

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: August 9, 2013

To: The Commission
(Meeting of August 15, 2013)

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

**Subject: SB 656 (Wright) – Electrical Restructuring: Information Practices
As amended: August 6, 2013**

RECOMMENDED POSITION: SUPPORT IF AMENDED

SUMMARY OF BILL

This bill would amend Section 392.1 of the Public Utility Code (PU Code) to extend existing consumer protection provisions for customers of Electric Service Providers to customers of Core Transport Agents (also known as Core Gas Aggregators). In addition, this bill would suspend the requirement for the California Public Utilities Commission (CPUC) to compile and regularly update customer complaint numbers or official terms and conditions of registered ESP's, as long as ESP residential service subscription has not reached a 5% rate of monthly increase. The bill would eliminate the requirement for the Office (now Division) of Ratepayer Advocates to collect, analyze, and disseminate ESP related information for customers.

Specifically, this bill:

- Amends current CPUC information practices in regards to Electrical Service Providers (ESPs) so that the CPUC will no longer be required to compile and regularly update customer complaint numbers or official terms and conditions of registered ESP's, as long as ESP residential service subscription has not reached a 5% rate of monthly increase;
- Requires the CPUC to notify the Secretary of State of time periods when residential ESP subscription has reached this rate of increase;
- Removes a requirement for the Office (now Division) of Ratepayer Advocates to collect, analyze, and disseminate helpful ESP information for customers, including recommendations; and
- Would extend the existing ESP consumer protection provisions and registration requirements of Article 12, Chapter 2.3 of the PU Code to Core Transport Agents (CTAs), with the following results:
 - Requirement for CTAs to register with the CPUC before providing or continuing to provide natural gas service and establish a set of required

- fees, documents, disclosures, and administrative processes for approval of CTA registration;
- CPUC development of uniform standards for determining financial viability as well as technical and operational ability of prospective CTAs;
 - Expansion of CPUC jurisdiction to include both informal complaint resolution and accepting formal complaints in regards to CTAs, and grant the CPUC the ability to award reparations in such cases;
 - Establishment of protocol and standards of CTA treatment while being evaluated via CPUC hearings as well as boundaries of penalty enforcement;
 - Creation of a CTA analog of the current requirement for the CPUC to compile, analyze, and distribute consumer oriented information regarding ESPs;
 - Establishment of a set of minimum standards of conduct for CTAs, including a requirement to provide the customer with a clear description of all terms and conditions, and provision for the Commission to establish additional protections;
 - Requirement for the CPUC to maintain a residential and small commercial do-not-call list, updated quarterly; and
 - Establishment of approved damages that may be awarded to customers as a result of conflict with CTAs.

CURRENT LAW

Section 392.1 of PUC Code:

- Requires the CPUC to compile and regularly update names, contact information, and customer complaint numbers for ESPs; and
- Requires the Division of Ratepayer Advocates to use this compiled information to publish and distribute education materials to residential and small commercial customers interested in ESP service.

AUTHOR'S PURPOSE

This bill addresses two problems. First, residential Direct Access electrical service has been suspended for nearly twelve years as a result of Decision (D.) 01-09-060. As a result, Energy Division staff and the Division of Ratepayer Advocates are no longer compiling and updating information regarding ESPs and their complaint records for distribution to residential customers. However, PU code 392.1 currently requires the CPUC to maintain and update this information. As this section of code has become antiquated, SB 656 seeks to reconcile code with practice by removing a requirement that the DRA create consumer educational materials. The bill would make the requirement that the CPUC compile and update information—including consumer complaint records—to assist consumers in making ESP choices conditional upon a 5% monthly growth rate of residential Direct Access enrollment. The CPUC requirement to maintain names and contact information would remain, which is in alignment with current Energy Division practice. Energy Division believes these provisions are needed.

The second problem being addressed concerns the growing prevalence of customers utilizing Core Gas Aggregation service, and the coinciding increase in complaints regarding Core Transport Agents' aggressive sales tactics. The year-to-date number of written complaints received by the Consumer Affairs Branch in regards to Core Gas Aggregators was already equal to the total number of complaints received in 2012. The issue of misleading and belligerent sales tactics has become prominent enough to even receive its own segment on KPIX 5's television broadcast. Currently the CPUC has no legal authority to penalize CTAs in response to customer complaints because the PU Code contains no consumer protection measures for customers of CTAs. SB 656 would extend various consumer protection provisions currently established for ESP customers to customers of Core Transport Agents. These provisions include the requirement that each entity, other than an electrical corporation, offering electrical service to residential and small commercial customers within the service territory of an electrical corporation register with the CPUC and provide specified information to the CPUC. Energy Division staff believes this section of the bill is an important step in protecting CTA customers. Registration requirements and the consumer protection provisions of the bill will also establish standards of conduct as a means by which the CPUC might prosecute offending CTAs.

EXPLANATION OF BILL'S IMPACT ON CPUC PROGRAMS, PRACTICE & POLICY

Chapter 2.3, Section 392.1

This bill would set a threshold for rates of residential enrollment in ESP service below which the CPUC would not be required to maintain records of customer complaints against ESPs or information for aiding consumers in making provider choices. The threshold would be set at a 5% monthly increase. Currently, the law requires the CPUC to maintain descriptive complaint information as well as each entity's plan information. However, the CPUC does not currently maintain this information in practice because the number of customers enrolled in residential and small commercial customers enrolled in Direct Access service represents less than 1% of California ratepayers, and no new enrollment is allowed for residential customers. As the threshold for enrollment rates will effectively remove this information requirement for the foreseeable future, the overall effect of this portion of the bill will be to reconcile the PU Code with current Energy Division practice.

