STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 5, 2011

To: The Commission
(Meeting of May 5, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 790 (Leno) - Electricity: community choice aggregation.**
As amended: April 14, 2011.

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: **OPPOSE UNLESS AMENDED**

SUMMARY OF BILL:

This bill would require the CPUC to undertake a number of actions to facilitate formation and operation of Community Choice Aggregators (CCAs) and shift some of the costs currently allocated to CCAs and Direct Access providers to utilities' bundled customers. The bill would impose certain restrictions on how the CPUC may impose certain resource adequacy charges and other non-bypassable charges on a CCA. Among other things, the bill would impose specific conditions on utility marketing against the CCAs and would allow a CCA to elect to become a 3rd-party administrator for the energy efficiency programs financed through the non-bypassable system benefits charge.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The bill would severely limit the CPUC's ability to order or authorize the utilities to obtain additional generating resources unless it was first determined that a load serving entity had failed to meet the resource adequacy requirements of Section 380, and that this failure had caused a serious threat to system. In case the above condition was met and net unavoidable electricity purchase contracts were authorized, the bill would limit the CPUC's authority to recover costs from the CCAs to 36 months. As explained later, some aspects of the bill would be difficult to implement while others will shift costs away from the CCAs to utilities' bundled customers.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

This bill, as written, would impact many areas of regulation at the CPUC. The CPUC is neutral or supportive of some changes sought by this bill but has concerns with some restrictions that the bill would impose on the CPUC's ratemaking authority and its ability to implement the CCA program and the Direct Access program in a way that would keep a utility's bundled customers indifferent when some customers move to CCA/DA service.

A. The CPUC is neutral or supportive of the bill's amended provisions in the following areas:

1. Service agreement: The bill would amend PU Code section 366.2 (c) 15 to require that the operating service agreement with the utility include equitable responsibilities and remedies for all parties.

(16) A community choice aggregator shall have an operating service agreement with the electrical corporation prior to furnishing electric service to consumers within its jurisdiction. The service agreement shall include performance standards that govern the business and operational relationship between the community choice aggregator and the electrical corporation. The commission [CPUC] shall ensure that any service agreement between the community choice aggregator and the electrical corporation includes equitable responsibilities and remedies for all parties. The parties may negotiate specific terms of the service agreement, provided the service agreement is consistent with this chapter.

2. Termination of service by a CCA: This bill would require that the CPUC vote before a utility could terminate CCA service (Section 366.2(l)) in contrast to the current policies which allow utilities to terminate a CCA's service without an order of the CPUC.

3. Opt-out Rules: This bill would establish rules regarding the opt-out process for new or relocated customers in a CCA service area to require that an existing CCA customer retains CCA status and that a new customer becomes a customer of the CCA unless he/she opts out after having received the CCA's terms and conditions of service. CPUC staff is already working with PG&E to put similar rules in place and is in the process of revising existing tariff rules with respect to community choice aggregation and customer opt-out procedures applying in these situations.[1] This section of SB 790 would ensure

---

[1] Effectively, this section would appear to require that new or relocated customers who are unaware of the terms and conditions of the CCA service will be informed of those terms and conditions before being given the opportunity to opt out of CCA service. This new provision would appear to address concerns that the Commission has raised, as well, (see Resolution E-4250, Ordering Paragraph 6.) and to address these concerns in

that consistent opt out rules apply to all new or relocated customers in service areas throughout the State that have a functioning CCA.

4. Separation of a utility's CCA marketing activities from the regulated utility business: This bill would add section 707 to the PU Code. This section would require the CPUC to open a rulemaking "for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs".

The bill would require the CPUC to adopt and implement a code of conduct, associated rules and enforcement procedures by January 1, 2013. These rules will not allow a utility to market against a CCA except through an independent marketing division that is funded exclusively by shareholders and that is functionally and physically separate from the utility's ratepayer funded divisions. The rules will limit the use of support services from the utility's ratepayer funded divisions. In addition, the rules will need to ensure that the independent marketing division does not have access to competitively sensitive information. The bill would want the CPUC to include in whole or in part, affiliate rules adopted by the CPUC in D. 97-12-088 and the San Joaquin Valley Authority/ PG&E settlement adopted in D. 08-06-016. The bill expressly provides that it does not limit the authority of the CPUC to require that marketing against a CCA be conducted only through an affiliate or to prohibit marketing by the marketing division of the utility.

CPUC does not oppose or support these provisions because they preserve the utility's right to free speech and preserve the CPUC's authority to craft rules to achieve the bill's goals in this area. However, having addressed same issues in R.03-10-003, its existing rulemaking on community choice aggregation and policies relating to utility conduct with respect to community choice aggregation, the CPUC does not think that additional rules or procedures are needed at this time. The CPUC is also addressing these issues in Phase 2 of R.09-11-014 through a ruling and comments on the existence of appropriate safeguards to prevent misuse of energy efficiency funds in a way that adversely affects CCA programs.

B. The CPUC is opposed to the following amended provisions of the bill:

1. Expanded Definition of a CCA. Section 331.1(c) would expand the definition of who can be a CCA to include any "California public agency possessing powers authorizing it to generate or deliver electricity within its designated jurisdiction…". The bill also provides for an existing CCA to serve load of any other entity that has by resolution elected to be served by a CCA as it appears from the excerpt below:

366.2. a.11: A city or county may request, by affirmative resolution of its governing council or

---

the manner that would be consistent with the Commission's past stated intent (i.e., in Resolution E-4250).

board, that another entity authorized to be a community choice aggregator act as the community choice aggregator on its behalf. If a city or county, by resolution, requests another authorized entity be the community choice aggregator for the city or county, that authorized entity shall be responsible for adopting the ordinance to implement the community choice aggregation program on behalf of the city or county.

It appears that this expanded definition would allow an already existing CCA to serve load any where in the service territories of investor-owned utilities where a local government had voted to procure power from a CCA instead of serving load only in the area that it was established to serve. There are no geographic restrictions on this ability, which would suggest that an existing CCA such as MEA could provide services throughout the State. We are not sure that the author intended to do this. The language is overly broad and vague and should be amended to include some geographic limitations.

This expansion of definition could create CCAs with large areas. While the bill broadens the definition of the entities that may be served by a CCA, it imposes a statutory limitation as excerpted below on the authority of the CPUC to design appropriate liability rules to deal with situations that may result from the broadening of the definition.

