

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: August 1, 2012

To: The Commission
(Meeting of August 2, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 843 (Wolk) – Energy: electrical corporations: City of Davis
PVUSA solar facility: Community-Based Renewable Energy
Self-Generation Program
As amended: May 9, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS
AMENDED**

SUMMARY OF BILL:

Under this bill an IOU retail customer (“participant”) can acquire an interest in a community renewable energy facility (CREF) and receive bill credits based on the percentage share of the CREF kWh output that is assigned to the participating benefiting account (“participant”). Bill credits offset all or a portion of the participant’s electricity *generation* charges at a defined facility rate. A CREF cannot exceed 20 MW per facility and the combined statewide cumulative rated generating capacity of CREFs under this program shall not exceed 2 gigawatts, unless the Commission determines to raise that cap. The bill would provide that any corporation or person engaged directly or indirectly in developing, producing, delivering, participating in, or selling interests in, CREF (“participant organization”) is not a public utility or electrical corporation solely by reason of engaging in any of those activities.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

SB 843 should be opposed unless amended for the following reasons:

- (1) **The bill creates a cross subsidy from non-participating ratepayers to participating ratepayers:** the bill’s prescribed methodology for calculating the participating customer’s bill credit will result in a cross subsidy from non-participating ratepayers to participating ratepayers. The size and extent of the cost shift is unknown and would require further study to understand the impacts.

- (2) **The “facility rate” paid to participants in the form of bill credits is not an appropriate proxy for the “value” of DG renewables on the grid.** The bill establishes two methods for calculating participants’ bill credits: the RPS method and the “added value” method. The RPS method serves as a floor to the bill credit rate because participants receive the greater of RPS method rate or the added value rate. Under the RPS method, nonparticipating ratepayers pay, in the form of bill credits to participants, a per kilowatt-hour rate based on recent RPS PPA prices. However, because REC from CREFs are retired on behalf of the participants, nonparticipants do not receive RPS credit for energy produced by CREFs. Nonparticipants therefore pay renewable prices for what is effectively brown power. Under the “added value” method, participants’ bill credits are calculated as the sum of the added value of DG resources (a value determined by the PUC that reflects avoided T&D infrastructure, peak load reduction, avoided transmission losses and other benefits) and the generation rate component of each participant’s tariff. It is likely that the added value plus generation rate of some tariffs will exceed the cost of the lowest-cost energy and capacity that would have otherwise been procured for nonparticipants.
- (3) **Under the “added value” method, the financial benefit to participants is arbitrary, depending on the participants’ retail rate:** The higher a participant’s generation rate, the greater the benefit to the participant, and conversely, the more nonparticipants pay as a result of lost revenue to the utility. Thus, the benefit to potential participants is an arbitrary result of the IOUs’ tariff structures. There are almost 40 different generation rates in the IOUs’ tariffs ranging from ~\$0.02/kWh to \$0.12/kWh.
- (4) **Depending on the success of the program, the bill could impose an enormous 2,000 MW procurement obligation on IOUs.** To the extent that the PUC finds cost shifting does occur, even under the floor value of the RPS method, there is no discretion for the PUC to terminate the program or reduce the bill credit rate to a level that holds nonparticipants indifferent. Moreover, the bill is unfair to IOU ratepayers because it imposes no corresponding obligation on publicly-owned utilities.
- (5) **The bill is exceedingly complex and will require significant CPUC and IOU resources to administer and implement.** The Commission is responsible for:
- determining the facility rate for each CREF;
 - determining the added-value method for each CREF and reviewing it every 3 years;
 - maintaining a publicly available database of existing and proposed community renewable energy facilities.
- In addition, IOUs must calculate bill credits for each participant based on the participant’s individual generation rate and based on either the RPS method or the added-value method – whichever is greater. Thus, any particular CREF could produce bill credits at dozens of different rates.
- (6) **Achieving ratepayer indifference is compromised by provisions that result in cost shifts to non-participants.** The added-value method is used to determine a participant’s bill credit if the added-value rate plus the customer’s

generation rate is greater than RPS method facility rate. In designing the added-value rate the CPUC must consider the costs and benefits of adding CREFs to the grid. However the RPS method acts as a floor on the facility rate, so the Commission would not be able set the facility rate at a level that achieves non-participant ratepayer indifference due to the minimum floor price for the facility rate.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill should be revised substantially to conform with the following amendments:

- (1) Facility rate and value added rate should be replaced by a single 'Facility rate' which is based on RAM for projects between 3 and 20 MWs and REMAT for projects between 0 and 3 MWs with a reduction that reflects the lack of RPS compliance value for nonparticipants.
- (2) The Commission should have the authority to set a uniform bill credit rate in place of the generation rate. This will ensure that all ratepayers have an equal opportunity to participate at the same financial terms. The method of calculating customer bill credits will remain the same except that the Commission-set bill credit rate will be used in place of the generation rate which varies widely across different rate schedules.
- (3) After the first 250 MWs are installed, the Commission should have the authority to evaluate the program and make adjustments to the 'facility rate' to achieve nonparticipant rate payer indifference.
- (4) The total program capacity (2 GW) should be divided into four 500 MW tranches. All tranches after the first tranche should be released at the discretion of the Commission based on its assessment of program success and ratepayer impact.
- (5) The program should have seller deposit, concentration, project viability, and online date requirements that mirror the rules in place for the RAM program or as otherwise determined at the PUC's discretion.
- (6) Describing the program as a "community-based" renewable energy "self-generation" program is misleading. The bill neither requires that a CREF be located within the same community as participants nor that all of the participants in a given CREF be residents of the same community. The only locational requirement is that a utility can require a CREF to be located in its service territory. Additionally, because CREFs may be located hundreds of miles from participants, it is a stretch to describe the program as fostering self-generation when many CREFs may depend on transmission infrastructure to deliver their generation. The program should simply be described as a renewable energy bill credit program.

