STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 1, 2009

To: The Commission
(Meeting of May 7, 2009)

From: Pamela Loomis, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 413 (Fuentes) Energy: rates.**
As Amended April 20, 2009

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

This bill would make several changes that affect electric rates, including codifying eligibility for the California Alternate Rates for Energy (CARE) program, barring mandatory dynamic pricing for residential electric customers, and lifting the current cap on some residential electricity rates. This bill would also modify low-income energy efficiency (LIEE) programs and relax some statutory constraints on existing direct access arrangements, while removing any Commission discretion on the complete reopening of direct access.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

While the Commission supports the lifting of the AB 1x rate cap, it strongly opposes any limitation of its authority to implement dynamic pricing for residential electric customers. The dynamic pricing provisions of this bill would limit the benefits of advanced metering infrastructure and smart grid technology, as well as undermine the goals of the Energy Action Plan to shave peak demand. The Commission is also concerned with language pertaining to the allocation of net costs of new generation resources to meet system or local reliability.

SUMMARY OF SUGGESTED AMENDMENTS:

- **PU Code § 739.1(b):** In addition to removing the January 1, 2008 date limitation, language should be included in Section 739.1(b) to avoid conflicting with the Natural Gas Surcharge exemptions specified in PU Code 896 and to clarify that

CARE costs should not be recoverable from CARE customers (e.g., "… *from all classes of customers excluding CARE customers. The types of natural gas consumers specified in PU Code section 896 will continue to be exempt from the Natural Gas Surcharge*.")

- **PU Code § 739.1(b)(2):**
  "The commission, may, subject to the limitation in paragraph (4), increase the rates in effect for CARE program participants ~~for electricity usage up to 130 percent of baseline quantities by the annual percentage increase in benefits under the CalWORKs program as authorized by the Legislature for the fiscal year in which the rate increase would take effect, but not to exceed 3 percent per year~~ to not exceed *80% of the corresponding rate charged to non-CARE residential customers."*

- **PU Code § 739.1(b)(3)(B):**
  "That the level of discount for low-income electric and gas customers correctly reflects ~~the level of need as determined by the needs assessment conducted pursuant to subdivision (e) of Section 382~~ *a 20% discount on all rate charges not explicitly excepted by previous acts of the Legislature.*

- **PU Code § 739.1(b)(4):**
  "Tier 1, tier 2, *tier 3, tier 4, and tier 5* ~~3~~ CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, tier 3, tier 4 and tier 5 rates charged residential customers not participating in the CARE program,…"

- **PU Code § 739.1(b)(5):**
  "Rates charged to CARE program participants shall not have more than *five* ~~three~~ tiers,…"

DIVISION ANALYSIS (Energy Division):

<u>Low Income Energy Efficiency Programs related provisions</u>

AB 413 proposes that to the extent practicable, the Low Income Energy Efficiency Program (LIEE) shall *"target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electric usage and develop programs that specifically target new construction by, and new and retrofit appliances for nonprofit affordable housing providers*". The Commission opposes this for a variety of reasons discussed below.

The CPUC does not support targeting specific customer segments in the low income energy efficiency program. Decision 08-11-031 on utility budgets for low income programs clearly emphasizes that "the IOU's must serve all eligible low income customers." Targeting specific customers like upper-tier and multifamily customers would be discriminatory.

Also, the criteria that energy efficiency programs should result in ‘long term permanent reductions’ in energy use could be in conflict with the stated goal of the Low Income Energy Efficiency (LIEE) program to 'improve the quality of life of the low income population'. For example, the installation of air-conditioning in a hot climate zone will improve the quality of life of the low-income individual, but it would not result in long term permanent energy reductions.

Additionally, it should be noted that the CPUC is already pursuing multifamily property participation in low income energy efficiency program and the solar program.

For 2009-2011 the Commission already has authorized the utilities to spend approximately $300 million per year for Low Income Energy Efficiency programs that install a range of efficiency measures at no cost to the existing occupants. Multi-family dwellings are fully eligible to receive these services for eligible households meeting the income limits. A substantial number of those assisted are living in multi-family dwellings.

Multi-family properties are also currently eligible for solar incentives under the existing California Solar Initiative (CSI). Furthermore, under the CSI program, ten percent of the budget is set aside for low-income programs, and half of that budget is specifically for the Multi-family Affordable Solar Housing (MASH) program.

The IOUs and the CPUC face some barriers to maximize the participation of multi-family customers. Customers who reside in multi-family residences are often tenants and do not have the same incentives as owners to avail of energy efficiency or solar technologies.

Section 3 of AB 413 would further require the Commission and the electrical and gas corporations to make enhanced low-income energy efficiency programs available to eligible customers as practicable by December 31, 2014.

In *The California Long-term Energy Efficiency Strategic Plan* (hereafter *The Plan*), the Commission outlined its long-term vision for the LIEE Program, stating that ‘[b]y 2020, 100% of eligible and willing customers will have received all cost effective Low income energy efficiency measures.’

This stated goal of the CPUC to reach 100% of the eligible and willing LIEE customers by 2020 is already consistent with the bill’s goal to reach as many eligible customers as practicable by December 31, 2014. Additionally, in the CSI decision (D.07-11-045), the CPUC already determined that ‘low income incentive applicants should obtain an energy audit and enroll in LIEE, if eligible, and have all feasible LIEE measures installed or be on the waiting list for installation prior to receiving solar incentives.’

To accomplish these ambitious goals for low income customers, in its November 2008 decision on the low income budget applications of Investor Owned Utilities (D. 08-11-

031), the CPUC has already provided substantial budget increases to provide LIEE measures for 25% of all eligible and willing customers in the 2009-11 period.