The commission [CPUC] shall not, as a condition of registration or otherwise, require an agency's members to voluntarily assume the debts, liabilities, and obligations of the agency to the electrical corporation unless the [CPUC] finds that the agreement by the agency's members is the only reasonable means by which the agency may establish its creditworthiness under the electrical corporation's tariff to pay charges to the electrical corporation under the tariff.

The CPUC needs the ability to craft appropriate rules to address the effect on bundled customers of the broadening of the definition especially in the area of liability and rules for customers returning to the IOU.

2. Intervenor Compensation for representing CCA's residential and small customers Section 1802(b)(1)(D) would expand the definition of "customer" for purposes of intervenor compensation to include a "community choice aggregator or an entity seeking to establish a community choice aggregation program, *prior to its commencement of service to customers*, that has been expressly authorized by its enabling ordinance to represent the interests of residential and small commercial customers for whom the aggregator supplies or proposes to supply electric service". (Emphasis added.) Thus, it would appear that under this statute, even very nascent CCAs could pursue (and potentially receive) intervenor compensation. The clear downside here is the potential that ratepayers would bear the costs of funding participation in situations for a CCA which had not yet taken any serious steps to form a CCA. and the community choice aggregation program was never implemented.

At present, Section 1802 of Public Utilities Code provides intervenor compensation for representatives of residential and small customers who meet qualifying conditions for such compensation. Section 1802 presently expressly excludes all state, federal, local government agencies, publicly owned utilities and any entity established or formed by a local government entity for the purpose of participating in a CPUC proceeding. This bill would provide an exception for CCAs and make them eligible for intervenor compensation. CPUC opposes this provision. There are many government entities representing interests of their customers and CCAs should be no exception.

Also, there would be practical difficulties in implementing this section because in order to receive intervenor compensation, CCAs would need to meet other requirements, including the financial hardship provision under this section. In the case of a group or organization, this would mean that “the economic interest of the individual members of the group or organization [would need to be] small in comparison to the costs of effective participation in the proceeding. (PUC section 1802(g).) The economic interest of the individual members of a CCA (i.e., here, under the bill it would appear to be the entire potential pool of customers that the CCA could eventually serve) could be large (at least with respect to many CCAs) in comparison to the costs a CCA would incur to effectively participate in a CPUC proceeding. Thus, it is not clear how CCAs (or most of them in any event) would meet the significant financial hardship requirement under the intervenor compensation statute.

3. Violations by utilities and fines: At present, any fines collected by the CPUC go to the General Fund. The bill would add section 366.2(c)(10) to the PU Code to require that if a CCA was harmed by a utility that violated rules in this section, the CPUC may allocate all or part of any fine collected pursuant to Chapter 11 (commencing with Section 2100) to an affected community choice aggregation program. Any allocation must be subject to the condition that the monies collected from a fine may only be used for the direct benefit of the customers of the community choice aggregation program to procure eligible renewable energy resources. The revised language expands the activities from "uncooperative and anticompetitive behavior" to (it appears) any violation of section 366.2. Further, as proposed, the CPUC would need to assess the impact of any alleged violations on all affected CCAs, not just the CCA filing the complaint.

This subsection is overly broad and may be problematic to implement. First, it could have the potential to incentivize CCAs to pursue complaints against an electrical corporation. Second, in case of failure of a CCA, it would be difficult to determine what the impact of a particular action of the utility was vis-à-vis many other factors that determine the success or failure of a CCA.

4. Expedited Processing of Complaints by CCAs: Section 366(c)(11) in the bill would require the CPUC to resolve a complaint filed by a CCA against an electrical corporation within 180 days of filing. The existing rules provide for adjucatory complaints to be resolved within 12 months of initiation. Additionally, this section would allow for the 180 day deadline to be extended only “upon the agreement of all parties to the complaint”. The CPUC is concerned that it may be very difficult (if not impossible) to meet this deadline in cases pursued under this section considering among other things, the 30 day comment period and the potential need to conduct evidentiary hearings. This section should be amended to provide sufficient time for a proper inquiry into the issues alleged in a complaint. The bill should provide for an extension of time along the lines of PU Code 1701.2(d) and add that "this deadline may only be extended if the CPUC makes findings why this deadline cannot be met and issues an order extending this deadline."

5. Providing CCAs access to customers' electric and gas consumption data: At present PU Code section 8380 imposes a number of conditions on the disclosure of energy consumption data by an electric or gas utility to safeguard customers' personal identifying information. Current rules allow utilities to disclose such data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, energy efficiency, or community choice aggregation programs, provided that, for contracts entered into after January 1, 2011, the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information from unauthorized access and prohibit the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent. This bill would allow a utility to provide access to such data by a third party for purposes of CCA programs without the consent of the customer. The bill should specify that access to customer specific consumption is to be provided only after a local government has voted to pursue a CCA program and has established protocols and procedures to properly safeguard data from unauthorized disclosure. For entities in preliminary stages of feasibility studies of CCA information, access should be provided on an aggregated basis such as zip code aggregated basis.

6. Limiting long term power procurement : Section 365.1(c)(2)(B) would add the following language to the PUC:

The commission [CPUC] shall not authorize or order an electrical corporation to obtain generation resources pursuant to subparagraph (A), unless the commission [CPUC] finds, after adequate notice and an opportunity for public hearing, that a load serving entity has failed to meet the resource adequacy requirements of Section 380, and that this failure has caused a serious threat to system or local reliability that is not remedied by the Independent System Operator or other load serving entity. If the commission [CPUC] authorizes or orders an electrical corporation to obtain generation resources, the commission[CPUC] shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation in proportion to the costs recovered from those ratepayers.

This section would prohibit the CPUC from authorizing utilities to acquire generation needed to ensure system reliability unless the CPUC has made a finding that a load serving entity has failed to meet its resource adequacy requirements. Under current CPUC policies, the CPUC's long term procurement plan proceeding develops and/or examines ten year forecasts of system supply and demand and determines the need for new resources. It then authorizes electrical corporations to enter into contracts to ensure new resources are constructed and the costs shared among all benefiting customers. The CPUC reviews those contracts to ensure resources are procured at the lowest cost to meet the identified need, and approves those contracts if appropriate. The bill would require a showing that a load serving entity has failed to meet the resource adequacy requirements and this failure has caused a serious threat to the system or local reliability before the CPUC could authorize or order a utility to obtain new resources. The use of a ten year forecast ensures both that there will be sufficient time to permit and build a power plant before it is needed and that no load serving entity has to have failed to meet its resource adequacy requirement for a need to be identified. This section would prohibit a planned and economical response to electric needs and risk the state facing another energy crisis before taking any action.