The CPUC would, however, still be required to maintain a list of the names and contact numbers of registered ESPs, regardless of the rate of residential enrollment. This is consistent with current practice and is favored by Energy Division staff. Although residential enrollment was suspended following Decision 01-09-060, 11,063 residential customers who enrolled prior to 2001 remain on ESP service as of April 2013. Moreover, there are also a combined 35,000 commercial, industrial, and agricultural customers receiving Direct Access. Maintaining names and contact information of registered ESPs will require minimal CPUC resources but still help provide these customers with a source of basic information should they need to contact their ESP.

The bill also seeks to alleviate the Division of Ratepayer Advocates (DRA) from the responsibility of creating and distributing educational materials to prospective ESP customers. Current law requires the DRA to collect and summarize information relating to ESP performance, including customer complaints, so customers might make more informed decisions when choosing an ESP. SB 656 would completely eliminate this requirement, regardless of residential enrollment level. This removal will have minimal practical effects because new residential service is currently barred and the DRA is no longer in the practice of creating ESP educational materials.

Chapter 4.7

The overall effect of implementing SB 656's Chapter 4.7 would be to confer upon customers of CTAs the consumer protections afforded to customers of ESPs. Currently, the CPUC has no legal authority to follow up on consumer complaints regarding CTAs. The present extent of Energy Division's work on CTA issues is solely to answer inquiries requesting information on Core Aggregation Service. If SB 656 is passed, all of the provisions of chapter 4.7—creating and evaluating registration requirements, ensuring consumer protection standards, maintaining information on CTAs for consumer choice—will initiate new practices at the CPUC. These practices should improve the transparency, accountability, and standards of conduct within the Core Aggregation environment.

SAFETY IMPACT

SB 656 is not anticipated to have any major safety impacts.

RELIABILITY IMPACT

SB 656 is not expected to impact reliability of service for electric or gas customers.

RATEPAYER IMPACT

There is no anticipated impact on rates charged to customers. However, SB 656 should have a positive impact on the marketing practices of CTAs, as well as on service for ratepayers electing CTA. The bill will do so in a number of ways. First, the bill will increase CTA accountability by creating registration requirements and requiring the CPUC to make public the names, contact information, and number of customer complaints received for each CTA. Both consumers and the CPUC will have greater insight into the past conduct of CTAs, thereby increasing the CTA's incentive to avoid disputes with customers. Moreover, the requirement that the CPUC develop uniform standards of financial viability should provide a bulwark against CTAs becoming insolvent and potentially leaving their customers to cover the cost of reconnection to utility gas service and/or to endure lack of gas service until reconnection. Creating a requirement that the CPUC also accept, compile, and resolve customer complaints against CTAs will also further incentivize avoidance of disputes and improve CTA service and marketing practices.

FISCAL IMPACT

By creating the registration requirements for Core Transport Agents and having the CPUC oversee the registration process, the bill will require Energy Division staff time. As section 981(a) of the proposed legislation would require extant Core Transport Agents to register with the CPUC, a large influx of CTA registrations can be expected in the first year of the bill's implementation. This may require the temporary hiring of a staff person to review incoming registration materials, at least until the initial wave of registrations has subsided. After this period the registrations should be manageable using existing staff. Currently, the analogous ESP registration process is facilitated with the use of a Staff Services Analyst in Sacramento. The Staff Services Analyst is responsible for answering ESP registrant questions, review of required registration materials, and data population in Energy Division's Oracle database. The Staff Services Analyst currently employed in these duties with regards to ESPs has a full workload and would not be able to handle the expected influx of new CTA registrations arising from SB 656. The implementation of would therefore require the hiring of a temporary Staff Services Analyst for an expected duration of 3 months, with a total cost of \$24,763.

Section 981(a) of Chapter 4.7 would contain several registration requirements for Core Transport Agents, including the development of uniform standards for proof of financial, technical, and operational ability. The standards for determining these abilities would need to be developed. Creating these standards would require careful research and planning on the part of the Energy Division, as well as a high degree of coordination with the utility companies involved in Core Aggregation service agreements. However, Energy Division may be able to draw on past experience of staff involved in establishing analogous standards for ESPs, making the process less time intensive than would be otherwise expected. The Natural Gas section believes this workload can be absorbed using current staff.

SB 656's creation of an outlet for consumer complaints against CTAs is also expected to create increased CPUC workload. Section 983 of chapter 4.7 would require the CPUC to accept, compile and attempt to either informally resolve or formally investigate consumer complaints, depending on the extent of the perceived abuse. The Consumer Affairs Branch believes they will not require additional staff to handle these complaints.

CTA registration standards might need to be developed via a proceeding before the Commission. Resolving formal, written complaints will require Administrative Law Judge (ALJ) involvement and formal CPUC decision. The ALJ division expects that establishing standards related to SB 656 will require the attention of one ALJ for one year, with a total fiscal impact of \$139,745.

In addition, Section 984 of SB 656 will require the CPUC to maintain the same information concerning CTAs that section 392.1 required in regards to ESPs—reviewing new registrations, aggregating and maintaining customer complaint data, ensuring web content is up to date, and creating educational materials to aid in customer choice among CTAs will all be new duties required of the CPUC. This will require Energy Division to devote about half the time of a Public Utility Regulatory Analyst I (PURA I).

The cost of this increased workload would be \$40,205. The bill is also likely to have some impact on the Division of Ratepayer Advocates' workload that is not included in this analysis.

The fiscal impact of implementing SB 656 will therefore be \$204,712.