DIVISION ANALYSIS (Energy Division):

Overview of how the bill works:

- A developer builds a DG project up to 20 MW in size on the utility side of the meter with RPS eligible renewable technologies and the utility is the off-taker of the power.
- Customer participants can acquire an interest in the facility and will pay some kind of a fee to the project developer aka the “participant organization.” Their interest is represented by a percentage kWh share of the output of the facility.
- The IOU will provide monthly bill credits to participating benefiting accounts.
- Calculating the bill credits works as follows:
 - CPUC establishes a “**facility rate**” for each project using the “**RPS solicitation method**” for 2013 and 2014, and the greater of the RPS method or an “added value” method after 2015.
 - Pursuant to the RPS method, the CPUC sets the facility rate at the most recent RPS procurement price¹.
 - Bill credit = [kWh share of participant] x [facility rate]
 - The bill credit is netted against the customer’s *generation charges*, and any positive balance is carried forward as dollar amount credit to the next billing cycle.
 - At the end of 12 months any remaining bill credit is paid out at the default load aggregation point (DLAP) rate; i.e. the same rate used for Net Surplus Compensation.
 - Not later than December 31, 2014, the commission shall determine the methodology for calculating the **added value** used to determine the participant’s bill credit. In determining the added value, the commission shall determine the amount of monetary costs and benefits a community renewable energy facility brings to the electrical corporation, other nonparticipating ratepayers, and the grid. In determining the added value, the commission shall analyze the costs and benefits, including, but not limited to, avoided transmission line loss, avoided transmission and distribution infrastructure costs, any reduction in fixed operations and maintenance costs, the offset of peak demand or shifting load, and the reduction of environmental compliance costs, including costs that would otherwise be incurred for reducing emissions of greenhouse gases. The net value of the costs and benefits derived from a community renewable energy facility shall be denominated in a monetary amount per kilowatt of production and shall be added to the otherwise applicable generation component of the participant’s electric service rate.
 - If the added value added to the customer’s generation rate is greater than the facility rate derived from the RPS method, then the added value method is used to determine the customer’s bill credit. Thus the RPS method represents the floor price for the bill credits.

¹ The facility rate shall be set at the weighted average time-of-delivery adjusted cost of electricity established in the commission’s Renewables Portfolio Standard Quarterly Report, 4th Quarter 2011, Cost Reporting in Compliance with SB 836, published in the first quarter of the previous year, for eligible renewable energy resource of comparable size that utilizes the same generating technology as employed by the community renewable energy facility, calculated on January 1 of the previous year for each electrical corporation for purposes of the report made to the Legislature pursuant to Section 911.

- The commission shall not regulate the prices paid for an interest in a community renewable energy facility, but may enforce the required disclosures, and may establish rules applicable to participant organizations to ensure consumer protection.
- The RECs are retired on behalf of participants by the participant organization.
- The resource adequacy value of the facility is assigned to the IOU.
- Participants are still responsible for paying their transmission and distribution charges and all other non-generation charges on their rate plan.
- Unallocated capacity is compensated by the recipient IOU to the facility operator at the DLAP rate.
- CREF generation does not count towards the IOU RPS target, but does lower their retail sales.

Explanation of bill's impact on CPUC program's practice and policy:

1. The bill further exasperates controversy over cost-shifts associated with policies that promote distributed generation.

As result of the perception of and actuality of the cost shift created by this bill, there will be additional push back on the NEM program as a result. The NEM program is highly popular and successful at promoting customer generation and the CPUC is undertaking a process to examine alternatives to NEM that do not result in significant cost shift. The controversy over this bill will not be helpful to the climate needed to create reform for NEM.

2. The bill requires significant CPUC resources to develop rules and for ongoing administration.

The bill is complicated while at the same time deferring to CPUC on policy and administrative issues. It will require significant rulemaking procedures. Additionally there is a significant on-going CPUC role in administering the program including:

- Determining facility rates for each project
- Posting generation rates for each rate class
- Setting a value added method for determining the facility rate each 3 years
- Ensuring cost neutrality for non-participants
- Oversight of marketing and disclosure materials for participant organizations
- Conducting program evaluations.

PROGRAM BACKGROUND:

Under existing complementary state laws, the CPUC oversees a range of policies that support distributed generation:

1. Rebates: Rebates through the California Solar Initiative (CSI) and Self Generation Incentive Program (SGIP). The CSI program provides rebates for systems up to 1 MW (and allows systems up to 5 MW), with the exception of certain state-owned

facilities (per AB 2724, 2010).

