

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Review,  
Revise, and Consider Alternatives to the  
Power Charge Indifference Adjustment.

R. \_\_\_\_\_

**ORDER INSTITUTING RULEMAKING TO REVIEW, REVISE, AND CONSIDER  
ALTERNATIVES TO THE POWER CHARGE INDIFFERENCE ADJUSTMENT**

**Summary**

We open this rulemaking to review the current Power Charge Indifference Adjustment (PCIA). This rulemaking will follow up and expand upon the recent consideration of the PCIA undertaken by participants in a workshop facilitated by Energy Division staff that issued a report in September 2016, and in the PCIA Working Group that issued a report in April 2017. Although the participants in these projects did not agree on most issues they discussed, they identified several areas for further consideration that this Order Instituting Rulemaking (OIR) will take up. These topics include:

- Improving the transparency of the existing PCIA process;
- Revising the current PCIA methodology to increase stability and certainty;
- Reviewing specific issues related to inputs and calculations for the current PCIA methodology; and
- Considering alternatives to the PCIA.

This OIR will consider recent legislation on the treatment of bundled retail customers of investor-owned utilities (IOUs) and customers departing IOU

service made by Senate Bill 350 (De León), Stats. 2015, ch. 547 (adding Pub. Util. Code Sections 365.2 and 366.3).

This OIR will also examine the concerns raised by several parties in other proceedings about the status of exemptions from the PCIA for customers using California Alternative Rates for Energy (CARE) and Medical Baseline rates.

The PCIA touches a wide range of customers, a wide variety of interests, and a large number of load-serving entities. In order to provide a common framework for the tasks in this OIR, a set of preliminary Guiding Principles is proposed as part of the preliminary scoping memo (section 4, below).

This OIR will examine the PCIA methodology and consider alternatives to that mechanism. In view of the approach and scope of this OIR, we conclude that Application 17-04-018, the Application of Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric Company (Joint IOUs) for Approval of the Portfolio Allocation Methodology for all Customers, is premature. The Joint IOUs may argue for alternatives to the PCIA as appropriate within the scope of this proceeding. We therefore will dismiss A.17-04-018 without prejudice.

Interested persons may comment on this OIR, the proposed Guiding Principles, and the preliminary scoping memo consistent with the schedule and procedure described herein.

## **1. Jurisdiction**

The Power Charge Indifference Adjustment (PCIA) has its origin in Assembly Bill (AB) 1X (Keeley), Stats. 2001 ch.4, which added Water Code

Section 80110 to California law.<sup>1</sup> The structure and requirements for customers leaving bundled service of investor owned utilities (IOUs) for service from community choice aggregators (CCAs) or electric service providers (ESPs) have been developed by AB 117 (Migden), Stats. 2002, ch. 838 (amending Pub, Util. Code Section 366 and adding Section 366.2); AB 80 (Havice), Stats. 2002, ch. 837 (adding Section 366.1); Senate Bill (SB) 790 (Leno), Stats. 2011, ch. 599 (amending Section 366.2); SB 1171, Stats. 2012, ch. 162 (amending Section 366.2); SB 695 (Kehoe), Stats. 2009, ch. 337 (amending Section 365 and adding Section 365.1). Most recently, SB 350 (De León), Stats. 2015, ch. 547, added Sections 365.2 and 366.3.<sup>2</sup>

## **2. Background**

### **2.1. Work on the PCIA**

The PCIA has been a topic of interest in several recent Commission proceedings and activities. The activities are very briefly summarized here to provide information and background for the scope of this proceeding.

#### **2.1.1. Staff workshop**

In D.15-12-022, the Commission directed Energy Division staff to hold a workshop on the PCIA.<sup>3</sup> The workshop included discussion of the mechanics of

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<sup>1</sup> See Decision (D.) 02-11-022, which adopted the DWR Power Charge based on AB 1X. Implementing AB 117, the Commission replaced the DWR Power Charge with the PCIA in D.06-07-030.

<sup>2</sup> Relevant current statutory provisions are reproduced in Appendix A. All further citations to sections are to the Public Utilities Code, unless otherwise noted.

