

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco**M e m o r a n d u m**

Date: May 22, 2012

To: The Commission
(Meeting of May 24, 2012)

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

Subject: **SB 998 (de León) – Energy efficiency, renewable energy, and distributed generation on-bill repayment programs.**
As amended: May 2, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED**SUMMARY OF BILL**

This bill would require the California Public Utilities Commission (CPUC) to require electric and gas corporations with more than 100,000 service connections in the state to develop and implement an on-bill repayment (OBR) program for eligible energy efficiency, renewable and distributed generation (DG) energy investments.

SB 998 makes changes in the Public Resources Code to update an informational booklet given to homeowners, renters and others about the statewide home energy rating program. The bill also changes the Public Utilities Code to allow shutoff for nonpayment of OBR for residential customers. Additionally, SB 998 specifies the following:

- The CPUC will establish requirements to be included in each utility's on-bill repayment programs submitted to the commission for approval. These include: project eligibility criteria, project inspection requirements, notice and disclosure requirements, and protections and program access for middle- and low- income customers.
- The repayment obligation for on-bill repayment runs with the meter, not the customer. (As background, currently most debts are associated with an individual or company.)
- The loan (or other financing mechanism) payment is to be listed as a separate line item on the utility bill.

- The utility will collect the amounts owed for the loan/financing on the utility bill on behalf of a third party that provided financing and promptly remit payment to the third party.
- The commission *may* require proportional payment to the utility and the lender if the amount paid by the customer is less than the amount billed to the customer.
- When disputes arise between the customer and a third party lender, the utility shall hold the moneys in an interest bearing account, if instructed to do so by a court or arbitrator.

Regarding partial payment, SB 998 says, “If the commission requires that payment be prorated, any shortfall in payment by the customer is a failure to pay for electric or gas service, consistent with the rules established by the commission for a customer’s failure to pay for service.” Though it is not expressly said in the bill, the above-quoted language could make it possible for the utility to shut off power to residential customers for nonpayment to a third party. This feature of the bill frustrates the consumer protections under the existing Public Utilities Code (see below for more discussion).

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

The CPUC should be generally supportive of the contents of this bill for energy efficiency, as it addresses significant legal barriers for OBR. As discussed in further detail below, OBR is a new program requirement for nonresidential and multifamily customers in the Guidance Decision on the 2013-2014 Energy Efficiency Portfolios (approved on May 10, 2012). Earlier this year, Energy Division decided not to pursue plans to require OBR for residential customers due to the legal hurdles (shut off for non-payment, attachment to meter) that this bill is intended to address.

The bill has implications for financing, loan origination and servicing which are subjects that the CPUC does not have expertise. Therefore the analysis provided by the CPUC on the bill is by no means complete. As the public review process of OBR for energy efficiency continues over the next year, it is likely that additional legal barriers to OBR will arise that will require follow-up legislation.

Regarding the renewables/DG portions of the bill, the CPUC should be neutral. Adding renewables and DG to the activities covered under the on-bill payment plan offers potential but uncertain benefits offset by the inevitably greater administrative burden on utilities. Furthermore, because this has not been vetted in any procedural framework, the pros and cons are difficult to evaluate.

SUMMARY OF SUGGESTED AMENDMENTS

- (1) The bill should make clear that it applies only to investor owned utilities (IOUs). As currently written, the bill applies to “electric and gas corporations.” Public Utilities Code Section 218 (a) defines an “electrical corporation” to include “every corporation or person owning, controlling, operating, or managing any electric

plant for compensation within this state...” This definition includes publicly owned utilities.

- (2) The bill’s text should be revised to change the “100,000 or more service connections” language to “250,000 or more service connections” so that the bill does not apply to small utilities like Southwest Gas, since Southwest Gas is not currently part of the IOU’s energy efficiency portfolio.
- (3) Section 2834 (c) and Section 2835 (c)(5) should be amended to make on-bill repayment able to run with the meter rather than require that it shall run with the meter. Such language would build in some flexibility, should the CPUC’s public review process, consisting of expert consultants, workshops and work groups, uncover exceptions where attachment to the meter is not beneficial.
- (4) The bill’s text should be revised such that the CPUC *may* require electrical and gas corporations to develop an OBR program for eligible renewable energy and DG. On-bill payment plans outside the scope of energy efficiency have not yet been fully vetted and have uncertain benefits requiring additional time to assess.

