

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 31, 2012

To: The Commission
(Meeting of August 2, 2012)

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

Subject: **AB 723 (Bradford) – CA Global Warming Solutions Act of 2006: investor-owned utilities: school energy efficiency. As amended: June 27, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: NEUTRAL

SUMMARY OF BILL:

This bill would extend the sunset date for the collection of public goods charge (PGC) funds to January 1, 2020 to provide ongoing funding for energy efficiency and conservation, research, development and demonstration, as well as renewable energy programs. The bill would direct the CPUC to require the investor owned utilities (IOUs) to establish a separate, non-bypassable rate component in the annual amounts of \$228 million for energy efficiency and conservation activities, \$65.5 million for renewable energy, and \$62.5 million for research, development and demonstration activities. These amounts shall be adjusted, beginning as of January 1, 2002, by the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.¹

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Energy Division recommends taking a neutral position on this bill.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

¹ Given these adjustment factors, the funds to be collected for energy efficiency and conservation, renewables, and research, development and demonstration activities in 2011 amounted to approximately \$250 million, \$73 million and \$70 million, respectively.

DIVISION ANALYSIS (Energy Division):

- 1) In the wake of the failure of legislative attempts to reauthorize the PGC, the CPUC has since moved forward with other approaches, utilizing its pre-existing authority, to fund energy efficiency, research, development and demonstration, and renewables support activities.
- 2) In Rulemaking (R.) 09-11-014, the California Public Utilities Commission (CPUC) addressed the loss of a portion of energy efficiency funding associated with the expiration of the PGC. In December 2011, the CPUC authorized an expansion of the existing electric procurement energy efficiency charge to fully fund the IOUs' 2012 budgetary requirements to achieve all cost-effective energy efficiency pursuant to statutory mandates. Because adequate funding mechanisms are available to CPUC under existing statutory authority, PGC funding for energy efficiency is unnecessary. The effect of this bill would be to offset the funding requirements collected through the procurement energy efficiency charge by whatever amount the PGC would collect for energy efficiency, with no net change in rates and no net increase in energy efficiency funding.
- 3) Similarly, in the case of the other areas the PGC previously supported, namely research, development and demonstration activities and renewables funding, the CPUC has established the Electric Program Investment Charge (EPIC) program to address funding in these areas. Under the framework adopted by the CPUC in R.11-10-003, monies collected pursuant to EPIC are to be used to support a range of activities principally intended to support the development of next generation clean energy technologies, as well as facilitate the deployment of those technologies. While the EPIC program is envisioned as funding activities in many the same areas as those that had been funded via the PGC, the program ultimately adopted by the CPUC is significantly different in a number of ways, based on the CPUC review of the efficacy of the PGC-supported programs in terms of providing ratepayer benefits.
- 4) Given these efforts, extending the PGC as envisioned by this bill would appear to be substantially duplicative of the funding the CPUC has established to pursue activities similar to those the PGC previously supported.
- 5) It should also be noted that the budget trailer bill, Senate Bill 1018 (Stats. 2012, ch. 39), repealed and amended a number of Public Resources Code sections that had previously empowered the California Energy Commission (CEC) to fund and administer renewables programs. If the Legislature would like to see the PGC continue to fund CEC-administered renewables programs, it will have to provide authorization to the CEC to do so in this bill.
- 6) Importantly, the bill could provide some benefit in terms of providing additional statutory authorization for funding critical policy areas like energy efficiency, research and development and market support programs. To achieve this in a manner that is consistent with the decisions the CPUC has made within the context

of the PGC and its sunset, the bill would need to be modified such that the programs funded via an extended PGC are not at odds with decisions the CPUC has made regarding alternative funding and program design.

