

AMENDED IN SENATE APRIL 14, 2011

**SENATE BILL**

**No. 790**

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**Introduced by Senator Leno**

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would require the commission to institute a rulemaking proceeding by March 1, 2012, for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, to govern the conduct of an electrical corporations relative to the consideration, formation, and implementation of community choice aggregation programs and to implement the code of conduct, associated rules, and enforcement procedures by January 1, 2013. The bill would require the code of conduct, associated rules, and enforcement procedures to do the following: (A) ensure that an electrical corporation does not market against a community choice aggregation program,

except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders, (B) limit the electrical corporation's independent marketing division's use of support services from the electrical corporation's ratepayer funded divisions, (C) ensure that the electrical corporation's independent marketing division does not have access to competitively sensitive information, (D) *incorporates rules that the commission finds to be necessary or convenient in order to promote the development of community choice aggregation programs, to foster fair competition, or to protect against cross-subsidization paid by ratepayers,* and ~~(D)~~ (E) other matters that the commission determines to be necessary or advisable to protect a ratepayer's right to be free from forced speech or to implement that portion of PURPA that establishes the federal standard that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric utility for promotional or political advertising.

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

This bill would expand the entities that are permitted to undertake community choice aggregation. The bill would require that the electrical load data to be supplied by an electrical corporation as part of its duty to cooperate fully with any community choice aggregator, include electrical consumption data, as defined. The bill would, ~~if it finds that a community choice aggregation program has been financially damaged by the uncooperative or anticompetitive behavior of the incumbent electrical corporation,~~ *require the commission the commission finds that an electrical corporation has violated the requirement to cooperate fully with a community choice aggregator, require that the commission consider the impact of the violation upon community choice aggregators and would authorize the commission to allocate to the community choice aggregator, all or a portion of any fine collected from the electrical company, as damages to compensate the aggrieved to an affected community choice aggregation program.* The bill would revise certain resource adequacy and cost responsibility requirements as they relate

to community choice aggregators. The bill would require that certain energy efficiency, renewable energy resource, and energy research programs financed through a nonbypassable system benefits charge authorized pursuant to the Reliable Electric Service Investments Act be administered on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis with the customers of an electrical corporation. The bill would *require the commission to* authorize a community choice aggregator to elect to become a 3rd-party administrator for the energy efficiency programs financed through the nonbypassable system benefits charge, for its electric service customers. The bill would authorize a community choice aggregator that has expressly been authorized by its enabling ordinance to represent the interests of residential and small commercial customers for whom the aggregator supplies *or proposes to supply* electric service, to seek intervenor compensation through the commission’s procedures for awarding such compensation.

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

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

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

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

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

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) It is the policy of the state to provide for the consideration,
- 4 formation, and implementation of community choice aggregation
- 5 programs authorized in Section 366.2 of the Public Utilities Code.

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

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

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

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

18 ~~(e)~~

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

22 ~~(f)~~

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

27 ~~(g)~~

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

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

36 331.1. For purposes of this chapter, “community choice  
37 aggregator” means any of the following entities, if that entity is  
38 not within the jurisdiction of a local publicly owned electric utility  
39 that provided electrical service as of January 1, 2003:

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

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

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

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

20 365.1. (a) Except as expressly authorized by this section, and  
21 subject to the limitations in subdivisions (b) and (c), the right of  
22 retail end-use customers pursuant to this chapter to acquire service  
23 from other providers is suspended until the Legislature, by statute,  
24 lifts the suspension or otherwise authorizes direct transactions. For  
25 purposes of this section, "other provider" means any person,  
26 corporation, or other entity that is authorized to provide electric  
27 service within the service territory of an electrical corporation  
28 pursuant to this chapter, and includes an aggregator, broker, or  
29 marketer, as defined in Section 331, and an electric service  
30 provider, as defined in Section 218.3. "Other provider" does not  
31 include a community choice aggregator, as defined in Section  
32 331.1, and the limitations in this section do not apply to the sale  
33 of electricity by "other providers" to a community choice  
34 aggregator for resale to community choice aggregation electricity  
35 consumers pursuant to Section 366.2.