2. Simplified Interconnection: Reduced interconnection costs are available under utility Rule 21 tariffs that exempt self-generation renewable energy systems under 1 MW from most studies and fees. Rule 21 also offers these systems accelerated interconnection timelines. Separately, the CPUC exempted renewable self-generation systems from standby charges in 2003.
3. Net Energy Metering: Per PU Code 2827, NEM customer-generators who take service from IOUs have their net generation valued at the full retail rate at the time the energy is exported.² AB 920 requires compensation of net surplus generation above annual load.
4. Virtual Net Energy Metering: First established as part of the Multifamily Affordable Solar Housing (MASH) Program³ in D.08-10-036, VNM allows customers to allocate the kilowatt-hour credits from the electricity generated from a single solar energy system on an affordable housing property to multiple customer accounts within that property. VNM was originally limited to MASH customers only, and D.11-07-031, among other directives, expanded both the types of customers and generation technologies eligible for VNM.

Specifically, D.11-07-031 does not limit the expanded VNM to CSI customers. Whereas VNM was previously limited to solar PV technologies, D.11-07-031 now allows all technologies that are eligible for the full retail NEM tariff to participate in VNM. D.11-07-031 also limits the expanded VNM to customers served by a single service delivery point (SDP).⁴

LEGISLATIVE HISTORY:

The NEM statute has been modified numerous times in the past decade. It was created in response to AB 656 (1996), and modified by numerous bills, including: AB 1755 (1998), AB 918 (2000), AB X1-29 (2001), SB 1038 (2002), AB 2228 (2003), AB 58 (2003), AB 1214 (2004), AB 920 (2009), AB 510 (2010), and SB 489 (2011).

At least four other bills introduced in the 2011-12 Session would modify the NEM program:

- AB 2165 (Hill) – Expands the generation-only rate NEM cap for eligible fuel cell customer-generators (Status: Senate Floor);
- AB 2514 (Bradford) - Requires the CPUC to complete a study by June 30, 2013, to determine the extent to which each class of ratepayers receiving service under NEM is paying the full cost of the services provided to them by electrical corporations and

² PU Code 2827(h)(2)(B).

³ The MASH Program is a component of the CSI Program that provides incentives to multifamily affordable housing residences.

⁴ Multifamily Affordable Solar Housing (MASH) participants remain the exception to the single SDP limitation in VNM.

the extent to which those customers pay their share of the costs of public purpose programs. (Status: Senate Appropriations Committee);

- SB 594 (Wolk) - NEM Meter Aggregation of Multiple Meters of a Single Customer on a Contiguous Property Under Single Ownership (Status: Assembly Appropriations Committee).
- SB 1537 (Kehoe): Prohibits the CPUC from adopting any new demand charges for NEM customers.

FISCAL IMPACT:

SB 843 would require ongoing costs for one PURA V to staff the new program, for a total cost of approximately \$120,234. Additionally, it would require an ALJ II for two years for program implementation at a temporary cost of \$151,000 per year. Total costs for years one and two would amount to \$322,234.

STATUS:

SB 843 is pending in the Assembly Appropriations Committee.

SUPPORT/OPPOSITION:

Support

Affordable Housing Alliance
Alameda County Supervisor, Keith Carson
American Lung Association in California
Androit Solar Energy & Design
Breathe California
California Interfaith Power & Light (CIPL)
California League of Conservation Voters

SB 843
Page 10

California Native Plant Society
California School Boards Association (CSBA)
California State Association of Electrical Workers
Christiansen Consulting
City of Brea
City of Chula Vista
City of Davis
City of Ventura
Clean Tech Energy
CleanPath Ventures
CleanTECH San Diego
Coalition of California Utility Employees (CCUE)
Consumer Federation of California
County School Facilities Consortium (CSFC)
Davis Joint Unified School District
Department of Defense (DoD) (if amended)
Division of Ratepayer Advocates (DRA) (if amended)
El Peco Energy, LLC
Environment California

Environmental Entrepreneurs (E2)
Green Collar Job Campaign of the Ella Baker Center for Human Rights
GreenBuild Energy
Hansen Financial Management
Homeboy Industries
Individuals (8 letters)
Lincoln Renewable Energy
LMI of San Diego
LTS Energy
Mayor Jean Quan, City of Oakland
Natural Resources Defense Council (NRDC)
Oakland Rising
Oakland Technical High School Green Academy/Green Team
Oakland Unified School District (OUSD)
Octus Energy
PaulinNeal
Planning and Conservation League
Recurrent Energy
Renewable Funding
San Diego County Solar
San Diego Gas & Electric Company (SDG&E) (if amended)
Santa Ana Unified School District
School Energy Coalition (SEC)
Sierra Club California
Small Business California
Solar Energy Industries Association (SEIA)
Solar Training Institute
Solar West Design Build
Sonoma County Board of Supervisors
Sonoma County Water Agency
The Workforce Collaborative
Tom Torlakson, State Superintendent of Public Instruction (SSPI) (Sponsor)
Ufficio Energia e Clima (Office of Energy and Climate)
Vote Solar
Yolo County Board of Education
Yuba Community College District (YCCD)