<sup>3</sup> This decision was issued in Application (A.)15-06-001, the 2016 Energy Resource Recovery Account (ERRA) Forecast proceeding for Pacific Gas and Electric Company (PG&E). As a result of different timing among different proceedings, the PCIA workshop was held and the staff's report on the workshop was filed in A.14-05-024, Phase II of PG&E's 2015 ERRA forecast proceeding.

the PCIA, the calculation of the market price benchmark used in the PCIA, and recommendations from parties for reform of various aspects of the PCIA. The workshop final report prepared by Energy Division staff was made available and filed in A.14-05-024 in September 2016.

### **2.1.2. PCIA Working Group**

In D.16-09-044 (concluding A.14-05-024), the Commission ordered the creation of a Working Group on the PCIA. The PCIA Working Group, headed by Southern California Edison Company (SCE) and Sonoma Clean Power, met in late 2016 and early 2017, producing a report in April 2017.<sup>4</sup>

The participants agreed on a proposal to improve transparency in the PCIA process by establishing a common template for PCIA workpapers.<sup>5</sup> The participants did not agree on any other specific steps, but did identify other areas of concern. These include additional steps to improve transparency; changes to the PCIA methodology to improve stability and certainty of the methodology and its results; and alternatives to the current PCIA. These topics are set out in more detail in the preliminary scoping memo for this Rulemaking. (See section 4, below).

### **2.2. Portfolio Allocation Methodology Application**

Participants in the PCIA Working Group identified three potential alternatives to the PCIA as it now exists: 1) a new “portfolio allocation methodology;” 2) a lump-sum buyout of what would otherwise be CCA

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<sup>4</sup> The working group report may be found at <http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=186706892>.

<sup>5</sup> This proposal was formally proposed in a Petition for Modification of D.06-07-030 in April 2017.

customers' PCIA obligations; and 3) the assignment of certain procurement contracts of the IOUs to CCAs, in lieu of imposing the PCIA.

The IOUs put forward their proposal for a portfolio allocation methodology (PAM) by filing A.17-04-018. In May 2017, twelve parties filed protests and four parties filed responses to the PAM application; the IOUs filed their response June 9, 2017. One party also filed a motion to dismiss the PAM application without prejudice, arguing that the requested changes should be considered in a more general rulemaking. Two responses to the motion to dismiss were filed.

### **2.3. Related activities and proceedings**

Other recent Commission activities addressing the relationships among IOUs, CCAs, ESPs, and their customers, include:

- A Commission *en banc* hearing on CCA Issues (February 1, 2017);<sup>6</sup>
- CPUC and Energy Commission Joint *En Banc* on Changing Nature of Consumer and Retail Choice in California (May 19, 2017);<sup>7</sup> and
- Rulemaking (R.) 03-10-003, to set the bond or other financial security to be posted by CCAs on registration with the Commission.

### **3. Procedure**

Pacific Gas and Electric Company (PG&E), SCE, San Diego Gas & Electric Company (SDG&E), all CCAs (see Appendix B) and all ESPs (see Appendix C) are Respondents to this proceeding. The small and multijurisdictional

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<sup>6</sup> See CCA Information, at <http://www.cpuc.ca.gov/General.aspx?id=2567>.

<sup>7</sup> See [www.cpuc.ca.gov/retailchoiceenbanc](http://www.cpuc.ca.gov/retailchoiceenbanc).

utilities--PacifiCorp, Bear Valley Electric Service, and Liberty Utilities (CalPeco)--are not made respondents, but are encouraged to become parties and participate in this proceeding. All Respondents must, and any interested persons may, comment on the preliminary scoping memo consistent with the schedule established in Section 5.

In the interest of broad notice, we serve this rulemaking on the service lists of R.03-10-003 (CCA bond proceeding); R.05-06-040 (confidentiality); R.07-05-025 (limited reopening of direct access) R.12-06-013 (residential rates rulemaking); R.14-10-010 (resource adequacy); R.15-02-020 (renewables portfolio standard); R.16-02-007 (integrated resource planning); A.06-03-005 (PCIA for Alternative Rates for Energy (CARE) customers departing PG&E service); A.14-11-007 (most recent CARE/Energy Savings Assistance proceeding); A.14-05-024 (2015 PG&E ERRa proceeding that set up the Working Group); A.16-04-018, A.16-05-001, A.16-06-003 (2017 ERRa Forecast proceedings for IOUs, now consolidated);<sup>8</sup> A.17-04-016 (SDG&E 2018 ERRa Forecast); A.17-05-006 (SCE 2018 ERRa Forecast); A.17-06-005 (PG&E 2018 ERRa Forecast); and A.17-04-018 (PAM application).