36 (b) The commission shall allow individual retail nonresidential  
37 end-use customers to acquire electric service from other providers  
38 in each electrical corporation's distribution service territory, up to  
39 a maximum allowable total kilowatthours annual limit. The  
40 maximum allowable annual limit shall be established by the

1 commission for each electrical corporation at the maximum total  
2 kilowatthours supplied by all other providers to distribution  
3 customers of that electrical corporation during any sequential  
4 12-month period between April 1, 1998, and the effective date of  
5 this section. Within six months of the effective date of this section,  
6 or by July 1, 2010, whichever is sooner, the commission shall  
7 adopt and implement a reopening schedule that commences  
8 immediately and will phase in the allowable amount of increased  
9 kilowatthours over a period of not less than three years, and not  
10 more than five years, raising the allowable limit of kilowatthours  
11 supplied by other providers in each electrical corporation's  
12 distribution service territory from the number of kilowatthours  
13 provided by other providers as of the effective date of this section,  
14 to the maximum allowable annual limit for that electrical  
15 corporation's distribution service territory. The commission shall  
16 review and, if appropriate, modify its currently effective rules  
17 governing direct transactions, but that review shall not delay the  
18 start of the phase-in schedule.

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

22 (1) Ensure that other providers are subject to the same  
23 requirements that are applicable to the state's three largest electrical  
24 corporations under any programs or rules adopted by the  
25 commission to implement the resource adequacy provisions of  
26 Section 380, the renewables portfolio standard provisions of Article  
27 16 (commencing with Section 399.11), and the requirements for  
28 the electricity sector adopted by the State Air Resources Board  
29 pursuant to the California Global Warming Solutions Act of 2006  
30 (Division 25.5 (commencing with Section 38500) of the Health  
31 and Safety Code). This requirement applies notwithstanding any  
32 prior decision of the commission to the contrary.

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

1 load provisions as determined by the commission, to all of the  
2 following:

3 (i) Bundled service customers of the electrical corporation.

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

6 (iii) Customers of community choice aggregators.

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

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

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

1 (d) (1) If the commission approves a centralized resource  
2 adequacy mechanism pursuant to subdivisions (h) and (i) of Section  
3 380, upon the implementation of the centralized resource adequacy  
4 mechanism the requirements of paragraph (2) of subdivision (c)  
5 shall be suspended. If the commission later orders that electrical  
6 corporations cease procuring capacity through a centralized  
7 resource adequacy mechanism, the requirements of paragraph (2)  
8 of subdivision (c) shall again apply.

9 (2) If the use of a centralized resource adequacy mechanism is  
10 authorized by the commission and has been implemented as set  
11 forth in paragraph (1), the net capacity costs of generation resources  
12 that the commission determines are required to meet urgent system  
13 or urgent local grid reliability needs, and that the commission  
14 authorizes to be procured outside of the Section 380 or Section  
15 454.5 processes, shall be recovered according to the provisions of  
16 paragraph (2) of subdivision (c).

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

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

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

26 366.2. (a) (1) Customers shall be entitled to aggregate their  
27 electric loads as members of their local community with  
28 community choice aggregators.

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

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

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

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

15 (2) Under community choice aggregation, customer participation  
16 may not require a positive written declaration, but all customers  
17 shall be informed of their right to opt out of the community choice  
18 aggregation program. If no negative declaration is made by a  
19 customer, that customer shall be served through the community  
20 choice aggregation program. If an existing customer moves the  
21 location of their electric service within the jurisdiction of the  
22 community choice aggregator, the customer shall retain the same  
23 subscriber status as prior to the move, unless the customer  
24 affirmatively changes their subscriber status. If the customer is  
25 moving from outside to inside the jurisdiction of the community  
26 choice aggregator, the customer shall become a customer of the  
27 community choice aggregator, unless the customer affirmatively  
28 opts out after having received the community choice aggregator's  
29 terms and conditions of service.