Opposition

California Farm Bureau Federation
Pacific Gas and Electric Company (PG&E) (unless amended)
Southern California Edison (SCE)

STAFF CONTACTS:

Lynn Sadler, Director-OGA (916) 327-3277
Nick Zanjani, Legislative Liaison-OGA (916) 327-3277

LS1@cpuc.ca.gov
nkz@cpuc.ca.gov

BILL LANGUAGE:

BILL NUMBER: SB 843 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 9, 2012
AMENDED IN ASSEMBLY APRIL 30, 2012
AMENDED IN ASSEMBLY JUNE 21, 2011
AMENDED IN SENATE MARCH 24, 2011

INTRODUCED BY Senator Wolk

FEBRUARY 18, 2011

An act to amend Section 25019 of the Corporations Code, and to amend Sections 216 and 218 of, to repeal Section 2826.5 of, and to repeal and add Chapter 7.5 (commencing with Section 2830) of Part 2 of Division 1 of, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 843, as amended, Wolk. Energy: electrical corporations: City of Davis PVUSA solar facility: Community-Based Renewable Energy Self-Generation Program.

(1) Under existing law, the Public Utilities Commission has regulatory jurisdiction over public utilities, including electrical 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. Under existing law, the local government renewable energy self-generation program authorizes a local government, as defined, to receive a bill credit, as defined, to be applied to a designated benefiting account for electricity exported to the electrical grid by an eligible renewable generating facility, as defined, and requires the commission to adopt a rate tariff for the benefiting account.

This bill would repeal these provisions and enact the Community-Based Renewable Energy Self-Generation Program. The program would authorize a retail customer of an electrical corporation (participant) to acquire an interest, as defined, in a community renewable energy facility, as defined, for the purpose of receiving a bill credit, as defined, to offset all or a portion of the participant's electricity usage, consistent with specified requirements.

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 the provisions of the bill would require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

~~—The~~

(2) *The* bill would provide that any corporation or person engaged directly or indirectly in developing, producing, delivering, participating in, or selling

interests in, a community renewable energy facility is not a public utility or electrical corporation solely by reason of engaging in any of those activities.

—(2)—

(3) Existing law authorizes the City of Davis to receive a bill credit, as defined, to a benefiting account, as defined, for electricity supplied to the electrical grid by a photovoltaic electricity generation facility located within, and partially owned by, the city (PVUSA solar facility) and requires the commission to adopt a rate tariff for the benefiting account.

This bill would repeal these provisions relating to the City of Davis.

—(3)—

(4) 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 25019 of the Corporations Code is amended to read:

25019. (a) "Security" means any note; stock; treasury stock; membership in an incorporated or unincorporated association; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; life settlement contract or a fractionalized or pooled interest therein; voting trust certificate; certificate of deposit for a security; interest in a limited liability company and any class or series of those interests (including any fractional or other interest in that interest), except a membership interest in a limited liability company in which the person claiming this exception can prove that all of the members are actively engaged in the management of the limited liability company; provided that evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under that title or lease; put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof); or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; any beneficial interest or other security issued in connection with a funded employees' pension, profit sharing, stock bonus, or similar benefit plan; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in,

temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. All of the foregoing are securities whether or not evidenced by a written document.

(b) "Security" does not include: (1) any beneficial interest in any voluntary inter vivos trust which is not created for the purpose of carrying on any business or solely for the purpose of voting, or (2) any beneficial interest in any testamentary trust, or (3) any insurance or endowment policy or annuity contract under which an insurance company admitted in this state promises to pay a sum of money (whether or not based upon the investment performance of a segregated fund) either in a lump sum or periodically for life or some other specified period, or (4) any franchise subject to registration under the Franchise Investment Law (Division 5 (commencing with Section 31000)), or exempted from registration by Section 31100 or 31101, or (5) any right to a bill credit or interest of a participant in a community renewable energy facility pursuant to Chapter 7.5 (commencing with Section 2830) of Part 2 of Division 1 of the Public Utilities Code.

~~—SEC. 2.— Section 216 of the Public Utilities Code is amended to read:~~

~~— 216. (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.~~

~~—(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.~~

~~—(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.~~

~~—(d) Ownership or operation of a facility that employs cogeneration technology or produces power from other than a conventional power source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.~~

~~—(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not~~

~~a public utility within the meaning of this section solely by reason of engaging in any of those activities.~~

~~—(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, operation, or sale.~~

~~—(g) Ownership or operation of a facility that is an exempt wholesale generator, as defined in the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)), does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.~~

~~—(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, sales into a market established and operated by the Independent System Operator or any other wholesale electricity market, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.~~

~~—(i) A corporation or person engaged directly or indirectly in developing, owning, producing, delivering, participating in, or selling interests in, a community renewable energy facility pursuant to Chapter 7.5 (commencing with Section 2830) of Part 2, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.~~

SEC. 2. Section 216 of the Public Utilities Code is amended to read:

216. (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(d) Ownership or operation of a facility that employs cogeneration

technology or produces power from other than a conventional power source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, operation, or sale.