PROGRAM BACKGROUND:

- 1) In 1996 AB 1890 directed the state's three major investor-owned utilities (Southern California Edison, Pacific Gas and Electric Company, and San Diego Gas & Electric) to collect a "public goods" or "system benefits" surcharge on ratepayer electricity use from 1998 through 2001 to create public benefits funds for renewable energy (\$540 million), energy efficiency (\$872 million), and research, development & demonstration (RD&D) (\$62.5 million).
- 2) A subsequent legislation was passed in 2000 (AB 995 and AB 1194) extending the PGC for an additional 10 years with an annual funding of approximately \$228 million for energy efficiency programs, \$135 million for renewable energy programs (at the time projected to be approximately \$150 million annually for 2007-2011), and \$62.5 million for RD&D.
- 3) In 2007, SB 1036 was enacted, making changes to renewable energy programs consequently reducing collections to \$65.5 million annually (previously projected to be approximately \$72 million annually) for 2008-2011.
- 4) Pursuant to legislation, funding for the PGC expired on January 1, 2012. In light of the critical nature of various activities consistent with those funded via the PGC, the CPUC sought to address the policy gap created by the expiration of PGC funding via a number of rulemakings. In R.09-11-014 the CPUC considered the funding gap created by the sunset of the PGC for energy efficiency. To consider ongoing funding in the RD&D and renewables areas previously supported by PGC collections, the CPUC opened R.11-10-003.
- 5) On December 15, 2011, the CPUC adopted D.11-12-038, which made additional procurement energy efficiency funds available so that energy efficiency programs could continue at currently authorized levels. Prior to the expiration of the PGC, the IOUs' \$3.1 billion 2010-2012 energy efficiency program portfolio was funded as follows: 17% from natural gas Public Purpose Program (PPP) funds, 25% from electric PGC funds, and 57% from electric procurement funds. Today, energy procurement funds account for approximately 83% of the IOUs 2012 budgetary requirements. Under existing law (PUC Sec. 454.5), the CPUC must require the IOUs to procure all available energy efficiency that cost-effective, reliable and feasible. Because adequate funding mechanisms are available to CPUC under existing statutory authority, PGC funding for energy efficiency is unnecessary.
- 6) On December 15, 2011, the CPUC adopted D.11-12-035, which established the Electric Program Investment Charge (EPIC). In that decision, the CPUC directed staff, working in consultation with staff from the CEC, to develop a report that

provides recommendations regarding the renewables and RD&D activities and programs that should be funded via the EPIC.

- 7) On May 24, 2012, the CPUC adopted D.12-05-037, which established the purposes and governance for an EPIC-funded program and continued funding collections during 2013 -2020. Although the program funded by EPIC shares certain objectives with those activities that had been funded by the PGC, it bears noting the CPUC took a “first principles” approach when developing the program. In taking this approach, certain activities that had been supported with the PGC were deemed inappropriate to continue funding (e.g. Emerging Renewables Program and Existing Renewable Facilities Program), while other areas, most notably RD&D, were identified as meriting ongoing support.
- 8) If the PGC is to be reauthorized, it could become the principle means of funding many of the activities the CPUC has determined to fund via EPIC and, in the case of EE, procurement dollars. This could represent a significant benefit in terms of providing statutory authority for ongoing ratepayer funding to support energy efficiency, RD&D, etc. However, the bill language may need to be changed to ensure alignment between what the extended PGC funds would be used for and the activities the CPUC has determined are an appropriate use of ratepayer monies in the wake of the expiration of the PGC. Any reauthorization of the PGC should provide the CPUC sufficient authority to allow those monies to be deployed in a manner that is consistent with the CPUC’s determinations regarding the use of ratepayer monies to support RD&D, renewables and EE activities in lieu of the PGC.

LEGISLATIVE HISTORY:

The 2012 budget trailer bill, Senate Bill 1018, repealed and amended a number of Public Resources Code sections that had previously empowered the CEC to fund and administer renewables programs that were funded by the PGC. Specifically, Senate Bill 1018 significantly modified Chapter 8.6 of Division 15 of the Public Resources Code (Pub. Resources Code, §§ 25740-25751) so that the Energy CPUC would close out awards of incentives for emerging technologies and consumer education activities. The existing Renewable Resources Trust Fund continues to be eligible for use to fund the New Solar Homes Program and other programs the authority for which derives from statutes other than Chapter 8.6 of the Public Resources Code (e.g., the PACE Financing Program, Clean Energy Academies, and grants for local governments to permit renewable facilities).