DIVISION ANALYSIS (Energy Division)

Regarding Energy Efficiency:

- The bill dovetails with requirements in the May 10, 2012 Guidance Decision on the 2013-2014 Energy Efficiency Portfolios. The Decision requires the IOUs to develop on-bill repayment programs for non-residential and multifamily customers, and opens the door for IOUs to propose residential OBR pilots, within existing statutory limitations.
- Notably, the bill goes further than the Decision by expanding OBR to renewables and DG.

A number of statutory limitations could limit or prevent the CPUC from developing an OBR program, particularly in the residential sector. To this end, this bill:

1. Makes it possible to attach debt to the real property as part of the tariff rate and specifies that the utility or agent will provide specific information (estimated savings, amount that remains owed, etc.) to a new customer that has purchased/rented a property on which there is a debt.
 - Pros of attaching debt to the utility meter: Attaching debt to a tariff/meter separates the debt obligation from the individual and ties it to the property on which the improvements are made. This opens the door for more comprehensive, deeper retrofits whose payback periods might extend beyond the anticipated tenure of a current owner or occupant. This would also likely reach into a borrower pool of customers who until now have been under-represented in the energy efficiency retrofit market.

- Cons of attaching debt to the utility meter: Attaching a debt to a tariff /meter has not been previously done in California, though it has been done in other states. CPUC in-house legal analysis indicated repayment obligation attached to a meter might be OK only if the subsequent customer has knowledge of the debt and consents to assuming repayment for it. SB 998 requires the CPUC to ensure that OBR programs include “adequate disclosure that allows customers to knowingly weight the benefits of investment and determine whether the investment is in the customer’s best interest.” The bill does not overtly address the issue of whether the subsequent customer consents to the OBR obligation, instead leaving this issue to the CPUC to resolve.
2. Provides guidance on what happens when a customer partially pays his bill. SB 998 says: “the commission may require... that the amount paid by the customer be prorated in proportion to the respective charges of the [utility] and the [lender].”
- This is a legal issue that prospective third party lenders care a lot about because it influences the amount of risk they would bear by participating in an OBR program. Some OBR programs outside of California have arrangements similar to what is described here, and there are some programs where utility bill debts are paid first and others where partial debts are paid in alternating months where the utility is paid first one month and the third party lender is paid first on the second month.
3. Exempts third party lenders of OBR from certain provisions of the PU Code and opens the door for shut-off for nonpayment of a third party service for residential service. SB 998 gives the CPUC latitude to decide whether to require shortfalls in payment to be prorated and “any shortfall in payment by the customer is a failure to pay for electric or gas service, and shall be treated consistent with the rules established by the commission for a customer’s failure to pay for service.” Though it is not expressly said, with this language, SB 998 gives the CPUC room to give the utility authority to shut off power to residential customers for nonpayment of a third party. This creates exemptions to Public Utilities Code sections 777.1(e)(3) and 779.2(a).
- Pros: Shut-off provides a form of “free” security that should induce capital providers to offer better terms and lower interest rates. This lower cost of capital makes deeper retrofits more affordable to a broader set of borrowers than might otherwise qualify.
 - Cons: Consumer advocacy groups are very concerned that OBR could increase utility shut-offs caused by nonpayment to third parties. Utilities are leery of the associated bad press that could result from residential shut-offs for energy loans.

Regarding Renewables:

Unlike energy efficiency, some forms of renewable DG already have a robust market mechanism that provides upfront financing and in many cases offers the systems at no cost to the customer generator through a third party owner (TPO). The TPO model has been successful for firms such as SolarCity, SunRun, Sungevity, etc. These firms offer long term lease or purchased power deals to utility customers. Smaller, independent contractors who currently sell systems on a cash basis could potentially benefit if a mechanism like OBR were to expand the market in this direction.

This bill would provide an additional financing option for renewable DG, but could create some complications for the TPO model. This program will inevitably involve a complication to customer billing and thus raise utility administrative costs. There is no available credible estimate of this administrative cost impact, but it is not clear that the added cost is justified for a market that appears to already have several financing options. Because this proposal has not been vetted in a public forum or proceeding, it is difficult to predict at this time (1) what are the added benefits not considered here, or (2) what are the added implementation difficulties or market distortions not considered here that might also deserve consideration.