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

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

38 (B) Ratesetting and other costs to participants.

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

- 1 (D) The methods for entering and terminating agreements with  
2 other entities.
- 3 (E) The rights and responsibilities of program participants,  
4 including, but not limited to, consumer protection procedures,  
5 credit issues, and shutoff procedures.
- 6 (F) Termination of the program.
- 7 (G) A description of the third parties that will be supplying  
8 electricity under the program, including, but not limited to,  
9 information about financial, technical, and operational capabilities.
- 10 (4) A community choice aggregator establishing electrical load  
11 aggregation shall prepare a statement of intent with the  
12 implementation plan. Any community choice load aggregation  
13 established pursuant to this section shall provide for the following:
  - 14 (A) Universal access.
  - 15 (B) Reliability.
  - 16 (C) Equitable treatment of all classes of customers.
  - 17 (D) Any requirements established by state law or by the  
18 commission concerning aggregated service, *including those rules*  
19 *adopted by the commission pursuant to paragraph (3) of*  
20 *subdivision (b) of Section 8341 for the application of the*  
21 *greenhouse gases emission performance standard to community*  
22 *choice aggregators.*
- 23 (5) In order to determine the cost-recovery mechanism to be  
24 imposed on the community choice aggregator pursuant to  
25 subdivisions (d), (e), and (f) that shall be paid by the customers of  
26 the community choice aggregator to prevent shifting of costs, the  
27 community choice aggregator shall file the implementation plan  
28 with the commission, and any other information requested by the  
29 commission that the commission determines is necessary to develop  
30 the cost-recovery mechanism in subdivisions (d), (e), and (f).
- 31 (6) The commission shall notify any electrical corporation  
32 serving the customers proposed for aggregation that an  
33 implementation plan initiating community choice aggregation has  
34 been filed, within 10 days of the filing.
- 35 (7) Within 90 days after the community choice aggregator  
36 establishing load aggregation files its implementation plan, the  
37 commission shall certify that it has received the implementation  
38 plan, including any additional information necessary to determine  
39 a cost-recovery mechanism. After certification of receipt of the  
40 implementation plan and any additional information requested,

1 the commission shall then provide the community choice  
2 aggregator with its findings regarding any cost recovery that must  
3 be paid by customers of the community choice aggregator to  
4 prevent a shifting of costs as provided for in subdivisions (d), (e),  
5 and (f).

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

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

1 the electrical corporation provides services to community choice  
2 aggregators and retail customers.

3 (10) If the commission finds that ~~a community choice~~  
4 ~~aggregation program has been financially damaged by the~~  
5 ~~uncooperative or anticompetitive behavior of the incumbent~~  
6 ~~electrical corporation, the commission shall~~ *an electrical*  
7 *corporation has violated this section, the commission shall consider*  
8 *the impact of the violation upon community choice aggregators*  
9 *and may allocate all or a portion of any fine collected pursuant to*  
10 Chapter 11 (commencing with Section 2100) ~~as damages to~~  
11 ~~compensate the aggrieved~~ *to an affected* community choice  
12 aggregation program. Any allocation shall be subject to the  
13 condition that the moneys collected from a fine may only be used  
14 for the direct benefit of the customers of the community choice  
15 aggregation program to procure eligible renewable energy resources  
16 pursuant to Article 16 (commencing with Section 399.11). ~~The~~

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

26 ~~(11)~~

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

39 (B) Two or more entities authorized to be a community choice  
40 aggregator, as defined in Section 331.1, may participate as a group