(g) Ownership or operation of a facility that is an exempt wholesale generator, as defined in the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)), does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, sales into a market established and operated by the Independent System Operator or any other wholesale electricity market, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

(i) The ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, control, operation, or management. For purposes of this subdivision, "light duty plug-in electric vehicles" includes light duty battery electric and plug-in hybrid electric vehicles. This subdivision does not affect the commission's authority under Section 454 or 740.2 or any other applicable statute.

(j) A corporation or person engaged directly or indirectly in developing, producing, delivering, participating in, or selling interests in a community facility, pursuant to Chapter 7.5 (commencing with Section 2830) of Part 2, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

SEC. 3. Section 218 of the Public Utilities Code is amended to read:

218. (a) "Electrical corporation" includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others.

(b) "Electrical corporation" does not include a corporation or

person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity solely for any one or more of the following purposes:

(1) Its own use or the use of its tenants.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated or on real property immediately adjacent thereto, unless there is an intervening public street constituting the boundary between the real property on which the electricity is generated and the immediately adjacent property and one or more of the following applies:

(A) The real property on which the electricity is generated and the immediately adjacent real property is not under common ownership or control, or that common ownership or control was gained solely for purposes of sale of the electricity so generated and not for other business purposes.

(B) The useful thermal output of the facility generating the electricity is not used on the immediately adjacent property for petroleum production or refining.

(C) The electricity furnished to the immediately adjacent property is not utilized by a subsidiary or affiliate of the corporation or person generating the electricity.

(3) Sale or transmission to an electrical corporation or state or local public agency, but not for sale or transmission to others, unless the corporation or person is otherwise an electrical corporation.

(c) "Electrical corporation" does not include a corporation or person employing landfill gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated.

(3) Sale or transmission to an electrical corporation or state or local public agency.

(d) "Electrical corporation" does not include a corporation or person employing digester gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated.

(3) Sale or transmission to an electrical corporation or state or local public agency, if the sale or transmission of the electricity service to a retail customer is provided through the transmission system of the existing local publicly owned electric utility or electrical corporation of that retail customer.

(e) "Electrical corporation" does not include an independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9 of Part 2.

(f) The amendments made to this section at the 1987 portion of the 1987-88 Regular Session of the Legislature do not apply to any corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity that physically produced electricity prior to January

1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989.

(g) A corporation or person engaged directly or indirectly in developing, owning, producing, delivering, participating in, or selling interests in, a community renewable energy facility pursuant to Chapter 7.5 (commencing with Section 2830) of Part 2, is not an electrical corporation within the meaning of this section solely by reason of engaging in any of those activities.

SEC. 4. Section 2826.5 of the Public Utilities Code is repealed.

SEC. 5. Chapter 7.5 (commencing with Section 2830) of Part 2 of Division 1 of the Public Utilities Code is repealed.

SEC. 6. Chapter 7.5 (commencing with Section 2830) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 7.5. COMMUNITY-BASED RENEWABLE ENERGY
~~SELF-GENERATION PROGRAM~~ SELF-GENERATION PROGRAM

2830. The Legislature finds and declares all of the following:

(a) The Governor has proposed a Clean Energy Jobs Plan calling for the development of 12,000 megawatts of generation from distributed eligible renewable energy resources of up to 20 megawatts in size by 2020. The Legislature recognizes the advantages of this proposal as distributed generation provides benefits in addition to the environmental benefits, including reduced electrical line losses, decreased investment in transmission and distribution infrastructure, easier permitting, and local economic benefits. There is widespread interest from many large institutional customers, including schools, colleges, universities, local governments, businesses, and the military, for development of distributed energy facilities to serve their needs. For these reasons the Legislature agrees that the Governor's distributed energy program represents a desired policy direction for the state.

(b) Community-based renewable energy self-generation creates jobs, reduces emissions of greenhouse gases, promotes energy independence, and will assist in meeting the state's zero net energy buildings goals. Further, community-based renewable energy self-generation will enable schools, colleges, universities, local governments, businesses and consumers to save money on their electricity bills, thereby helping to fund educational programs, social services, and new hiring.

(c) The California Solar Initiative has been extremely successful, resulting in over 100,000 residential and commercial on-site installations of solar energy systems. The Community-Based Renewable Energy Self-Generation Program seeks to build on this success by dramatically expanding the market for eligible renewable energy resources to include residential and commercial renters, residential and commercial buildings with shaded or improperly oriented roofs, and other groups who are unable to access the benefits of onsite generation. It is in the public interest to promote broader participation in self-generation by California residents, public agencies, and businesses by the development of community renewable energy self-generation facilities in which participants are entitled to generate electricity and receive credit for that electricity on their utility bills.

(d) Many institutional customers in California have been focused on distributed energy programs of their own. For example, the Secretary of the Navy established as policy that 50 percent of the

on-shore electricity for naval and Marine Corps installations in the United States be from renewable sources by 2020. To implement this policy the Navy and Marine Corps have been working on a variety of renewable generation projects within the 1 megawatt to 20 megawatt range. The military installations, and other institutional users, have identified a number of regulatory barriers to implementing distributed generation projects. The enactment of this chapter will create a mechanism whereby institutional customers such as military installations, universities, and local governments, as well as groups of individuals, can efficiently invest in generating electricity from eligible renewable energy resources.