Staff believes that changing the LIEE implementation period from the already stated timelines may actually delay implementation as annual budgets will need to be increased to meet AB 413's proposed deadlines. These changes may also lead to increased program costs and consumer rates to accommodate the higher budgets which are charged as a surcharge on customer's rates.

Section 3 of AB 413 would also require the Commission and electrical and gas corporations to make all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs.

The Commission is not opposed to this provision but notes that in its recent Decision, 08-11-031, the IOUs are required to begin leveraging their low income energy efficiency programs with other federal, state, and local programs. Specifically, the Commission envisioned the creation of local government partnerships and the leveraging of the Low Income Energy Efficiency Program with the federally funded LIHEAP (Low Income Heating Assistance Program) and WAP (Weatherization Assistance Program).

In March, 2009, the CPUC signed a Memorandum of Understanding with the Department of Community Services and Development (CSD) to coordinate the two programs. Since the funding for LIHEAP and WAP is expected to increase several fold pursuant to the American Recovery and Reinvestment Act, the partnership between the CPUC and the CSD has taken on a heightened importance. The Commission and CSD plan to organize meetings with stakeholders and workshops with parties in the near future.

CARE Eligibility, Recovery of CARE Costs and Changes in CARE Rates

The Commission's authority in determining income eligibility for CARE assistance and in determining the contribution of various classes of customers towards CARE costs should be preserved. This authority is needed so that the Commission may make appropriate changes in response to changing economic conditions in a timely manner.

In several decisions, the Commission has reiterated its intent to provide a 20% discount on the overall bill for CARE customers. In principle, CARE rates for each tier should be set at no higher than 80% of the corresponding non-CARE tiers. CARE rates should have the same number of tiers as the non-CARE rates with each tier discounted at 20% of the non-CARE rate. CARE and non-CARE rates should have the same rate adjustment formula over time to ensure that these rates stay in line over time while providing the appropriate discount to CARE customers.

In general, the CPUC prefers not to have rate design issues handled in statute because it unnecessarily complicates rational rate design and the ability to respond to cost changes over time. It also prevents the CPUC from making proactive adjustments to

respond to economic conditions. More detail on the background of the issue and the merits of the CPUC's recommended position is provided below.

A. Codifying CARE income eligibility and recovery of CARE costs:

Under the current CPUC rules, residential customers with income at or below 200% of the federal poverty guideline are eligible for CARE rates. The cost of the CARE programs under the Commission's current rules is recovered on an equal cents per kwh and equal cents per therm basis from specified customer classes. Section 739.1(b)(1) of this bill will codify the existing income eligibility at 200% of the federal poverty guidelines and the equal cents recovery in statute which will limit the Commission's flexibility in the future to make changes to the income eligibility as well as the recovery mechanism.

In addition, this section of the bill prescribes that cost of low income assistance programs "shall be recovered ….from all classes of customers that were subject to the surcharge that funded the program on January 1, 2008." It is not clear whether this section of the bill is trying to ensure that none of the classes of customers that pay these costs now are exempted from these costs in the future or whether it is trying to ensure that no customer classes that were not paying as of January 1, 2008 can be made to contribute to the low income program costs. In any case, the Commission would prefer to retain its ratemaking authority in this area to assign cost recovery at its discretion.

B. Allowing statutorily prescribed changes in CARE rates:

The bill would remove the cap on residential CARE rates for usage up to 130% of baseline and allow for some rate increases. These rate increases are necessary because, in their absence, all cost increases have to be paid for by increasing rates for usage above 130% of baseline. In the absence of these CARE rate increases, when CARE costs increase, all other customers must pay a larger share of these costs. The Commission supports removing the cap on CARE rates, as well as the need to limit increases to keep the financial burden on CARE customers as low as possible. However, the increases in these rates should use the same inflation indexing formula as non-CARE rates to maintain a consistent 20% discount for CARE rates with respect to non-CARE rates.

1. History of CARE Discount: Historically, the Commission has examined the issue of appropriate level of CARE discount in its own proceedings, balancing the needs of CARE eligible low income customers and the impact of the discount on other customers that pay for these programs. The Commission increased the CARE discount from 15% to 20% (D. 01-06-010) in June 2001 for PG&E, SDG&E, SCE and SoCalGas. The Commission later specifically exempted CARE customers from some costs resulting from the 2000-01 Energy Crisis. These exemptions have resulted in increasing the CARE discount above 20% over time.

By freezing CARE rates, and non-CARE residential rates for up to 130% of the baseline (which covers Tier 1 and Tier 2 consumption) at February, 2001 levels, AB1X has had the unintended consequence of increasing the discount for low income customers with high electric consumption. As an illustration, the following table shows CARE discount for customers at various consumption levels:

PG&E--Current Levels of CARE Discount

Residential Consumption level	CARE rate	Non-CARE rate	Discount
Tier 1: Baseline Usage	$0.08316	$0.11531	27.9%
Tier 2: 101% - 130% of Baseline	$0.09563	$0.13109	27.1%
Tier 3: 131% - 200% of Baseline	$0.09563	$0.25974	63.2%
Tier 4: 201% - 300% of Baseline	$0.09563	$0.37866	74.7%
Tier 5: Over 300% of Baseline	$0.09563	$0.44098	78.3%

As the above table shows, the CARE discount for PG&E for high consumption levels has increased to over 70%. This was not the intent but has been the result. Preserving the existing structural imbalance in statute would lead to a growing problem over time.