ECONOMIC IMPACT

SB 656 is expected to have very little economic impact. Section 984(a) will require Core Transport Agents to pay a registration fee of \$100.00, which will be deposited into the Public Utilities Reimbursement Account and cover the costs of implementing the new consumer protection program. This is not expected to significantly impact CTA financial solvency.

LEGAL IMPACT

SB 656 is not anticipated to raise any legal issues and there are no ongoing associated cases.

LEGISLATIVE HISTORY

Assembly Bill 1890 (Brulte, Chapter 854, Statutes 1996)

BACKGROUND INFORMATION ON IMPACTED PROGRAMS, PRACTICE OR POLICY

Electrical Restructuring

Assembly Bill (AB) 1890 (Brulte, 1996) introduced Chapter 2.3 of the Public Utilities Code, which deregulated the Electrical Market in California. Chapter 2.3 has subsequently been modified by dozens of bills. This legislation has been codified in Public Utilities Code sections 330 – 399.31. Under AB 1890, the California retail electric market was opened up to free market competition from unregulated Electric Service Providers providing “Direct Access” electrical service. The legislature found that competition in the electric generation market would encourage better service by all market participants, reduce the cost of regulatory oversight, and offer customers greater choice in electrical service.

Following the California Energy Crisis of 2001, enrollment in Direct Access service was suspended for all customer classifications following CPUC Decision 01-09-060 in September of 2001. In March of 2010, the CPUC ruled to implement provisions made in SB 695 (Kehoe, 1999) via Rulemaking (R.) 07-05-025. SB 695 stated that the CPUC should allow individual nonresidential end-use customers to acquire electric service from other providers within their territory, up to a certain maximum allowable annual kilowatt hour limit. Residential customers are still prohibited from entering into Direct Access service contracts with Electric Service Providers. However, those residential customers who initiated Direct Access contracts before September of 2001 and have sustained their agreements with ESPs are permitted to receive Direct Access service.

The CPUC currently tracks the number of customers served under Direct Access through monthly Direct Access Service Requests (DASR's) per Decision 97-05-040. The most recently published DASR states that there were 46,020 customers enrolled in Direct Access service as of February 28, 2013. This demographic represents .4% of the total number of potential customers (11,692,418). However, the Direct Access load reported in the February 2013 DASR is over 24 million MWh. This represents a disproportionately large percentage of total utility electrical load, at 12.6%. This load reflects the large share of industrial customers enrolled in Direct Access service (24%).

Gas Deregulation in California

The natural gas procurement market was officially deregulated in February of 1991 with Commission Decision 91-02-40. This decision followed a pilot aggregation program established in November of 1990 by Decision 90-11-061. Decision 91-02-40 offered core gas customers the opportunity to aggregate their loads in order to participate in competitive gas markets. The decision to allow customers to choose where to buy their gas was seen as aligned with the CPUC's efforts to limit utility presence in gas procurement. Later, in 1995, the CPUC ordered the unbundling of transportation rates from procurement rates. This decision sought to reduce customer CTA customer liability for interstate capacity, lowering CTA customer prices and enabling core aggregators to better compete with utilities and to weaken monopolies.

Chapter 2.3, Article 12 of the PU Code contains the consumer protection provisions which form the basis of Chapter 4.7. This article of the code was introduced by AB 1890 and later modified by SB 477 (Peace, 1997), AB 1658 (Committee on Commerce, 1999), AB 1 (Aanestad, 2000), and AB 3048 (Committee on Commerce, 2008). While AB 1890 created the framework for Electric Service Provider regulation, SB 477 added the majority of the consumer protection provisions which will allow the CPUC to ensure better service for CTA customers.

Currently, the PU Code does not authorize the CPUC to provide any oversight on CTA matters. However, CTAs are held to certain standards of conduct by the utility companies with whom they contract. PG&E's Gas Rule 23, SoCalGas's Rule 32, and SDG&E's Gas Rule 32 establish these standards of conduct. These rules describe application requirements, establishment of credit, billing process options, and customer protection measures. These rules afford the utilities the right to terminate service if CTAs are found to be in violation of the utility's customer protection policies. These customer protection policies aim to avoid unintentional customer signup and prevent fraudulent solicitations. However, these gas rules also provide for a lengthy appeals process through which CTAs can contest customer complaints. In fact, PG&E's webpage for Frequently Asked Questions regarding CTA service advises customers who are interested in settling disputes with their CTA to either contact the CPUC—who has no jurisdiction over CTAs—or to take the matter up in judicial court. SDG&E's and SoCalGas' CTA FAQ webpages tell dissatisfied customers they can cancel service with their CTA, but are not allowed to return to utility service within the first year of electing CTA service. The customer must choose another CTA from which to purchase gas.

OTHER STATES' INFORMATION

Several other states have either deregulated gas industries or are introducing legislation to establish third party gas supplier pilot programs. New York, New Jersey, Pennsylvania, and the District of Columbia all have robust third party supplier programs. These states' experience with third party gas supply regulation has been similar to that of California. Most deregulated their respective gas industries in the early-mid 1990's. Moreover, it appears that these states have had to introduce more stringent customer protection rules in response to aggressive solicitations from suppliers. The New York State Public Service Commission, for example, has created and published an "Energy Service Companies Bill of Rights" which describes customers' rights with heavy emphasis on sales regulation.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

This bill should be supported for the following reason(s):

- (1) Direct Access service no longer applies to a significant amount of residential customers, making the current ESP information maintenance requirements obsolete. SB 656 will help to reconcile CPUC policy with reasonable practice.
- (2) SB 656 will advance the CPUC's mission of serving public interest by improving consumer standing in the Core Gas Aggregation environment. The bill will extend consumer protection provisions to CTA customers, increase CTA transparency through creation of a registration process, and provide dissatisfied customers with an effective outlet for complaints.

