup>188</sup> Instead, the public conversation about AB 205 leading up to its passage focused on the issue of the SRR and its implications for various communities. The IGFC remained a sleeper issue that did not raise alarm bells for relevant stakeholders until AB 205 had already been passed.

The IGFC provision was developed quietly and progressively throughout the spring. Those stakeholders who claim that AB 205's language was only publicly available for three days are wrong. In contrast to the sentiment that the IGFC was devised behind closed doors, this account of events shows that there was publicly available dialogue and transparent processes that occurred at least over the past decade beginning with the negotiations involved in passing AB 327. This context and history seem to have been missed by many of the parties and individuals who have called AB 205's passage undemocratic. Rather, there were multiple conversations and research going on at the same time trying to address the twin goals of energy justice and beneficial electrification via changes in the electricity rate system. In the background of these concurrent movements towards reform, electricity rates were rising, addressing wildfire and grid capacity issues became an urgent priority, and customer arrearages continued to amass. The coming together of these circumstances cultivated the right climate for the IGFC's inception. Read together with the timeline of AB 205's drafting, the narrative presented in this Part is a well-defined journey of progress.

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186. *Messages From the Governor: Signing Message—Assembly Bill No. 205*, *supra* note 148, at 5962.

187. While there may have been a lot of back and forth between legislative staff and assemblymembers, the hearings only offer space for two lead support witnesses and two lead opposition witnesses. They each only get two minutes to speak while everyone else can then only speak to say that they stand in support or opposition.

188. Interview with Severin Borenstein (Oct. 25, 2023) (observing that the solar industry did not show up at all or reach out at this time).

V. LESSONS FOR THE FUTURE: MAKING SENSE OF IMPLEMENTATION CONCERNS, MYTHS, MISALIGNED ACTORS, THE CONSERVATION ETHIC, AND THE ELECTRICITY CONSUMER

*“At the last minute, someone who remains unidentified to this day mysteriously tucked in a short clause in a trailer bill which passed without discussion or debate in AB 205. If you think this sounds like the script for a Matt Damon movie, you are not the only one having such a thought. Sadly, that describes the state of politics in Sacramento these days.”*<sup>189</sup>

*“Based on our initial review so far, the IOUs’ “fixed-charge” proposal is nothing but a shameful attempt to exploit and rip off residential customers.”*<sup>190</sup>

*“[AB 205] is un-American, and I’m sure it’s unconstitutional.”*<sup>191</sup>

There has been an alarming amount of misinformation circulating about AB 205 which in turn has ignited a campaign of fear and distrust. Legislators are paying attention and have started to respond.<sup>192</sup> These responses reflect a wide range of fears that reflect a shared distrust of public utility companies, resistance to progressive changes to ratemaking, and tensions between the conservation ethos and the recent push for beneficial electrification. Furthermore, many practical concerns voiced by stakeholders present their own challenges to the CPUC’s work to devise an IGFC.

The conspiracies, misinformation, and ignorance around AB 205 pose a serious threat to the outcomes for which the IGFC strives. By investigating these reactions and sources of resistance to the IGFC, this Part attempts to understand and offer solutions regarding the underlying tensions and conflicting ideologies that threaten the feasibility of future decarbonization initiatives grounded in energy justice frameworks. Two competing visions of electricity also emerge, one built on the idea of a shared grid and the other built around an individualist, consumer-oriented view that leaves no room for participation in public utilities.

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189. Ahmad Faruqui, *What Concerns Did State Legislators Voice to the CPUC About the IGFC?*, LINKEDIN (Nov. 9, 2023) [https://www.linkedin.com/posts/ahmad-faruqui-0177b83\\_letter-from-ca-legislators-activity-7128422641484357633-1q90?utm\\_source=share&utm\\_medium=member\\_desktop](https://www.linkedin.com/posts/ahmad-faruqui-0177b83_letter-from-ca-legislators-activity-7128422641484357633-1q90?utm_source=share&utm_medium=member_desktop) [https://perma.cc/9R5C-X5X2].

190. Letter from the California Senate Republican Caucus to Alice Busching Reynolds, CPUC President (Apr. 20, 2023), <https://src.senate.ca.gov/sites/src.senate.ca.gov/files/2023%20FINAL%20IOU%20Flat%20Rate%20Letter%20to%20the%20PUC.pdf> [https://perma.cc/PW2Q-UA5N].

191. Ribakoff, *supra* note 64.

192. See Letter from the California Senate Republican Caucus to Alice Busching Reynolds, CPUC President, *supra* note 190; Letter From Twenty-Two California Asms. to Alice Busching Reynolds, President of the CPUC, *supra* note 140; Senator Josh Becker & Asm. Marc Berman, Opinion, *The Income-Based Electricity Bill Provision Is a Mistake That Will Raise Your Rates. Let’s Not Shy Away From Real Solutions*, PALO ALTO ONLINE (Nov. 8, 2023), <https://www.paloaltoonline.com/news/2023/11/03/opinion-the-income-based-electricity-bill-provision-is-a-mistake-that-will-raise-your-rates-lets-not-shy-away-from-real-solutions> [https://perma.cc/M8TR-TJW3].

## A. Challenges, Coordinated Resistance, and Conflicting Ideologies

### 1. Implementation Concerns

Uncertainty is baked into AB 205's language. In delegating the development of the IGFC framework to the CPUC, AB 205 intentionally leaves questions regarding its implementation unanswered. The major concerns regarding the IGFC have grown from these unresolved issues. These concerns are shared across parties and stakeholders.

One of the biggest challenges to implementing the IGFC that was identified across parties is how to set up an income verification framework. Critics of the IGFC have transformed the uncertainty around this into the narrative that any type of income verification process would involve an invasion of privacy. However, a record of low-income customers already exists via the CARE and FERA programs; the only new component would be for high-income verification. The resistance to income disclosure thus becomes a story not of privacy concerns, but of wealthy consumers articulating that they are okay with income disclosure for low-income households but not for themselves. One favored solution would be to set up a third-party administrator to conduct income verification.<sup>193</sup> This way, utilities would not be privy to the incomes and other personal information of customers. Instead, only the customer's broader income category would be shared with each utility.<sup>194</sup>

Grid defection<sup>195</sup> is another major fear and worst-case scenario imagined by proponents of the IGFC. What would happen if the fixed charges were so large that they would incentivize customers to disconnect entirely from the grid to escape paying the monthly fixed charge? This could be a serious problem if the private cost to consumers of meeting their power needs was lower than the aggregate bills paid to electric utilities regardless of fixed charges.<sup>196</sup> This concern is most relevant to solar customers as well as high-income customers who would likely face the highest fixed charges, although a recent study shows that distributed battery storage prices would have to drop significantly to make the savings from disconnecting worth the investment in enough storage to achieve

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193. The utilities do not want to be tasked with income verification; it is not a core competency for them. Another goal is to figure out a single manner to conduct income verification that can be applied statewide. The challenge becomes how to use data to sort people who should be in the middle- versus high-income band while also not consuming too many resources. Interview with TURN staff attorney, *supra* note 76.