1 in a community choice aggregation pursuant to this chapter,  
2 through a joint powers agency established pursuant to Chapter 5  
3 (commencing with Section 6500) of Division 7 of Title 1 of the  
4 Government Code, if each entity adopts an ordinance pursuant to  
5 subparagraph (A). Pursuant to Section 6508.1 of the Government  
6 Code, members of a joint powers agency that is a community  
7 choice aggregator may specify in their joint powers agreement  
8 that, unless otherwise agreed by the members of the agency, the  
9 debts, liabilities, and obligations of the agency shall not be the  
10 debts, liabilities, and obligations, either jointly or severally, of the  
11 members of the agency. The commission shall not, as a condition  
12 of registration or otherwise, require an agency's members to  
13 voluntarily assume the debts, liabilities, and obligations of the  
14 agency to the electrical corporation unless the commission finds  
15 that the agreement by the agency's members is the only reasonable  
16 means by which the agency may establish its creditworthiness  
17 under the electrical corporation's tariff to pay charges to the  
18 electrical corporation under the tariff.

19 ~~(12)~~

20 (13) Following adoption of aggregation through the ordinance  
21 described in paragraph~~(11)~~ (12), the program shall allow any retail  
22 customer to opt out and to continue to be served as a bundled  
23 service customer by the existing electrical corporation, or its  
24 successor in interest. Delivery services shall be provided at the  
25 same rates, terms, and conditions, as approved by the commission,  
26 for community choice aggregation customers and customers that  
27 have entered into a direct transaction where applicable, as  
28 determined by the commission. Once enrolled in the aggregated  
29 entity, any ratepayer that chooses to opt out within 60 days or two  
30 billing cycles of the date of enrollment may do so without penalty  
31 and shall be entitled to receive default service pursuant to paragraph  
32 (3) of subdivision (a). Customers that return to the electrical  
33 corporation for procurement services shall be subject to no more  
34 than a six-month stay requirement with the electrical corporation.  
35 Any reentry fees to be imposed after the opt-out period specified  
36 in this paragraph, shall be approved by the commission and shall  
37 reflect the cost of reentry. The commission shall exclude any  
38 amounts previously determined and paid pursuant to subdivisions  
39 (d), (e), and (f) from the cost of reentry.

40 ~~(13)~~

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

6 ~~(14)~~

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

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

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

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

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

1 to derive electrical energy service through the electrical corporation  
2 providing service in the area.

3 ~~(15)~~

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

15 ~~(16)~~

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

20 ~~(17)~~

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

25 ~~(18)~~

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

30 ~~(19)~~

31 (20) An electrical corporation shall recover from the community  
32 choice aggregator any costs reasonably attributable to the  
33 community choice aggregator, as determined by the commission,  
34 of implementing this section, including, but not limited to, all  
35 business and information system changes, except for  
36 transaction-based costs as described in this paragraph. Any costs  
37 not reasonably attributable to a community choice aggregator shall  
38 be recovered from ratepayers, as determined by the commission.  
39 All reasonable transaction-based costs of notices, billing, metering,  
40 collections, and customer communications or other services

1 provided to an aggregator or its customers shall be recovered from  
2 the aggregator or its customers on terms and at rates to be approved  
3 by the commission.

4 ~~(20)~~

5 (21) At the request and expense of any community choice  
6 aggregator, electrical corporations shall install, maintain and  
7 calibrate metering devices at mutually agreeable locations within  
8 or adjacent to the community aggregator’s political boundaries.  
9 The electrical corporation shall read the metering devices and  
10 provide the data collected to the community aggregator at the  
11 aggregator’s expense. To the extent that the community aggregator  
12 requests a metering location that would require alteration or  
13 modification of a circuit, the electrical corporation shall only be  
14 required to alter or modify a circuit if such alteration or  
15 modification does not compromise the safety, reliability or  
16 operational flexibility of the electrical corporation’s facilities. All  
17 costs incurred to modify circuits pursuant to this paragraph, shall  
18 be borne by the community aggregator.