SUMMARY OF SUGGESTED AMENDMENTS

This bill should be amended in the following way(s):

- (1) The definition of "Core Transport Agent" put forth by section 980(a) leaves uncertainty as to whether or not a public agency offering gas service to large customers within its jurisdiction could be considered a Core Transport Agent. This section could be amended to read:

“(a) “Core transport agent” means an entity that offers gas service to customers within the service territory of a gas corporation, but does not include a gas corporation, and does not include a public agency that offers gas service to ~~residential and small commercial customers~~ *core and noncore* customers within its jurisdiction or within the service territory of a local publicly owned gas utility. “Core transport agent” includes the unregulated affiliates and subsidiaries of a gas corporation.”
- (2) The registration requirements of Section 981(a)(8) contain a loophole that has been made evident through CPUC dealings with ESPs (whose registration requirements use the same language via PU Code section 394).

Though section 981(a)(8) requires disclosure of any sanctions or penalties imposed upon the CTA or its owners, directors, partners, or officers, the section does not require disclosure of sanctions or penalties issued against companies owned, managed, or directed by individuals involved with the CTA in question. This allows individuals involved in CTAs being sanctioned in one state to register separate entities in California without disclosing past transgressions. Tighter language would help utilities and the CPUC to better identify potentially problematic CTA relationships. The following language could be inserted into section 981(a) to tighten the loophole:

"Neither applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of applicant, or anyone acting in a management capacity for applicant has: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been (to his/her knowledge) the subject of a criminal referral by judge or public agency; (e) had a license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general."

- (3) Section 983.5(d) of the bill states that CTAs must post a bond or demonstrate sufficient insurance to cover reentry fees in the event that a customer is involuntarily returned to gas corporation service (due to fault of the CTA). However, this section later states that in the event of CTA insolvency, reentry fees will be allocated to the returning customers. It seems that customer protection could be strengthened if the bill mandated that the bonds or insurance must be sufficient to cover the cost of re-entry even in the event of insolvency. Section 983.5(d) could be amended to read:

"As a condition of its registration, a core transport agent shall post a bond or demonstrate insurance sufficient to cover those re-entry fees, including re-entry fees for customers returned in the event of

~~the core transport agent becoming insolvent. In the event that a core transport agent becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated the returning customers."~~

- (4) In many instances, the bill uses the general term "service" to describe the commodity to be provided by the CTAs. We believe the bill would benefit from replacing this term with the more specific "gas procurement service" in order to dispel confusion and minimize room for interpretation.
- (5) The traditional threshold between "small commercial" customers and "large commercial" customers has been an annual use of 250,000 therms, or an average monthly use of 20,800 therms. A customer could have a *maximum peak demand* of greater than 20,800 therms and still be considered small commercial so long as their *average monthly use* did not exceed 20,800 therms. Average monthly use is calculated over the most recent twelve month period.

Rather than define "small commercial customers", the bill could simply refer to the definition of "core gas customers" specified in the utility tariffs, i.e. as those customers using less than 20,800 therms per month. All instances of the phrase "residential and small commercial customers" would then be replaced with "core gas customers", which is more consistent with the language used in utility tariffs. Alternatively, the bill could define small commercial customers as those that use no more than 250,000 therms per year. The new language would read:

"(c) "Core gas customer" has the same meaning as that specified in the tariffs of the utility whose territory the customer in question lies under"

OR

"(c) "Small commercial customer" means a customer whose annual use does not exceed 250,000 therms."

- (6) The language of section 983(b) leaves unclear the CPUC's authority to grant awards in complaint cases. While the CPUC "shall have the authority to accept, compile, and resolve residential, and small commercial consumer complaints, including the authority to award reparations", its authority shall "not be expanded to include either an award of any other damages or regulation of the rates or charges of the core transport agent". While this latter clause may be intended to prevent the CPUC from awarding damages via a CTA rate change, the language is sufficiently unclear that it may lead to confusion in future conflict resolution. Section 983(b) could be amended to read:

“The commission’s authority in these complaint proceedings is limited to adjudication of complaints regarding residential and small commercial gas service provided by a core transport agent and shall not be expanded to include either an award of any other damages or *through* regulation of the rates or charges of the core transport agent”

(7) Section 983.7 seems to be unrelated to CTA regulation and should be removed.

SUPPORT/OPPOSITION

Support: Division of Ratepayer Advocates

Opposition: None on file

VOTES

Assembly Committee on Utilities & Commerce, 7/1/13: **13 Ayes, 0 Noes**

Senate Floor, 5/16/13: **37 Ayes, 0 Noes**

Senate Committee on Energy, Utilities & Communications, 4/30/2013: **11 Ayes, 0 Noes**

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BILL LANGUAGE
SECTION 1.

Section 392.1 of the Public Utilities Code is amended to read:

392.1.

(a) The commission shall compile and regularly update the names and contact numbers of registered providers.

~~(a) (b) (1)~~ The commission shall *also* compile and regularly update ~~the following information: names and contact numbers of registered providers,~~ information to assist consumers in making service ~~choices,~~ *choices* and the number of customer complaints against specific providers in relation to the number of customers served by those providers and the disposition of those complaints. To facilitate this function, registered entities shall file with the commission information describing the terms and conditions of any standard service plan made available to residential and small commercial customers. The commission shall adopt a standard format for this filing. The commission shall maintain and make generally available a list of entities offering electrical services operating in California. This list shall include all registered providers and those providers not required to be registered who request the commission to be included in the list. The commission shall, upon request, make this information available at no charge. Notwithstanding any other provision of law, public agencies ~~which~~ *that* are registered entities shall be required to disclose their terms and conditions of service contracts only to the same extent that other registered entities would be required to disclose the same or similar service contracts.