194. Borenstein, *supra* note 90.

195. BORENSTEIN ET AL. (2022), *supra* note 66, at 32. "Socially-inefficient grid defection occurs when the incremental cost (including pollution externalities) of providing electricity to a customer from the grid, for a given level of reliability, is lower than the cost of doing so disconnected from the grid, yet the customer still chooses to disconnect in order to lower their private costs." *Id.*

196. Rebuttal Testimony of Mohit Chhabra and Sylvie Ashford, Sponsored by the NRDC and TURN Addressing Options for an Income-Graduated Fixed Charge, CPUC Procedure R.22-07-005 (June 2, 2023).



similar reliability to that of the grid.<sup>197</sup> Despite this fact and other evidence that contradicts the possibility of mass grid defection, fear of grid defection remains a vocalized concern for all. In light of these technical issues and implementation concerns, the Administrative Law Judge decided to split the implementation of the IGFC into two phases so that the IGFC implementation process could be built out with room to readdress and revise these concerns over the next few years.<sup>198</sup>

The legality of the IGFC structure has also been challenged. Some believe that the alleged income redistribution goals of the IGFC should be conducted through state tax policies, not through electricity bills. However, current electricity bills are already a form of state tax policy.<sup>199</sup> The IGFC instead attempts to undo the current regressive wealth redistribution that is caused by utility bills. And using tax policy to advance such goals has not proven viable in the current political landscape.<sup>200</sup> In fact, a bill has already been vetoed to incorporate the costs driving higher electricity rates into the state budget.<sup>201</sup> Others have argued that existing law prevents the implementation of the IGFC by mandating a two-thirds vote of the legislature rather than the simple majority required by a trailer bill. But this reasoning quickly falls short. This law requiring a two-thirds vote applies only to fees and taxes charged by the government collecting money to serve the government while the IGFC would be charged by privately owned utility companies.<sup>202</sup> These attacks on the IGFC's legality are based on faulty premises at best.

For Severin Borenstein, one of the authors of the two Next 10 Reports that shepherded in the idea of an IGFC, the real risk with implementation is that the rate structure the CPUC ultimately selects may be too diluted to be effective. He fears that the rates that will be settled on will not be set high enough to achieve the twin aims of equity and electrification while also making such a change worth the enormous costs of implementation.<sup>203</sup> Already,

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197. BORENSTEIN ET AL. (2022), *supra* note 66, at 33.

198. *See supra* note 115 and accompanying text (discussing this decision).

199. Borenstein, *supra* note 90.

200. *See infra* note 209 and accompanying text (discussing the feasibility and pros and cons of putting these costs into the state income tax).

201. *See* Borenstein, *supra* note 90.

202. *See* Jon Coupal, *Big Problems for California's Income-Based Utility Rates*, HOWARD JARVIS TAXPAYERS ASS'N (Apr. 25, 2023), <https://www.hjta.org/california-commentary/big-problems-for-californias-income-based-utility-rates/> [<https://perma.cc/X3H4-P9KW>] (noting that the Taxpayer Protection and Government Accountability Act (TPA) for 2024 ballot would require any tax to be approved by a two-thirds vote of the legislature and would clarify what constitutes a tax versus a fee).

203. Interview with Severin Borenstein, *supra* note 188 (“We have said to various people, if that’s what you’re thinking of doing, don’t do it all because administrative costs would dwarf such a pathetic IGFC.”). Part of Professor Borenstein’s concern stems from his belief that the legislature lacks the technical knowledge to be very precise since in theory, California has a regulatory commission with the experts giving them guidance and advising on what design makes sense. *Id.*

dilution of Next 10's proposal is evident.<sup>204</sup> Moreover, the IOUs' revenue requirements have drastically increased since his 2021 report.<sup>205</sup> This means that even though PG&E has proposed an IGFC as high as \$92 for high-income households,<sup>206</sup> this fixed charge is replacing far less of the revenue gap than would the more modest fixed charges outlined in the 2021 report. Thus, the current fixed charges on the table are that much farther from getting down to the social marginal cost of providing electricity.<sup>207, 208</sup>

His preferred method for achieving the same goals of the IGFC would be to instead pay some of these costs through the state budget.<sup>209</sup> Redistributing electricity costs through utility bills would be more regressive than funding them through the state budget. Furthermore, the necessary income determinations that the IGFC entails may involve imprecise taxation by the CPUC.<sup>210</sup> While legislators seem to be broadly and theoretically sympathetic with regards to putting this into the state budget, the death of a recent bill

204. For instance, he would have made a minimum of more than three income tiers. As well, he views the hypothetical IGFC in his 2021 and 2022 reports as regressive and has expressed disappointment in the joint NRDC and TURN proposal for not being more aggressive. *Id.* (also acknowledging that probably both the NRDC and TURN are trying to walk the line of both wanting beneficial electrification and figuring out how to realistically get there).

205. The analysis was conducted on 2019 billing data. BORENSTEIN ET AL. (2022), *supra* note 66, at 4 n.2 ("This report focuses primarily on 2019 data, because they are pre-pandemic and the most recent available when data were requested from the utilities. But it is clear that the residual cost burden has continued to expand since 2019.").

206. Track A Opening Brief of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, *supra* note 115, at 5.

207. When asked what he thought it would take to bring rates down to the social marginal cost (SMC), Professor Borenstein answered "brave commissioners." Part of the problem now is the following dichotomy. On one hand, the CPUC does understand the benefits of aligning rates with the SMC, and they are not swayed by the arguments of the solar industry. However, at the same time, they also recognize the tremendous political pressure on this case just as occurred with the NEM proceeding. In that Rulemaking, they settled on the middle ground approach. In this case, there is more excitement about whatever comes of the IGFC in the future as more subsidies are added for EV charging stations, vegetation management, and grid hardening and will go into the IGFC rather than volumetric rates. This would in turn increase pushback from the solar industry (whose business model is based on high electricity volumetric rates) and from homeowners who made investments in response to the current rate system. Interview with Severin Borenstein, *supra* note 188.

208. Also note that natural gas is priced below its true cost to society especially given its climate impact, while electricity is priced well above it. "If we're massively overpricing electricity while underpricing or correctly pricing these other, more carbon-intensive alternatives, then we're undermining everybody's incentives." Dylan Walsh, *Report Reveals Inequity in Electricity Pricing, Calls for Rate Reform to Help Fight Climate Change*, BERKELEYHAAS: NEWSROOM (Sept. 22, 2022), <https://newsroom.haas.berkeley.edu/research/report-reveals-inequity-in-electricity-pricing-calls-for-rate-reform-to-help-fight-climate-change/> [https://perma.cc/S68Y-SHKG].