Service of this rulemaking does not confer party status or place a person or organization that has received such service on the service list for this proceeding, except that Respondents are automatically parties. Persons or entities that file comments on the rulemaking will be conferred party status. To be placed on the service list, persons or entities should follow the instructions in Section 6.1, below.

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<sup>8</sup> See Administrative law Judge's ruling Consolidating Proceedings and Establishing Phase II (May 22, 2017).

#### **4. Preliminary Scoping Memo**

This rulemaking follows work done through the Energy Division staff workshop and the PCIA Working Group, described in section 2, above. In this rulemaking, we will consider proposals and concepts raised by participants in those processes, as well as additional issues related to improvements or alternatives to the current PCIA.

We also take up in this OIR the separate requests of City of Lancaster, Marin Clean Energy, and SCE to reexamine the current exemptions from the PCIA for CARE and Medical Baseline customers.<sup>9</sup>

With this overall approach in mind, we provide a set of preliminary guiding principles for this proceeding. We also preliminarily determine the issues, category, need for hearing, and other elements of the preliminary scoping memo. (Rule 7.1(d), Commission Rules of Practice and Procedure.)<sup>10</sup>

##### **4.1. Guiding Principles**

The following guiding principles are proposed as a common conceptual framework for the specific tasks to be addressed in this OIR. They are derived from statutory instructions, prior Commission decisions, and participation of a variety of stakeholders in other proceedings and Commission forums. Parties

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<sup>9</sup> See Motion of Marin Clean Energy for Consolidation (December 23, 2016), filed in A.16-06-013 and Southern California Edison Company's Motion to Remove PCIA CARE/MB Exemption Issue to A.16-05-001; or, in the Alternative, to Set Legal Briefing Schedule in this Proceeding (May 3, 2017), filed in R.12-06-013. SCE provides a useful timeline (at 3-4). All requests have emphasized the desirability of handling the CARE and medical baseline issues at the same time, in one proceeding. We agree, and do so in this rulemaking.

<sup>10</sup> The Rules of Practice and Procedure may be found on the Commission's web site at <http://www.cpuc.ca.gov/proceedings/>. All further references to rules are to the Rules of Practice and Procedure, unless otherwise noted.

are invited to address these proposed guiding principles in their comments on this OIR.

1. Bundled IOU customers should be neither worse off nor better off as a result of customers departing the IOU for other energy providers (“bundled customer indifference”).
2. Any methodology to ensure bundled customer indifference should be transparent and verifiable, including the most open and easily accessible treatment of input data, while maintaining confidentiality of information that should remain confidential.
3. Any methodology to ensure bundled customer indifference should have reasonably predictable outcomes that promote certainty and stability for all customers within a reasonable planning horizon.
4. Any methodology to ensure bundled customer indifference should be flexible enough to maintain its accuracy and stability if the number of departing customers changes significantly.
5. Any methodology to ensure bundled customer indifference should not create unreasonable obstacles for customers of non-IOU energy providers.
6. Any methodology to ensure bundled customer indifference should be consistent with California energy policy goals and mandates.

#### **4.2. Issues**

We preliminarily identify the following issues. We include examples of topics that may be considered as part of each issue. These examples should not be considered exclusive; they are intended to be illustrative.

1. Implementation of SB 350 language<sup>11</sup> discussing bundled customer indifference and protection of departing customers from allocation of costs not incurred on their behalf.

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<sup>11</sup> See Sections 365.2 and 366.3.



