



**CITY OF SAN DIEGO
COUNCILMEMBER ED HARRIS
COUNCIL DISTRICT TWO**

M E M O R A N D U M

DATE: May 15, 2014

TO: Councilmember David Alvarez, Chair, Committee on the Environment

FROM: Councilmember Ed Harris *Ed Harris*

SUBJECT: Opposition to AB 2145 (Bradford) Electricity: Community Choice Aggregation

I strongly recommend that the City Council pass a resolution opposing AB 2145 (Bradford) – Electricity: Community Choice Aggregation. AB 2145 intends to reverse the Community Choice Aggregation law (AB 117) passed in 2002, which was meant to provide communities with a choice of electricity service provider.

Community Choice Aggregation (CCA) is a mechanism that allows cities, counties and other government entities to aggregate individual electricity customers within a defined area for the purpose of providing electricity and related energy services. This committee unanimously supported moving forward with a CCA feasibility study in October 2013. We expect to receive the results this fall.

Six states, including California, allow local governments to procure their own electricity supplies, with the incumbent utility continuing to operate the transmission and distribution lines. Community Choice programs provide local control over energy supply (but are distinct from municipal utilities, which own the distribution infrastructure).

Two Community Choice programs have already been established in California – in Marin and Sonoma Counties. More than a dozen other communities across California are in varying stages of program development.

By law, Community Choice programs can automatically enroll electricity customers, who can choose to opt out and stay with the incumbent utility. AB 2145 would change this essential aspect of the law, making it impossible for Community Choice programs to effectively compete with the incumbent utilities.

If enacted, AB 2145 will limit local energy choice, thwart San Diego's environmental goals, infringe on local government decision-making power, diminish local communities' ability to create local clean energy jobs, and will effectively destroy the future of Community Choice energy in California.

Many cities, counties, water districts and other local government agencies are opposing this bill, including the League of California Cities and the California State Association of Counties – as well as environmental and consumer advocates. See the attached sheet for a list of opponents.

Community Choice is one of the most powerful vehicles for establishing a clean energy future: for enabling climate action plans, local clean energy development, and energy demand reduction. This is how we develop new businesses, provide jobs, and create economic opportunity while lowering greenhouse gas emissions.

Thank you for your leadership on creating a sustainable, healthy and vibrant San Diego community. I recommend this committee adopt the attached draft resolution opposing AB 2145 and move the item forward to Council.

**RESOLUTION OF THE CITY COUNCIL OF SAN DIEGO
SUPPORTING LOCAL CLEAN ENERGY AND COMMUNITY CHOICE AND
OPPOSING AB 2145 (Bradford)**

WHEREAS, the San Diego region has a variety of renewable energy sources and a growing renewable energy business and job-creating sector; and

WHEREAS, local control of energy policy and investment will help San Diego meet its environmental challenges, including climate change and air quality, and at the same time will maximize the local benefits of renewable energy, such as competition, creation of high quality jobs, and energy security; and

WHEREAS, under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations; and

WHEREAS, the Public Utilities Act authorizes a community choice aggregator like cities, counties and other government agencies to aggregate the electrical load of interested electricity consumers within its boundaries and requires the community choice aggregator to provide each customer an opportunity to “opt-out” of his or her community's aggregation program; and

WHEREAS, other states with Community Choice Aggregation (CCA) statutes impose the same “opt-out” process as California, which is an industry best practice; and

WHEREAS, the Environment Committee of the City Council of the City of San Diego voted on October 16, 2013 to support a feasibility study on Community Choice, and the results of that study are expected in the fall of 2014; and

WHEREAS, AB 2145 (Bradford), if passed, will limit the ability of CCA to viably exist at the local level by restructuring the Community Choice model from “opt-out” to “opt-in;” and thereby hamper the ability to form a CCA program by depriving future programs of the initial customer base necessary to be financially viable;

NOW THEREFORE, BE IT RESOLVED THAT the City Council of the City of San Diego opposes AB 2145 (Bradford) - Electricity: Community Choice Aggregation and its goal of restructuring Community Choice programs to an “opt in” model.