209. Interview with Severin Borenstein, *supra* note 188.

210. *Id.*; BORENSTEIN ET AL. (2022), *supra* note 66.

proposed by Senator Toni Atkins to move some electricity costs into the state budget reveals the deeper reluctance to realize this type of reform.<sup>211</sup>

## 2. The Solar Industry's Disapproval and Attack Campaigns

Perhaps to make up for their absence during AB 205's legislative hearings, the solar industry has been quick and forceful in their opposition to the IGFC. The interests of the solar industry currently stand in direct opposition of the IGFC's approach to achieving energy equity and beneficial electrification. It is currently in the solar industry's best interest for volumetric rates to remain as high as possible because this makes their offering more attractive and provides headroom for raising prices. SEIA's proposal for the IGFC is revealing of the solar industry's intentions.<sup>212</sup> Their proposal is essentially to not make any change through a proposed fixed charge that reaches no higher than \$9.<sup>213</sup>

This is not the first time the solar industry has responded critically to an equity centered rate change. During the NEM proposals, where solar customers were lined up to pay a grid connection fee, the solar industry claimed that solar customers were being discriminated against in the form of a fixed charge for just those with behind-the-meter solar. They complained that other customers should also be paying for their share of electric infrastructure costs, saying that if a fixed charge was going to be implemented, it should be applied across the board. However, even now that their called for structure of a common fixed charge has been introduced, the distributed solar contingency remains upset. For those involved in the policy and lawmaking around rate reform, the solar industry's response feels frustrating and paints the solar contingency as disingenuous profit-seekers.<sup>214</sup>

Solar customers have also shown up in force to express their disgruntlement with the IGFC. Behind their unhappiness is the feeling that they invested in solar, they made their homes energy efficient, and now they feel tricked for having made investments in response to a bad policy that is now being reformed. But the popular narrative that solar customers will not be able to make a return on their investments in solar is false. In fact, they will still be getting a return on their investment based on the rates currently being proposed. All three rates are still high enough that anyone who installed solar

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211. See *Senate Democrats Introduce Legislation to Enhance Zero Carbon Goals, Meet Needs of Working Californians*, SENATOR TONI G. ATKINS (Apr. 19, 2022), <https://sd39.senate.ca.gov/news/20220419-senate-democrats-introduce-legislation-enhance-zero-carbon-goals-meet-needs-working> [<https://perma.cc/456R-NPYC>].

212. See Prepared Direct Testimony of R. Thomas Beach on Behalf of the Solar Energy Industries Association, *supra* note 130.

213. See *supra* note 132 and accompanying text; Interview with Severin Borenstein, *supra* note 188 (calling SEIA's rates "pathetic").

214. See Interview with a Legis. Sec'y at Off. of California Governor Gavin Newsom, *supra* note 76; Interview with CPUC staff, *supra* note 149; Interview with TURN staff attorney, *supra* note 76.

before April can easily recover their investments and then some.<sup>215</sup> The IGFC will not kill the rooftop solar industry.<sup>216</sup>

The solar industry seems to have had a strong hand in financing and choreographing an acerbic response from utility customers. As one example, thousands of copies of a scathing letter were sent to various district offices and legislative committees, including the Budget Committee.<sup>217</sup> Some have accused the solar industry of funding the letter, which was sent from individual customers and grounded in discussion of a research paper that eviscerated the proposals on residential fixed charges.<sup>218</sup> Whether or not that is true, it is clear that an anti-IGFC stakeholder funded this research and coordinated this widescale citizen action.

Evidence of this coordinated feedback reappears in the public comments section of the CPUC's Rulemaking. Much of the feedback comes from solar customers, many of whom use the same stock language to call for the repeal of the IGFC. The shared sentiment across the solar customers is anger. They believe that the IGFC will hurt them, and they feel angry that they, who have made the right and ethical choice to invest in solar systems, are being punished and will suffer financially.<sup>219</sup> As one customer noted, "[the CPUC] already attempted to destroy rooftop solar with NEM3. This could be the last nail in the coffin."<sup>220</sup> While the reality that the financial 'harm' that these customers talk about likely just means lower returns on investment, solar customers have felt increasingly deceived with each new NEM aiming to counteract the cross-subsidy effects of residential rooftop solar.<sup>221</sup>

Their outcry and mobilization are concerning. However, as one TURN attorney put it, the solar industry adapts to whatever the rules are.<sup>222</sup> At the end of the day, they will adapt to the IGFC because the final decision will likely

215. Interview with Severin Borenstein, *supra* note 188.

216. See Borenstein, *supra* note 90 (expressing that customers who can afford it and are not renters will still have incentives to install solar if they include a battery).

217. FLAGSTAFF RSCH., *supra* note 135.

218. Interview with Assembly Budget Comm. Consultant #1, *supra* note 144 (alleging that the email spam campaign has its origins with the solar industry).

219. *Infra* Part V.A.2. (discussing the response of the solar industry and solar system users who believe that the IGFC fails to adequately consider the financial impact on residents who have invested in solar energy systems).

220. R220705 – *Public Comments*, CAL. PUB. UTILS. COMM'N, (quotation taken from two identical public comments from individuals in Arroyo and Orange Counties). All public comments are available at the CPUC's online portal for R.22-07-005 at [https://apps.cpuc.ca.gov/apex/f?p=401:65::: \[https://perma.cc/8QXR-H9QF\]](https://apps.cpuc.ca.gov/apex/f?p=401:65:::).

221. The cost shift from NEM customers to others adds pressures to rates. Cal. Pub. Utils. Comm'n, 2022 Senate Bill 695 Report (2022), at 10 n.6. NEM 3.0 proposed a grid access charge, but it was rejected for a net billing tariff. *Id.* See also Borenstein, *supra* note 90 (writing that for customers who can afford it and who are not renters, they will still have incentives to install solar if they include a battery).

222. Interview with TURN staff attorney, *supra* note 76.

create stronger incentives for customers to install solar with energy storage.<sup>223</sup> In the wake of the most recent NEM reform decision, the solar industry has already started to pivot to push storage. As the CPUC Rulemaking procedure develops, the same spirit of adaptability can only be hoped for regarding their response to the IGFC.

### 3. Challenges to Rooted Paradigms of Conservationism and the Electricity Consumer.

The significant outcry and strong rhetoric that has developed against the IGFC reveals both new and underlying anxieties that stand in the face of an equitable and just transition. Much of the resistance to the IGFC has grown from the tension between the seemingly opposing concepts of conservationism and electrification. Historically, “encouraging conservation was the primary goal of rate design.”<sup>224</sup> Now, however, the goal has become to spur electrification by lowering volumetric rates for electricity consumption. For many consumers, this seems to create a perverse incentive to encourage consumption of electricity. This call for consumption feels flawed and illogical based on the assumption undergirding the electricity rate system that many consumers are used to: that using less electricity is better for the environment.<sup>225</sup> Consumers also appear skeptical that California’s grid would be able to provide enough electricity for sharp increases in consumption and demand.<sup>226</sup>

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223. Interview with Severin Borenstein, *supra* note 188. Solar without energy storage would have limited value to the grid. *Id.*

224. Shelley, *supra* note 139 (referencing the NRDC’s previous stance). *See also* U&E Fixed Charge Briefing Memorandum from Legislative Staff, *supra* note 116 (“For decades, to encourage conservation, California IOUs have calculated residential rates based on volumetric charges (i.e. charges based on how many kilowatt hours (the volume) of electricity customers consume). The more energy you use, the more you pay.”).

225. *See* Ruthie Lazenby, *Income-Based Electric Bills: Fact and Fiction*, LEGALPLANET (Aug. 29, 2023), <https://legal-planet.org/2023/08/29/income-based-electric-bills-fact-and-fiction/> [<https://perma.cc/JC6R-DRQC>] (“The anger the policy has prompted . . . highlight[s] the fundamental tensions between incentivizing broad-scale electrification and incentivizing electricity conservation.”).