7. Limiting recovery of net unavoidable electricity purchase contract costs: This bill would amend Section 366.2(f)(2) of PU Code to limit the CPUC's ability to set appropriate rules for the recovery of costs incurred by the utilities in procuring net unavoidable electricity purchases directed by the CPUC by imposing a cap of 36 months.

As amended, this section would read as follows (the amended language is italicized and bolded):

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

……..

(2) Any additional costs of the electrical corporation recoverable in commission [CPUC]-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission [CPUC], for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation, ***provided that the costs shall not continue for a period in excess of 36 months. In establishing the share of net unavoidable electricity purchase contract costs attributable to customers of a community choice aggregator, the commission [CPUC] shall exclude electricity purchase contracts, or other resources commitments, made after adoption of the community choice aggregator's implementation plan for all customers served by the community choice aggregator within five years of its adoption****.*

This bill would change the cost allocation methodology established by the legislature and contained in PU Code section 380 and enable the CCAs to avoid paying for costs needed to add new generation in the state and allow CCAs and direct access (DA) electric service providers to procure power as they see fit. This will shift the responsibility for building and paying for new generation needed to maintain system reliability and to integrate renewable resources to bundled service customers of utilities. Currently under PU Code Section 380, the CPUC determines the need for new generation resources looking 10 years out. This is done in the system track of the long term procurement proceeding by analyzing the physical needs of the system as including both system and local needs. This analysis includes the CEC IEPR forecast of need, the CAISO transmission plan, and forecasts of changes in energy efficiency, demand response, distributed generation (including CSI), combined heat and power, renewables, new fossil generation and plant retirements. In the past, this analysis had been limited to amount of capacity needed, but it is being expanded to examine resource capabilities needed to integrate renewable resources. The end result of this analysis is a determination of additional resources that need to be built to maintain reliability. The CPUC then authorizes the utilities to contract for the construction of the needed resources. It can take up to 8 years to permit and construct a new power plant, so a 10 year forward look is critical to ensuring reliability.

This bill would limit the CCAs obligation to procuring resources for resource adequacy (RA), Renewable Portfolio Standard (RPS) power and system and local reliability. It would not obligate them to contribute to the building of any new needed resources. The RA program is designed to determine if sufficient resources are under contract to ensure reliability for the next year. It is not intended to build new power plants. Ensuring short term reliability through RA requirements does not ensure the building of new needed capacity. The state is going to be caught short if sufficient new capacity is not built.

The utilities objected to procuring new resources because new resources cost more than existing resources, and it would be unfair to subject bundled service energy customers with the added cost of new resources, while ESP and CCA customers obtained some of the reliability benefit of those resources but did not have to pay any of the cost. To remedy this problem, the CPUC adopted a policy to share the cost and RA value of new resources with all benefiting customers. AB 695 (Kehoe) among other things revised PU 365.1 to require this sharing.

Because new generation is a very small percent of all generation and new generation cost are shared on a load share ratio basis, the impact on any one customer, CCA or ESP is very small. Since part of the RA value of the new resource is shared, there is no double counting.

This bill would saddle utility's bundled customers with the cost of new capacity disproportionately and leave the CCAs and ESPs without such responsibility. Additionally, imposing this shorter time-frame could result in the electrical corporations entering into shorter-term procurement contracts.

This bill further limits contributions by CCAs by requiring that electrical corporations exclude from nonbypassable charge calculations electricity purchase contracts or other commitment made "*after adoption of the community choice aggregator's implementation plan for all customers served by the community choice aggregator within five years of" its adoption"*. This section could also create confusion for utilities with respect to their procurement practices in light of the references to commitments made "after adoption of the community choice aggregator's implementation plan" (which does not create a binding commitment on the part of the CCA to serve customers) and “all customers served by the community choice aggregator”.

8. Energy efficiency: This bill appears to grant a right to a CCA to become an administrator for energy efficiency programs as the following excerpts show:

381.1. (a) No later than July 15, 2003, the commission [CPUC] shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice
aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs established pursuant to Section 381 or the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)). In determining whether to approve an application to become ***administrators and subject to an aggregator’s right to elect to become an administrator*** *pursuant to subdivision (f), the commission [CPUC] shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators.*

381.1 (f) ***A community choice aggregator electing to become an administrator*** *shall submit a plan to the commission [CPUC] for the administration of cost-effective energy efficiency and conservation programs for the aggregator’s electric service customers that meet the following objectives includes funding requirements, a program description, and the duration of the program.*

Sections 381.1(d) and (e) would add the following language to the PUC:

d. The commission [CPUC] shall establish an impartial process for making the determination of whether a third party, including a community choice aggregator, may become administrators for cost-effective energy efficiency and conservation programs pursuant to subdivision (a), and shall not delegate or otherwise transfer the commission’s [CPUC] authority to make this determination to an electrical corporation.

(e) the impartial process established by the commission [CPUC] shall allow a registered community choice aggregator to ***elect*** *to become the administrator of funds….[emphasis added]*

Recently, the Energy Division conducted a workshop on energy efficiency and community choice aggregation and considered various models for CCA administration of energy efficiency programs within their territories, including maintaining the current rules of having the utilities administer the programs and having the CCAs apply to the utilities (i.e., through the IOU portfolio third-party program or the local government partner program) for energy efficiency funds.

The bill should be amended to preserve the CPUC’s authority to determine when a CCA might be appropriate as an administrator.

Further, it is unclear whether the CPUC would have any oversight authority over the energy efficiency programs a CCA program administrator pursues, once the CPUC approves its application to become an administrator. The CPUC has established energy savings goals, cost-effectiveness parameters, and other policy guidance for the utilities. CCA's should be required to meet the same state policy goals as investor-owned utilities, but this bill provides no such assurance. It is unclear whether CCA's would be subject to the same oversight authority from the CPUC to ensure that ratepayer dollars are administered cost-effectively and meet statewide policy goals. The bill should be amended to clarify these oversight questions.

Finally, the bill requires any CCA that becomes an energy efficiency program administrator to "coordinate with broader statewide and regional programs." This raises questions about how such coordination would occur, especially in light of the CPUC's direction to the utilities (in D.09-09-047) to administer their energy efficiency portfolios through twelve consistent statewide programs. The bill should be amended to require that CCA energy efficiency program administrators conform their program offerings to the statewide programs established by the CPUC.

9. Limiting stay of customers returning to the utility to 6 Months: This bill would amend the Public Utilities Code (PU Code) to provide that "Customers that return to the electrical corporation for procurement services shall be subject to no more than a six-month stay requirement with the electrical corporation"..(Section 366.2(c)(13).