California Organizations & Local Governments Opposing AB 2145

(Updated 05/15/14)

Local Governments

City of Benicia
City of Berkeley
City of Cupertino
City of Hayward
City of Lancaster
City of Menlo Park
City of Mountain View
City of Richmond
City of San Carlos
City of San Pablo
City of Santa Cruz
City of Solana Beach
City of Sunnyvale
Town of Fairfax
Alameda County
Los Angeles County
Marin County
Santa Cruz County
Sonoma County
Monterey County
San Benito County

Governmental Agencies & Associations

Bay Area Air Quality Management District (BAAQMD)
CA State Association of Counties (CSAC)
California Air Pollution Control Officers Association (CAPCOA)
California Manufacturers & Technology Assoc.(CMTA)
Green Cities California
League of California Cities
Marin County Council of Mayors and Councilmembers
Monterey Regional Waste Management District
Office of Ratepayer Advocates, California Public Utilities Commission (CPUC)
Regional Climate Protection Authority
RichmondBUILD
Salinas Valley Solid Waste Authority
Sonoma County
Transportation Authority
Sonoma County Water Agency
South San Joaquin Irrigation District

Elected Officials

Councilmember Lynette McElhaney, City of Oakland
Supervisor Brad Wagenknecht, Napa County
Supervisor Scott Haggerty, Alameda County
Supervisors Dianne Jacob and David Roberts, San Diego County
Mayor Elizabeth Patterson, City of Benicia
Vice Mayor Rod Sinks, City of Cupertino
Vice Mayor Michael Winkler, City of Arcata

Non-Profit Advocacy Organizations

350.org – Bay Area, San Francisco, San Diego, Sonoma County, and Santa Barbara chapters
Asian Pacific Environmental Network
Berkeley Climate Action Coalition
Bay Localize
Carbon Free Mountain View Clean Coalition
Climate Protection Campaign Communities for a Better Environment
Community Environmental Council
Environment California
Environmental Health Coalition (EHC)
Galvin Electricity Initiative
Global Exchange
Greenlining Institute
Greywater Action
Kyoto USA
Local Clean Energy Alliance
Movement Generation Justice and Ecology Project
New Voices Are Rising
Organizing for Action (OFA)-California
Planting Justice
Public Interest Coalition
Rose Foundation for Communities & the Environment
Sierra Club California
The Utility Reform Network
Transition US
World Wildlife Fund US

Community Choice Energy Programs

MCE - Marin Clean Energy
Sonoma Clean Power Authority
Emerging Community Choice Programs
Friends of San Diego Clean Energy
Monterey Bay Community Power, representing 21 communities in Monterey, San Benito and Santa Cruz Counties
San Diego Energy District Foundation
San Luis Obispo Clean Energy

Community Choice Advocacy Organizations

Clean Energy & Jobs Oakland Campaign of the Oakland Climate Action Coalition
Community Choice Energy Working Group of the Berkeley Climate Action Coalition
Local Energy Aggregation Network (LEAN Energy US)
San Francisco Clean Energy Advocates
Sierra Club Bay Chapter

Civic/Faith-Based Organizations

The Action Hub, Richmond
Haight Ashbury Neighborhood Council
Joint Venture Monterey Bay
Kehilla Community
Synagogue, Greening Committee
Mainstreet Moms
Our City San Francisco
People United for a Better Life in Oakland (PUEBLO)
Resilient Neighborhoods
Richmond Progressive Alliance
Sustainable Marin
Sustainable Napa County
Sustainable San Rafael and Novato
Victory Garden Foundation
West Oakland Environmental Indicators Project

Energy Sector & Energy Sector Associations

Alliance for Retail Energy Markets
California Energy Storage Alliance
California Municipal Utilities Association
California Solar Energy Industries Association
Commonwealth Energy Consortium, LLC
Energy 2001, Inc.
Energy Solidarity Cooperative
Enlightenment Energy
Everybody Solar
G2 Energy
Galvin Electricity Initiative
GenPower, Inc.
OurEvolution Energy and Engineering
Pacific Energy Advisors
Panasonic Eco Solutions North America (PESNA)
Planet EcoSystems
RE-volv
Recolte Energy
REP Energy Inc.
Renewables 100 Policy Institute
Retail Energy Suppliers Association
School Project for Utility Rate Reduction (SPURR)
Shell Energy North America
Solar Energy Industries Association (SEIA)
SolEd Benefit Corporation
Sun Light & Power
Sungevity
West Coast Solar Energy
Western Power Trading Forum (WPTF)

