

Community Choice Bill of Rights

February, 2005

An act to add Section 366.2, 366.3 454.5 to and amend Section 381.1 of the Public Utilities Code, relating to public utilities.

SB ____, as introduced, _____. Public utilities: community choice aggregation.

BILL DESCRIPTION:

(1) Existing law provides that bundled service electric utility customers shall be protected against cost-shifting related to Community Choice Aggregation. This bill would protect customers of Community Choice Aggregators against cost-shifting related to electric utility procurement activities. The bill would limit the Customer Responsibility Surcharge to electric utility procurement authorized before a CCA implementation plan is submitted to the CPUC. It would require electrical corporations' procurement plans to facilitate load departures associated with Community Choice Aggregators that have filed implementation plans with the commission, would require electric utility procurement plans to employ short-term contracts to facilitate a ten (10) percent per year CCA load departure without imposing costs on Community Choice Aggregators or their customers, and would prohibit the commission from approving procurement plans that do not comply with these requirements. Finally, the bill would allocate \$500,000 for the commission to establish the monetary benefits of self generation, renewable energy development, efficiency and conservation on the state's infrastructure and bundled service customers, and to establish a methodology for those benefits to be reflected in utility fees and the Customer Responsibility Surcharge.

(2) Existing law, relating to transactions between an electric service provider, as defined, and end use customers, authorizes customers to aggregate their electrical loads as members of their local community with community choice aggregators, as defined, and authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its

boundaries. Existing law requires a community choice aggregator to file an implementation plan with the Public Utilities Commission in order for the commission to determine a cost-recovery mechanism to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical corporation's bundled customers.

This bill would require the commission, upon the filing of a petition or other appropriate procedure determined by the commission, and upon the meeting of certain conditions, to establish separate distribution service rates and charges by an electrical corporation, for electricity, from an eligible renewable electricity generation source, as defined, that is supplied to end use customers by an electric service provider pursuant to an implementation plan with a community choice aggregator, where the electricity is transported within a single local distribution system, as defined. The separate distribution charge would, to the extent permitted by federal law, avoid charges for transmission services and would specify how any applicable transmission charges would be allocated. The separate distribution charge would pass on any distribution system cost savings resulting from the development of distributed energy resources to the end use customer of the community choice aggregator.

(3) The bill would further limit the imposition of fees and charges by the California Independent System Operator. Because the violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program.

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.

(4) Existing Law requires the commission, not later than July 15, 2003, to establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs. Furthermore, existing law provides that the commission, if a community choice aggregator is not the administrator, to require the administrator of cost-effective energy efficiency and conservation programs to direct a

proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class, and the commission is authorized to order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary for an equitable and cost-effective allocation of program activities.

This bill affirms that Community Choice Aggregators have a fundamental right to administer all energy efficiency programs in their jurisdictions as key components of their integrated resources planning process. The bill would require that municipalities and counties receive energy efficiency funds collected from their customers by electrical corporations. The commission shall authorize municipalities to spend the funds on energy efficiency measures that benefit their customers, subject to any rules adopted by the commission to ensure accurate accounting, verification, and adherence to a plan filed by the entity.

The bill also provides for a statewide system of energy efficiency funds administration based on a standard offer system, as defined.

(5) The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 366.2 (f) of the Public Utilities Code, is amended to read:

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

- (1) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that customer, that the commission lawfully determines may be recovered in rates.
- (2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with ~~the customer's purchases of electricity from the~~ *the date on which the* community choice aggregator *submitted its implementation plan pursuant to 366.2(c)(3) of the*

Public Utilities Code , through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

SECTION 2. Section 454.5 of the Public Utilities Code, is amended to read:

454.5. (b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) a list of municipalities and counties that have adopted a Community Choice Aggregation implementation plan pursuant to 366.2(c)(3).

~~(2)~~ An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions, *as well as any measures necessary to facilitate the departure of load associated with Community Choice Aggregation implementation plans described in subsection 1.*

~~(23)~~ A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.