~~(b) (2)~~ The commission shall issue public alerts about companies attempting to provide electric service in the state in an unauthorized or fraudulent manner as defined in subdivision (b) of Section 394.25.

(3) (A) This subdivision is inoperative except for time periods in which providers are authorized to offer service to residential customers and the combined enrollments in competitive retail electric service in the service territories of the Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas and Electric Company increase at a rate of more than 5 percent per month.

~~(c) (B) The commission shall direct the Office of Ratepayer Advocates to collect and analyze information provided pursuant to subdivision (a) for purposes of preparing easily understandable informational guides or other tools to help residential and small commercial customers understand how to evaluate competing electric service options. In implementing these provisions, the commission shall direct the Office of Ratepayer Advocates to pay special attention to ensuring that customers, especially those with limited English speaking ability or other disadvantages when dealing with marketers, receive correct, reliable, and easily understood information to help them make informed choices. The Office of Ratepayer Advocates shall not make specific recommendations or rank the relative attractiveness of specific service offerings of registered~~

~~providers of electric services~~. *notify, in writing, the Secretary of State at the beginning and end of any time period described in subparagraph (A).*

SEC. 2.

Section 394.3 of the Public Utilities Code is amended to read:

394.3.

~~In order to~~ *To* carry out essential elements of a sustainable and effective consumer protection program in connection with electric service providers offering electrical service to residential and small commercial customers as intended by the Legislature in this article, the following shall apply:

(a) ~~A~~ *The commission shall collect* a registration fee of one hundred dollars (\$100) ~~shall be collected~~ from electric service providers required to register under this article, and *deposit* the fee proceeds ~~shall be deposited~~ in the Public Utilities Reimbursement Account established under Section 402.

(b) The commission shall annually determine the costs of administering the registration program and other facets of consumer protection directly related to the direct access transactions of electric service ~~providers, including the cost for the duties imposed pursuant to subdivision (c) of Section 392.1.~~ *providers*. The commission shall ~~only~~ collect *only* those costs not already being collected elsewhere. ~~Registrants~~ *A registrant* who ~~fail~~ *fails* to submit to the commission *a* required ~~fees~~ *or fee or a piece of* information upon which fees are calculated within 30 days of billing shall be subject to a 15-percent penalty.

SEC. 3.

Section 394.5 of the Public Utilities Code is amended to read:

394.5.

(a) Except for an electrical corporation as defined in Section 218, or a local publicly owned electric utility offering electrical service to residential and small commercial customers within its service territory, each electric service provider offering electrical service to residential and small commercial customers shall, prior to the commencement of service, provide the potential customer with a written notice of the service describing the price, terms, and conditions of the service. ~~The notices~~ *A notice* shall include all of the following:

(1) A clear description of the price, terms, and conditions of service, including:

(A) The price of electricity expressed in a format ~~which~~ *that* makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. The commission shall adopt rules to implement this subdivision. The commission shall require disclosure of the total price of electricity on a cents-per-kilowatt-hour basis, including the costs of all electric services and charges regulated by the commission. The commission shall also require estimates of the total monthly bill for the electric service at varying consumption levels, including the costs of all electric services and charges regulated by the commission. In determining these rules, the commission may consider alternatives to the cents-per-kilowatt-hour disclosure if

other information would provide the customer with sufficient information to compare among alternatives on a standard basis.

(B) Separate disclosure of all recurring and nonrecurring charges associated with the sale of electricity.

(C) If services other than electricity are offered, an itemization of the services and the charge or charges associated with each.

(2) An explanation of the applicability and amount of the competition transition charge, as determined pursuant to Sections 367 to 376, inclusive.

(3) A description of the potential customer's right to rescind the contract without fee or penalty as described in Section 395.

(4) An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.

(5) The electric service provider's registration number, if applicable.

(6) The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract.

(7) A description of the availability of low-income assistance programs for qualified customers and how customers can apply for these programs.

(b) The commission may assist electric service providers in developing the notice. The commission may suggest inclusion of additional information it deems necessary for the consumer protection purposes of this section. On at least a semiannual basis, electric service providers shall provide the commission with a copy of the form of notice included in standard service plans made available to residential and small commercial ~~customers as described in subdivision (a) of Section 392.1. customers.~~

(c) ~~Any~~ *An* electric service provider offering electric services who declines to provide those services to a consumer shall, upon request of the consumer, disclose to that consumer the reason for the denial in writing within 30 days. At the time service is denied, the electric service provider shall disclose to the consumer ~~his or her~~ *the* right to make this request. ~~Consumers~~ *A consumer* shall have at least 30 days from the date service is denied to make the request.

SEC. 4.

Chapter 4.7 (commencing with Section 980) is added to Part 1 of Division 1 of the Public Utilities Code, to read:

CHAPTER 4.7. Core Transport Agent 980.

As used in this chapter, the following terms mean the following:

(a) *"Core transport agent" means an entity that offers gas service to customers within the service territory of a gas corporation, but does not include a gas corporation, and does not include a public agency that offers gas service to residential and small commercial customers within its jurisdiction,*

or within the service territory of a local publicly owned gas utility. "Core transport agent" includes the unregulated affiliates and subsidiaries of a gas corporation.

(b) "Gas corporation" has the same meaning as that set forth in Section 222.

(c) "Small commercial customer" means a customer that has a maximum peak demand of less than 20,800 therms.

981.