Political Organizations

Green Party of California
Wellstone Democratic Renewal Club

Other/Private Sector

Braun Blaising McLaughlin & Smith, PC
Douglass & Liddell, PC
Green Ideals Inc
Rifkind Law Group
San Rafael Airport
Tosdal Law Firm



SAN DIEGO COUNTY DIVISION

May 12, 2014

The Honorable Steven Bradford
Chair, Assembly Committee on Utilities and Commerce
State Capitol, Room 5136
Sacramento, CA 95814

**RE: AB 2145 (Bradford) Electricity: Community Choice Aggregation
NOTICE OF OPPOSITION AS AMENDED 4/10/2014**

Dear Assembly Member Bradford,

On behalf of the League of California Cities, San Diego County Division which is comprised of the 18 cities in San Diego County, I write to express opposition to your AB 2145, which would adversely impact Community Choice Aggregation (CCA).

The League of California Cities has been a strong supporter of CCA for many years. In fact, in 2002, the League worked closely with then Assembly Member Carol Migden and other stakeholders to help pass AB 117 (Migden), which changed the procedures governing CCA to, among other things, allow cities and counties to aggregate on an "opt-out" basis, rather than an "opt-in" basis. All other states with CCA statutes impose the same "opt-out" process as California. The "opt-out" approach gives customers full choice but also provides greater certainty in the market and helps level the playing field for small CCAs attempting to compete in a highly competitive market. It should also be noted that the final amended version of AB 117, as signed into law, received wide bipartisan support and had no opposition.

Under existing law, a CCA cannot be implemented without extensive and appropriate public notice and due process, ensuring full transparency. Existing law also mandates a formal "opt-out" process begin after months of local CCA development and public outreach. Every utility customer is given multiple opportunities over a minimum four-month public noticing process to "opt-out" of the CCA before it begins offering service in a new community. At least four "opt-out" notices are issued to each customer in a proposed CCA jurisdiction. Additionally, customers can "opt out" at any time after the formal public noticing process.

Finally, the League San Diego County Division agrees with the League on not fully understanding the need to alter the existing "opt-out" process, which seems to be operating in an effective and transparent manner with few, if any, customer complaints.

For these reasons, we must respectfully oppose AB 2145.

Sincerely,

Kristal Jabara

Kristal Jabara
President, League San Diego County Division
Council Member, City of San Marcos

MEMBER CITIES

- CARLSBAD
- CHULA VISTA
- CORONADO
- DEL MAR
- EL CAJON
- ENCINITAS
- ESCONDIDO
- IMPERIAL BEACH
- LA MESA
- LEMON GROVE
- NATIONAL CITY
- OCEANSIDE
- POWAY
- SAN DIEGO SAN
- MARCOS
- SANTEE
- SOLANA BEACH
- VISTA

DIVISION OFFICERS

PRESIDENT

KRISTAL JABARA
COUNCIL MEMBER
CITY OF SAN MARCOS

FIRST VICE PRESIDENT

JOHN MINTO
COUNCIL MEMBER
CITY OF SANTEE

SECOND VICE PRESIDENT

LORRAINE WOOD
COUNCIL MEMBER
CITY OF CARLSBAD

PAST PRESIDENT

AL OVROM JR.
COUNCIL MEMBER
CITY OF CORONADO

LEAGUE STAFF

Catherine Hill
Public Affairs Manager



California
LEGISLATIVE INFORMATION

AB-2145 Electricity: community choice aggregation. (2013-2014)

SECTION 1. Section 366.2 of the Public Utilities Code is amended to read:

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

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

(3) If a customer ~~opts out of~~ *does not opt in to* a community choice aggregator's program, or has no community choice aggregation program available, that customer shall ~~have the right to~~ continue to be served by the existing electrical corporation or its successor in interest.

(4) The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation.

(5) A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute.

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

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

be entered into by an entity authorized to be a community choice aggregator, as defined in Section 331.1.