If the Legislature would like to see the PGC continue to fund CEC-administered renewables programs, it will have to authorize the California Energy CPUC to do so in this bill with changes to the Public Resources Code.

FISCAL IMPACT:

None.

STATUS:

AB 723 is pending consideration in the Senate Energy, Utilities and Communications Committee.

SUPPORT/OPPOSITION:

Support: None on file.

Opposition: California Chamber of Commerce
California Large Energy Consumers Association
Southern California Edison

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BILL LANGUAGE:

BILL NUMBER: AB 723 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 27, 2012
AMENDED IN SENATE JUNE 29, 2011
AMENDED IN SENATE JUNE 20, 2011

INTRODUCED BY Assembly Member Bradford

FEBRUARY 17, 2011

An act to amend ~~Sections 399.4 and~~ Section 399.8 of the Public Utilities Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 723, as amended, Bradford. Energy: public goods charge.

(1) Under the Public Utilities Act (the act), the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. The Reliable Electric Service Investments Act within the act requires the PUC to require an electrical corporation, until January 1, 2012, to identify a separate electrical rate component, commonly referred to as the "public goods charge," to fund energy efficiency, renewable energy, and research, development, and demonstration programs that enhance system reliability and provide in-state benefits. A violation of the act is a crime.

This bill would extend this requirement to January 1, 2020, and would make other technical and conforming changes. Because a violation of the act is a crime, this bill would impose a state-mandated local program by extending the application of a crime.

~~—(2) The Reliable Electric Services Act states that it is the policy of the state to administer cost effective energy efficiency programs and requires the commission to ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.~~

~~—This bill would require that the commission implement various elements and principles for the state's investments in cost effective energy efficiency improvements pursuant to the Reliable Electric Services Act.~~

~~—(3)~~

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

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

~~—(4)~~

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

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

~~—SECTION 1.— Section 399.4 of the Public Utilities Code is amended to read:~~

~~—399.4. (a) (1) In order to ensure that prudent investments in energy efficiency continue to be made that produce cost effective energy savings, reduce customer demand, and contribute to the safe and reliable operation of the electric distribution grid, it is the policy of this state and the intent of the Legislature that the commission shall continue to administer cost effective energy efficiency programs authorized pursuant to existing statutory authority.~~

~~—(2) As used in this section, the term "energy efficiency" includes, but is not limited to, cost effective activities to achieve peak load reduction that improve end use efficiency, lower customers' bills, and reduce system needs.~~

~~—(b) The commission, in evaluating energy efficiency investments under its existing statutory authority, shall also ensure that local and regional interests, multifamily dwellings, and energy service industry capabilities are incorporated into program portfolio design and that local governments, community based organizations, and energy efficiency service providers are encouraged to participate in program implementation where appropriate.~~

~~—(c) The commission shall implement the following elements and principles for the state's investments in cost effective energy efficiency improvements pursuant to this article:~~

~~—(1) That the state's investments in cost effective energy efficiency improvements protect ratepayers and promote reliable electric service by doing each of the following:~~

~~—(A) Ensure that moneys collected through the nonbypassable system benefits charge authorized pursuant to this article prioritize energy efficiency programs for low and moderate income customers, customers who have higher energy usage, and customers in more extreme cooling and heating climates, and ensure that opportunities are made available to all ratepayer classes paying the charge.~~

~~—(B) Establish measurement verification and evaluation criteria prior to program implementation.~~

~~—(C) If the commission establishes a risk-reward incentive mechanism, align electrical corporation incentives for administering energy efficiency activities with actual utility accomplishments.~~

~~—(2) That the state's investments in cost effective energy efficiency improvements are undertaken so that they achieve accountability and transparency by doing each of the following:~~

~~—(A) Make data publicly available in a manner that provides sufficient information to ascertain the total installed cost of energy efficiency measures, the amount of expected energy savings, the total amount of energy efficiency incentives provided, the location where provided, the type of measures installed in each electrical corporation's service area, the processing time for providing incentives, and any type or cause of failure of energy~~