2. <u>It is important to carefully balance the low income customer assistance and the impact on customer classes that pay for such assistance:</u> The Commission and the legislature must carefully consider and balance the competing needs of customers. This is especially important in the current time of economic hardship for middle class customers and businesses. The Commission should have the flexibility to set the discount levels and costs borne by other customers by balancing all affected customer classes.

3. <u>It is appropriate and necessary to discourage high consumption levels through appropriate rate design.</u>

Through tiered rate design, the Commission has historically provided price signals to discourage high residential consumption levels. The rates for Tier 1and Tier 2 are set lower than the other tiers to ensure affordable basic levels of electricity for all residential customers. The Commission believes that all customers -CARE and non-CARE - should be discouraged from excessive electricity use by the use of tiered pricing while giving CARE customers a discount. The legislature must preserve the Commission's ratemaking authority to provide appropriate low income assistance and appropriate price incentives for conservation. This is especially important as the Commission implements its very ambitious Low Income Energy Efficiency (LIEE) program to assist low income customers with high consumption.

4. <u>Low income assistance should be in the form of a prescribed CARE discount from regular residential rates and not as a stand alone or arbitrarily determined CARE rate:</u> Residential CARE rates should have the same tiered structure as regular rates, but should get a discount off of each tier rate for non-CARE customers. Accordingly, CARE rates should have the same 1, 2, 3, 4 and 5 tiers as non-CARE customers with the rate

for each tier discounted by 20%. This will preserve the incentive to conserve for CARE customers.

6. CARE rates should be subject to similar adjustment over time to reflect cost of service increases: This bill would allow CARE rates for usage up to 130% of baseline to be increased by *"the annual percentage increase in benefits under the CalWORKS program"*, not to exceed 3% per year. Because the bill provides for a different rate of increase for non-CARE customers over time, it will result in CARE and non-CARE rates following very different trajectories over time without regard to cost of service and increasing the size of the CARE discount over time.

CARE Tier 1 and Tier 2 rates should be subject to the same adjustment for changes in cost of service as the non-CARE Tier 1 and Tier 2 rates to keep CARE and non-CARE rates in line over time. The Commission feels that it would be more appropriate to limit Tier 1 and Tier 2 price changes for both CARE and non-CARE by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent but the increase should not be more than 5 percent per year. Using a single inflation measure would also reduce the administrative complexity of rate increases.

SUGGESTED AMENDMENTS to PU Code 739.1(b)**:** In addition to removing the January 1, 2008 date limitation discussed above, language should be included in Section 739.1(b) to avoid conflicting with the Natural Gas Surcharge exemptions specified in PU Code 896 and to clarify that CARE costs should not be recoverable from CARE customers (e.g., "… *from all classes of customers excluding CARE customers. The types of natural gas consumers specified in PU Code section 896 will continue to be exempt from the Natural Gas Surcharge*.")

- **PU Code § 739.1(b)(2):**
  "The commission, may, subject to the limitation in paragraph (4), increase the rates in effect for CARE program participants ~~for electricity usage up to 130 percent of baseline quantities by the annual percentage increase in benefits under the CalWORKs program as authorized by the Legislature for the fiscal year in which the rate increase would take effect, but not to exceed 3 percent per year~~ to not exceed *80% of the corresponding rate charged to non-CARE residential customers."*

  - **PU Code § 739.1(b)(3)(B):**
    "That the level of discount for low-income electric and gas customers correctly reflects ~~the level of need as determined by the needs assessment conducted pursuant to subdivision (e) of Section 382~~ *a 20% discount on all rate charges not explicitly excepted by previous acts of the Legislature.*

  - **PU Code § 739.1(b)(4):**
    "Tier 1, tier 2, *tier 3, tier 4, and tier 5* ~~3~~ CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, tier 3, tier 4 and tier 5 rates charged residential customers not participating in the CARE program,…"

- **PU Code § 739.1(b)(5):**
  "Rates charged to CARE program participants shall not have more than *five* ~~three~~ tiers,…"

Relaxing the AB 1X cap to allow the Commission to increase Non-CARE rates for up to 130% of baseline consumption

This bill allows the Commission to increase non-CARE residential Tier 1 and Tier 2 rates. The Commission supports this provision. Under AB1X for the past 8 years, the Commission has had to incorporate all the increases in residential cost of service into Tier 3, 4 and 5 rates, which has resulted in very high rates for those tiers. However, this bill's prescribed minimum and maximum band of 3-5% for Tier 1 and Tier 2 rates with a "CPI plus 1%" formula is problematic. Instead, it would be more appropriate to simply tie changes in these rates to corresponding changes in the CPI.

Under the AB1X rate cap, residential rates for tier 1 and tier 2 customers have effectively declined relative to other price and inflation measures. Since 2001, Consumer Price Index (CPI) and the Producer Price Index (PPI) for energy have increased respectively by 17% and 20.8%. During this time, the energy component of the CPI increased by 68.7%, and the Residential electricity component of CPI increased by 19.0%.

Based on 2009 sales forecasts, the rate increases allowed under this bill would allow the utilities to collect approximately $160-270 million more per year from usage at the tier 1 and tier 2 levels. This revenue would be used to avoid increases in rates for tiers 3-5 that would otherwise be necessary.

Tying Tier 1 and 2 rate increases to the CPI would result in capturing cost increases over time while providing a measure outside of the control of the utilities: The bill is too prescriptive in specifying minimum and maximum limits for rate changes. It would be more appropriate to limit Tier 1 and Tier 2 price changes by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not more than 5 percent per year. The Energy Division recommends removing the 3% minimum rate increase from the bill language. This would allow the Commission to approve rate increases of less than 3% for tiers and 1 and 2 if economic conditions warrant doing so. Recent CPI data suggests that rates would generally fall within the 3-5% allowable rate change levels. Between 1990 and 2007, for 14 out of 18 years, the CPI Index plus 1% fell within the 3-5% range specified in AB 413. However, long-term analysis suggests that price volatility can be much more severe.