(2) Under community choice aggregation, customer participation ~~may not shall~~ require a positive written ~~declaration, but~~ *declaration and* each customer shall be informed of his or her right to opt ~~out of in to~~ the community choice aggregation program. If ~~no negative an affirmative~~ declaration is made by a customer, that customer shall be served through the community choice aggregation program. If an existing customer moves the location of his or her electric service within the jurisdiction of the community choice aggregator, the customer shall retain the same subscriber status as prior to the move, unless the customer affirmatively changes his or her subscriber status. If the customer is moving from outside to inside the jurisdiction of the community choice aggregator, customer participation shall ~~not~~ require a positive written ~~declaration, but~~ *declaration and* the customer shall be informed of his or her right to ~~elect not to receive service through~~ *opt in to* the community choice ~~aggregator. aggregation program.~~

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

- (A) An organizational structure of the program, its operations, and its funding.
- (B) Ratesetting and other costs to participants.
- (C) Provisions for ~~disclosure~~ *full disclosure of all information specified in paragraph (15)* and due process in setting rates and allocating costs among participants.
- (D) The methods for entering and terminating agreements with other entities.
- (E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.
- (F) Termination of the program.
- (G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, *complete* information about financial, technical, and operational capabilities.

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

- (A) Universal access.

(B) Reliability.

(C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service, ~~including~~ *including, but not limited to*, those rules adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of the greenhouse gases emission performance standard to community choice aggregators.

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

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

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

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

(9) ~~All~~ *An* electrical ~~corporations~~ *corporation* shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, electrical consumption data as defined in Section 8380 and other data detailing electricity needs and patterns of usage, as determined by the commission, and in

accordance with procedures established by the commission. The commission shall exercise its authority pursuant to Chapter 11 (commencing with Section 2100) to enforce the requirements of this paragraph when it finds that the requirements of this paragraph have been violated. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) If the commission finds that an electrical corporation *or community choice aggregator* has violated this section, the commission shall ~~consider the impact of the violation upon community choice aggregators.~~ *order appropriate corrective action.*

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

(A) Upon agreement of all of the parties to the complaint.

(B) The commission makes a written determination that the deadline cannot be met, including findings for the reason for this determination, and issues an order extending the deadline. A single order pursuant to this subparagraph shall not extend the deadline for more than 60 days.

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

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

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

(13) Following adoption of aggregation through the ordinance described in paragraph (12), the program shall allow any retail customer to opt ~~out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest.~~ *in to the community choice aggregation program.* Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law, except that those customers shall be subject to no more than a 12-month stay requirement with the electrical corporation. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

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

(15) ~~(A) Every~~ *The solicitation of customers by a* community choice aggregator shall ~~fully inform participating customers at least twice within two calendar months, or 60 days, in advance of the date of commencing automatic enrollment. Notifications may occur concurrently with billing cycles. Following enrollment, the~~

~~aggregated entity shall fully inform participating customers for not less than two consecutive billing cycles. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers of both of the following: contain, and communication by the community choice aggregator to the public or to a prospective or existing customer shall be consistent with, the following information:~~

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

~~(ii) (A) The ~~terms and conditions of the services offered~~: electric supply rate for the customer if the customer remains with the electrical corporation compared to the electric supply rate if the customer chooses to be served by the community choice aggregator. Rates shall be specific to the customer class of that customer and shall be provided for the next five years of service. The electrical corporation shall provide its projected electric supply rate to the community choice aggregator.~~

~~(B) The annual greenhouse gas emissions rate for electricity actually delivered to customers for the previous two years if the community choice aggregator ~~may request the commission to approve and order the electrical corporation to provide the notification required in subparagraph (A). If the commission orders the electrical corporation to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from~~ has been serving customers and the projected annual greenhouse gas emissions rate for electricity to be actually delivered in the next five years of service. The projected greenhouse gas emissions rate for each year shall be calculated using the regulations and protocols established by the State Air Resources Board, and for previous years using the greenhouse gas emissions reported pursuant to Article 2 (commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. The greenhouse gas emissions rate shall include any emissions otherwise attributable to any first importer supplying electricity to the community choice ~~aggregator all reasonable incremental costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with~~ aggregator, whether or not the community choice aggregator in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A): is a first deliverer as defined in paragraph (175) of subdivision (a) of Section 95102 of Title 17 of the California Code of Regulations.~~