(e) It is the intent of the Legislature that public schools have the authority to invest in community renewable energy facilities to generate electricity as provided in this chapter. Electricity usage is one of the most significant cost pressures facing public schools at a time when schools have been forced to cut essential programs, increase classroom sizes, and send pink slips to teachers throughout the state. Schools may use the savings for restoring funds for salaries, student achievement, facility maintenance, and other budgetary needs. The community renewable energy facility projects that go forward pursuant to this chapter will create new construction jobs, stimulate the economy, generate funding, and provide more electricity generated by clean, renewable sources to customers.

(f) It is the further intent of the Legislature that as the commission works to implement this chapter, that the commission carefully consider regulatory barriers to distributed generation projects already identified and those not yet identified, and quickly address those barriers in a manner that is conducive to the development of distributed generation projects consistent with appropriate ratepayer protections.

2831. As used in this chapter, the following terms have the following meanings:

(a) "Benefiting account" means one or more accounts designated to receive a bill credit pursuant to Section 2832.

(b) "Bill credit" means an amount of money credited each month, or in an otherwise applicable billing period, to one or more benefiting accounts based on the percentage share of the community renewable energy facility that is assigned to the account pursuant to the methodology described in Section 2832.

(c) "Community renewable energy facility" means a facility for the generation of electricity that meets all of the following requirements:

(1) Has a generating capacity of no more than 20 megawatts.

(2) Is an eligible renewable energy resource pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1).

(3) The electrical output of the facility is measured by a production meter capable of recording electrical generation in real time.

(4) Is located within the service territory of an electrical corporation having 100,000 or more service connections in California.

~~—(5) If it is to interconnect to the electrical grid at the transmission level of the grid, it has applied for interconnection through the Independent System Operator's generation interconnection process.~~

(5) If it is to interconnect to the electrical grid at the

transmission level of the grid, it has applied for interconnection through the Independent System Operators' generation interconnection process.

(6) Unless the facility has a bill credit arrangement in place by December 31, 2012, it achieves initial commercial operation on January 1, 2013, or thereafter.

(d) "Default load aggregation point" means a calculation, as determined by the commission, of avoided cost derived from an hourly day-ahead electricity market price that reflects the costs the electrical corporation avoids in procuring electricity during the time period a community renewable energy facility generates electricity.

~~—(d)~~

(e) "Facility rate" means the per kilowatthour rate, or some other unit of measurement that the commission determines to be superior to kilowatthours, established by the commission that is used to calculate the bill credit for a particular community renewable energy facility. The applicable facility rate for each community renewable energy facility shall be computed pursuant to Section 2832.

~~—(e)~~

(f) "Interest" means a direct or indirect ownership, lease, subscription, or financing interest in a community renewable energy facility that enables the participant to receive a bill credit for a retail account with the electrical corporation.

~~—(f)~~

(g) "Local government" means a city, county, city and county, special district, school district, county office of education, political subdivision, or other local governmental entity.

~~—(g)~~

(h) "Participant" means a retail customer of an electrical corporation who owns, leases, finances, or subscribes to an interest in a community renewable energy facility and who has designated one or more of its own retail accounts as a benefiting account to which the subscription shall be attributed.

~~—(h)~~

(i) "Participant organization" means any entity whose purpose is to beneficially own or operate a community renewable energy facility for the participants or owners of that facility.

2832. (a) (1) A retail customer of an electrical corporation having 100,000 or more service connections within the state may acquire an interest in a community renewable energy facility for the purpose of becoming a participant and receiving a bill credit to offset all or a portion of the customer's bill for electrical service. The participant shall designate one or more benefiting accounts to which the interest shall be attributed.

(2) To be eligible to be designated as a benefiting account, the account shall be for service to premises located within the geographical boundaries of the service territory of the electrical corporation containing the community renewable energy facility, or within the geographical boundaries of a contiguous service territory, if the electrical corporation or local publicly owned electric utility for that service territory have entered into an agreement enabling the connection of the benefiting account to the community renewable energy facility.

(3) A participant organization may beneficially own or operate a

community renewable energy facility for the participants of that facility. A community renewable energy facility may be built, owned, or operated by a third party under contract

with a participant organization.

(4) (A) The combined statewide cumulative rated generating capacity of community renewable energy facilities under this program shall not exceed 2 gigawatts, except as provided by in subparagraph (B).

(B) The commission shall maintain a publicly available database of existing and proposed community renewable energy facilities. Proposed community renewable energy facilities shall report their expected size, location, and commercial operation date no less than six months prior to their commercial operation date. Once the statewide cumulative rated generation capacity of existing and proposed community renewable energy facilities reaches one gigawatt, the commission shall establish a process for allocating the remaining one gigawatt of capacity to ensure the cap established in subparagraph (A) is not exceeded. When the statewide cumulative rated generation capacity of community renewable energy facilities reaches one and one-half gigawatts, the commission shall begin a process to determine if the gigawatt limitation in subparagraph (A) is necessary. Unless the commission determines that removal of the gigawatt limitation in subparagraph (A) would have a significant negative effect on electrical corporation ratepayers, the commission shall order that the gigawatt limitation is no longer applicable. If the commission decides that the removal of the gigawatt limitation in subparagraph (A) would have a significant negative effect on the ratepayers of an electrical corporation, the commission shall decide if the limitation should remain at two gigawatts or if it should be raised to some other level. For the purposes of this subparagraph, the rated generating capacity of a community renewable energy facility shall, where available, use the Energy Commission's alternating current rating for the facility.