The language should also be modified to ensure that the 5% maximum rate increase does not apply to Time Of Use (TOU) pricing schedules, nor should it apply to a flat tier rate offered as an alternative under a default time-variant rate schedule.

This bill also requires that baseline residential rates for any utility cannot exceed 90% of that utility's system average rate. Comparison of each utility's system average rate to its baseline residential rates shows that this would not affect utilities rates for 2009. 2009 baseline rates are 80% (PG&E), 89% (SCE), and 77% (SDG&E). Additionally, this provision would not prevent 3-5% increases in baseline rates, as required under this bill.

SUGGESTED AMENDMENTS:

The Energy Division recommends removing the 3% minimum rate increase from the bill language. This would allow the Commission to approve rate increases of less than 3% for tiers 1 and 2 if economic conditions warrant doing so.

> 739.9. (a) The commission may, subject to the limitation in subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities, as defined in Section 739, by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but ~~not less than 3 percent and~~ not more than 5 percent per year.

Dynamic Pricing

This bill would add proposed section 745 to the Public Utilities Code to prohibit the CPUC from employing mandatory dynamic pricing for residential customers and would allow the Commission to employ default time-variant pricing only after January 1, 2016. The CPUC finds this provision of the bill problematic and opposes it. The bill would limit the benefits of advanced metering infrastructure and smart grid technology and undermine the goals of the Energy Action Plan.

Dynamic pricing involves rate structures that reflect the time of the energy's use and includes various forms of time variant pricing such as pre-determined time of use rates (TOU), real-time TOU and critical peak pricing. Time varying prices reduce consumption during periods of high demand and high rates and reduce the need to build costly peak capacity that is only used during a few hours during the year. Avoiding spikes in peak use through dynamic pricing avoids the need to build peak capacity and reduces overall cost of power. In addition, time varying rates can have other public policy benefits such as reduced greenhouse gas emissions. With the AB 32 goals, it would not be prudent for the Legislature to limit the CPUC's ability to use innovative rate design options to encourage reductions in peak load usage and overall energy use. The CPUC would carefully consider the impacts of mandatory dynamic pricing on customers, including low income customers, and the need for substantial customer education before adopting such rates.

Direct Access

This bill would prohibit the CPUC from allowing the reopening of direct access without express statutory authority and would maintain the current suspension of Direct Access. However, it will authorize the Commission to allow individual retail end-use customers

who are either currently taking service from an electric service provider, or eligible to take service from an electric service provider under Commission rules, to acquire service for new accounts from an electric service provider. The CPUC supports relaxing the direct access suspension and would like to preserve the authority to re-open Direct Access when it is appropriate and permissible under current law.

Direct Access was originally implemented by the Commission on April 1, 1998, as an integral part of a comprehensive restructuring program to bring retail competition to California electric power markets. Under this competitive restructuring program, implemented pursuant to Assembly Bill (AB) 1890, retail customers had the choice either to subscribe to traditional bundled utility service or to purchase electricity on a competitive basis from an electric service provider (ESP). A direct access customer receives distribution and transmission services from the utility, but purchases electricity directly through an independent ESP. Although the ESP supplies electricity to the direct access customer, the utility remains the electricity provider of last resort.

In 2001, after the Department of Water Resources (DWR) had contracted for power on behalf of the state's IOUs during the energy crisis, the Legislature suspended direct access in order to ensure that cost responsibility for the DWR procurement was assigned in a fair manner among retail electric customers and to ensure a stable customer base. Pursuant to the legislative mandate of AB1X, the CPUC suspended the right to enter into new contracts for direct access after September 20, 2001. A "standstill approach" was applied, permitting no new direct access contracts, but allowing pre-existing contracts to continue in effect.

The CPUC believes that the underlying concerns previously identified by the Commission and the Legislature as reasons for the suspension of direct access have been addressed in various Commission proceedings. For example, DWR bonds were issued at investment grade, and the Commission established non-bypassable charges for recovery of DWR bond costs. The Commission has also established cost recovery mechanisms for DWR to be reimbursed for its power costs from both bundled and direct access customers. California energy markets have become more stable and the Commission has adopted various policy reforms to eliminate the conditions that prompted the energy crisis of 2000-2001. In addition, the Commission has implemented its resource adequacy program pursuant to AB 380, and its Long Term Procurement Planning process pursuant to AB 57. The CPUC is currently examining options for relieving DWR of its responsibility as a power provider, potentially making it possible to resume direct access under current law. This bill would remove CPUC discretion in this area until express statutory authority is granted at some future point.

LEGISLATIVE HISTORY:

- SB 695, introduced February 27, 2009, is virtually identical to AB 413. It passed out of the Senate Energy, Utilities & Communications Committee on April 21st, and is now awaiting hearing in Senate Appropriations.

- D.08-11-031 – A LIEE decision on utility budgets for low income programs that, amongst other findings, stated that "the IOU's must serve all eligible low income customers" and the "IOUs shall not neglect low income customers with low energy use."
- D.07-11-045 – A California Solar Initiative decision, that, amongst other findings, determined that 'low income incentive applicants should obtain an energy audit and enroll in LIEE, if eligible, and have all feasible LIEE measures installed or be on the waiting list for installation prior to receiving solar incentives.'

STATUS:

AB 413 passed out of the Assembly Utilities and Commerce Committee on April 27th, and is now awaiting hearing in Assembly Appropriations.