(a) A core transport agent shall register with the commission within 90 days after the commission has adopted standards for financial viability, and technical and operational capacity. As a precondition to registration, the core transport agent shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the core transport agent is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer protection law or regulation, and of any felony convictions of any kind against the company or any owner, partner, officer, or director of the company. In addition, a core transport agent shall furnish the commission with fingerprints for those owners, partners, officers, and managers of the core transport agent specified by any commission decision applicable to all core transport agents. The commission shall submit completed fingerprint cards to the Department of Justice. Those fingerprints shall be available for use by the Department of Justice and the Department of Justice may transmit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The commission may use information obtained from a national criminal history record check conducted pursuant to this section to determine a core transport agent's eligibility for registration.

(9) Proof of financial viability. The commission shall develop uniform standards for determining financial viability and shall publish those standards for public comment no later than June 30, 2014. In determining the financial viability of the core transport agent, the commission shall take into account the number of customers the potential registrant expects to serve, the number of therms of gas it expects to provide, and any other appropriate criteria to ensure that residential and small commercial customers have adequate recourse in the event of fraud or nonperformance.

(10) Proof of technical and operational ability. The commission shall develop uniform standards for determining technical and operational capacity and shall publish those standards for public comment no later than June 30, 2014.

(b) Before reentering the market, a core transport agent whose registration has been revoked shall file a formal application with the commission that satisfies the requirements set forth in Section 982 and demonstrates the fitness and ability of the core transport agent to comply with all applicable rules of the commission.

(c) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by core transport agents. This part does not authorize the commission to regulate the rates or terms and conditions of service offered by core transport agents.

982.

(a) The registration shall be deemed approved and a registration number issued no later than 45 days after the required information has been submitted, unless the commission's executive director finds, upon review of the information submitted by the core transport agent or available to the commission, that there is evidence to support a finding that the core transport agent has committed an act constituting grounds for denial of registration as specifically set forth in the operative provisions of this chapter, including, but not limited to, subdivision (c).

(b) Upon a finding by the commission's executive director that there is evidence to support a finding that the core transport agent has committed an act constituting grounds for denial of registration as set forth in this section, the commission shall notify the core transport agent in writing, cause the documents submitted by the core transport agent to be filed as a formal application for registration, and notice an expedited hearing on the registration of the core transport agent to be held within 30 days of the notification to the core transport agent of the executive director's finding of evidence to support denial of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the registration request which shall be based on the findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(c) (1) The commission may deny an application for registration in accordance with subdivision (b) on the grounds that the core transport agent or any officer or director of the core transport agent has one or more of the following:

(A) Been convicted of a crime as described in paragraph (8) of subdivision (a) of Section 981.

(B) Failure to make a sufficient showing with respect to paragraphs (1) to (10), inclusive, of subdivision (a) of Section 981.

(C) Knowingly made a false statement of fact in the application for registration.

(2) The commission may deny registration pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties required to provide gas service to end use customers of gas or the false statement is material to the registration application. For purposes

of this subdivision, conviction of a crime shall be established in the same manner as that set forth in paragraph (1) of subdivision (a) of Section 480 of the Business and Professions Code.

(d) The commission shall require core transport agents registered under this section to update their registration information set forth in paragraphs (1) to (10), inclusive, of subdivision (a) of Section 981 within 60 days of any material change in the information provided. Material changes to any other information required pursuant to this article shall be updated annually.

983.

(a) The commission shall accept, compile, and attempt to informally resolve consumer complaints regarding core transport agents. If the commission reasonably suspects a pattern of customer abuses, the commission may, on its own motion, initiate investigations into the activities of a core transport agent offering gas service. Consumer complaints regarding service by a public agency offering gas service within the political boundary of the public agency or service territory of a local publicly owned gas utility shall continue to be resolved by the public agency. Within the service territory of a local publicly owned utility, consumer complaints arising from the violation of core transport service rules adopted by the governing body of the local publicly owned utility shall be resolved through the local publicly owned utility's consumer complaint procedures.

(b) Notwithstanding other provisions, residential and small commercial customers shall have the option to proceed with a complaint against a core transport agent either through an action filed in the judicial court system or through a complaint filed with the commission. A customer who elects either the judicial or commission remedies may not raise the same claim in both forums. The commission shall have the authority to accept, compile, and resolve residential, and small commercial consumer complaints, including the authority to award reparations. The commission's authority in these complaint proceedings is limited to adjudication of complaints regarding residential and small commercial gas service provided by a core transport agent and shall not be expanded to include either an award of any other damages or regulation of the rates or charges of the core transport agent. However, a person or core transport agent that takes a conflict to the commission shall not be precluded from pursuing an appeal of the decision through the courts as provided for by law.

(c) In connection with customer complaints or commission investigations into customer abuses, core transport agents shall provide the commission access to their accounts, books, papers, and documents related to California transactions as described in Sections 313 and 314, if the information is relevant to the complaint or investigation.

(d) A core transport agent shall not discontinue service to a customer for a disputed amount if that customer has filed a complaint that is pending with the commission, and that customer has paid the disputed amount into an escrow account.

983.5.

(a) (1) The commission may enforce Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against a core transport agent as if the core transport agent is a public utility for purposes of those sections.

(2) Notwithstanding paragraph (1), this section does not grant the commission jurisdiction to regulate core transport agents other than as specifically set forth in this chapter. Core transport agents shall continue to be subject to Sections 2111 and 2112.

(3) Upon a finding by the commission's executive director that there is evidence to support a finding that the core transport agent has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b), the commission shall notify the core transport agent in writing and notice an expedited hearing on the suspension or revocation of the core transport agent's registration to be held within 30 days of the notification to the core transport agent of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the suspension or revocation of registration, which shall be based on findings of fact and conclusions of law based on the evidence presented at the hearing. The decision shall include the findings of fact and the conclusions of law relied upon.