2. Transparency of current PCIA methodology.
  - a. Information sharing (e.g., load forecast methodology).
  - b. Publication of IOUs' contract terms to greatest extent permitted without violating confidentiality rules.
  - c. Non-disclosure agreements for confidential information.
3. Data access for current PCIA methodology.
  - a. Public online source of information used for PCIA calculation.
  - b. Revision of rules on access to confidential PCIA input data.<sup>12</sup>
4. Review and possible modification of current PCIA methodology.
  - a. Total Portfolio Cost inputs and calculation.
  - b. Market Price Benchmark.
    - i. Updating.
    - ii. Alternative methods.
  - c. Optimization of IOU portfolio management (e.g., contract extensions and contract renegotiation) to minimize stranded costs.
  - d. PCIA forecasting and possible cap.
  - e. Sunset of obligation to pay PCIA.
  - f. Accuracy of PCIA in assuring bundled customer indifference.
5. Alternatives to PCIA framework.
  - a. IOUs' Portfolio Allocation Methodology.
  - b. Portfolio buy-out by CCA/ESP.
  - c. Assignment of IOUs' contracts to CCA/ESP.
6. Exemptions from PCIA for CARE and Medical Baseline customers.
  - a. Review and possible revision of exemptions.

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<sup>12</sup> Revisions to confidentiality rules related to PCIA are the subject of the recently filed California Community Choice Association Petition for Modification of Decision 11-07-028.

- b. Consistency of treatment of exemptions among IOUs.
- 7. Additional considerations and statutory changes relevant to review, revision, and consideration of alternatives to the PCIA.

#### **4.3. Issues Outside the Scope of this OIR**

Although this rulemaking focuses on the PCIA, it is situated in the larger context of consumer choice in energy services. This rulemaking is not, however, intended to be a follow-up to the CPUC and Energy Commission Joint *En Banc* on Changing Nature of Consumer and Retail Choice in California. Any implementation steps growing out of that *en banc* will be separately developed by the Commission. Nor will this OIR address other issues that are connected to the broader context of consumer choice, but not relevant to the PCIA or alternatives to it.<sup>13</sup>

#### **4.4 Category and *Ex Parte* Communications**

We preliminarily determine the category of this proceeding to be quasi-legislative. This review and revision of the PCIA fits within our established definition of quasi-legislative proceedings:

... proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry. (Rule 1.3(d).)

This preliminary determination is not appealable, but shall be confirmed or changed by assigned Commissioner's Scoping Memo and Ruling after

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<sup>13</sup> Examples of topics this OIR does not encompass include exploration of the "provider of last resort" and consideration of publicly-owned utilities departing load. These examples are not intended to be an exhaustive list. The touchstone for inclusion in this OIR is relevance to review, revision, and alternatives to the current PCIA.

consideration of comments on this preliminary determination. The assigned Commissioner's determination as to category is subject to appeal. (Rules 7.3 and 7.6.)

Communications with decision makers and advisors in this rulemaking are governed by Pub. Util. Code §§ 1701.1 and 1701.4 and Article 8 of the Rules of Practice and Procedure. (Rule 8.1, *et seq.*) *Ex parte* communications are allowed without restriction or reporting requirement in a quasi-legislative proceeding. (Rule 8.3(a).) No *ex parte* restrictions or reporting requirements apply in this proceeding.<sup>14</sup>

#### **4.5 Need for Hearing**

We anticipate that many of these issues can be addressed by filed comments or in workshops, but that some are likely to require evidentiary hearings. Therefore, we preliminarily determine that hearings will be needed. (Rule 7.1(d).) The assigned Commissioner's Scoping Memo and Ruling, after considering the comments and recommendations of parties, will make a final determination of the need for hearing. (Rule 7.3(a).)

#### **5. Initial Schedule**

The following schedule is subject to change by the assigned Commissioner or administrative law judge after review of the comments. It may be supplemented or changed to promote the efficient and equitable development of

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<sup>14</sup> Interested persons are advised that, to the extent that the requirements of Rule 8.1 *et seq.* deviate from Pub. Util. Code §§ 1701.1 and 1701.4, as amended by SB 215 (Leno), Stats. 2016, ch.807, effective January 1, 2017, the statutory provisions govern. Interested persons should also be aware that, to the extent that the Commission may promulgate new rules to implement provisions of SB 215, the Rules of Practice and Procedure may change with respect to communications relevant to this proceeding.

the record. It is anticipated that this proceeding will be resolved within 18 months of the date the Rulemaking is opened. (See Pub. Util. Code § 1701.5.)