(5) (A) The commission shall maintain a public database of annualized average generation rates for each customer class and tier.

(B) The tariff applicable to a participant shall be identical, with respect to rate structure, all retail rate components, and any monthly charges, to the charges that the participant would be assigned if the participant did not receive a bill credit. Participants shall not be assessed standby charges on the community renewable energy facility or the kilowatthour generation of a community renewable energy facility. Any new or additional demand charge, standby charge, customer charge, minimum monthly charge, interconnection charge, or any other charge that would increase a participant's costs beyond those of other customers who are not participants in the rate class to which the participant would otherwise be assigned if the participant did not receive a bill credit is contrary to the intent of this chapter, and shall not form a part of the participant's tariff.

(6) The commission shall establish a facility rate base for each community renewable energy facility utilizing either the renewables portfolio standard (RPS) solicitation method or added value method, to be computed as follows:

(A) Beginning January 1, 2013, the RPS solicitation method shall be used for computing the facility rate. Pursuant to this method, the facility rate shall be set at the weighted average time-of-delivery

adjusted cost of electricity delivered from an eligible renewable energy resource of comparable size that utilizes the same generating technology as employed by the community renewable energy facility, calculated ~~for the most recent~~ on January 1 of the previous year for each electrical corporation for purposes of the report made to the Legislature pursuant to Section 911. Where data is not available for a comparable resource and facility size for the previous year, the most recent data shall be used. The facility rate shall be calculated on the basis of the price paid for a kilowatthour of electricity, unless the commission determines that some other unit of measurement is superior to using kilowatthours, in which case that unit of measurement will be used. The RPS solicitation method for computing the facility rate shall be determined as of the time that the community renewable energy facility becomes operational.

(B) Not later than December 31, 2014, the commission shall determine the added value method for calculating a facility rate. Pursuant to the added value method, the facility rate shall be set at the monetary value of the benefits a community renewable energy facility brings to the electrical corporation, other nonparticipating ratepayers, and the grid. In determining the added value, the commission shall analyze the benefits, including avoided transmission line loss, avoided transmission and distribution infrastructure costs, any reduction in fixed operations and maintenance costs, the offset of peak demand or shifting load, and the reduction of environmental compliance costs, including costs that would otherwise be incurred for reducing emissions of greenhouse gases. The value of these benefits shall be added to the otherwise applicable generation component of the participant's electric service rate. The commission shall reevaluate the facility rate using the added value method every three years, and shall establish a new added value if the commission determines that there has been a material change in the added value of the community renewable energy facility.

(7) (A) Prior to January 1, 2015, the RPS solicitation method shall be used to compute the facility rate.

(B) Beginning January 1, 2015, the added value method shall be used to compute the facility rate if both of the following are true:

(i) The commission has determined a facility rate for the community renewable energy facility using the added value method.

(ii) The bill credit that will be provided using the added value method is greater than the credit provided by continued use of the RPS solicitation method.

(8) The electrical corporation shall provide a monthly bill credit, valued in dollars, to each benefiting account. The bill credit amount shall be calculated as the volumetric quantity of generation allocated to the benefiting account multiplied by the facility rate. The volumetric quantity of generation shall be expressed in kilowatthours, unless the commission determines that another unit of measurement is superior to use in place of kilowatthours.

(b) (1) A participant shall not acquire an interest in a community renewable energy facility that represents more than 2 megawatts of generating capacity. This limitation does not apply to a federal, state, or local government, school, school district, county office of education, the California Community Colleges, the California State University, or the University of California.

(2) The commission shall not regulate the prices paid for an

interest in a community renewable energy facility, but may enforce the required disclosures.

(3) Participants may aggregate their loads for the purpose of participating in a community renewable energy facility pursuant to this section.

(4) For a participant that elects to aggregate its loads for the purpose of acquiring an interest in a community renewable energy facility, the participant shall designate the benefitting accounts and the allocation of the bill credit to those accounts.

(c) (1) A participant organization shall provide to the electrical corporation information on the identity of the benefitting accounts that will receive a bill credit pursuant to this section not less than 30 days prior to the billing cycle for which the participant's account will receive a bill credit. The participant organization shall provide the electrical corporation with not less than 30 days' notice whenever a participant's facility rate changes from the RPS solicitation method to the added value method.

(2) Prior to the sale of an interest in a community renewable energy facility, the participant organization shall provide a disclosure to the potential participant that, at a minimum, includes all of the following:

(A) A good faith estimate of the annual kilowatthours to be delivered by the community renewable energy facility based on the size of the interest.

(B) A plain language explanation of the terms under which the bill credits will be calculated.

(C) A plain language explanation of the contract provisions regulating the disposition or transfer of the interest.

(D) A plain language explanation of the costs and benefits to the potential participant based on their current usage and applicable tariff, for the term of the proposed contract.