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

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

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

35 (1) A charge equivalent to the charges that would otherwise be  
36 imposed on the customer by the commission to recover bond  
37 related costs pursuant to any agreement between the commission  
38 and the Department of Water Resources pursuant to Section 80110  
39 of the Water Code, which charge shall be payable until any  
40 obligations of the Department of Water Resources pursuant to

1 Division 27 (commencing with Section 80000) of the Water Code  
2 are fully paid or otherwise discharged.

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

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

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

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

35 (g) To the extent that the estimated net unavoidable electricity  
36 costs paid by the customers of a community choice aggregator  
37 reimburse an electrical corporation for its costs to comply with the  
38 resource adequacy provisions of Section 380, the renewables  
39 portfolio standard requirements of Article 16 (commencing with  
40 Section 399.11), or the requirements for the electricity sector

1 adopted by the State Air Resources Board pursuant to the California  
2 Global Warming Solutions Act of 2006 (Division 25.5  
3 (commencing with Section 38500) of the Health and Safety Code),  
4 or for any other electrical or environmental attribute of the electric  
5 utility's resources, the community choice aggregator shall annually  
6 be given commensurate credit towards its own obligations to  
7 comply with the resource adequacy, renewables portfolio standard,  
8 and global warming requirements.

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

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

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

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

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

35 (k) Except for programs funded through the nonbypassable  
36 system benefits charge authorized pursuant to the Reliable Electric  
37 Service Investments Act (Article 15 (commencing with Section  
38 399)), electric service customers of a community choice aggregator  
39 shall not be required to pay nonbypassable charges for goods,  
40 services, or programs that do not directly benefit either, or where

1 applicable, both, the customer and the community choice  
2 aggregator serving the customer. The commission, Energy  
3 Commission, electrical corporation, or third-party administrator  
4 shall administer those programs funded through the nonbypassable  
5 system benefits charge on a nondiscriminatory basis so that the  
6 electric service customers of a community choice aggregator may  
7 participate in the program on an equal basis with the customers of  
8 an electrical corporation.

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

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

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

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

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

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

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

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

6 (3) Minimize enforcement requirements and costs.

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

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

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

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

38 (f) The commission shall require sufficient information,  
39 including, but not limited to, anticipated load, actual load, and  
40 measures undertaken by a load-serving entity to ensure resource

1 adequacy, to be reported to enable the commission to determine  
2 compliance with the resource adequacy requirements established  
3 by the commission.

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

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

- 21 (1) Meeting the objectives of this section.
- 22 (2) Ensuring that investment is made in new generating capacity.
- 23 (3) Ensuring that existing generating capacity that is economic  
24 is retained.
- 25 (4) Ensuring that the cost of generating capacity is allocated  
26 equitably.
- 27 (5) Ensuring that community choice aggregators ~~and electric~~  
28 ~~service providers~~ can determine the generation resources used to  
29 serve their customers.

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

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

- 37 (1) A local publicly owned electric utility.
- 38 (2) The State Water Resources Development System commonly  
39 known as the State Water Project.

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

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

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

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

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

17 381.1. (a) No later than July 15, 2003, the commission shall  
18 establish policies and procedures by which any party, including,  
19 but not limited to, a local entity that establishes a community choice  
20 aggregation program, may apply to become administrators for  
21 cost-effective energy efficiency and conservation programs  
22 established pursuant to Section 381 or the Reliable Electric Service  
23 Investments Act (Article 15 (commencing with Section 399)). In  
24 determining whether to approve an application to become  
25 administrators *and subject to an aggregator's right to elect to*  
26 *become an administrator pursuant to subdivision (f)*, the  
27 commission shall consider the value of program continuity and  
28 planning certainty and the value of allowing competitive  
29 opportunities for potentially new administrators. The commission  
30 shall weigh the benefits of the party's proposed program to ensure  
31 that the program meets the following objectives:

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

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

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

39 (b) All audit and reporting requirements established by the  
40 commission pursuant to Section 381 or the Reliable Electric

1 Service Investments Act (Article 15 (commencing with Section  
2 399)), and other statutes shall apply to the parties chosen as  
3 administrators under this section.