(b) A core transport agent may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the core transport agent or its employees, agents, or representatives, or to disadvantage retail gas customers.

(3) If the commission finds that there is evidence that the core transport agent is not financially or operationally capable of providing the offered gas service.

(4) The misrepresentation of a material fact by an applicant in obtaining a registration pursuant to Section 981.

(c) Pursuant to its authority to revoke or suspend registration, the commission may suspend a registration for a specified period or revoke the registration, or in lieu of suspension or revocation, impose a moratorium on adding or soliciting additional customers. Any suspension or revocation of a registration shall require the core transport agent to cease serving customers within the boundaries of investor-owned gas corporations, and the affected customers shall be served by the gas corporation until the time when they may select service from another core transport agent. A customer shall not be liable for the payment of any early termination fees or other penalties to any core transport agent under the service agreement if the serving core transport agent's registration is suspended or revoked.

(d) If a customer of a core transport agent is involuntarily returned to service provided by a gas corporation, any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers of the gas corporation shall be the obligation of the core transport agent, except in the case of a customer returned due to default in payment or other contractual obligations or because the customer's contract has expired. As a condition of its registration, a core transport agent shall post a bond or demonstrate insurance sufficient to cover

those reentry fees. In the event that a core transport agent becomes insolvent and is unable to discharge its obligation to pay reentry fees, the fees shall be allocated to the returning customers.

983.7.

If a customer files a claim with a gas corporation for damages to property resulting from the curtailment of gas service due to the failure of the gas corporation to reasonably provide service or restore service within a reasonable time after a fire, flood, earthquake, other natural disaster, or act of God, the gas corporation shall inform the customer that the claim may be pursued in small claims court or other judicial courts, depending on the amount of the claim.

984.

In order to carry out essential elements of a sustainable and effective consumer protection program in connection with core transport agents offering gas service to residential and small commercial customers as intended by the Legislature in this chapter, the following shall apply:

(a) A registration fee of one hundred dollars (\$100) shall be collected from a core transport agent required to register under this chapter and the fee proceeds shall be deposited in the Public Utilities Reimbursement Account established under Section 402. The commission may adjust the fee as necessary to recover the cost of administering the program.

(b) The commission shall annually determine the costs of administering the registration program and other facets of consumer protection directly related to the core transport service transactions of core transport agents, including the cost for the duties imposed pursuant to subdivision (c) of Section 984.5. The commission shall only collect those costs not already being collected elsewhere. Registrants who fail to submit to the commission required fees or information upon which fees are calculated within 30 days of billing shall be subject to a 15-percent penalty.

984.5.

(a) The commission shall compile and regularly update the following information: names and contact numbers of a registered core transport agent, information to assist consumers in making service choices, and the number of customer complaints against specific providers in relation to the number of customers served by those providers and the disposition of those complaints. To facilitate this function, registered entities shall file with the commission information describing the terms and conditions of any standard service plan made available to residential and small commercial customers. The commission shall adopt a standard format for this filing. The commission shall maintain and make generally available a list of entities offering core transport services operating in California. This list shall include all registered core transport agents and those agents not required to be registered that request the commission to be included on the list. The commission shall, upon request, make this information available at no charge. Notwithstanding any other law, public agencies that are registered entities shall be required to disclose their terms and conditions of service contracts only to the same extent that other registered entities would be required to disclose the same or similar service contracts.

(b) The commission shall issue public alerts about companies attempting to provide core transport service in the state in an unauthorized or fraudulent manner as defined in subdivision (b) of Section 983.5.

(c) The commission shall direct the Office of Ratepayer Advocates to collect and analyze information provided pursuant to subdivision (a) for purposes of preparing easily understandable informational guides or other tools to help residential and small commercial customers understand how to evaluate competing core transport service options. In implementing these provisions, the commission shall direct the Office of Ratepayer Advocates to pay special attention to ensuring that customers, especially those with limited-English-speaking ability or other disadvantages when dealing with marketers, receive correct, reliable, and easily understood information to help them make informed choices. The Office of Ratepayer Advocates shall not make specific recommendations or rank the relative attractiveness of specific service offerings of registered providers of core transport services.
985.

Rules that implement the following minimum standards shall be adopted by the commission for core transport agents offering gas services to residential and small commercial customers and the governing body of a public agency offering gas services to residential and small commercial customers within its jurisdiction:

(a) Confidentiality. Customer information shall be confidential unless the customer consents in writing. This shall encompass confidentiality of customer specific billing, credit, or usage information. This requirement shall not extend to disclosure of generic information regarding the usage, load shape, or other general characteristics of a group or rate classification, unless the release of that information would reveal customer specific information because of the size of the group, rate classification, or nature of the information.

(b) Physical disconnects and reconnects. Only a gas corporation, or a publicly owned gas utility, that provides physical delivery service to the affected customer shall have the authority to physically disconnect or reconnect a customer from the transmission or distribution grid. Physical disconnection by gas corporations subject to the commission's jurisdiction shall occur only in accordance with protocols established by the commission. Physical disconnection by publicly owned gas utilities shall occur only in accordance with protocols established by the governing board of the local publicly owned gas utility.

(c) Change in providers. Upon adequate notice supplied by a core transport agent to the gas corporation or local publicly owned gas utility providing physical delivery service, customers who are eligible for core transport service may change their energy supplier. Energy suppliers may charge for this change, provided that any fee or penalty charged by the supplier associated with early termination of service, shall be disclosed in that contract or applicable tariff.