(3) Not more frequently than once per month, and upon providing the electrical corporation with a minimum of 30 days' notice, the participant organization may change, add, or remove a benefitting account. If the owner of a benefitting account transfers service to a new address or benefitting account, the electrical corporation shall transfer any credit remaining from the previous account to the new account.

(4) A participant organization shall be responsible for providing to the electrical corporation, on a monthly basis, a statement of the percentage shares to be used to determine the bill credit to each benefitting account and the names and account numbers of those participants who's facility rate is to be changed from the RPS solicitation method to the added value method. If there has been no change in the allocations from the previous submission or in the method of calculating the facility rate of participants, the participant organization is not required to submit a new statement.

(5) The participant organization shall provide real-time meter data to the electrical corporation and shall make the data available to a participant upon request. A participant organization shall be responsible for all costs of metering and shall retain production data for a period of 36 months.

(6) A participant organization shall provide not less than 120 days' notice to the electrical corporation and the commission prior to the date the community renewable energy facility becomes operational.

(7) The participant organization shall establish an account and

register the community renewable energy facility with the Western Renewable Energy Generation Information System or its successor.

(8) The participant organization shall be responsible for all costs of interconnection at either the distribution or transmission level of the electrical grid.

(d) (1) An electrical corporation shall ensure that requests for establishment of bill credits and changes to benefiting accounts are processed in a time period not to exceed 30 days from the date it receives the request.

(2) An electrical corporation shall cooperate fully with community renewable energy facilities to implement this chapter.

(3) An electrical corporation shall comply with the requirements applicable to protection of the right to commercial free speech described in Commission Decision 10-05-050 as applied to the development, sale of subscriptions, and operation of community renewable energy facilities. Community renewable energy facilities may file a complaint with the commission for violation of this paragraph.

(4) For capacity that is unallocated to a benefitting account during the previous billing period, the recipient electrical corporation shall pay the facility operator the current default load aggregation point.

(e) The following process shall be used when billing and creating a benefiting account:

(1) An electrical corporation shall bill a benefiting account for all electricity usage, and for each applicable bill component, including but not limited to transmission and distribution charges, at the rate schedule applicable to the benefiting account, including any cost-responsibility surcharge or other cost recovery mechanism, as determined by the commission, to reimburse the Department of Water Resources for purchases of electricity pursuant to Division 27 (commencing with Section 80000) of the Water Code. Participants shall not be subject to any departing load charge.

(2) An electrical corporation shall subtract the bill credit applicable to the benefiting account. The electrical corporation shall ensure that the ~~subscriber~~ participant receives the full bill credit to which it is entitled. The information and line items on a participant's bill statement will be unchanged, except one or more entries detailing the bill credit shall be added to a participant's bill.

(3) If, at the end of each billing cycle, the total otherwise applicable *generation component of the bill* exceeds the bill credit, the benefiting account shall be billed for the difference.

(4) (A) If, at the end of a billing cycle, the bill credit exceeds the ~~total~~ *generation component of the* amount billed to the account, the difference shall be carried forward as a dollar credit to the next billing cycle.

(B) *If the participant's bill credit is calculated based on the added value method pursuant to subparagraph (B) of paragraph (6) of subdivision (a), the bill credit may exceed the generation component of the bill, but only by the amount of the added value. The added value shall be subtracted from the balance of the participant's bill remaining after credits are applied to the generation component of the bill. Any earned credit that exceeds the generation component of the bill shall roll over to the subsequent billing period and shall*

continue to roll over until used or until the annual anniversary date of the participant's initial bill credit, whichever occurs first. On the annual anniversary date of the participant's initial bill credit, any remaining bill credit earned during the previous year and that remains after the application of bill credits to the generation component of a participant's bills shall cease to roll over and will be subject to a default load aggregation point true-up. The default load aggregation point true-up shall be calculated by converting the remaining unused bill credits to kilowatthours, by dividing the unused bill credits by the facility rate, and then multiplying the kilowatthours by the default load aggregation point. The amount calculated doing the default load aggregation point true-up is owed by the electrical corporation to the participant. The commission shall determine whether the default load aggregation point true-up is to be paid to participants or credited to future billings and, if so, the manner of crediting.

~~(f) Unless specifically provided otherwise in the contract between the participant organization and the participant, any~~ Any renewable energy credits associated with an interest shall be retired by the participant organization on behalf of the participant. Renewable energy credits generated at a facility owned by an electrical corporation , or associated with electricity paid for by the electrical corporation shall be counted toward meeting that electrical corporation's renewables portfolio standard. For purposes of this subdivision, "renewable energy credit" and "renewables portfolio standard" have the same meanings as defined in Section 399.12.

(g) In calculating its procurement requirements to meet the requirements of the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11) of Chapter 2.3 of Part 1), an electrical corporation may exclude from total retail sales the kilowatthours generated by a community renewable energy facility.

~~(h) A community renewable energy facility that is interconnected at the distribution level shall be treated as being deliverable to load for the purposes of Section 380. The generating capacity of a community renewable energy facility shall be counted toward meeting the resource adequacy requirements adopted by the commission pursuant to Section 380.~~

(h) The resource value attributable to a community renewable energy facility, as determined by the commission pursuant to Section 380, shall be assigned to the electrical corporation to which the facility is interconnected.

SEC. 7. 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.