<b>ITEM</b>	<b>DATE</b>
Comments on OIR and Preliminary Scoping Memo	20 days from date Rulemaking issued
Prehearing conference	To be determined by assigned Commissioner and assigned administrative law judge
Scoping Memo	To be determined by assigned Commissioner
Workshops, if any	As needed
Evidentiary hearings, if needed	To be determined

Comments on the Preliminary Scoping Memo and any other issues in this OIR may be filed and served not later than 20 days from the date this Rulemaking is issued. Comments must state any objections to the preliminary scoping memo regarding category, need for hearing, issues to be considered, or schedule. (Rule 6.2.)

## **6. Service List, Filing and Service of Documents, Subscription Service**

### **6.1. Addition to the Official Service List**

Additions to the official service list are governed by Rule 1.9(f). Persons who file responsive comments to the rulemaking will become parties to this proceeding and will be added to the “Parties” category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request*

*addition to the “Information Only” category as described below.* They will be removed from that category upon obtaining party status.

Any person will be added to the “Information Only” category of the official service list upon request and will receive electronic service of all documents in the proceeding. Interested persons or entities should request to be added to the service list promptly to ensure timely service of comments and other documents and correspondence in the proceeding. (See Rule 1.9(f).) The request must be sent to the Process Office by e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the docket number of this rulemaking in the request.

## **6.2. Filing and Service**

Filing and service of documents in this proceeding are governed by the rules contained in Article 1 of the Commission’s Rules of Practice and Procedure. (See particularly Rules 1.5 through 1.10 and 1.13). If you have questions about the Commission’s filing and service procedures, contact the Docket Office ([Docket\\_Office@cpuc.ca.gov](mailto:Docket_Office@cpuc.ca.gov)) or check the Practitioner’s Page on our website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

## **6.3. Subscription Service**

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

## **7. Public Advisor**

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or (866) 849-8390 or e-mail [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov); or in Los Angeles at (213) 576-7055 or (866) 849-8391, or e-mail [public.advisor.la@cpuc.ca.gov](mailto:public.advisor.la@cpuc.ca.gov). The TTY number is (866) 836-7825.

Section 1711(a) provides that:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the Commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding.

The Public Advisor's Office will contact appropriate stakeholders and local governments that may be affected by this proceeding.

## **8. Intervenor Compensation**

Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation within 30 days of the prehearing conference. (*See* Rule 17.1(a).) Intervenor compensation rules are governed by § 1801 et seq. of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Public Advisor's office for assistance. Contact information is set forth in Section 7, above.

## **9. Application 17-04-018**

This rulemaking will consider a number of proposals made by members of the PCIA Working Group and other interested participants in Commission

proceedings for improvement in and/or replacement of the PCIA. It would therefore be both premature and inefficient to litigate just one of the proposals, the IOUs' PAM proposal, while this Rulemaking is ongoing. A.17-04-018 should therefore be dismissed without prejudice.

**IT IS ORDERED** that:

1. This Order Instituting Rulemaking is adopted pursuant to Public Utilities Code Sections 365, 365.1, 365.2, 366, 366.1, 366.2, and 366.3, and Rule 6.1 of the Commission's Rules of Practice and Procedure.

2. The preliminary categorization is quasi-legislative.

3. The preliminary determination is that hearings are needed.

4. The preliminary scope of issues is as stated in Section 4 of this order.

5. The schedule stated in Section 5 of this order is adopted, subject to any changes made when the Scoping Memo for this proceeding is issued. It is the Commission's intent to resolve this proceeding within 18 months of the date the rulemaking is adopted.

6. Pacific Gas and Electric Company; Southern California Edison Company; San Diego Gas & Electric Company; Apple Valley Choice Energy; CleanPowerSF; Hermosa Beach Choice Energy; Lancaster Choice Energy; Peninsula Clean Energy; Pico Rivera Community Choice Aggregation; Redwood Coast Energy Authority; San Jacinto Power; Silicon Valley Clean Energy; Sonoma Clean Power; Agera Energy, LLC; American Powernet Management, LP; Calpine Energy Solutions, LLC; Calpine Poweramerica-CA LLC, dba Champion Energy Services, LLC; Commercial Energy of California; Constellation Newenergy, Inc.; Direct Energy Business; Direct Energy Services, LLC; EDF Industrial Power Services (CA), LLC; Gexa Energy California, LLC; Just Energy Solutions Inc.; Liberty Power Delaware LLC; Liberty Power Holdings LLC; Mansfield Power and Gas

LLC; Palmco Power CA; Pilot Power Group, Inc.; Praxair Plainfield, Inc.; Shell Energy; Tenaska California Energy Marketing, LLC; Tenaska Power Services Co.; The Regents of the University of California; Tiger Natural Gas, Inc.; and Yep Energy, Y.E.P. are Respondents to this Order Instituting Rulemaking.