SUPPORT/OPPOSITION:

Support: Alliance for Retail Energy Markets (AReM)
California Retailers Association (if amended)
California Rural Legal Assistance Foundation (CRLA)
Direct Energy
Pacific Gas and Electric Company (PG&E)
Southern California Edison (SCE)
The Utility Reform Network (TURN)
Western Center on Law and Poverty

Opposition: California Manufacturers & Technology Association (CMTA) (unless amended)

STAFF CONTACTS:

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Date: May 1, 2009

BILL LANGUAGE:

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BILL NUMBER: AB 413    AMENDED
        BILL TEXT

        AMENDED IN ASSEMBLY  APRIL 20, 2009
        AMENDED IN ASSEMBLY  APRIL 13, 2009

INTRODUCED BY   Assembly Member Fuentes

                         FEBRUARY 23, 2009
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An act to amend Sections 327, 382, 739.1, and 747 of, and to add Sections ~~739.9~~ *365.1, 739.9,* and 745 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 413, as amended, Fuentes. Energy: rates.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

This bill would prohibit the commission from requiring or permitting an electrical corporation to employ time-variant pricing, as defined, for residential customers, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing. The bill, commencing January 1, 2016, would authorize the commission to authorize an electrical corporation to employ default time-variant pricing for residential customers, if the customer has the option of receiving service pursuant to a rate schedule that is not based upon time-variant pricing and if residential customers that exercise the option to not receive service pursuant to the time-variant pricing incur no additional fee or surcharge to exercise that option.

(2) Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer.

This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes at or below 200% of the federal poverty guideline levels, and require that the cost of the program *not be borne solely by any single class of customer. The bill would require, for an electrical corporation or public utility that is both an electrical corporation and a gas corporation, that the cost of the program* be recovered on an equal cents per kilowatthour *or per-therm* basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.

(3) Existing law relative to electrical restructuring requires that the electrical corporations and gas corporations that participate in the CARE program administer low-income energy efficiency and rate assistance programs described in specified statutes, and undertake certain actions in administering specified energy efficiency and weatherization programs.

This bill would require that electrical corporations, in administering the specified energy efficiency and weatherization programs, to target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage and develop

programs that specifically target new construction by, and new and retrofit appliances for, nonprofit affordable housing providers. The bill would require the commission to require electrical corporations to deploy enhanced Low-Income Energy Efficiency (LIEE) programs, as defined, designed to reach as many eligible customers as practicable by December 31, 2014, particularly targeting those customers occupying apartment houses or similar multiunit residential structures, and would require the commission and electrical corporations and gas corporations to expend all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this requirement.

(4) Existing law relative to electrical restructuring requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers.

Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers.

Existing law enacted during the energy crisis of 2000-01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law provides that the department is entitled to recover certain expenses resulting from its purchases and sales of electricity and authorizes the commission to enter into an agreement with the department relative to cost recovery. That law prohibits the commission from increasing the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities, until the department has recovered the costs of electricity it procured for electrical corporation retail end use customers. That law also suspends the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the prohibition that the commission not increase the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities. The bill would authorize the commission, until January 1, 2019, to increase the rates charged residential customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year. This authorization would be subject to the limitation that rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90% of the system average rate, as defined. The bill would authorize the commission to increase the rates for participants in the CARE program, subject to

certain limitations. The bill would ~~authorize the commission to allow individual retail end-use customers taking service from an electric service provider on January 1, 2010, or eligible to take service from an electric service provider under rules adopted by the commission in existence on January 1, 2008, to acquire service for new accounts, as defined, from an electric service provider. The bill would suspend the right of retail end-use customers to acquire service through a direct transaction until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions~~ *delete the existing suspension of direct transactions in the Water Code that was adopted during the energy crisis of 2000- 01, and would instead require the commission to authorize direct transactions subject to a phase-in schedule of not less than 3 years and not more than 5 years, and subject to total and yearly direct transaction limits established, as specified, for each electrical corporation. The bill would continue the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions* .

(5) Existing law requires the commission to prepare and submit to the Governor and the Legislature a written report on an annual basis before February 1 of each year on the costs of programs and activities conducted by an electrical corporation or gas corporation that has more than a specified number of customers in California.

This bill would also require the report to contain the commission's recommendations for actions that can be undertaken during the upcoming year to limit utility cost increases, consistent with the state's carbon reduction, energy, and environmental goals. The bill would require the commission to annually require electrical and gas corporations to study and report to the commission on measures that they recommend be undertaken to limit cost increases.

(6) 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 certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new 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. Section 327 of the Public Utilities Code is amended to read:

327. (a) The electrical corporations and gas corporations that participate in the California Alternate Rates for Energy program, as established pursuant to Section 739.1, shall administer low-income energy efficiency and rate assistance programs described in Sections 382, 739.1, 739.2, and 2790, subject to commission oversight. In

administering the programs described in Section 2790, the electrical corporations and gas corporations, to the extent practicable, shall do all of the following:

(1) Continue to leverage funds collected to fund the program described in subdivision (a) with funds available from state and federal sources.

(2) Work with state and local agencies, community-based organizations, and other entities to ensure efficient and effective delivery of programs.

(3) Encourage local employment and job skill development.

(4) Maximize the participation of eligible participants.

(5) Work to reduce consumers electric and gas consumption, and bills.

(6) For electrical corporations, target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage, and develop programs that specifically target new construction by, and new and retrofit appliances for, nonprofit affordable housing providers.