226. *See* Shelley, *supra* note 139 (“This is all blithering idiocy because the state doesn’t produce as much electricity as it needs. California imports more electricity than any other state, utilities run public service announcements telling people to turn off their appliances at 4 p.m, and every heat wave risks rolling blackouts. California’s new policy is to simultaneously encourage more electricity use and less electricity use.”). *See also* Evan Symon, *Income Based Electric Rate System Proposed by California Energy Companies*, CAL. GLOBE (Apr. 15, 2023), <https://californiaglobe.com/articles/income-based-electric-rate-system-proposed-by-california-energy-companies/> [<https://perma.cc/KU7F-P7S2>] (“[A] fixed costs system could only encourage people to use more electricity, especially during high use times like the summer . . . . That means an even greater strain on the grid. You feel for these families struggling to pay bills, but at the same time, the electric grid out here is fragile, and anything that encourages even greater use at critical times is dangerous.”) (quoting Ellen Wright, a utility contract consultant).

Amplifying these concerns is the continued misunderstanding of how an IGFC coupled with lower volumetric rates works. In response to the concern that lowering rates will discourage energy efficiency, Professor Borenstein explains that “[t]he new rates would still be far higher than the actual incremental cost of supplying electricity, so they will certainly not encourage wasteful use of electricity. What they will do is encourage a shift from gasoline for transportation and from natural gas for home heating, hot water heating, clothes drying, and cooking.”<sup>227</sup> He further observes that “switching major energy services from oil and natural gas to electricity is much more critical for our policy goals than discouraging usage that people actually value more than it costs society.”<sup>228</sup>

Electricity consumers have also expressed anger at being punished for their conservation efforts.<sup>229</sup> One customer asked in a public comment on the CPUC Rulemaking, “Why are we going to punish people who have worked to decrease their consumption, but then decrease the bills for high consumers? That makes no sense.” Consumers decried the IGFC as “backwards” for “punish[ing] people who utilize rooftop solar,” when they really “should be rewarded.”<sup>230</sup> Many felt like they were “being punished for doing the ‘right thing’ and going green” and that they “have done [their] part.”<sup>231</sup> The comment section is saturated with similar iterations of the conviction that ‘conservationists’ should be rewarded with lower rates and savings while high usage households should suffer. This serves as further evidence of the tension that the IGFC has raised between notions of conservationism and consumption. A study of customers’ understanding of the IGFC conducted by SDG&E in the first quarter of 2023 also revealed that many customers feel that it “goes against the conservation message they’ve been receiving for years.”<sup>232</sup> This widespread upset and frustration shows just how pervasive the culture of conservationism has become.<sup>233</sup> Over time, because people have absorbed the message that conservation is good, it has become hard to digest the idea that conservation of electricity is a less preferable goal than is electrification.

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227. Borenstein, *supra* note 90.

228. *Id.*

229. R220705 – *Public Comments*, *supra* note 220. See also Ahmad Faruqi, *California’s Income Graduated Fixed Charge Proposal Just Got Slammed—Yet Again*, LINKEDIN (Nov. 2023) <https://www.linkedin.com/in/ahmad-faruqi-0177b83/recent-activity/all/> [<https://perma.cc/AG63-R49T>] (writing that “efficiency will be penalized and gluttony rewarded”).

230. R220705 – *Public Comments*, *supra* note 220.

231. *Id.* (“So go ahead and punish the ones that did everything right.”).

232. Joint IOUs’ Exhibit 1 of Joint Testimony Describing Income-Graduated Fixed Charge Proposals 113, CPUC Proceeding R.22–07–005, at 113 (June 20, 2023).

233. This mindset is not confined just to the issue of electric rates. See FLAGSTAFF RSCH., *supra* note 135 (supporting a finding that “[h]igh fixed charges discourage all forms of energy conservation, such as turning off the lights, energy efficiency, or installing new windows, rooftop solar, and batteries. These proposals will take away control from ratepayers, degrading their ability to manage their energy bill.”) (“We are watching and intend to hold state lawmakers accountable for the outcome of this matter.”).

However, the idea that high usage households should be punished is based on flawed assumptions and further intensifies the unequal distributional impacts of the current electricity rate system. The factors that contribute to higher electricity usage do not fit well into the binary of the ethical or unethical choice to consume electricity. Instead of morals, the main factors contributing to higher usage are “benign,”<sup>234</sup> including the size of the household, whether the household also produces electricity, and whether it is in a hotter inland zone versus a cooler coastal one.<sup>235</sup> A recent study examining how each of these factors affected per capita net electricity consumption revealed that the usage of those on the high end of this distribution is actually quite similar to that of those on the lower end.<sup>236</sup> And importantly, these results underscore that “the common narrative of imprudent energy hogs and socially-responsible energy angels over-represents wealthy and white households among the ‘angels’ and underrepresents them among the ‘hogs’, because it fails to adjust for difference in number of occupants, rooftop solar and climate. At the same time, it greatly under-represents Latinx families among the energy ‘angels.’”<sup>237</sup> This way of thinking thus upholds a culture around energy use that blames those communities disproportionately burdened by the current electricity system.

There is no place for this culture of energy use shaming in the just transition imagined by the IGFC.<sup>238</sup> Furthermore, the coupling of this resistance to electrification with extremely underpriced gasoline and natural gas is harmful. It discourages the switch from natural gas and gasoline, which is a much bigger threat to health in California than is electricity.<sup>239</sup>

Another negative reaction to the IGFC relates to how it has been perceived as a form of identity subsidization.<sup>240</sup> Many people condemn the IGFC for attempting income redistribution through electricity rates, calling it “nothing more than socialism for private electric companies.”<sup>241</sup> The irony is that this is

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234. Severin Borenstein, (*Mis*)Judging Energy Hogs, ENERGY INST. BLOG (Aug. 21, 2023), <https://energythaas.wordpress.com/2023/08/21/misjudging-energy-hogs/> [<https://perma.cc/LH8M-LG5L>].

235. *Id.*

236. *Id.*

237. *Id.*

238. See also Severin Borenstein, *Energy Hogs Roam the Whole Economy*, ENERGY INST. BLOG (Aug. 28, 2023), <https://energythaas.wordpress.com/2023/08/28/hogs-take-flight/> [<https://perma.cc/XFK5-6ZH2>]. Borenstein explains the dichotomy of how energy use shaming is focused on residential use when really most energy use occurs outside the home. Thus, net household electricity consumption is not a good guide to determine who is imposing damage on the planet. *Id.*

239. Interview with Severin Borenstein, *supra* note 188.

240. *Id.*

241. R220705 – *Public Comments*, *supra* note 220 (statement from a Castro Valley resident). Further individuals claim that the IGFC hurts the middle class who installed solar and battery storage. “I should not be expected to pay more if I have higher income, nor should I expect to pay less if I have lower income. That’s socialism.” *Id.* (statement from a Burbank resident).

essentially what is happening now—people are paying for public policies and public emergencies through the current electricity rates while the IGFC is an attempt to unwind that.<sup>242</sup> Currently, electricity customers subsidize the CARE program through increases in the rates of all non-CARE customers.<sup>243</sup> The same goes for climate emergencies, which are paid for by increases in retail electricity rates rather than through the state budget.<sup>244</sup> Furthermore, while it is true that the IGFC would raise bills for some people, those people would primarily be high-income, wealthier customers, while the average bills of low- and middle-income households would be lowered. As Professor Borenstein recently pointed out, “[t]he argument that [it] is unfair is based on the presumption that the current system is fair, a system that has been shown to result in low-income households paying for a disproportionate share of those fixed costs and public policies.”<sup>245</sup>