Under current law and CPUC policies, CCA as well as Direct Access customers are subject to a 3 year minimum stay requirement to prevent customers from going back and forth between the utility and non-utility providers and taking advantage of whatever works for them the best at any given time. This bill would grant preferential treatment to CCA customers vis-à-vis DA customers by reducing the current 3 year stay to 6 months and make it difficult for the utilities to plan their systems.

10. Credits for Paying Net Unavoidable Capacity Costs: This bill would require that the CCA be given annual credit towards its own obligation to comply with the resource adequacy, renewables portfolio standard, and global warming requirements as below:

(g) To the extent that the estimated net unavoidable electricity costs paid by the customers of a community choice aggregator reimburse an electrical corporation for its costs to comply with the resource adequacy provisions of Section 380, the renewables portfolio standard requirements of Article 16 (commencing with Section 399.11), or the requirements for the electricity sector Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), or for any other electrical or environmental attribute of the electric utility's resources, the community choice aggregator shall annually be given commensurate credit towards its own obligations to comply with the resource adequacy, renewables portfolio standard, and global warming requirements.

While this may be reasonable in concept, implementation of this section of the bill may be time- consuming and difficult.

PROGRAM BACKGROUND:

None.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

SB 790 (Leno) is scheduled to be heard before the Senate Energy, Utilities and Communications Committee on May 3rd, 2011.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

Edward F. Randolph, Director-OGA	(916) 327-3277	efr@cpuc.ca.gov
Nick Zanjani, Legislative Liaison-OGA	(916) 327-3277	nkz@cpuc.ca.gov

BILL LANGUAGE:

BILL NUMBER: SB 790 AMENDED
BILL TEXT

AMENDED IN SENATE APRIL 14, 2011

INTRODUCED BY Senator Leno

FEBRUARY 18, 2011

An act to amend Sections 331.1, 365.1, 366.2, 380, 381.1, 395.5, 1802, and 8380 of, and to add Section 707 to, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 790, as amended, Leno. Electricity: community choice aggregation.

(1) The federal Public Utility Regulatory Policies Act of 1978 (PURPA) requires every state regulatory authority with respect to each electric utility, as defined, for which it has ratemaking authority, to determine whether to adopt certain federal standards if consistent with otherwise applicable state law. The federal standards include that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising, as defined.

This bill would require the commission to institute a rulemaking proceeding by March 1, 2012, for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of an electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs and to implement the code of conduct, associated rules, and enforcement procedures by January 1, 2013. The bill would require the code of conduct, associated rules, and enforcement procedures to do the following: (A) ensure that an electrical corporation does not market against a community choice aggregation program, except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders, (B) limit the electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer funded divisions, (C) ensure that the electrical corporation's independent marketing division does not have access to competitively sensitive information, *(D) incorporates rules that the commission finds to be necessary or convenient in order to promote the development of community choice aggregation programs, to foster fair competition, or to protect against cross-subsidization paid by ratepayers,* and ~~(D)~~ *(E)* other matters that the commission determines to be necessary or advisable to protect a ratepayer's right to be free from forced speech or to implement that portion of PURPA that establishes the federal standard that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising.

(2) Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the commission. Existing law requires an electrical corporation to cooperate fully with any community choice aggregator that investigates, pursues, or implements community choice aggregation programs, including providing appropriate billing and electrical load data.

This bill would expand the entities that are permitted to undertake community choice aggregation. The bill would require that the electrical load data to be supplied by an electrical corporation as part of its duty to cooperate fully with any community choice aggregator, include electrical consumption data, as defined. The bill would, if ~~it finds that a community choice aggregation program has been financially damaged by the uncooperative or anticompetitive behavior of the incumbent electrical corporation, require the commission~~ *the commission finds that an electrical corporation has violated the requirement to cooperate fully with a community choice aggregator, require that the commission consider the impact of the violation upon community choice aggregators and would authorize the commission* to allocate ~~to the community choice aggregator,~~ all or a portion of any fine collected from the electrical company ~~, as damages to compensate the aggrieved~~ *to an affected* community choice aggregation program. The bill would revise certain resource adequacy and cost responsibility requirements as they relate to community choice aggregators. The bill would require that certain energy efficiency, renewable energy resource, and energy research programs financed through a nonbypassable system benefits charge authorized pursuant to the Reliable Electric Service Investments Act be administered on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis with the customers of an electrical corporation. The bill would *require the commission to* authorize a community choice aggregator to elect to become a 3rd-party administrator for the energy efficiency programs financed through the nonbypassable system benefits charge, for its electric service customers. The bill would authorize a community choice aggregator that has expressly been authorized by its enabling ordinance to represent the interests of residential and small commercial customers for whom the aggregator supplies *or proposes to supply* electric service, to seek intervenor compensation through the commission's procedures for awarding such compensation.

(3) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because this bill would expand the duties owed bu an electrical corporation pursuant to the act, the bill would impose a state-mandated local program by creating a new crime or expanding the definition of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) It is the policy of the state to provide for the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2 of the Public Utilities Code.

(b) Since community choice aggregation programs were first authorized in 2002, only one community choice aggregation program has been implemented.

(c) Electrical corporations have inherent market power derived from, among other things, name recognition among customers, longstanding relationships with customers, joint control over regulated operations and competitive generation services, access to competitive customer information, and the potential to cross-subsidize competitive generation services.

(d) The Public Utilities Commission has found that conduct by electrical corporations to oppose community choice aggregation programs has had the effect of causing community choice aggregation programs to be abandoned.

(e) The Public Utilities Commission has made considerable progress in identifying and addressing the conduct that has hindered the creation of community choice aggregation programs, and it is now appropriate to further address these issues in statute.

~~(e)~~

(f) The exercise of market power by electrical corporations is a deterrent to the consideration, development, and implementation of community choice aggregation programs.

~~(f)~~

(g) California has a substantial governmental interest in ensuring that conduct by electrical corporations does not threaten the consideration, development, and implementation of community choice aggregation programs.

~~(g)~~

(h) It is therefore necessary to establish a code of conduct, associated rules, and enforcement procedures, applicable to electrical corporations in order to promote the consideration, development, and implementation of community choice aggregation programs, to foster fair competition, and to protect against cross-subsidization by ratepayers.

SEC. 2. Section 331.1 of the Public Utilities Code is amended to read:

331.1. For purposes of this chapter, "community choice aggregator" means any of the following entities, if that entity is not within the jurisdiction of a local publicly owned electric utility that provided electrical service as of January 1, 2003:

(a) Any city, county, or city and county whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a communitywide electricity buyers' program.