~~efficiency measures.~~

~~—(B) Verify energy demand reductions by region and assess progress toward energy efficiency goals, ensure that consumer information is made publicly available to assist customers in finding reliable contractors and energy efficiency measures, to understand the cost and benefits of energy efficiency measures, to understand their energy bills, and to understand the costs and benefits of various means of financing energy efficiency measures.~~

~~—(C) Make all contract bidding opportunities publicly available, including contracts administered by electrical corporations or third party administrators, and ensure that small businesses and minority, women, and disabled veteran owned businesses are considered during the contract bidding process.~~

~~—(D) Ensure that all products of all consultant contracts are made available in a timely manner on the commission's Internet Web site.~~

~~—(3) That the cost effectiveness of investments in energy efficiency are evaluated consistent with all of the following:~~

~~—(A) Retain the commission's flexibility when evaluating the cost effectiveness of measures installed in low income households.~~

~~—(B) Allow projects to reasonably exceed cost limitations for measures installed in low income households.~~

~~—(C) Ensure that all energy efficiency programs are designed to account for the benefits as well as the costs of the programs.~~

~~—(4) That all of the following program design elements are incorporated into the state's investments in cost effective energy efficiency improvements:~~

~~—(A) Ensure that all program funds collected through the nonbypassable system benefits charge authorized by this article are used only to support deployment of energy efficiency measures, training on California building health and safety codes and regulations to ensure quality of installation, measurement, and evaluation, cost effectiveness analyses, and program administration.~~

~~—(B) Require that all energy efficiency measures allowed to participate in the programs maximize the reduction in electricity demand.~~

~~—(C) Ensure that total expenditures for measurement and evaluation, cost effectiveness, and program administration, when added together, do not exceed 10 percent of the total funding.~~

~~—(D) Ensure that third party entities, including regional government energy management centers, directly administer a reasonable portion of the program.~~

~~—(E) Include comprehensive approaches to maximize energy efficiency, avoid lost opportunities, and overcome implementation barriers.~~

~~—(F) Utilize rebates, loans, interest rate reductions, or a combination of those measures, for the installation of energy efficiency measures.~~

~~—(G) Incorporate integrated demand side management principles to the maximum extent practicable.~~

~~—(H) Establish dollar per kilowatt limits for individual projects and establish maximum energy efficiency project incentives to ensure that incentives do not exceed more than 30 percent of the installed cost of a specific energy efficiency project, with the commission retaining the authority to periodically reduce the total incentives available in response to reduced installation costs or market response that indicates that the then existing amount of available incentives are no longer needed to encourage use of energy efficiency~~

~~measures.~~

~~—(I) Ensure that projects that receive incentives funded pursuant to this article are not also receiving incentives through other ratepayer funded programs, including the Public Interest Research, Development, and Demonstration Program (Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code), the Renewable Energy Resources Program (Chapter 8.6 (commencing with Section 25740) of the Public Resources Code), and the California Solar Initiative (Article 1 (commencing with Section 2851) of Chapter 9 of Part 2), in a manner that exceeds the maximum dollar per kilowatt limit established pursuant to subparagraph (H).~~

~~—(J) Evaluate whether to administer programs to raise public awareness, generally, or programs targeted to particular customer groups, to encourage implementation of energy efficiency measures, including behavior changes that reduce energy consumption, provided that the commission ensure that any funds expended for those programs do not significantly reduce the funding available for encouraging the adoption of energy efficiency measures or behavioral changes that reduce energy consumption.~~

~~—(K) Ensure that moneys collected by an electrical corporation are not expended to provide incentives to customers outside of the service territory of the electrical corporation.~~

~~—(5) That the state's investments in cost effective energy efficiency improvements coordinate with the state's research, development, and demonstration programs and building code energy efficiency programs by doing both of the following:~~

~~—(A) Ensure that moneys collected through the nonbypassable system benefits charge to fund energy efficiency not be used to fund research, development, and demonstration or to develop or create amendments to the state building codes.~~

~~—(B) Coordinate with the Public Interest Research, Development, and Demonstration Program (Chapter 7.1 (commencing with Section 25620) of Division 15 of the Public Resources Code) to identify specific areas of research or to identify work needed to amend building codes that can be addressed through the Public Interest Research, Development, and Demonstration Program.~~