~~(34)~~ The duration of the plan.

~~(45)~~ The duration, timing, and range of quantities of each product to be procured.

~~(56)~~ A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.

~~(67)~~ An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(78) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(89) Procedures for updating the procurement plan.

(910) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Section 399.6, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products, *including products necessary to facilitate at least 10% of its load to depart annually through Community Choice Aggregation pursuant to 366(a) and 366.2(c)(17) of the Public Utilities Code.*

(1011) The electrical corporation's risk management policy, strategy, and practices, including specific measures of price stability.

(1112) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel supply of nonutility electrical generation.

~~(12)~~(13) A mechanism for recovery of reasonable administrative costs related to procurement in the generation component of rates.

(c) The commission shall review and accept, modify, or reject each electrical corporation's procurement plan. The commission's review shall consider each electrical corporation's individual procurement situation, and shall give strong consideration to that situation in determining which one or more of the features set forth in this subdivision shall apply to that electrical corporation. A procurement plan approved by the commission shall contain one or more of the following features, provided that the commission may not approve a feature or mechanism for an electrical corporation if it finds that the feature or mechanism would impair the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of an electrical corporation's creditworthiness:

(1) A Community Choice Aggregation Departing Load Calendar under which an electrical corporation's procurement plan shall not contract for capacity in a manner that would impose additional costs on Community Choice Aggregators that have filed implementation plans with the Commission pursuant to Section 366.2(c)(5) of the Public Utilities Code.

~~(12)~~ A competitive procurement process under which the electrical corporation may request bids for procurement-related services. The commission shall specify the format of that procurement process, as well as criteria to ensure that the auction process is open and adequately subscribed. Any purchases made in compliance with the commission-authorized process shall be recovered in the generation component of rates.

~~(23)~~ An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that

limit the risk and reward of an electrical corporation, *and impose penalties for overprocurement that imposes costs on Community Choice Aggregators or their customers.*

(34) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction.

The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

(d) A procurement plan approved by the commission shall accomplish each of the following objectives:

(1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and reasonable rates.

(2) Enable 10% of an electrical corporation's customer load to depart each year with Community Choice Aggregators without imposing any costs on such Community Choice Aggregators or their customers.

(23) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with an approved procurement plan, including resulting electricity procurement contracts, practices, and related expenses. However, the commission may establish a regulatory process to verify and assure that each contract was administered in accordance with the terms of the contract, and contract disputes which may arise are reasonably resolved.

(34) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted

by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(45) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

(56) Provide for just and reasonable rates, with an appropriate balancing of price stability and price level in the electrical corporation's procurement plan.

(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.

(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a

reimbursable expense and eligible for funding pursuant to Section 631.

(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(I) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the

effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

SECTION 3. No later than December 31, 2005, the Commission shall quantify the benefits of a CCA program on the state's energy or economic infrastructure, including renewables, self-generation, conservation and energy efficiency, including but not limited to potential reductions in the need for distribution and transmission upgrades and;

- a) potential reductions in the cost of wholesale power and/or;
- b) potential stimulation of new electric generation plants in the State of California and or;
- c) potential reductions in electrical corporations' cost of capital resulting and/or;
- d) potential reduction in electrical corporations' capital investment requirements and/or;
- e) potential reduction of costs related to electrical corporations' long-term contracting risk level, debt equivalence, and capital costs;
- f) improved electrical corporations' efficiency in procuring power;
- g) potential stimulation of economic development in communities which elect CCA;

The commission shall order commission staff to determine an appropriate method for these benefits to be reflected in utility fees and the Cost Responsibility Surcharge to be imposed on Community Choice Aggregators or their customers as appropriate. The sum of five hundred thousand dollars (\$500,000) is hereby appropriated from the Public Utilities Commission Utility Reimbursement Account in the General Fund to the Public Utilities Commission for the purposes of implementing this section, and shall be made available to parties that made a substantial contribution in phase I of the proceeding, including, but not limited to, Community Choice

Aggregators, as determined by the commission.