(b) Any group of cities, counties, or cities and counties whose governing boards have elected to combine the loads of their programs, through the formation of a joint powers agency established under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(c) Any California public agency possessing powers authorizing it to generate ~~and~~ *or* deliver electricity within its designated jurisdiction, provided the agency may only combine the loads of residences, businesses, and governmental facilities of cities and counties within its jurisdiction that have, by resolution exercised pursuant to paragraph (11) of subdivision (c) of Section 366.2, requested the agency to implement a community choice aggregation program.

SEC. 3. Section 365.1 of the Public Utilities Code is amended to read:

365.1. (a) Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, "other provider" means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3. "Other provider" does not include a community choice aggregator, as defined in Section 331.1, and the limitations in this section do not apply to the sale of electricity by "other providers" to a community choice aggregator for resale to community choice aggregation electricity consumers pursuant to Section 366.2.

(b) The commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation's distribution service territory, up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual limit shall be established by the commission for each electrical corporation at the maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12-month period between April 1, 1998, and the effective date of this section. Within six months of the effective date of this section, or by July 1, 2010, whichever is sooner, the commission shall adopt and implement a reopening schedule that commences immediately and will phase in the allowable amount of increased kilowatthours over a period of not less than three years, and not more than five years, raising the allowable limit of kilowatthours supplied by other providers in each electrical corporation's distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation's distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

(c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do both of the following:

(1) Ensure that other providers are subject to the same

requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.

(2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following:

(i) Bundled service customers of the electrical corporation.

(ii) Customers that purchase electricity through a direct transaction with other providers.

(iii) Customers of community choice aggregators.

(B) The commission shall not *authorize or* order an electrical corporation to obtain generation resources pursuant to subparagraph (A), unless the commission finds, after adequate notice and an opportunity for public hearing, that a load serving entity has failed to meet the resource adequacy requirements of Section 380, and that this failure has caused a serious threat to system or local reliability that is not remedied by the Independent System Operator or other load serving entity. If the commission *authorizes or* orders an electrical corporation to obtain generation resources, the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation in proportion to the costs recovered from those ratepayers.

(C) The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

(D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

(3) Nothing in this subdivision supplants the resource adequacy requirements of Section 380 or the resource procurement procedures established in Section 454.5.

(e) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.

SEC. 4. Section 366.2 of the Public Utilities Code is amended to read:

366.2. (a) (1) Customers shall be entitled to aggregate their electric loads as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(3) If a customer opts out of a community choice aggregator's program, or has no community choice program available, that customer shall have the right to continue to be served by the existing electrical corporation or its successor in interest.

(b) If a public agency seeks to serve as a community choice aggregator, it shall offer the opportunity to purchase electricity to all residential customers within its jurisdiction.

(c) (1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under community choice aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the community choice aggregation program. If no negative declaration is made by a

customer, that customer shall be served through the community choice aggregation program. If an existing customer moves the location of their electric service within the jurisdiction of the community choice aggregator, the customer shall retain the same subscriber status as prior to the move, unless the customer affirmatively changes their subscriber status. If the customer is moving from outside to inside the jurisdiction of the community choice aggregator, the customer shall become a customer of the community choice aggregator, unless the customer affirmatively opts out after having received the community choice aggregator's terms and conditions of service.

(3) A community choice aggregator establishing electrical load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing. The implementation plan shall contain all of the following:

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) Provisions for disclosure and due process in setting rates and allocating costs among participants.

(D) The methods for entering and terminating agreements with other entities.

(E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.

(F) Termination of the program.

(G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, information about financial, technical, and operational capabilities.

(4) A community choice aggregator establishing electrical load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:

(A) Universal access.

(B) Reliability.

(C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service *, including those rules adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of the greenhouse gases emission performance standard to community choice aggregators* .

(5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (d), (e), and (f) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (d), (e), and (f).

(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed, within 10 days of the filing.

(7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. After certification of receipt of the implementation plan and any additional information requested, the commission shall then provide the community choice aggregator with its findings regarding any cost recovery that must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (d), (e), and (f).

(8) No entity proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission determines the cost-recovery that must be paid by the customers of that proposed community choice aggregation program, as provided for in subdivisions (d), (e), and (f). The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any annual procurement plan of the electrical corporation that has been approved by the commission.

(9) All electrical corporations shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, electrical consumption data as defined in Section 8380 and other data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission, and pursuant to the procedures established by the commission. Those procedures shall not require electrical corporations to obtain a customer's consent for the provision of billing and electrical load data if the community choice aggregator agrees to reasonable safeguards appropriate to the nature of the data to prevent the disclosure of the data to third parties. The commission shall exercise its authority pursuant to Chapter 11 (commencing with Section 2100) to enforce the requirements of this paragraph when it finds that the requirements of this paragraph have been ~~knowingly~~ violated. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) If the commission finds that ~~a community choice aggregation program has been financially damaged by the uncooperative or anticompetitive behavior of the incumbent electrical corporation, the commission shall~~ *an electrical corporation has violated this section, the commission shall consider the impact of the violation upon community choice aggregators and may* allocate all or a portion of any fine collected pursuant to Chapter 11 (commencing with Section 2100) ~~as damages to compensate the aggrieved~~ *to an affected* community choice aggregation program. Any allocation shall be subject to the condition that the moneys collected from a fine may only be used for the direct benefit of the customers of the community choice aggregation

program to procure eligible renewable energy resources pursuant to Article 16 (commencing with Section 399.11). ~~The~~

(11) *The* commission shall proactively expedite the complaint process for disputes regarding an electrical corporation's violation of its obligations pursuant to this section in order to provide for timely resolution of complaints made by community choice aggregation programs, so that all complaints are resolved in no more than 180 days following the filing of a complaint by a community choice aggregation program concerning the actions of the incumbent electrical corporation. This deadline may only be extended upon the agreement of all parties to the complaint.

~~(11)~~

(12) (A) An entity authorized to be a community choice aggregator, as defined in Section 331.1, that elects to implement a community choice aggregation program within its jurisdiction pursuant to this chapter, shall do so by ordinance. A city or county may request, by affirmative resolution of its governing council or board, that another entity authorized to be a community choice aggregator act as the community choice aggregator on its behalf. If a city or county, by resolution, requests another authorized entity be the community choice aggregator for the city or county, that authorized entity shall be responsible for adopting the ordinance to implement the community choice aggregation program on behalf of the city or county.