Consumers are not alone in feeling surprised and threatened by the IGFC. Republican state senators issued a letter in April of 2023 stating that “the tactic of implementing a structured fixed-charge system that diminishes individual responsibility and usage in favor of an ‘identity’ subsidization is not . . . an answer.”<sup>246</sup> In a separate interview, Senator Brian Jones, one of the signatories to this letter, called the IGFC “un-American” and “unconstitutional.”<sup>247</sup> Politicians have also revealed their lack of understanding how beneficial electrification can actually support, rather than contradict, conservation goals. For instance, in October, Assemblymembers who voted for AB 205 decried in a letter to the president of the CPUC that “this proceeding, and its subsequent decision, could ultimately steer the state away from a conservation focus to that of increased electrical consumption, by sending the wrong signal to rate payers.”<sup>248</sup>

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242. See Interview with Severin Borenstein, *supra* note 188. Professor Borenstein described how currently, customers are paying for energy efficiency programs, low-income subsidies, rooftop solar, EV charging, and vegetation management necessitated by climate change all through volumetric rates. This is the most regressive way possible to pay for these new policies. *Id.*

243. This is unlike how low-income food and medical treatment programs in California are paid for, which are instead paid for by the state budget. The only reason the same is not true for electricity rates is because the legislature has objected to this approach. *Id.*

244. For instance, PG&E is proposing seven billion dollars a year be spent over the next four years in undergrounding wires and grid hardening. *Id.* In 2019, PG&E’s entire revenue requirement for electricity was thirteen billion dollars, so this is a “mind boggling” increase in their revenue requirement. *Id.* It is not that PG&E suddenly became greedier, rather it is that they must respond to the climate emergency and they have chosen to do so through volumetric rates. *Id.*

245. Severin Borenstein, *What’s a Fair Electricity Bill?*, ENERGY INST. BLOG (Nov. 13, 2023), <https://energyathaas.wordpress.com/2023/11/13/whats-a-fair-electricity-bill/> [<https://perma.cc/DG3Y-GZ2B>].

246. Letter from the California Senate Republican Caucus to Alice Busching Reynolds, CPUC President, *supra* note 190. See also Walters, *supra* note 141.

247. See Ribakoff, *supra* note 64.

248. Letter From Twenty-Two California Assemblies to Alice Busching Reynolds, President of the CPUC, *supra* note 140 (also stating that “[t]here is a very real possibility that these proposals could discourage the kind of conservation that is needed in order to



Whether it has been directly named or lies under the surface of public reactions, identity politics play a substantial part in the tensions that have surfaced between a conservation ethic and beneficial electrification. Wealthy solar system users don't want to lose the high returns promised through switching to solar, nor do they want to "subsidize" the electricity bills of lower-income households. Furthermore, the current rate system treats customers like individual consumers who have control over their bills. Electricity consumers are used to feeling like they have the power to make decisions about what type of energy systems they use and how much electricity they consume that will in turn affect their monthly bills.

While having a choice to use more or less electricity won't change with the IGFC, consumer choice and household wealth alone will no longer give consumers as much of a sense of control over their monthly bills.<sup>249</sup> Instead, the IGFC will allocate a monthly fixed charge based on household income regardless of whether a family has decided to install a complete solar system or use less electricity. This seizure of control and dilution of the power of consumer choice upsets solar users and higher-income households. The Rulemaking's public comments are saturated with customer critiques and outcries from customers who see themselves as having chosen to 'do the right thing' by being conservationists and investing in solar. The IGFC would change how electricity consumers situate themselves as self-interested consumers with control and individual choice. Part of the strong negative reaction to the IGFC then originates in this threat to remove control from consumers through stronger ratemaking policy and regulation. This can be seen as a moment of reckoning with the current imbalance between free market regulation and the original notion of public utility regulation as the "social control of business."<sup>250</sup>

Here, the two opposing notions of electricity and electricity provisioning emerge. On one side are those who advocate for electricity to be provided through a shared grid and for the more equal distribution of the costs and benefits of electricity systems. This view returns to the core principles of public utility regulation, that providing electricity is a public service affected with the public interest that should thus be regulated in a way that serves the public in a just and reasonable way. This would include treating grid infrastructure and the service of providing electricity as collective and shared by all consumers. On the other side are those whose view on electricity provisioning is individualist and consumer-oriented. They are electricity consumers empowered by their choices and their individual circumstances. Those with the means to do so have defected from the grid and see no reason why they should participate

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avoid rolling blackouts that have threatened the state too often over the past several years").

249. It might be more accurate to describe this feeling as an illusion of control because there are significant factors outside of individual consumer choice that influence usage and electricity bills including but not limited to household wealth; region; neighborhood; and a building's structural efficiency.

250. See Boyd & Carlson, *supra* note 94.

in the first vision of public utilities or shared infrastructure. This view is manifested in the angry comments of the solar system users, the solar industry, and the political leaders of more affluent regions. The success of the IGFC's implementation, as well as future equity-based electrification reforms, can only operate successfully if the first vision of electricity is more widely adopted by those currently opposed to this rate reform.

#### 4. Misconceptions and Agents of Fear

Despite the abundance of information submitted through the Rulemaking and discussed since in panels led by the CPUC, consumers, key stakeholders, and political actors alike still fundamentally misunderstand how the IGFC works.<sup>251</sup> In voicing their fears of higher utility bills across households, they seem to forget about a core promise of AB 205. Instead of increasing bills for most customers, it mandates that any IGFC make bills lower on average for low-income households. The source of this misunderstanding originates from both the manufactured narratives around the IGFC from opposing stakeholders and the lack of marketing, education, and outreach thus far on the part of the utilities, the CPUC, and the government.

For instance, the twenty-two Assemblymembers who recently wrote angrily to the CPUC shared their belief that the IGFC would foster inequality and harm low-income customers.<sup>252</sup> In this letter, the Assemblymembers also critique the passage of AB 205 and CPUC Rulemaking for keeping doors closed and for being rushed.<sup>253</sup> Notably, the Assemblymembers who signed the letter are all Democrats.<sup>254</sup> The same discourse of smoke in the room seems to have settled for the long term across party lines, even for those who have been actively engaged in the dialogue preceding and following the passage of IGFC. Just a week after the passage of AB 205, two more Democrats added to this public critique. Assemblymember Marc Berman and Senator Josh Becker, who serves as the Chair of the Senate Budget Subcommittee No. 2 on Resources, Environmental Protection, and Energy, coauthored an opinion piece calling the IGFC “a mistake.”<sup>255</sup> Although they both initially supported AB 205, they expressed

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251. Interview with Severin Borenstein, *supra* note 188 (explaining that the IGFC makes electrification far more economic for consumers which a lot of people do not understand, pointing to bad messaging on the IGFC as a source of this confusion).

252. Letter From Twenty-Two California Assembs. to Alice Busching Reynolds, President of the CPUC, *supra* note 140, at 1 (“Building on this departure from volumetric rates, a significant amount of analysis has been conducted on the impact of these proposals on both California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance Program (FERA) rate payers, as is appropriate. Lower income Californians were meant to benefit from an income graduated fixed charge, however analysis shows that rate payers just outside of the CARE and FERA income levels who consume less electricity will ultimately pay more for their electricity than a large electricity user.”).

253. *See generally id.*

254. *Id.* at 3–4.