(d) Written notices. Notices describing the terms and conditions of service as described in Section 986, service agreements, notices of late payment, notices of discontinuance of service, and disconnection notices addressed to residential and small commercial customers shall be easily

understandable and shall be provided in the language in which the core transport agent offered the services.

(e) Billing. All bills shall have a standard bill format, as determined by the commission or the governing body, and shall contain sufficient detail for the customer to recalculate the bill for accuracy. Any late fees shall be separately stated. A core transport agent shall provide on all customer bills a telephone number by which customers may contact the core transport agent to report and resolve billing inquiries and complaints. A core transport agent contacted by a customer regarding a billing dispute shall advise the customer at the time of the initial contact that the customer may file a complaint with the commission if the customer's dispute is not satisfactorily resolved by the core transport agent.

(f) Meter integrity. A gas customer shall have a reasonable opportunity to have his or her meter tested to ensure the reasonable accuracy of the meter. The commission or governing body shall determine who is responsible for the cost of that testing.

(g) Customer deposits. Core transport agents may require customer deposits before commencing service, but in no event shall the deposit be more than the estimated bill for the customer for a three-month period.

(h) Additional protections. The commission or the governing body may adopt additional residential and small commercial consumer protection standards that are in the public interest.

986.

(a) Except for a gas corporation, or a local publicly owned gas utility offering gas service to residential and small commercial customers within its service territory, a core transport agent offering gas service to residential and small commercial customers shall, prior to the commencement of service, provide the potential customer with a written notice of the service describing the price, terms, and conditions of the service. The notices shall include all of the following:

(1) A clear description of the price, terms, and conditions of service, including all of the following:

(A) The price of gas expressed in a format that makes it possible for residential and small commercial customers to compare and select among similar products and services on a standard basis. The commission shall adopt rules to implement this subdivision. The commission shall require disclosure of the total price of gas on a cents-per-therm basis, including the costs of all gas services and charges regulated by the commission. The commission shall also require estimates of the total monthly bill for the gas service at varying consumption levels, including the costs of all gas services and charges regulated by the commission. In determining these rules, the commission may consider alternatives to the cents-per-therm disclosure if other information would provide the customer with sufficient information to compare among alternatives on a standard basis.

(B) Separate disclosure of all recurring and nonrecurring charges associated with the sale of gas.

(C) If services other than gas are offered, an itemization of the services and the charge or charges associated with each.

(2) A description of the potential customer's right to rescind the contract without fee or penalty as described in Section 989.1.

(3) An explanation of the customer's financial obligations, as well as the procedures regarding past due payments, discontinuance of service, billing disputes, and service complaints.

(4) The core transport agent's registration number, if applicable.

(5) The right to change service providers upon written notice, including disclosure of any fees or penalties assessed by the supplier for early termination of a contract.

(6) A description of the availability of low-income assistance programs for qualified customers and how customers can apply for these programs.

(b) The commission may assist core transport agents in developing the notice. The commission may suggest inclusion of additional information it deems necessary for the consumer protection purposes of this section. On at least a semiannual basis, a core transport agent shall provide the commission with a copy of the form of notice included in its standard service plans made available to residential and small commercial customers as described in subdivision (a) of Section 984.5.

(c) Any core transport agent offering gas services who declines to provide those services to a consumer shall, upon request of the consumer, disclose to that consumer the reason for the denial in writing within 30 days. At the time service is denied, the core transport agent shall disclose to the consumer his or her right to make this request. Consumers shall have at least 30 days from the date service is denied to make the request.

987.

(a) The commission shall maintain a list of residential and small commercial customers who do not wish to be solicited by telephone, by a gas corporation, marketer, broker, or aggregator for gas service, to subscribe to or change their core transport agent. The commission shall not assess a charge for inclusion of a customer on the list. The list shall be updated periodically, but no less than quarterly.

(b) The list shall include sufficient information for gas corporations, marketers, brokers, or aggregators of gas service to identify customers who do not wish to be solicited, including a customer's address and telephone number. The list shall be made accessible electronically from the commission to any party regulated as a gas corporation or registered at the commission as an electric marketer, broker, or aggregator of gas service.

(c) A gas corporation, marketer, broker, or aggregator of gas service shall not solicit, by telephone, any customer on the list prepared pursuant to subdivision (a). Any gas corporation, marketer, broker, or aggregator of gas service, or the representative of a gas corporation, marketer, broker, or aggregator of gas service, who solicits any customer on the list prepared pursuant to subdivision (a) more than once shall be liable to the customer for twenty-five dollars (\$25) for each contact in violation of this subdivision.

988.

Notwithstanding any other provision of this chapter, requirements placed on a core transport agent shall not apply to gas services provided by a local publicly owned gas utility to customers within the jurisdiction or service territory of that local publicly owned gas utility.

989.

Unclaimed refunds ordered by the commission, and any accrued interest, may be used by the commission to fund additional consumer protection efforts.

989.1.

(a) In addition to any other right to revoke an offer, residential and small commercial customers of gas service, have the right to cancel a contract for gas service until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the agreement or offer.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(d) Notice of cancellation given by the buyer need not take the particular form as provided with the contract or offer to purchase and, however expressed, is effective if it indicates the intention of the buyer not to be bound by the contract.

989.5.

(a) A consumer damaged by a violation of this chapter by a core transport agent is entitled to recover all of the following:

(1) Actual damages.

(2) The consumer's reasonable attorney's fees and court costs.

(3) Exemplary damages, in the amount the court deems proper, for intentional or willful violations.

(4) Equitable relief as the court deems proper.

(b) The rights, remedies, and penalties established by this chapter are in addition to the rights, remedies, or penalties established under any other law.

(c) This chapter does not abrogate any authority of the Attorney General to enforce existing law.

SEC. 5.

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