(B) Two or more entities authorized to be a community choice aggregator, as defined in Section 331.1, may participate as a group in a community choice aggregation pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A). Pursuant to Section 6508.1 of the Government Code, members of a joint powers agency that is a community choice aggregator may specify in their joint powers agreement that, unless otherwise agreed by the members of the agency, the debts, liabilities, and obligations of the agency shall not be the debts, liabilities, and obligations, either jointly or severally, of the members of the agency. The commission shall not, as a condition of registration or otherwise, require an agency's members to voluntarily assume the debts, liabilities, and obligations of the agency to the electrical corporation unless the commission finds that the agreement by the agency's members is the only reasonable means by which the agency may establish its creditworthiness under the electrical corporation's tariff to pay charges to the electrical corporation under the tariff.

~~(12)~~

(13) Following adoption of aggregation through the ordinance described in paragraph ~~(11)~~ *(12)*, the program shall allow any retail customer to opt out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service

pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to no more than a six-month stay requirement with the electrical corporation. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

~~(13)~~

(14) Nothing in this section shall be construed as authorizing any city or any community choice retail load aggregator to restrict the ability of retail electricity customers to obtain or receive service from any authorized electric service provider in a manner consistent with law.

~~(14)~~

(15) (A) The community choice aggregator shall fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following:

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the community choice aggregator without penalty.

(ii) The terms and conditions of the services offered.

(B) The community choice aggregator may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the community choice aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the community choice aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.

~~(15)~~

(16) A community choice aggregator shall have an operating service agreement with the electrical corporation prior to furnishing electric service to consumers within its jurisdiction. The service agreement shall include performance standards that govern the business and operational relationship between the community

choice aggregator and the electrical corporation. The commission shall ensure that any service agreement between the community choice aggregator and the electrical corporation includes equitable responsibilities and remedies for all parties. The parties may negotiate specific terms of the service agreement, provided the service agreement is consistent with this chapter.

~~(16)~~

(17) The community choice aggregator shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

~~(17)~~

(18) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

~~(18)~~

(19) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

~~(19)~~

(20) An electrical corporation shall recover from the community choice aggregator any costs reasonably attributable to the community choice aggregator, as determined by the commission, of implementing this section, including, but not limited to, all business and information system changes, except for transaction-based costs as described in this paragraph. Any costs not reasonably attributable to a community choice aggregator shall be recovered from ratepayers, as determined by the commission. All reasonable transaction-based costs of notices, billing, metering, collections, and customer communications or other services provided to an aggregator or its customers shall be recovered from the aggregator or its customers on terms and at rates to be approved by the commission.

~~(20)~~

(2 1) At the request and expense of any community choice aggregator, electrical corporations shall install, maintain and calibrate metering devices at mutually agreeable locations within or adjacent to the community aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community aggregator at the aggregator's expense. To the extent that the community aggregator requests a metering location that would require alteration or modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if such alteration or modification does not compromise the safety, reliability or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be borne by the community aggregator.

(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with Section 80000) of the Water Code and Section 360.5, and is therefore declaratory of existing law.

(e) A retail end-use customer that purchases electricity from a community choice aggregator pursuant to this section shall pay both of the following:

(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.

(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable electricity purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the Department of Water Resources.

(f) A retail end-use customer purchasing electricity from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation, provided that the costs shall not continue for a period in excess of 36 months. In establishing the share of net unavoidable electricity purchase contract costs attributable to customers of a community choice aggregator, the commission shall exclude electricity purchase contracts, or other resource commitments, made after adoption of the community choice aggregator's implementation plan for all customers served by the community choice aggregator within five years of its adoption.

(g) To the extent that the estimated net unavoidable electricity costs paid by the customers of a community choice aggregator reimburse an electrical corporation for its costs to comply with the resource adequacy provisions of Section 380, the renewables portfolio standard requirements of Article 16 (commencing with Section 399.11), or the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code), or for any other electrical or environmental attribute of the electric utility's resources, the community choice aggregator shall annually be given commensurate credit towards its own obligations to comply with the resource adequacy, renewables portfolio standard, and global warming requirements.

(h) (1) Any charges imposed pursuant to subdivision (e) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (f) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to ensure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to subdivisions (d), (e), and (f) shall be nonbypassable.

~~(i) Notwithstanding Section 80110 of the Water Code, the~~

(i) *The* commission shall authorize community choice aggregation only if the commission imposes a cost-recovery mechanism pursuant to subdivisions (d), (e), (f), and (h). Except as provided by this subdivision, this section shall not alter the suspension by the commission of direct purchases of electricity from alternate providers other than by community choice aggregators, pursuant to Section ~~80110 of the Water Code~~ *365.1* .

(j) (1) The commission shall not authorize community choice aggregation until it implements a cost-recovery mechanism, consistent with subdivisions (d), (e), and (f), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and January 1, 2003.

(2) The commission shall not authorize community choice aggregation until it has adopted rules for implementing community choice aggregation.

(k) Except for programs funded through the nonbypassable system benefits charge authorized pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)), electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not directly benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer. The commission, Energy Commission, electrical corporation, or third-party administrator shall administer those programs funded through the nonbypassable system benefits charge on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis with the customers of an electrical corporation.

(l) *(1)* An electrical corporation shall not terminate the services of a community choice aggregator unless authorized by a vote of the full commission. The commission shall ensure that prior to authorizing a termination of service, that the community choice aggregator has been provided adequate notice and a reasonable opportunity to be heard regarding any electrical corporation contentions in support of termination. If the contentions made by the electrical corporation in favor of termination include factual claims, the community choice aggregator shall be afforded an opportunity to address those claims in an evidentiary hearing.

(2) Notwithstanding paragraph (1), if the independent system operator has transferred the community choice aggregator's scheduling coordination responsibilities to the incumbent electrical corporation, an administrative law judge or assigned commissioner, after providing the aggregator with notice and an opportunity to respond, may suspend the aggregator's service to customers pending a full vote of the commission.

(m) Any meeting of an entity authorized to be a community choice aggregator, as defined in Section 331.1, for the purpose of developing, implementing, or administering a program of community choice aggregation shall be conducted in the manner prescribed by the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

SEC. 5. Section 380 of the Public Utilities Code is amended to read:

380. (a) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements for all load-serving entities.

(b) In establishing resource adequacy requirements, the commission shall achieve all of the following objectives:

(1) Facilitate development of new generating capacity and retention of existing generating capacity that is economic and needed.

(2) Equitably allocate the cost of generating capacity and prevent shifting of costs between customer classes.

(3) Minimize enforcement requirements and costs.