255. Becker & Berman, *supra* note 192.

concern for how the IGFC may burden low- and middle-income customers in the Bay Area given the high cost of living there, among other factors. Instead of seeing the IGFC as a tool to achieve energy justice and beneficial electrification, they claim it “undermin[es] [their] energy conservation and efficiency goals” and condemn it as a profit-seeking move by the utility companies.<sup>256</sup> They, too, have characterized the IGFC as anti-conservationist. They have turned to the trope of the utility companies as evil monopolists to invoke sympathy in their call for alternative solutions, like a climate bond.<sup>257</sup>

Conspiracies regarding secret motivations behind AB 205 and the IGFC also remain in circulation. One popular theory is that the “Utilities Commission with their cronies”<sup>258</sup> have concocted a conspiracy to increase their revenues, which is false given that the IGFC is revenue neutral.<sup>259</sup> The pervasiveness of this misconception is also evident in the public comments section of the CPUC Rulemaking procedure. Only two of a sample of one hundred comments expressed support for AB 205, while the rest reflect mistrust of utility companies’ motives, distress at perceived financial harm, and outrage stemming from the conservation ethic. The second common theory is that some malevolent, secret motivation inspired AB 205 and the IGFC.<sup>260</sup> While much speculation has centered on whether AB 205’s IGFC and its SRR Fund were passed to support or help ease the decision to keep peaker plants going, as well as the Diablo Canyon nuclear plant,<sup>261</sup> it seems to matter less what the actual conspiracy is and more that a strong feeling of distrust of the legislative process has only grown since the passage of the bill.

The worst agents of the fear and misunderstanding around the IGFC are not confined to speculative consumers and legislative staff. In fact, one surprising anti-IGFC advocate is the energy economist Ahmad Faruqi who spent much of his career ushering in time-of-use rates in California and considering approaches to ratemaking centered on the Bonbright principles including

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256. *Id.*

257. *Id.* There is legitimacy to some of their concerns. Because the IGFC will begin with just two categories of income in its first version, CARE and non-CARE customers, those customers who are just above the CARE category will end up still contributing a higher percentage of their income than would those who sit more comfortably within the middle to high-income threshold of non-CARE customers.

258. *R220705 – Public Comments, supra* note 220. Many think that the IGFC is part of a conspiracy devised by the utility companies as a way to get more profits. Many also share their belief that low- and middle-class consumers will be harmed while the utilities profit. *Id.*

259. *See Borenstein, supra* note 245; Interview with Severin Borenstein, *supra* note 188 (commenting on how one major political problem is how this revenue neutral proposal has been conflated with huge rate increases).

260. One customer commented, “The havoc and mayhem created by P G and E in our area since the San Bruno Debacle on is CRIMINAL, there is no recompense and lobbying politicians for these back door deals continues unmentioned.” *R220705 – Public Comments, supra* note 220 (commentary from a Redding County resident).

261. All but one of the stakeholders interviewed for this paper reject the theory that Diablo Canyon has any relation to AB 205 or the IGFC.

equity and bill stability.<sup>262</sup> Faruqi's public stance against the IGFC is even more surprising considering the testimony he provided recently advocating for rate reform, including the introduction of a fixed monthly charge.<sup>263</sup> Despite this, he is behind some of the most acerbic and public calls for the repeal of AB 205 and the IGFC. Every month or two, he posts on LinkedIn and uses hyperbolic language to make dramatic claims that the IGFC "has unleashed a fury among Californians"<sup>264</sup> because "the IGFC will raise electric bills for millions of frugal, efficient and green customers."<sup>265</sup> In published opinion pieces, he further argues "[t]he IGFC maneuver is cleverly disguised as a plan to promote equitable electrification,"<sup>266</sup> explaining that it will hurt all, but especially solar customers.

His sympathies for the solar industry are underscored in his writings and in his choice to identify himself as a user of high technology, and highly priced, solar and electric powered technology.<sup>267</sup> Multiple critics of Faruqi's position against the IGFC question whose interests he may be representing.<sup>268</sup> Faruqi's collaboration with the Coalition for Environmental Equity and Economics (CEEE) makes it seem more likely that he has recently aligned with the solar industry.<sup>269</sup>

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262. See *Ahmad Faruqi: Biography*, BRATTLE GRP., <https://www.brattle.com/experts/ahmad-faruqi/> [<https://perma.cc/9JER-QJYX>].

263. Missouri Public Service Commission, File No. ER=2019-0335, Direct Testimony of Ahmad Faruqi, Ph.D., on Behalf of Union Electric Company 4-5 (July 3, 2019), <https://efis.psc.mo.gov/Document/Display/112543>.

264. Ahmad Faruqi, *How California's AB 205 Gave Birth to the Income Graduated Fixed Charge (IGFC)* ENERGY CENTRAL (September 2023) <https://energycentral.com/c/um/how-california%E2%80%99s-ab-205-gave-birth-income-graduated-fixed-charge> [<https://perma.cc/F4D5-4FFF>].

265. Ahmad Faruqi, *More Than 200 Organizations Have Conveyed Their Concerns About the IGFC to California Legislators*, LINKEDIN (Nov. 27, 2023) [https://www.linkedin.com/posts/ahmad-faruqi-0177b83\\_igfc-cpuc-fixedcharges-activity-7131158569508376576-KDF0/](https://www.linkedin.com/posts/ahmad-faruqi-0177b83_igfc-cpuc-fixedcharges-activity-7131158569508376576-KDF0/) [<https://perma.cc/2VYU-QKMG>].

266. Ahmad Faruqi, *The Income Graduated Fixed Charges in California Will Harm Customers With Low Electric Bills*, PV MAG. (May 8, 2023), <https://pv-magazine-usa.com/2023/05/08/the-income-graduated-fixed-charges-in-california-will-harm-customers-with-low-electric-bills/#:~:text=pv%20magazine%20USA-,The%20income%20graduated%20fixed%20charges%20in%20California%20will%20harm%20customers,consume%20low%20amounts%20of%20electricity> [<https://perma.cc/HG2Y-BYKT>].

267. In his LinkedIn profile 'About' section, he writes that "[a]s a consumer of energy, [he is] active in managing [his] domestic energy needs" as he has installed efficient HVAC equipment, a smart thermostat, solar panels, and an LG Chem battery, and he drives a Tesla Model 3 that he charges at home. *Ahmad Faruqi: About*, LINKEDIN, <https://www.linkedin.com/in/ahmad-faruqi-0177b83/> [<https://perma.cc/36T6-KZ25>].

268. See Interview with Severin Borenstein, *supra* note 188 (suggesting that Faruqi has become a political actor and no longer cares about getting the facts right); Interview with TURN staff attorney, *supra* note 76 (pointing out that Faruqi was pro-fixed charge when he worked for the Brattle Group but adopted a different perspective once he retired and got his own solar system).

269. Curt Barry, *Fears Grow Over Range of Effects From California's New Energy Reserve*, INSIDE EPA (July 10, 2022), <https://insideepa.com/climate-news/fears-grow-over-range-effects-california-s-new-energy-reserve> [<https://perma.cc/4XWD-L9WR>]. Faruqi

The CEEE alleges to be an environmental justice and consumer advocacy organization that believes in “energy democracy.”<sup>270</sup> However, much of their content online is primarily composed of disturbing forms of misinformation campaigns against the IGFC.<sup>271</sup> They have even targeted Severin Borenstein and sought to discredit him.<sup>272</sup> The CEEE’s work and Faruqi’s tirades thus reveal themselves more as financed campaigns against the IGFC rather than as thoughtful, genuine critiques of the rate reform. This type of fear mongering is devoid of fact-based claims and has likely soured many against the IGFC.