7. All Respondents must, and any other persons may, file comments of not more than 15 pages responding to this Order Instituting Rulemaking not more than 20 days from the date this Rulemaking is issued.

8. Application 17-04-018 is dismissed without prejudice.

9. The Executive Director will cause this Order Instituting Rulemaking to be served on all investor owned utilities, all community choice aggregators, and all electric service providers (including the named Respondents), and on the service lists for the following Commission proceedings: Rulemaking (R.) 03-10-003; R.05-06-040; R.07-05-025; R.12-06-013; R.14-10-010; R.15-02-020; R.16-02-007; Application (A). 06-03-005; A.14-11-007; A.14-05-024; A.16-04-018; A.16-05-001; A.16-06-003; A.17-04-016; A.17-05-006; A.17-06-005; and A.17-04-018.

10. *Ex parte* communications in this proceeding are allowed without restriction or reporting requirements.

11. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file its notice of intent to claim intervenor compensation within 30 days of the prehearing conference.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.



**APPENDIX A****Selected Sections of Public Utilities Code****365.**

The actions of the commission pursuant to this chapter shall be consistent with the findings and declarations contained in Section 330. In addition, the commission shall do all of the following:

(a) Facilitate the efforts of the state's electrical corporations to develop and obtain authorization from the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an independent Power Exchange, for the determination of which transmission and distribution facilities are subject to the exclusive jurisdiction of the commission, and for approval, to the extent necessary, of the cost recovery mechanism established as provided in Sections 367 to 376, inclusive. The commission shall also participate fully in all proceedings before the Federal Energy Regulatory Commission in connection with the Independent System Operator and the independent Power Exchange, and shall encourage the Federal Energy Regulatory Commission to adopt protocols and procedures that strengthen the reliability of the interconnected transmission grid, encourage all publicly owned utilities in California to become full participants, and maximize enforceability of such protocols and procedures by all market participants.

(b) (1) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in subdivision (a). The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase-in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any phase-in of customer eligibility for direct transactions ordered by the commission shall be equitable to all customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.

(2) Customers shall be eligible for direct access irrespective of any direct access phase-in implemented pursuant to this section if at least one-half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.

**365.1.**

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

(b) The commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation’s distribution service territory, up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual limit shall be established by the commission for each electrical corporation at the maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12-month period between April 1, 1998, and the effective date of this section. Within six months of the effective date of this section, or by July 1, 2010, whichever is sooner, the commission shall adopt and implement a reopening schedule that commences immediately and will phase in the allowable amount of increased kilowatthours over a period of not less than three years, and not more than five years, raising the allowable limit of kilowatthours supplied by other providers in each electrical corporation’s distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation’s distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

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

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

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

(i) Bundled service customers of the electrical corporation.

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

(iii) Customers of community choice aggregators.

(B) If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

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

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

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

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity

costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of paragraph (2) of subdivision (c).

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

### **365.2.**

The commission shall ensure that bundled retail customers of an electrical corporation do not experience any cost increases as a result of retail customers of an electrical corporation electing to receive service from other providers. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

### **366.**

(a) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electrical loads on a voluntary basis, provided that each customer does so by a positive written declaration. If no positive declaration is made by a customer, that customer shall continue to be served by the existing electrical corporation or its successor in interest, except aggregation by community choice aggregators, accomplished pursuant to Section 366.2.

(b) Aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited, to small commercial or residential customers. Aggregation may be accomplished by private market aggregators, special districts, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers, except aggregation by community choice aggregators, which shall be accomplished pursuant to Section 366.2.