(4) Maximize the ability of community choice aggregators ~~and electric service providers~~ to determine the generation resources used to serve their customers.

(c) Each load-serving entity shall maintain physical generating capacity adequate to meet its load requirements, including, but not limited to, peak demand and planning and operating reserves. The generating capacity shall be deliverable to locations and at times as may be necessary to provide reliable electric service.

(d) Each load-serving entity shall, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council or the Western Electricity Coordinating Council.

(e) The commission shall implement and enforce the resource adequacy requirements established in accordance with this section in a nondiscriminatory manner. Each load-serving entity shall be subject to the same requirements for resource adequacy and the renewables portfolio standard program that are applicable to electrical corporations pursuant to this section, or otherwise required by law, or by order or decision of the commission. The commission shall exercise its enforcement powers to ensure compliance by all load-serving entities. Except for the commission's authority to enforce resource adequacy requirements pursuant to this section, the renewables portfolio standard procurement requirements pursuant to Article 16 (commencing with Section 399.11), and providing for system and local reliability pursuant to paragraph (2) of subdivision (c) of Section 365.1, the commission has no authority or jurisdiction with respect to the generation procurement activities of community choice aggregators and shall not authorize an electrical corporation to procure generation resources on behalf of customers of a community choice aggregator.

(f) The commission shall require sufficient information, including, but not limited to, anticipated load, actual load, and measures undertaken by a load-serving entity to ensure resource adequacy, to be reported to enable the commission to determine compliance with the resource adequacy requirements established by the commission.

(g) An electrical corporation's costs of meeting resource adequacy requirements, including, but not limited to, the costs associated with system reliability and local area reliability, that are determined to be reasonable by the commission, or are otherwise recoverable under a procurement plan approved by the commission pursuant to Section 454.5, shall be fully recoverable from those customers on whose behalf the costs are incurred, as determined by the commission, at the time the commitment to incur the cost is made, on a fully nonbypassable basis, as determined by the commission. The commission shall exclude any amounts authorized to be recovered pursuant to Section 366.2 when authorizing the amount of costs to be recovered from customers of a community choice aggregator or from customers that purchase electricity through a direct transaction pursuant to this subdivision.

(h) The commission shall determine and authorize the most efficient and equitable means for achieving all of the following:

(1) Meeting the objectives of this section.

(2) Ensuring that investment is made in new generating capacity.

(3) Ensuring that existing generating capacity that is economic is retained.

(4) Ensuring that the cost of generating capacity is allocated equitably.

(5) Ensuring that community choice aggregators ~~and electric service providers~~ can determine the generation resources used to serve their customers.

(i) In making the determination pursuant to subdivision (h), the commission may consider a centralized resource adequacy mechanism among other options.

(j) For purposes of this section, "load-serving entity" means an electrical corporation, electric service provider, or community choice aggregator. "Load-serving entity" does not include any of the following:

(1) A local publicly owned electric utility.

(2) The State Water Resources Development System commonly known as the State Water Project.

(3) Customer generation located on the customer's site or providing electric service through arrangements authorized by Section 218, if the customer generation, or the load it serves, meets one of the following criteria:

(A) It takes standby service from the electrical corporation on a commission-approved rate schedule that provides for adequate backup planning and operating reserves for the standby customer class.

(B) It is not physically interconnected to the electric transmission or distribution grid, so that, if the customer generation fails, backup electricity is not supplied from the electricity grid.

(C) There is physical assurance that the load served by the customer generation will be curtailed concurrently and commensurately with an outage of the customer generation.

SEC. 6. Section 381.1 of the Public Utilities Code is amended to read:

381.1. (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs established pursuant to Section 381 or the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)). In determining whether to approve an application to become administrators *and subject to an aggregator's right to elect to become an administrator pursuant to subdivision (f)* , the commission shall consider the value of program continuity and planning certainty and the value of allowing competitive opportunities for potentially new administrators. The commission shall weigh the benefits of the party's proposed program to ensure that the program meets the following objectives:

(1) Is consistent with the goals of the existing programs established pursuant to Section 381 or the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)).

(2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.

(3) Accommodates the need for broader statewide or regional programs.

(b) All audit and reporting requirements established by the commission pursuant to Section 381 or the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)), and other statutes shall apply to the parties chosen as administrators under this section.

(c) If a community choice aggregator is not the administrator of energy efficiency and conservation programs for which its customers are eligible, the commission shall require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class. To the extent that energy efficiency and conservation programs are targeted to specific locations to avoid or defer transmission or distribution system upgrades, the targeted expenditures shall continue irrespective of whether the loads in those locations are served by an aggregator or by an electrical corporation. The commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures. The commission may order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary to ensure an equitable and cost-effective allocation of energy efficiency program activities.

(d) The commission shall establish an impartial process for making the determination of whether a third party, including a community choice aggregator, may become administrators for cost-effective energy efficiency and conservation programs pursuant to ~~this section~~ *subdivision (a)*, and shall not delegate or otherwise transfer ~~this authority~~ *the commission's authority to make this determination* to an electrical corporation.

~~(c) A registered community choice aggregator may elect, on an annual date determined by the commission,~~

(e) The impartial process established by the commission shall allow a registered community choice aggregator to elect to become the administrator of funds collected from the aggregator's electric service customers and collected through a nonbypassable system benefits charge authorized pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)), or other nonbypassable charge authorized by the commission, for cost-effective energy efficiency and conservation programs ~~or resources~~, *including nonbypassable charges for* procurement-related energy efficiency and conservation ~~programs. A~~ *programs of the incumbent electrical corporation.*

(f) A community choice aggregator electing to become an administrator shall ~~administer~~ *submit a plan to the commission for the administration of* cost-effective energy efficiency and conservation programs for the aggregator's electric service customers that ~~meet the following objectives~~ *includes funding requirements, a program description, and the duration of the program. The program shall do all of the following*:

(1) Be consistent with the goals of programs established pursuant to Section 381 and the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)).

(2) Advances the public interest in maximizing cost-effective electricity savings and related benefits.

~~(3) Coordinates with broader statewide or regional programs.~~

(3) Accommodates the need for broader statewide or regional programs.

(4) Includes audit and reporting requirements consistent with the audit and reporting requirements established by the commission pursuant to Section 381 or the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399)).

(5) Includes evaluation, measurement, and verification protocols established by the community choice aggregator.

SEC. 7. Section 395.5 of the Public Utilities Code is amended to read:

395.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Nonprofit charitable organization" means any charitable organization described in Section 501(c)(3) of the federal Internal Revenue Code that has as its primary purpose serving the needs of the poor or elderly.