## B. *Looking Ahead*

The campaign against the IGFC has grown increasingly harmful as politicians across the aisle have begun to share their own misconceptions and misinformation about the proposed rate reform. The valuable aims of the IGFC are often lost amongst this heated public discourse. As a leader in the clean energy and environmental protection space, California should be the most appropriate place to achieve a rate reform that promises to be so unprecedented. That the IGFC is now under attack and at risk of dilution or even repeal shows just how important it is to consider from where the resistance to the IGFC has grown.

While some of the mystery around the passage of AB 205 can be attributed to its origins as a trailer bill, the myths and conspiracies about the motives behind the IGFC provision have since become the fuel for the outcry against it. Despite the legislative timeline, tracked conversations, and multiple revisions of AB 205 revealing a thoughtful, democratic, and years long process involved in the formulation of the IGFC, for many, a combination of other factors has made it feel like it was conceived through a secret, closed-door process. Maybe a strategic choice was made to not raise too much attention to the IGFC provision, or maybe it really did just go unnoticed next to other more politically controversial provisions of AB 205. Regardless, the lack of robust public facing

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also joined forces with the Coalition for Environmental Equity and Economics (CEEE) by serving as a panelist in their recent panel on the IGFC. Coalition for Environmental Equity and Economics, *Utility Tax Webinar*, YouTube (Sept. 11, 2023), <https://www.youtube.com/watch?v=9mQjE7Oed00> [<https://perma.cc/Z99D-BCZG>].

270. *Mission Statement*, COAL. FOR ENV’T EQUITY & ECON., [https://perma.cc/9VD5-YHEX](https://ceeetruth.org/missionstatement)] (defining energy democracy as “energy autonomy and consumer equity for every California community of every social and economic status”).

271. The webpage titles on the CEEE website include: “The fixed rate utility tax scam”; “Nefarious fixed-rate timeline”; “Utility greed and big bonuses”; and “The crony energy machine.” *The Fixed rate utility tax scam*, COAL. FOR ENV’T EQUITY & ECON., [https://perma.cc/EG93-VPCL](https://ceeetruth.org/its-a-scam)]; *Timeline on Monopoly Utilities Deceptive Fixed-Rate Utility Tax*, COAL. FOR ENV’T EQUITY & ECON., [https://perma.cc/ZQ2X-Z7RC](https://ceeetruth.org/nefarious-fixed-rate-timeline)] (hover over “The Crony Energy Machine”); COAL. FOR ENV’T EQUITY & ECON., [https://perma.cc/2MWS-MVX2](https://ceeetruth.org/)].

272. *Shedding Light on the Facts About the Hass Institute: There’s Nothing Independent About Severin Bornstein*, COAL. FOR ENV’T EQUITY & ECON., [https://perma.cc/ET7P-Q9AG](https://ceeetruth.org/bornstein-conflict)] (note misspelling of his last name and of Haas).

conversation about the IGFC until after AB 205 was passed seems to have hurt the IGFC's chances of becoming the major bill that it at first promised to be. Much of the critique against it centers on frustration with the sense that it was passed quickly and with little conversation, despite the evidence that there was ample opportunity for parties to weigh in earlier. This feeling of being excluded from the political process, and that AB 205's passage was hasty and undemocratic, has become one of the biggest sources of attack against the IGFC. These negative reactions to the fast-tracked timeline of a trailer bill and the quiet introduction of the IGFC, intentional or not, should be considered the next time a major energy policy reform is drafted for legislation.

Furthermore, the tensions that have emerged between electrification and conservation, as well as among varying conceptions of an electricity consumer, raise the question of how much the energy justice and equity components of the IGFC have become the complicating factor. Instead of focusing on the beneficial electrification and energy justice goals of the IGFC, including the redistribution of the disproportionate burden of electricity bills that low-income households shoulder, many continue to engage in a form of misrecognition.<sup>273</sup> This misrecognition involves a consumer mindset that prioritizes self-interest above all else, an attitude which is masked by the guise of a conservation ethic. This culture thus persists and threatens not just the outcome of the CPUC's Rulemaking on the IGFC, but also future policy and legislative initiatives that are grounded in energy justice values. Theories of energy justice point to solutions via frameworks of distributional and recognition justice. This would entail finding a way to encourage public recognition and collective consideration of the frontline communities burdened by the electricity systems to overcome the uneven spread of costs and responsibilities related to the electricity system. In practice, one way to achieve this and counteract these deep-seated paradigms of conservationism and consumer individualism could be through thoughtful and wide-sweeping efforts to raise consciousness and awareness. This could entail educating consumers and policymakers, redefining the roles of the regulator and the consumer to help replace a culture of militant conservationism with one of beneficial electrification, and teaching why the IGFC has the potential to be a crucial step towards achieving a just transition.

With this regard, the absence of marketing, education, and outreach campaigns since AB 205 was passed has been disappointing. In a recent CPUC Rulemaking motion, the Joint IOUs outline the results of the customer research they each conducted regarding the IGFC proposal.<sup>274</sup> The response was the same across the three research initiatives. Despite receiving education materials on the IGFC, customers felt confused by how the IGFC would work and distrusted the promise that it would lower bills for middle- and

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273. Heffron et al., *supra* note 11, at 170.

274. Joint IOUs' Exhibit 1 of Joint Testimony Describing Income-Graduated Fixed Charge Proposals, *supra* note 232 at 109.

low-income households, claiming that they thought these households would instead be left with higher bills.<sup>275</sup> Many seemed to struggle with the concept that electrification was the goal, citing that they were concerned the IGFC would not encourage “enough conservation.” The motion also reports that most Southern California Edison customers expressed, “worry, helplessness, anger and/or confusion, with 66% feeling that it was not acceptable for SCE to have access to their income data and that they believed it was effectively a tax, and another way for SCE to make higher profits.”<sup>276</sup> Interestingly, SCE customers also expressed a preference for a usage based fixed-charge, which further suggests the pervasiveness of the conservation ethic and strong desire to be rewarded for conservationist behavior. While the Joint IOUs shared their plan to develop more marketing, education, and outreach six months in advance of the first IGFC rollout,<sup>277</sup> the delay in these initiatives seems to have already created enemies of the IGFC and pitted the public against it.

One of the biggest challenges is thus increasing the public’s comfort level with the IGFC.<sup>278</sup> It is crucial to make sure customers understand the purpose of the IGFC and how it affects their bills. This is a lesson that should have been learned from the rollout of time-of-use rates and the successful strategy of a phased rollout which helped customers acclimate and understand how they work.<sup>279</sup> Thus, one effective way to counteract the panic and misinformation of stakeholders with diverging interests is through a thoughtful implementation plan that works to make customers comfortable with the new rate regime.

Another effective strategy that should be prioritized is the use of a procedural justice framework that centers consumer advocates and representatives from frontline communities.<sup>280</sup> In previous localized energy transitions, a lack

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275. See *id.* at 12 (calling it “unfair” and calling for more data and information to support the IOUs’ proposal as well as sufficient notice of further implementation plans).

276. *Id.* at 114.