(b) If the commission requires low-income energy efficiency programs to be subject to competitive bidding, the electric and gas corporation described in subdivision (a), as part of their bid evaluation criteria, shall consider both cost-of-service criteria and quality-of-service criteria. The bidding criteria, at a minimum, shall recognize all of the following factors:

(1) The bidder's experience in delivering programs and services, including, but not limited to, weatherization, appliance repair and maintenance, energy education, outreach and enrollment services, and bill payment assistance programs to targeted communities.

(2) The bidder's knowledge of the targeted communities.

(3) The bidder's ability to reach targeted communities.

(4) The bidder's ability to utilize and employ people from the local area.

(5) The bidder's general contractor's license and evidence of good standing with the Contractors' State License Board.

(6) The bidder's performance quality as verified by the funding source.

(7) The bidder's financial stability.

(8) The bidder's ability to provide local job training.

(9) Other attributes that benefit local communities.

(c) Notwithstanding subdivision (b), the commission may modify the bid criteria based upon public input from a variety of sources, including representatives from low-income communities and the program administrators identified in subdivision (b), in order to ensure the effective and efficient delivery of high quality low-income energy efficiency programs.

SEC. 2. Section 365.1 is added to the Public Utilities Code , 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 was authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes electric service providers, an

aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3.

(b) The commission may allow individual retail nonresidential end-use customers to acquire electric service from electric service providers, subject to the limitation that the total annual kilowatthours supplied by all electric service providers to distribution customers of an electrical corporation shall not exceed the maximum total annual level of kilowatthours supplied by all electric service providers, within that electrical corporation's distribution service territory, for any year between April 1, 1998, and January 1, 2010. By January 31, 2010, the commission shall calculate and adopt a phase-in schedule of not less than three years, and not more than five years, to raise the allowable limit of kilowatthours supplied by other providers from the number of kilowatthours provided by other providers as of January 1, 2010, to the maximum total annual level for each electrical corporation's distribution service territory.

(c) The commission shall not authorize additional direct transactions pursuant to subdivision (b) unless both of the following conditions are met:

(1) Other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations pursuant to the resource adequacy requirements established by the commission pursuant to Section 380, the renewables portfolio standard requirements established by the commission pursuant to 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). It is the intent of the Legislature in making these requirements that, as a condition for allowing direct transactions, the resource adequacy requirements, renewables portfolio standard requirements, and requirements for reducing emissions of greenhouse gases be applied in a competitively neutral manner.

(2) (A) The commission utilizes a mechanism that allocates the net costs of new generation resources acquired by an electrical corporation to meet system or local area reliability needs, on a fully nonbypassable basis, either through a contract with a third party, pursuant to commission authorization, or through direct ownership of the generation resource by the electrical corporation, pursuant to commission direction, 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 resource adequacy benefits of new generation resources shall be allocated to all customers who pay their net costs. The allocation mechanism used by the commission should generally be consistent with that adopted by the commission in Decision 06-07-029, as modified by Decision 07-11-05, but that no energy auction shall be required as a condition of employing the mechanism, but may be allowed, to value the electricity generated by 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 costs of contracts with third parties shall be allowed for the terms of those contracts. It is the intent of the Legislature, in enacting this subparagraph, to ensure that the customers to whom the

net costs and benefits of capacity are allocated are not required to pay for the costs of electricity they do not consume.

(d) 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. 2.~~ *SEC. 3.* Section 382 of the Public Utilities Code is amended to read:

382. (a) Programs provided to low-income electricity customers, including, but not limited to, targeted energy-efficiency services and the California Alternate Rates for Energy program shall be funded at not less than 1996 authorized levels based on an assessment of customer need.

(b) In order to meet legitimate needs of electric and gas customers who are unable to pay their electric and gas bills and who satisfy eligibility criteria for assistance, recognizing that electricity is a basic necessity, and that all residents of the state should be able to afford essential electricity and gas supplies, the commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures. Energy expenditure may be reduced through the establishment of different rates for low-income ratepayers, different levels of rate assistance, and energy efficiency programs.

(c) Nothing in this section shall be construed to prohibit electric and gas providers from offering any special rate or program for low-income ratepayers that is not specifically required in this section.

(d) The commission shall allocate funds necessary to meet the low-income objectives in this section.

(e) Beginning in 2002, an assessment of the needs of low-income electricity and gas ratepayers shall be conducted periodically by the commission with the assistance of the Low-Income Oversight Board. The assessment shall evaluate low-income program implementation and the effectiveness of weatherization services and energy efficiency measures in low-income households. The assessment shall consider whether existing programs adequately address low-income electricity and gas customers' energy expenditures, hardship, language needs, and economic burdens.

(f) The commission shall require electrical corporations to deploy enhanced low-income energy efficiency programs designed to reach as many eligible customers as practicable by December 31, 2014, particularly targeting those customers occupying apartments or similar multiunit residential structures. The commission and electrical corporations and gas corporations shall make all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this subdivision. For purposes of this subdivision, "enhanced programs" are programs that provide long-term reductions in energy consumption at the dwelling unit based on an audit or assessment of the dwelling unit, and may include improved insulation, energy efficient appliances, measures that utilize solar energy, and other cost-effective improvements to the physical structure.

~~SEC. 3.~~ *SEC. 4.* Section 739.1 of the Public Utilities Code is amended to read:

739.1. (a) As used in this subdivision, the following terms have the following meanings:

(1) "Baseline quantity" has the same meaning as defined in Section 739.

(2) "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the commission in Decision 05-12-044 and Decision 06-01-024, as modified by Article 1 (commencing with Section 2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code.

(3) "CalWORKs program" means the program established pursuant to the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 the Welfare and Institutions Code).

(4) "Public goods charge" means the nonbypassable separate rate component imposed pursuant to Article 7 (commencing with Section 381) of Chapter 2.3 and the nonbypassable system benefits charge imposed pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3).