(2) "Electric commodity" means electricity used by the customer or a supply of electricity available for use by the customer, and does not include services associated with the transmission and distribution of electricity.

(b) Notwithstanding Section 80110 of the Water Code, a nonprofit charitable organization may acquire electric commodity service through a direct transaction with an electric service provider if electric commodity service is donated free of charge without compensation.

(c) A nonprofit charitable organization that acquires donated electric commodity service through a direct transaction pursuant to this section shall be responsible for paying all of the following:

(1) Those charges and surcharges that would be imposed upon a retail end-use customer of a community aggregator pursuant to subdivisions (d), (e), (f), and (h) of Section 366.2.

(2) The transmission and distribution charges of an electrical corporation or a local publicly owned electric utility.

(3) A nonbypassable charge imposed pursuant to Article 7 (commencing with Section 381), Article 8 (commencing with Section 385), or Article 15 (commencing with Section 399).

(4) Costs imposed upon a load-serving entity pursuant to Section 380.

(d) Existing direct access rules and all service obligations otherwise applicable to electric service providers shall govern transactions under this section.

(e) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 8. Section 707 is added to the Public Utilities Code, to read:

707. (a) Not later than March 1, 2012, the commission shall institute a rulemaking proceeding for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of the electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs authorized in Section 366.2. The code of conduct, associated rules, and enforcement procedures, shall do all of the following:

(1) Ensure that an electrical corporation does not market against a community choice aggregation program, except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders and that is functionally and physically separate from the electrical corporation's ratepayer-funded divisions.

(2) Limit the electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer-funded divisions, and ensure that the electrical corporation's independent marketing division has allocated costs of any permissible support services from the electrical corporation's ratepayer-funded divisions on a fully allocated embedded cost basis, providing detailed public reports of such use.

(3) Ensure that the electrical corporation's independent marketing division does not have access to competitively sensitive information.

(4) *(A)* Incorporate rules that the commission ~~has determined are necessary in newly competitive markets upon a finding by the commission that those rules are~~ *finds to be* necessary or convenient in order to promote the development of community choice aggregation programs, to foster fair competition, or to protect against cross-subsidization paid by ratepayers. ~~It~~

(B) *It* is the intent of the

Legislature that the rules include *, in whole or in part,* the rules approved by the commission in Decision 97-12-088 and Decision 08-06-016. ~~This~~

(C) This paragraph does not limit the authority of the commission to adopt ~~additional~~ rules that it determines are necessary or convenient in addition to those adopted in Decision 97-12-088 and Decision 08-06-016 *or to modify any rule adopted in those decisions* .

(5) Provide for any other matter that the commission determines to be necessary or advisable to protect a ratepayer's right to be free from forced speech or to implement that portion of the federal Public Utility Regulatory Policies Act of 1978 that establishes the federal standard that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising (16 U.S.C. Sec. 2623(b)(5)).

(b) The commission shall ensure that the code of conduct, associated rules, and enforcement procedures are implemented by no later than January 1, 2013.

(c) This section does not limit the authority of the commission to require that any marketing against a community choice aggregation plan shall be conducted by an affiliate of the electrical corporation, or to require that marketing against a community choice aggregator not be conducted by a marketing division of the electrical corporation, subject to affiliate transaction rules to be developed by the commission.

SEC. 9. Section 1802 of the Public Utilities Code is amended to read:

1802. As used in this article:

(a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) "Customer" means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a ~~customer, including a community choice aggregator that has expressly been authorized by its enabling ordinance to represent the interests of residential and small commercial customers for whom the aggregator supplies electric service.~~ *customer.*

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(D) A community choice aggregator or an entity seeking to establish a community choice aggregation program, prior to its commencement of service to customers, that has been expressly authorized by its enabling ordinance to represent the interests of residential and small commercial customers for whom the aggregator supplies or proposes to supply electric service.

(2) Except for a community choice aggregator meeting the requirements of subparagraph (B) of paragraph (1), "customer" does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding.

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

(d) "Other reasonable costs" means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) "Party" means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) "Proceeding" means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) "Small commercial customer" means any nonresidential customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of "small commercial customer," including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(i) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

SEC. 10. Section 8380 of the Public Utilities Code is amended to read:

8380. (a) For purposes of this section, "electrical or gas consumption data" means data about a customer's electrical or natural gas usage that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer.

(b) (1) An electrical corporation or gas corporation shall not share, disclose, or otherwise make accessible to any third party a customer's electrical or gas consumption data, except as provided in subdivision (e) or upon the consent of the customer.

(2) An electrical corporation or gas corporation shall not sell a customer's electrical or gas consumption data or any other personally identifiable information for any purpose.

(3) The electrical corporation or gas corporation or its contractors shall not provide an incentive or discount to the customer for accessing the customer's electrical or gas consumption data without the prior consent of the customer.

(4) An electrical or gas corporation that utilizes an advanced metering infrastructure that allows a customer to access the customer's electrical and gas consumption data shall ensure that the customer has an option to access that data without being required to agree to the sharing of his or her personally identifiable information, including electrical or gas consumption data, with a third party.

(c) If an electrical corporation or gas corporation contracts with a third party for a service that allows a customer to monitor his or her electricity or gas usage, and that third party uses the data for a secondary commercial purpose, the contract between the electrical corporation or gas corporation and the third party shall provide that the third party prominently discloses that secondary commercial purpose to the customer.

(d) An electrical corporation or gas corporation shall use reasonable security procedures and practices to protect a customer's unencrypted electrical or gas consumption data from unauthorized access, destruction, use, modification, or disclosure.

(e) (1) Nothing in this section shall preclude an electrical corporation or gas corporation from using customer aggregate electrical or gas consumption data for analysis, reporting, or program management if all information has been removed regarding the individual identity of a customer.

(2) Nothing in this section shall preclude an electrical corporation or gas corporation from disclosing a customer's electrical or gas consumption data to a third party for system, grid, or operational needs, or the implementation of demand response, energy management, energy efficiency, or community choice aggregation programs, provided that, for contracts entered into after January 1, 2011, the utility has required by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to the primary purpose of the contract without the customer's consent.

(3) Nothing in this section shall preclude an electrical corporation or gas corporation from disclosing electrical or gas consumption data as required or permitted under state or federal law or by an order of the commission.

(f) If a customer chooses to disclose his or her electrical or gas consumption data to a third party that is unaffiliated with, and has no other business relationship with, the electrical or gas corporation, the electrical or gas corporation shall not be responsible for the security of that data, or its use or misuse.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the

Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.