SECTION 4. Section 366.3 is added to the Public Utilities Code, to read:

366.3. (a) For purposes of this section:

(1) "Community choice aggregator" has the same meaning as specified in Section 331.1.

(2) "Distribution wheeling" is the transportation of electricity from an electric service provider to end use customers of a community choice aggregator, within a single local distribution system.

(3) "Electric service provider" has the same meaning as specified in Section 218.3.

(4) "Eligible renewable electricity generation source" means an electrical generating facility that is either an "eligible renewable energy resource" as specified in Section 399.12 or that meets the definition of "in-state renewable electricity generation technology" as specified in Section 383.5.

(5) "Local distribution system" means an electrical distribution system operated by an electrical corporation that may be served from a single interstate transmission facility. "Local distribution system" includes an electrical distribution system that is served from two or more interstate transmission facilities for the convenience of the electrical corporation, that could be served from a single interstate transmission facility. "Local distribution system" includes primary and secondary distribution lines, which deliver electricity, and substations and distribution transformers, which lower electric voltage from high voltage transmission levels (generally between 50,000 and 500,000 volts) to primary and secondary distribution and utilization levels.

(b) Upon petition or other appropriate procedure established by the commission, the commission shall establish separate distribution service rates and charges by an electrical corporation, for distribution wheeling between an electric service provider supplying

electricity from an eligible renewable electricity generation source to end users of a community choice aggregator that are within the same local distribution system, that do all of the following:

(1) To the extent permissible under federal law, avoids charges for transmission services. To the extent transmission service charges are applicable, those charges shall be allocated as noncustomer specific costs within the electrical corporation's otherwise applicable cost-allocation methodology. To the extent transmission charges are applicable, they shall be recovered from all customers within that same customer class or proportionately from subclasses of the customer class.

(2) Pass any distribution system cost savings resulting from the development of distributed energy resources to the end use customers of the community choice aggregator.

(c) The commission shall require, as a condition to establishing the separate distribution service rates and charges, that:

(1) End use customers have interval metering.

(2) Electric service providers providing electricity from an eligible renewable electricity generation source, employ suitable safety monitoring or instrumentation, in accordance with industry standards, as determined by the commission.

(d) The California Independent System Operator shall impose no fee or charge upon electricity delivered by an electric service provider from an eligible renewable electricity generation source, to end use customers of a community choice aggregator, that is delivered through distribution wheeling. The California Independent System Operator shall not impute the impact of any net load or net generation, including net ancillary services, of any activity not directly interconnected to transmission, on transmission system costs without also allocating the benefit of all probable load and generation diversity, methodological inaccuracies or measurement errors to such loads and generation not directly interconnected or to

the distribution system to which they are directly interconnected. The California Independent System Operator shall not calculate charges for any transmission service component of electricity delivered by an electric service provider from an eligible renewable electricity generation source, to end use customers of a community choice aggregator, that is delivered through distribution wheeling, from any gross load or gross generation activity not directly interconnected to the transmission system. The California Independent System Operator shall not attribute cost causation on a transmission system to any electrical load delivered by distribution wheeling.

SECTION 5. 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.

SECTION. 6.

Section 381 (c) of the Public Utilities Code is amended to read:

For purposes of this section:

“Codes and Standards” is defined as development and application of energy efficient building codes and appliance standards.

“Emerging Technologies” are new or innovative energy efficiency products or services that could provide significant benefits to ratepayers if they were more widely deployed, such as LED lighting.

“Information and Education” is information designed to increase consumer involvement in energy efficiency and conservation and education for key energy efficiency market participants, such as food service operators or building contractors.

“Market Transformation” is a type of energy efficiency products or services requiring urgent attention that might or might not be provided by a Standard Offer solicitation, for example a rapid increase in air conditioner efficiency to reduce peak load when energy supplies are short.