(b) (1) The commission shall establish a program of assistance to low-income electric and gas customers with annual household incomes at or below 200 percent of the federal poverty guideline levels, the cost of which shall *not be borne solely by any single class of customer. For an electrical corporation and for a public utility that is both an electrical corporation and a gas corporation, the costs shall* be recovered on an equal cent-per-kilowatthour *or equal cents-per-therm* basis from all classes of customers that were subject to the surcharge that funded the program on January 1, 2008. The program shall be referred to as the California Alternate Rates for Energy or CARE program. The commission shall ensure that the level of discount for low-income electric and gas customers correctly reflects the level of need.

(2) The commission may, subject to the limitation in paragraph (4), increase the rates in effect for CARE program participants for electricity usage up to 130 percent of baseline quantities by the annual percentage increase in benefits under the CalWORKs program as authorized by the Legislature for the fiscal year in which the rate increase would take effect, but not to exceed 3 percent per year. This paragraph shall become inoperative on January 1, 2019, unless a later enacted statute deletes or extends that date.

(3) Beginning January 1, 2019, the commission may, subject to the limitation in paragraph (4), establish rates for CARE program participants pursuant to Sections 739, 739.9, and this section, subject to both of the following requirements:

(A) That low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures.

(B) That the level of discount for low-income electric and gas customers correctly reflects the level of need as determined by the needs assessment conducted pursuant to subdivision (e) of Section 382.

(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge.

(5) Rates charged to CARE program participants shall not have more than three tiers. An electrical corporation that does not have a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order to moderate the impact on program participants whose usage exceeds 130 percent of baseline quantities, shall be phased in to 80 percent of the corresponding rates charged residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any other charge imposed to fund a program that exempts CARE participants from paying the charge. For electrical corporations that currently do not have a tier 3 CARE rate, the initial rate shall be no more than 150 percent of the CARE baseline rate and any additional revenues collected by an electrical corporation resulting from the adoption of a tier 3 CARE rate shall, until the utility's next periodic general rate case review of cost allocation and rate design, be tracked and credited to reduce rates of residential ratepayers not participating in the CARE program with usage above 130 percent of baseline quantities.

(c) The commission shall work with the public utility electrical and gas corporations to establish penetration goals. The commission shall authorize recovery of all administrative costs associated with the implementation of the CARE program that the commission determines to be reasonable, through a balancing account mechanism. Administrative costs shall include, but are not limited to, outreach, marketing, regulatory compliance, certification and verification, billing, measurement and evaluation, and capital improvements and upgrades to communications and processing equipment.

(d) The commission shall examine methods to improve CARE enrollment and participation. This examination shall include, but need not be limited to, comparing information from CARE and the Universal Lifeline Telephone Service (ULTS) to determine the most effective means of utilizing that information to increase CARE enrollment, automatic enrollment of ULTS customers who are eligible for the CARE program, customer privacy issues, and alternative mechanisms for outreach to potential enrollees. The commission shall ensure that a customer consents prior to enrollment. The commission shall consult with interested parties, including ULTS providers, to develop the best methods of informing ULTS customers about other available low-income programs, as well as the best mechanism for telephone providers to recover reasonable costs incurred pursuant to this section.

(e) (1) The commission shall improve the CARE application process by cooperating with other entities and representatives of California government, including the California Health and Human Services Agency and the Secretary of California Health and Human Services, to ensure that all gas and electric customers eligible for public assistance programs in California that reside within the service territory of an electrical corporation or gas corporation, are enrolled in the CARE program. To the extent practicable, the commission shall develop a CARE application process using the existing ULTS application process as a model. The commission shall work with public utility electrical and gas corporations and the Low-Income Oversight Board established in Section 382.1 to meet the low-income objectives in this section.

(2) The commission shall ensure that an electrical corporation or gas corporation with a commission-approved program to provide

discounts based upon economic need in addition to the CARE program, including a Family Electric Rate Assistance program, utilize a single application form, to enable an applicant to alternatively apply for any assistance program for which the applicant may be eligible. It is the intent of the Legislature to allow applicants under one program, that may not be eligible under that program, but that may be eligible under an alternative assistance program based upon economic need, to complete a single application for any commission-approved assistance program offered by the public utility.

(f) The commission's program of assistance to low-income electric and gas customers shall, as soon as practicable, include nonprofit group living facilities specified by the commission, if the commission finds that the residents in these facilities substantially meet the commission's low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit, such as improved quality of care or improved food service, of the low-income residents in the facilities. The commission shall authorize utilities to offer discounts to eligible facilities licensed or permitted by appropriate state or local agencies, and to facilities, including women's shelters, hospices, and homeless shelters, that may not have a license or permit but provide other proof satisfactory to the utility that they are eligible to participate in the program.

(g) It is the intent of the Legislature that the commission ensure CARE program participants are afforded the lowest possible electric and gas rates and, to the extent possible, are exempt from additional surcharges attributable to the energy crisis of 2000-01.

~~SEC. 4.~~ *SEC. 5.* Section 739.9 is added to the Public Utilities Code, to read:

739.9. (a) The commission may, subject to the limitation in subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities, as defined in Section 739, by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not less than 3 percent and not more than 5 percent per year. For purposes of this subdivision, the annual percentage change in the Consumer Price Index shall be calculated using the same formula that was used to determine the annual Social Security Cost of Living Adjustment on January 1, 2008. This subdivision shall become inoperative on January 1, 2019, unless a later enacted statute deletes or extends that date.