### **366.1.**

(a) As used in this section, the following terms have the following meanings:

(1) "Department" means the Department of Water Resources with respect to its power program described in Chapter 2 (commencing with Section 80100) of Division 27 of the Water Code.

(2) "Existing project participant" means a city with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement, dated May 1, 2001.

(3) "Magnolia Power Project" means a proposed natural gas-fired electric generating facility to be located at an existing site in Burbank and for which an application for

certification has been filed with the State Energy Resources Conservation and Development Act (Docket No. 00-SIT-1) and deemed data adequate pursuant to the expedited six-month licensing process established under Section 25550 of the Public Resources Code.

(b) Notwithstanding Section 80110 of the Water Code or Commission Decision 01-09-060, if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants, an existing project participant may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction.

(c) Subdivision (b) shall not become operative until both of the following occur:

(1) The commission implements a cost-recovery mechanism, consistent with subdivision (d), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of the act adding this section.

(2) The commission submits a report certifying its satisfaction of paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

(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's power purchase costs, as well as power purchase contract obligations incurred as of January 1, 2003, that are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs between customers.

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

(e) A retail end-use customer purchasing power from a community aggregator pursuant to subdivision (b) shall reimburse the department for all of the following:

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

(2) The costs of the department, equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from a community aggregator, through the expiration of all then existing power purchase contracts entered into by the department.

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

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

(2) The costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power 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 aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

(g) (1) A charge or cost imposed pursuant to subdivision (e), and all revenues received to pay the charge or cost, shall be the property of the Department of Water Resources. A charge or cost imposed pursuant to subdivision (f), and all revenues received to pay the charge or cost, shall be the property of the particular electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to assure that the revenues received to pay a charge or cost payable pursuant to this section are promptly remitted to the party entitled to those revenues.

(2) A charge or cost imposed pursuant to this section shall be nonbypassable.

### 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 his or her community's aggregation program.

(3) If a customer opts out of 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, 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 require a positive written declaration, but each customer shall be informed of his or her right to opt out of the community choice aggregation program. If no negative 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 the customer shall be informed of his or her right to elect not to receive service through the community choice aggregator.

(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 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, 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 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 electrical corporations 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 has violated this section, the commission shall consider the impact of the violation upon community choice aggregators.

(11) The commission shall proactively expedite the complaint process for disputes regarding an electrical corporation's violation of its obligations pursuant to this section in order to provide for timely resolution of complaints made by community choice aggregation programs, 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. 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. 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 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) The 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.

(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 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, electrical corporations 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 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).

*(Amended by Stats. 2012, Ch. 162, Sec. 154. Effective January 1, 2013.)*

### **366.3.**

Bundled retail customers of an electrical corporation shall not experience any cost increase as a result of the implementation of a community choice aggregator program. The commission shall also ensure that departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.

(End of Appendix A)

**APPENDIX B**

**List of Certified Community Choice Aggregators**

Apple Valley Choice Energy  
CleanPowerSF  
Hermosa Beach Choice Energy  
Lancaster Choice Energy  
Marin Clean Energy  
Peninsula Clean Energy  
Pico Rivera Community Choice Aggregation  
Redwood Coast Energy Authority  
San Jacinto Power  
Silicon Valley Clean Energy  
Sonoma Clean Power

(End of Appendix B)

**APPENDIX C**  
**List of Registered Electric Service Providers**

3 Phases Renewables, Inc.  
Agera Energy, LLC  
American Powernet Management, LP  
Calpine Energy Solutions, LLC  
Calpine Poweramerica-CA LLC, dba Champion Energy Services, LLC  
Commercial Energy of California  
Constellation Newenergy, Inc.  
Direct Energy Business  
Direct Energy Services, LLC  
EDF Industrial Power Services (CA), LLC  
Gexa Energy California, LLC  
Just Energy Solutions Inc.  
Liberty Power Delaware LLC  
Liberty Power Holdings LLC  
Mansfield Power and Gas LLC  
Palmco Power CA  
Pilot Power Group, Inc.  
Praxair Plainfield, Inc.  
Shell Energy  
Tenaska California Energy Marketing, LLC  
Tenaska Power Services Co.  
The Regents of the University of California  
Tiger Natural Gas, Inc.  
Yep Energy, Y.E.P.

**(End of Appendix C)**