277. See *id.* at 118 (describing the rollout as including “multiple touchpoint communications” with customers and a phased progression of working towards awareness raising and customer engagement).

278. Interview with a Legis. Sec’y at Off. of California Governor Gavin Newsom, *supra* note 74.

279. See Joint IOUs’ Exhibit 1 of Joint Testimony Describing Income-Graduated Fixed Charge Proposals, *supra* note 232, at 115–17 (describing the lessons learned from the residential TOU rollout, including “communicating with customers early and often about how the change will impact their bills, what the IGFC covers, the reasoning behind it, and how it will create a more equitable, cleaner future”). Despite the Joint IOUs’ impressive plans for marketing, education, and outreach, it seems like these efforts should have already been initiated, and may come too late, given the current disillusionment with and distrust of the IGFC. For more on the lessons learned from the TOU rollout, see also Folks, *supra* note 74; Jordan Folks & Zac Hathaway, *Assessing Equity in TOU: How Low-Income Customers Fare on Time of Use Rates*, OP. DYNAMICS, , [https://opiniondynamics.com/wp-content/uploads/2021/06/2020\\_ACEEE-Summer-Study\\_Assessing-Equity-How-Low-Income-Customers-Fare-on-TOU\\_Rates\\_Folks.pdf](https://opiniondynamics.com/wp-content/uploads/2021/06/2020_ACEEE-Summer-Study_Assessing-Equity-How-Low-Income-Customers-Fare-on-TOU_Rates_Folks.pdf) [<https://perma.cc/P79F-P8F3>].

280. See *supra* Part I.A. (defining procedural justice).

of community engagement has hindered the transition process.<sup>281</sup> As well, the recent Joint IOU's research on customer response to the IGFC shows that there is a current absence of community inclusion in the formulation of the IGFC and its implementation plan.

Given the equity goals of the IGFC, the best way to ensure these aspirations are reached in an effective way is through the increased role of and engagement from vulnerable customers.<sup>282</sup> One example of this could be through Intervenor Compensation Programs which pay for the "costs of advocates representing utility customers, and sometimes other organizations representing the public interest, to officially participate in the utility regulatory proceedings."<sup>283</sup> The CPUC established its first Intervenor Compensation Program in 1981, explaining that "by hearing from different perspectives, the CPUC is better able to make informed decisions that consider the impact of utility costs and services on all Californians."<sup>284</sup> While there are limitations to this program model,<sup>285</sup> it does begin to level the regulatory playing field.

The CPUC now has decades of experience to draw on regarding how to successfully implement significant rate reform. While the degree of hysteria, fear, and misinformation about the IGFC from the top down—from senators, assembly members, and energy economists, to consumer advocacy groups and electricity customers—may distinguish the political environment around the IGFC from that around previous rate reform initiatives, the same lessons for success from the past apply here. To combat the exceptional degree of attack campaigns and the widespread public distrust of the IGFC, the CPUC and the IOUs should hasten outreach and education initiatives. Community members must be included in this process of education regarding how the IGFC works, how it serves low-income households, aims to redistribute the burden of electricity bills to wealthier

281. See Axon & Morrissey, *supra* note 17 at 403. In the Axon & Morrissey local energy transition case study in the UK, community members' feedback is telling. One community member shared, "People are frightened of change now. I've been with British Gas for years and I'm frightened to change because I think what is going to happen. I know they say it's cheaper but is it? Am I going to change and then it's more dearer?" *Id.* ("Such responses illustrate how changes in energy supply (even a transition towards renewable energy systems) can alter individual and community attitudes towards energy, and not necessarily for the better.>").

282. See KEVIN LEE ET AL., THE ROLE OF INNOVATION IN THE ELECTRIC UTILITY SECTOR 8–9 (Losa Schwartz ed., 2022). See also FARLEY ET AL., *supra* note 24, at 7 (critiquing the general lack of meaningful participation of landowners, environmental groups, environmental justice communities and tribal groups and calling for public engagement across the board that focuses on local transitions).

283. FARLEY ET AL., *supra* note 24, at 7 n.53.

284. *Id.* at 7.

285. *Id.* "The California Intervenor Compensation Program includes the allowance of expert witness fees and is 'intended to ensure that individuals and entities that represent residential or small commercial electric utility customers have the financial resources to bring their concerns and interests to the CPUC during formal proceedings.' While this is certainly a model worthy of adaptation, there are issues with the fact that the compensation approval can only come after a decision is made." *Id.*



households, and decreases bill shock. This cannot wait until the months preceding the rollout of the first version of the IGFC because the public discourse against the IGFC has only escalated and now threatens to dilute, if not altogether block, the IGFC's goals of energy equity, beneficial electrification, and a just transition.

Finally, working towards a clean energy transition also requires resolving the tension between the two competing visions of electricity. But collective action problems, the persistence of the morally-imbued conservation ethic, and the individualist notion of electricity provisioning, complicate this project.<sup>286</sup> Some recent studies suggest that social and cultural norms regarding “carbon-relevant behaviors involving household energy usage” are more influential on consumer behavior than are traditional tools like changing prices.<sup>287</sup> And currently, a dominant norm for such carbon-relevant behavior is the individualist conservation ethic. Thus, in addition to rate reforms, achieving a clean energy transition would necessitate a significant cultural shift away from the individualist, consumer-oriented electricity system paradigm. Conservationism itself would have to be redefined to encompass beneficial electrification.

While education and outreach campaigns could help facilitate this change in electricity related behavior and morality, the notion of energy democracy also provides a useful vision for how to challenge the traditional paradigm of the individualist electricity consumer.<sup>288</sup> Energy democracy responds to the idea of utilities as a natural monopoly and replaces it with a more participatory structure.<sup>289</sup> As an extension of procedural and recognition justice, energy democracy considers the broader social transformation involved in a clean energy transition.<sup>290</sup> The focus cannot just be on affordability and carbon emissions, but rather must entail a “profound rethinking.”<sup>291</sup> For the goals of the IGFC to be satisfied as well as for future equity-centered decarbonization projects to succeed, this profound rethinking should entail a widespread adoption of the notion of electricity as a shared grid and collective infrastructure. Achieving this goal requires a concurrence of regulatory actions, education campaigns both from the ground up and from policymakers, and a recognition and serious consideration of the public involved in and affected by California's electricity system.

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286. EISEN ET AL., *supra* note 43, at 1018.

287. *Id.* at 1029 (quoting Michael P. Vandenbergh & Anne C. Steinmann, *The Carbon Neutral Individual*, 82 N.Y.U. L. REV. 1673, 1709–11 (2007)).

288. See Raya Salter et al., *Energy Justice: Frameworks for Energy Law and Policy*, in ENERGY JUSTICE: U.S. AND INTERNATIONAL PERSPECTIVES 1, 9 (2018).

289. *Id.*

290. See Eleanor Stein, *Energy Democracy: Power to the People? An Introduction*, in ENERGY JUSTICE: U.S. AND INTERNATIONAL PERSPECTIVES, *supra* note 288, at 258, 268.

291. *Id.* One example of energy democracy is the decentralization of renewable energy generation in Germany. *Id.* See also Salter et al., *supra* note 288, at 10 (explaining that energy democracy “encompasses the struggle against the corporate ownership of socially vital and environmentally strategic resources in favor of democratically controlled and socially owned energy”).