~~—(6) (A) That program results be reported annually to the Legislature and posted on the commission's Internet Web site for each program administered by an electrical corporation, third party administrator, or local government, to include verifiable energy use reductions achieved through the program, the number of measures implemented, the demographics where the measures were implemented, and the demographics of any jobs created.~~

~~—(B) The report submitted to the Legislature pursuant to this paragraph shall be submitted in compliance with Section 9795 of the Government Code.~~

~~—SEC. 2.—~~ SECTION 1. Section 399.8 of the Public Utilities Code is amended to read:

399.8. (a) In order to ensure that the citizens of this state continue to receive safe, reliable, affordable, and environmentally sustainable electric service, it is the policy of this state and the intent of the Legislature that prudent investments in energy efficiency, renewable energy, and research, development and demonstration shall continue to be made.

(b) (1) Every customer of an electrical corporation shall pay a nonbypassable system benefits charge authorized pursuant to this article. The system benefits charge shall fund energy efficiency,

renewable energy, and research, development and demonstration.

(2) Local publicly owned electric utilities shall continue to collect and administer system benefits charges pursuant to Section 385.

(c) (1) The commission shall require each electrical corporation to identify a separate rate component to collect revenues to fund energy efficiency, renewable energy, and research, development and demonstration programs authorized pursuant to this section beginning January 1, 2002, and ending January 1, 2020. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage.

(2) This rate component shall not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. If the amounts specified in paragraph (1) of subdivision (d) are not recovered fully in any year, the commission shall reset the rate component to restore the unrecovered balance, provided that the rate component shall not exceed, for any tariff schedule, the level of the rate component that was used to recover funds authorized pursuant to Section 381 on January 1, 2000. Pending restoration, any annual shortfalls shall be allocated pro rata among the three funding categories in the proportions established in paragraph (1) of subdivision (d).

(d) The commission shall order San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company to collect these funds commencing on January 1, 2002, as follows:

(1) Two hundred twenty-eight million dollars (\$228,000,000) per year in total for energy efficiency and conservation activities, sixty-five million five hundred thousand dollars (\$65,500,000) in total per year for renewable energy, and sixty-two million five hundred thousand dollars (\$62,500,000) in total per year for research, development and demonstration. The funds for energy efficiency and conservation activities shall continue to be allocated in proportions established for the year 2000.

(2) The amounts shall be adjusted annually at a rate equal to the lesser of the annual growth in electric commodity sales or inflation, as defined by the gross domestic product deflator.

(e) The commission shall ensure that each electrical corporation allocates funds transferred by the Energy Commission pursuant to subdivision (b) of Section 25743 in a manner that maximizes the economic benefit to all customer classes that funded the New Renewable Resources Account.

(f) The commission and the Energy Commission shall retain and continue their oversight responsibilities as set forth in Sections 381 and 384, and Chapter 7.1 (commencing with Section 25620) and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code.

(g) An applicant for the Large Nonresidential Standard Performance Contract Program funded pursuant to paragraph (1) of subdivision (b) and an electrical corporation shall promptly attempt to resolve disputes that arise related to the program's guidelines and parameters prior to entering into a program agreement. The applicant shall provide the electrical corporation with written notice of any dispute. Within 10 business days after receipt of the notice, the parties shall meet to resolve the dispute. If the dispute is not resolved within 10 business days after the date of the meeting, the

electrical corporation shall notify the applicant of his or her right to file a complaint with the commission, which complaint shall describe the grounds for the complaint, injury, and relief sought. The commission shall issue its findings in response to a filed complaint within 30 business days of the date of receipt of the complaint. Prior to issuance of its findings, the commission shall provide a copy of the complaint to the electrical corporation, which shall provide a response to the complaint to the commission within five business days of the date of receipt. During the dispute period, the amount of estimated financial incentives shall be held in reserve until the dispute is resolved.

~~SEC. 3.~~ SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SEC. 4.~~ SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent interruption of the funding and administration of programs funded through the public goods charge and to reform administration of those programs to better serve the needs of ratepayers and the persons participating in those programs, it is necessary for this act to take effect immediately.