~~(C) Each notification shall also include a mechanism by which a ratepayer may opt out of community choice aggregated service. The opt out may take the form of a self-addressed return postcard indicating the customer's election to remain~~

~~with, or return to, electrical energy service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical energy service through the electrical corporation providing service in the area.~~

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

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

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

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

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

(21) At the request and expense of any community choice aggregator, *an* electrical ~~corporations~~ *corporation* shall install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community choice aggregator at the aggregator's expense. To the extent that the community choice aggregator requests a metering location that would require alteration or

modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if *such that* alteration or modification does not compromise the safety, reliability, or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be borne by the community choice aggregator.

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

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

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

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

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

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

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

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net

unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) Estimated net unavoidable electricity costs paid by the customers of a community choice aggregator shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits.

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

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

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

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

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

(k) (1) Except for nonbypassable charges imposed by the commission pursuant to subdivisions (d), (e), (f), and (h), and programs authorized by the commission to provide broader statewide or regional benefits to all customers, electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer.

(2) The commission, Energy Commission, electrical corporation, or third-party administrator shall administer any program funded through a nonbypassable charge on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis

with the customers of an electrical corporation.

(3) Nothing in this subdivision is intended to modify, or prohibit the use of, charges funding programs for the benefit of low-income customers.

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

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

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

(n) Amendments to this section made by Assembly Bill 2145 of the 2013-14 Regular Session do not affect the enrollment status of a customer already enrolled in a community choice aggregation program prior to January 1, 2015.

SEC. 2. *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.*



California
LEGISLATIVE INFORMATION

AB-2145 Electricity: community choice aggregation. (2013-2014)

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE— 2013-2014 REGULAR SESSION

ASSEMBLY BILL

No. 2145

Introduced by Assembly Member Bradford

February 20, 2014

An act to amend Section 366.2 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2145, as amended, Bradford. Electricity: community choice aggregation.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. ~~Existing law~~ *The Public Utilities Act* authorizes a community choice aggregator, as defined, 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 and requires that the plan include disclosures of certain information and describe other matter. ~~Existing law~~ *The act requires the community choice aggregator to provide each customer an opportunity to opt out of his or her community's aggregation program. The act provides that customer*

participation in the community choice aggregation program does not require a positive written declaration for participation, but each customer shall be informed of his or her right to opt out of the program. The act provides that if no negative declaration is made by the customer regarding participation, the customer shall be served by the community choice aggregation program. The act 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. ~~Existing law~~ *The act* requires an electrical corporation, when requested by, and at the expense of, a community choice aggregator, to install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. ~~Existing law~~ *The act* requires a community choice aggregator to register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

This bill *would instead provide that each customer be given an opportunity to opt in to his or her community's aggregation program. The bill would require a positive declaration from a customer for participation in the community choice aggregation program and that each customer be informed of his or her right to opt in to the program. The bill would provide that a customer shall be served by the community choice aggregation program if an affirmative declaration is made. The bill would require solicitations of customers by a community choice aggregator contain, and communication by the community choice aggregator to the public or prospective and existing customers to be consistent with, specified information and would require the implementation plan to include the disclosure of those specified information. The bill would require that the implementation plan filed by a community choice aggregator* ~~make full disclosure of certain information~~ *and* completely describe other matter *required to be disclosed under existing law.* The bill would authorize the commission to require that a community choice aggregator, when registering with the commission, provide additional information to ensure compliance with basic consumer protection and other rules and other procedural matters. The bill would make other technical, nonsubstantive revisions to the community choice aggregator provisions.

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

Because the bill would impose requirements regarding communication by a community choice aggregator, a violation of which would be 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.

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program:
~~no~~yes

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

SECTION 1. Section 366.2 of the Public Utilities Code is amended to read:

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

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

(3) If a customer ~~opts out of~~ *does not opt in to* a community choice aggregator's program, or has no community choice aggregation program available, that customer shall ~~have the right to~~ continue to be served by the existing electrical corporation or its successor in interest.