“Natural Systems” are defined as energy savings produced by deployment of biological entities such as shade tree-planting, and mechanical systems that capture free, nature-based energy, such as solar water heaters.)

“On-Bill Financing” is defined as a financing mechanism utilizing utility bills, where customers pay a larger-than usual portion of energy efficiency measures and installations without any out-of-pocket expense, by paying for them as part of their utility bills, from the energy savings provided by the measure. On-Bill Financing provides increased energy savings from the same amount of program dollars.

“Standard Offer” is the opportunity to save energy in each customer sector is offered under the same terms and conditions to all applicants with proper licenses and a clean business record. Selection is first-come, first-served. Payments are tied directly to energy savings as a portion of “avoided costs” of supply side resources

~~381.1. (c) If a community choice aggregator is not the administrator of energy efficiency and conservation programs for which its customers are eligible, the commission shall require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class. To the extent that energy efficiency and conservation programs are targeted to specific locations to avoid or defer transmission or distribution system upgrades, the targeted expenditures shall continue irrespective of whether the loads in those locations are served by an aggregator or by an electrical~~

~~corporation. The commission shall also direct the administrator to work with the community choice aggregator, to provide advance information where appropriate about the likely impacts of energy efficiency programs and to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community choice aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures. The commission may order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary to ensure an equitable and cost-effective allocation of energy efficiency program activities.~~

(c) Effective immediately, the Commission shall authorize cities and counties, including but not limited to cities and counties that file an implementation plan as Community Choice Aggregators pursuant to 366.2(c) (3) of the Public Utilities Code, to file for and receive all energy efficiency funds collected from their customers by electrical corporations. Such funds shall be paid by the electrical corporations monthly, within one month of their collection. The Commission shall authorize such cities, counties and Community Choice Aggregators to create program plans and spend the funds on energy efficiency programs that benefit their customers, in approximate proportion to the single or multi-family residential, small business, large commercial/industrial and institutional sectors providing those funds, subject to the Commission's energy efficiency goals and any rules adopted by the Commission to ensure accurate accounting, measurement, verification and adherence to the plan. Cities, Counties and Community Choice Aggregators choosing to utilize this opportunity shall commit to deliver their share of the state's energy savings goals as adjusted for different climate regions, as determined by the Commission.

Section 381 of the Public Utilities Code is amended by adding:

*(d) (1) **Statewide System; System Director.** Within six months of the effective date of this law, the Commission shall establish a System Director to create and oversee a Statewide System for oversight and measurement of energy efficiency programs operating under this section, and an optional Statewide Program Plan available to all cities, counties and*

Community Choice Aggregators that wish to participate (Participants). The Statewide System shall provide: coordination, oversight and review; a system of measurement and verification serving all Participants but independent of them; and an interface with the Independent System Operator, transmission owners and load-serving entities to ensure the inclusion of verified energy efficiency for resource planning purposes. The Statewide Program Plan shall include optional Standard Offer and Special Programs described below in subsection (c) and shall provide for On-Bill Financing of Energy Efficiency installations by Community Choice Aggregators.

*(2) **Statewide Program Plan. Standard Offer.** For the Standard Offer portion of the Statewide Program, the System Director shall set payments for savings in various market sectors based on a percentage of “avoided costs” (of generation, transmission, distribution etc. as defined by the Commission), allowing flexibility to address transmission and generation constraints, hard-to-reach customers, and local needs and initiatives of Participants; provide a standard contract for implementation; and establish minimum qualifications for implementers. **Special Programs.** The System Director shall also establish a Special Administrator to develop non-standard offer statewide or local Special Programs, including Information and Education, Codes and Standards, and pilot programs for Market Transformation, Emerging Technology, and Natural Systems.*

*(3) **Funding.** The System Director shall be funded from 4% of the combined funds of Participants, 3% of which shall be devoted to measurement and verification. The System Director shall work with Participants to determine each one’s contribution to and involvement in various elements of the Statewide Program.*

SECTION 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are: In order to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of this state, it is necessary for this act to take effect immediately.