(b) The rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, shall not exceed 90 percent of the system average rate prior to January 1, 2019, and may not exceed 92.5 percent after that date. For purposes of this subdivision, the system average rate shall be determined by dividing the electrical corporation's total revenue requirements for bundled service customers by the adopted forecast of total bundled service sales.

(c) This section does not require the commission to raise any residential rate or restrict, or otherwise limit, the authority of the commission to reduce any residential rate in effect immediately preceding January 1, 2010.

~~SEC. 5.~~ *SEC. 6.* Section 745 is added to the Public Utilities Code, to read:

745. (a) The commission shall not require or permit an electrical corporation to employ mandatory time-variant pricing for residential

customers.

(b) The commission may authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing.

(c) Commencing January 1, 2016, the commission may authorize an electrical corporation to employ default time-variant pricing for residential customers, if the customer has the option of receiving service pursuant to a rate schedule that is not based upon time-variant pricing. The commission shall only approve an electrical corporation's default use of time-variant pricing if residential customers that exercise the option to not receive service pursuant to time-variant pricing incur no additional fee or surcharge to exercise that option.

(d) For purposes of this section, "time-variant pricing" includes time-of-use rates, critical-peak pricing, and real-time pricing, but does not include programs that provide customers with discounts from the standard tariff rate as an incentive to reduce consumption at certain times, including peak-time rebates.

~~SEC. 6.~~ *SEC. 7.* Section 747 of the Public Utilities Code is amended to read:

747. (a) It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.

(b) (1) The commission shall prepare a written report on the costs of programs and activities conducted by each electrical corporation and gas corporation that is subject to this section, including activities conducted to comply with their duty to serve. The report shall be completed on an annual basis before February 1 of each year, and shall identify, clearly and concisely, all of the following:

(A) Each program mandated by statute and its annual cost to ratepayers.

(B) Each program mandated by the commission and its annual cost to ratepayers.

(C) Energy purchase contract costs and bond-related costs incurred pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(D) All other aggregated categories of costs currently recovered in retail rates as determined by the commission.

(2) The report shall also contain the commission's recommendations for actions that can be undertaken during the upcoming year to limit utility cost increases, consistent with the state's carbon reduction, energy, and environmental goals.

(3) In preparing the report, the commission shall annually require electrical and gas corporations to study and report to the commission on measures that they recommend be undertaken to limit cost increases.

(c) As used in this section, the reporting requirements apply to electrical corporations with at least 1,000,000 retail customers in California and gas corporations with at least 500,000 retail customers in California.

(d) The report required by subdivision (b) shall be submitted to the Governor and the Legislature no later than February 1 of each year.

(e) The commission shall post the report required by subdivision (b) in a conspicuous area of its Internet Web site.

~~SEC. 7.~~ *SEC. 8.* Section 80110 of the Water Code is amended to read:

~~80110. (a) For purposes of this section, a "new account" means either of the following:~~
~~(1) An account belonging to an individual retail end-use customer, as described in subdivision (g), that exists on January 1, 2010, and that receives bundled utility service from an electrical corporation.~~
~~(2) An additional meter or request for service of an individual retail end-use customer, as described in subdivision (g), added after January 1, 2010.~~

~~(b)~~
80110. (a) The department shall retain title to all power sold by it to the retail end-use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.
~~(c)~~
(b) The revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.
~~(d)~~
(c) (1) For the purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. Prior to the execution of any modification of any contract for the purchase of power by the department pursuant to this division, on or after the effective date of this section, the department or the commission, as applicable, shall do the following:

(A) The department shall notify the public of its intent to modify a contract and the opportunity to comment on the proposed modification.

(B) At least 21 days after providing public notice, the department shall make a determination as to whether the proposed modifications are just and reasonable. The determination shall include responses to any public comments.

(C) No later than 70 days before the date of execution of the contract modification, the department shall provide a written report to the commission setting forth the justification for the determination that the proposed modification is just and reasonable, including documents, analysis, response to public comments, and other information relating to the determination.

(D) Within 60 days of the date of receipt of the department's written report, the commission shall review the report and make public its comments. If the commission in its comments recommends against the proposed modification, the department shall not execute the proposed contract modification.

(2) This subdivision does not apply to the modification of a contract modified to settle litigation to which the commission is a party.

(3) This subdivision does not apply to the modification of a contract for the purchase of electricity that is generated from a facility owned by a public agency if the contract requires the public agency to sell electricity to the department at or below the public agency's cost of that power.

(4) This subdivision does not apply to the modification of a contract to address issues relating to billing, scheduling, delivery of electricity, and related contract matters arising out of the implementation by the Independent System Operator of its market redesign and technology upgrade program.

(5) (A) For purposes of this subdivision, the department proposes to "modify" a contract if there is any material change proposed in the terms of the contract.

(B) A change to a contract is not material if it is only administrative in nature or the change in ratepayer value results in ratepayer savings, not to exceed twenty-five million dollars ($25,000,000) per year. For the purpose of making a determination that a change is only administrative in nature or results in ratepayer savings of twenty-five million dollars ($25,000,000) or less per year, the executive director of the commission shall concur in writing with each of those determinations by the department.

~~(e)~~

(d) The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission.

~~(f) The right of retail end-use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers is suspended until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.~~

~~(g) Notwithstanding subdivision (f), the commission may allow individual retail end-use customers taking service from an electric service provider as of January 1, 2010, or eligible to take service from an electric service provider under rules adopted by the commission in existence on January 1, 2008, to acquire service for new accounts from an electric service provider.~~

~~(h)~~

(e) The department shall have the same rights with respect to the payment by retail end-use customers for power sold by the department as do providers of power to the customers.

~~SEC. 8.~~ *SEC. 9.* 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.