(4) The implementation of a community choice aggregation program shall not result in a shifting of costs between the customers of the community choice aggregator and the bundled service customers of an electrical corporation.

(5) A community choice aggregator shall be solely responsible for all generation procurement activities on behalf of the community choice aggregator's customers, except where other generation procurement arrangements are expressly authorized by statute.

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

(c) (1) Notwithstanding Section 366, a community choice aggregator is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protection, and leverage the negotiation of contracts. However, the community choice aggregator may not aggregate electrical load if that load is served by a local publicly owned electric utility. A community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers. The community choice aggregator may enter into agreements for services to facilitate the sale and purchase of electricity and other related services. Those service agreements may be entered into by an entity authorized to be a community choice aggregator, as defined in Section 331.1.

(2) Under community choice aggregation, customer participation ~~may not shall~~ require a positive written ~~declaration, but~~ *declaration and* each customer shall be informed of his or her right to ~~opt-out-of in to~~ the community choice aggregation program. If ~~no-negative an affirmative~~ declaration is made by a customer, that customer shall be served through the community choice aggregation program. If an existing customer moves the location of his or her electric service within the jurisdiction of the community choice aggregator, the customer shall retain the same subscriber status as prior to the move, unless the customer affirmatively changes his or her subscriber status. If the customer is moving from outside to inside the jurisdiction of the community choice aggregator, customer participation shall ~~not~~ require a positive written ~~declaration, but~~ *declaration and* the customer shall be informed of his or her right to ~~elect not to receive service through the community choice aggregator. opt in to the community choice aggregation program.~~

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

- (A) An organizational structure of the program, its operations, and its funding.
- (B) Ratesetting and other costs to participants.
- (C) Provisions for full disclosure *of all information specified in paragraph (15)* and due process in setting rates and allocating costs among participants.
- (D) The methods for entering and terminating agreements with other entities.
- (E) The rights and responsibilities of program participants, including, but not limited to, consumer protection procedures, credit issues, and shutoff procedures.
- (F) Termination of the program.
- (G) A description of the third parties that will be supplying electricity under the program, including, but not limited to, complete information about financial, technical, and operational capabilities.

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

- (A) Universal access.
- (B) Reliability.
- (C) Equitable treatment of all classes of customers.

(D) Any requirements established by state law or by the commission concerning aggregated service, including, but not limited to, those rules adopted by the commission pursuant to paragraph (3) of subdivision (b) of Section 8341 for the application of the greenhouse gases emission performance standard to community choice aggregators.

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

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

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

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

(9) An electrical corporation shall cooperate fully with any community choice aggregators that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing the entities with appropriate billing and electrical load data, including, but not limited to, electrical consumption data as defined in Section 8380 and other data detailing electricity needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. The commission shall exercise its authority pursuant to Chapter 11 (commencing with Section 2100) to enforce the requirements of this paragraph when it finds that the requirements of this paragraph have been violated. Electrical corporations shall continue to

provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the community choice aggregator as providing the electrical energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to community choice aggregators and retail customers.

(10) If the commission finds that an electrical corporation *or community choice aggregator* has violated this section, the commission shall ~~consider the impact of the violation upon community choice aggregators.~~ *order appropriate corrective action.*

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

(A) Upon agreement of all of the parties to the complaint.

(B) The commission makes a written determination that the deadline cannot be met, including findings for the reason for this determination, and issues an order extending the deadline. A single order pursuant to this subparagraph shall not extend the deadline for more than 60 days.

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

(B) Two or more entities authorized to be a community choice aggregator, as defined in Section 331.1, may participate as a group in a community choice aggregation program pursuant to this chapter, through a joint powers agency established pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, if each entity adopts an ordinance pursuant to subparagraph (A). Pursuant to Section 6508.1 of the Government Code, members

of a joint powers agency that is a community choice aggregator may specify in their joint powers agreement that, unless otherwise agreed by the members of the agency, the debts, liabilities, and obligations of the agency shall not be the debts, liabilities, and obligations, either jointly or severally, of the members of the agency. The commission shall not, as a condition of registration or otherwise, require an agency's members to voluntarily assume the debts, liabilities, and obligations of the agency to the electrical corporation unless the commission finds that the agreement by the agency's members is the only reasonable means by which the agency may establish its creditworthiness under the electrical corporation's tariff to pay charges to the electrical corporation under the tariff.