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

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

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

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

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

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

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

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

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

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

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

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

35 395.5. (a) For purposes of this section, the following terms  
 36 have the following meanings:

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

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

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

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

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

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

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

21 (4) Costs imposed upon a load-serving entity pursuant to Section  
22 380.

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

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

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

31 707. (a) Not later than March 1, 2012, the commission shall  
32 institute a rulemaking proceeding for the purpose of considering  
33 and adopting a code of conduct, associated rules, and enforcement  
34 procedures, to govern the conduct of the electrical corporations  
35 relative to the consideration, formation, and implementation of  
36 community choice aggregation programs authorized in Section  
37 366.2. The code of conduct, associated rules, and enforcement  
38 procedures, shall do all of the following:

39 (1) Ensure that an electrical corporation does not market against  
40 a community choice aggregation program, except through an

1 independent marketing division that is funded exclusively by the  
2 electrical corporation's shareholders and that is functionally and  
3 physically separate from the electrical corporation's  
4 ratepayer-funded divisions.

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

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

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

21 (B) *It is the intent of the Legislature that the rules include, in*  
22 *whole or in part, the rules approved by the commission in Decision*  
23 *97-12-088 and Decision 08-06-016.* ~~This~~

24 (C) *This paragraph does not limit the authority of the*  
25 *commission to adopt* ~~additional~~ *rules that it determines are*  
26 *necessary or convenient in addition to those adopted in Decision*  
27 *97-12-088 and Decision 08-06-016 or to modify any rule adopted*  
28 *in those decisions.*

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

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

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

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

10 1802. As used in this article:

11 (a) “Compensation” means payment for all or part, as determined  
12 by the commission, of reasonable advocate’s fees, reasonable  
13 expert witness fees, and other reasonable costs of preparation for  
14 and participation in a proceeding, and includes the fees and costs  
15 of obtaining an award under this article and of obtaining judicial  
16 review, if any.

17 (b) (1) “Customer” means any of the following:

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

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

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

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

37 (2) Except for a community choice aggregator meeting the  
38 requirements of subparagraph (B) of paragraph (1), “customer”  
39 does not include any state, federal, or local government agency,  
40 any publicly owned public utility, or any entity that, in the

1 commission's opinion, was established or formed by a local  
2 government entity for the purpose of participating in a commission  
3 proceeding.

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

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

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

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

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

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

32 (i) "Substantial contribution" means that, in the judgment of  
33 the commission, the customer's presentation has substantially  
34 assisted the commission in the making of its order or decision  
35 because the order or decision has adopted in whole or in part one  
36 or more factual contentions, legal contentions, or specific policy  
37 or procedural recommendations presented by the customer. Where  
38 the customer's participation has resulted in a substantial  
39 contribution, even if the decision adopts that customer's contention  
40 or recommendations only in part, the commission may award the

1 customer compensation for all reasonable advocate’s fees,  
2 reasonable expert fees, and other reasonable costs incurred by the  
3 customer in preparing or presenting that contention or  
4 recommendation.

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

7 8380. (a) For purposes of this section, “electrical or gas  
8 consumption data” means data about a customer’s electrical or  
9 natural gas usage that is made available as part of an advanced  
10 metering infrastructure, and includes the name, account number,  
11 or residence of the customer.

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

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

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

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

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

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

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

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

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

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

28 SEC. 11. No reimbursement is required by this act pursuant to  
 29 Section 6 of Article XIII B of the California Constitution because  
 30 the only costs that may be incurred by a local agency or school  
 31 district will be incurred because this act creates a new crime or  
 32 infraction, eliminates a crime or infraction, or changes the penalty  
 33 for a crime or infraction, within the meaning of Section 17556 of  
 34 the Government Code, or changes the definition of a crime within  
 35 the meaning of Section 6 of Article XIII B of the California  
 36 Constitution.

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