(13) Following adoption of aggregation through the ordinance described in paragraph (12), the program shall allow any retail customer to ~~opt-out and to continue to be served as a bundled service customer by the existing electrical corporation, or its successor in interest.~~ *in to the community choice aggregation program.* Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers that have entered into a direct transaction where applicable, as determined by the commission. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 60 days or two billing cycles of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (3) of subdivision (a). Customers that return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law, except that those customers shall be subject to no more than a 12-month stay requirement with the electrical corporation. Any reentry fees to be imposed after the opt-out period specified in this paragraph, shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (d), (e), and (f) from the cost of reentry.

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

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

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

~~(ii) All terms and conditions of the services offered:~~

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

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

(15) Every solicitation of customers by a community choice aggregator shall contain, and communication by the community choice aggregator to the public or to a prospective or existing customer shall be consistent with, the following information:

(A) The electric supply rate for the customer if the customer remains with the electrical corporation compared to the electric supply rate if the customer chooses to be served by the community choice aggregator. Rates shall be specific to the customer class of that customer and shall be provided for the next five years of service. The electrical corporation shall provide its projected electric supply rate to the community choice aggregator.

(B) The annual greenhouse gas emissions rate for electricity actually delivered to customers for the previous two years if the community choice aggregator has been serving customers and the projected annual greenhouse gas emissions rate for electricity to be actually delivered in the next five years of service. The projected greenhouse gas emissions rate for each year shall be calculated using the regulations and protocols established by the State Air Resources Board, and for previous years using the greenhouse gas emissions reported pursuant to Article 2 (commencing with Section 95100) of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations. The greenhouse gas emissions rate shall include any emissions otherwise attributable to any first

importer supplying electricity to the community choice aggregator, whether or not the community choice aggregator is a first deliverer as defined in paragraph (175) of subdivision (a) of Section 95102 of Title 17 of the California Code of Regulations.

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

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

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

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

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

(21) At the request and expense of any community choice aggregator, an electrical corporation shall install, maintain, and calibrate metering devices at mutually agreeable locations within or adjacent to the community choice aggregator's political boundaries. The electrical corporation shall read the metering devices and provide the data collected to the community choice aggregator at the aggregator's expense. To the extent that the community choice aggregator requests a metering location that would require alteration or

modification of a circuit, the electrical corporation shall only be required to alter or modify a circuit if that alteration or modification does not compromise the safety, reliability, or operational flexibility of the electrical corporation's facilities. All costs incurred to modify circuits pursuant to this paragraph, shall be borne by the community choice aggregator.

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

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

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

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

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

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

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

(2) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net

unavoidable electricity purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing electricity purchase contracts entered into by the electrical corporation.

(g) Estimated net unavoidable electricity costs paid by the customers of a community choice aggregator shall be reduced by the value of any benefits that remain with bundled service customers, unless the customers of the community choice aggregator are allocated a fair and equitable share of those benefits.

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

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

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

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

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

(k) (1) Except for nonbypassable charges imposed by the commission pursuant to subdivisions (d), (e), (f), and (h), and programs authorized by the commission to provide broader statewide or regional benefits to all customers, electric service customers of a community choice aggregator shall not be required to pay nonbypassable charges for goods, services, or programs that do not benefit either, or where applicable, both, the customer and the community choice aggregator serving the customer.

(2) The commission, Energy Commission, electrical corporation, or third-party administrator shall administer any program funded through a nonbypassable charge on a nondiscriminatory basis so that the electric service customers of a community choice aggregator may participate in the program on an equal basis

with the customers of an electrical corporation.

(3) Nothing in this subdivision is intended to modify, or prohibit the use of, charges funding programs for the benefit of low-income customers.

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

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

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

(n) Amendments to this section made by Assembly Bill 2145 of the 2013-14 Regular Session do not affect the enrollment status of a customer already enrolled in a community choice aggregation program prior to January 1, 2015.

SEC. 2. *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.*