PROGRAM BACKGROUND

Regarding Energy Efficiency:

In the current 2010-2012 program cycle, the four California IOUs offer On-Bill Finance (OBF). OBF offers non-residential customers a way to arrange to pay for energy efficiency upgrades without incurring any upfront costs. Under this program a utility provides customers with unsecured loans which cover 100% of the energy efficiency equipment and installation costs (net of rebates and other incentives). Customers then repay the loans through charges that are added on to their regular utility bills. Loan capital is raised through utility rates and the energy efficiency budget covers defaults and pays for program administration on top of the budget figures shown below. Decision D.09-09-047 set the parameters for the 2010-2012 OBF; terms include:

- Interest rate: 0 percent.
- Commercial and industrial loan minimum and maximum (per meter): \$5,000 to \$100,000.
- Commercial and industrial loan term: typically 5 years, but may be extended to expected useful life.
- Institutional loan minimum and maximum: \$5,000 to \$1,000,000.
- Institutional loan term: up to 10 years or expected useful life, whichever is less.
- Loans are non-transferrable.
- Partial or non-payment of a loan may result in shut off of utility service.

OBF current program statistics:

- 2020-2012 Loan pool budget: \$41.5M, as of September 2011, \$24.8M has been lent.
- SCE's \$16M budget is fully committed; more was requested in an Advice Letter
- Participants: 1,000 through September 2011
- Default rate: <1% so far
- New at PG&E this program cycle.

On May 10, 2012, the CPUC approved a Guidance Decision on the 2013-2014 Energy Efficiency Portfolios. The Guidance Decision greatly expands the role of financing in the energy efficiency portfolio: it dedicates \$200M to energy efficiency financing over this two year program cycle, continues on-bill financing, funds loan programs created by the American Reinvestment and Recovery Act, and creates several new programs to ensure that low-interest loans are available to all customer sectors. The Decision requires the IOUs to develop on-bill repayment programs for non-residential and multifamily customers, and opens the door for IOUs to propose residential OBR pilots, within existing statutory limitations.

Regarding Renewables:

As noted above, TPOs already are dominant in the residential rooftop photovoltaic market. SB 998 could provide additional financing options.

FISCAL IMPACT

SB 998 would require a one-time cost of \$151,281 for one ALJ II for 12 months to oversee the required proceeding and ongoing costs of \$120,242 annually for one PURA V specializing in OBR, for a total fiscal impact of \$271,522 in the first year and \$120,242 annually thereafter.

STATUS

SB 998 is pending consideration in the Senate Appropriations Committee on May 24th.

SUPPORT/OPPOSITION

Support:

Environmental Defense Fund (sponsor)
Abundant Power
Beutler Corporation
Building Owners and Managers Association of California
California Business Properties Association
California Housing Partnership Corporation
Carbon Lighthouse
Commercial Real Estate Development Association
Distributed Energy Consumer Advocates

Division of Ratepayer Advocates (if amended)
Green Campus Partners
Groom Energy Solutions
International Council of Shopping Centers
Lime Energy
NAIOP of California
Renewable Funding
Rockwood Consulting
Saving Neighborhood Energy to Generate Neighborhood Wealth
SClenergy
SolarCity
Sunetric
Sunrun

Oppose:

Bear Valley Electric Service (unless amended)
California Land Title Association (unless amended)
California Pacific Electric Company (unless amended)
Pacific Gas and Electric Company
Pacific Power (unless amended)
San Diego Gas & Electric Company (unless amended)
Sempra Energy Utilities (unless amended)
Southern California Edison
Southern California Gas Company (unless amended)

STAFF CONTACTS

Lynn Sadler, Director-OGA (916) 327-3277
Nick Zanjani, Legislative Liaison-OGA (916) 327-3277

ls1@cpuc.ca.gov
nkz@cpuc.ca.gov

BILL LANGUAGE

BILL NUMBER: SB 998 AMENDED
BILL TEXT

AMENDED IN SENATE MAY 2, 2012
AMENDED IN SENATE APRIL 17, 2012

INTRODUCED BY Senator De León
 (Coauthors: Senators Blakeslee and Correa)
 (Coauthor: Assembly Member Solorio)

FEBRUARY 6, 2012

An act ~~to add Section 2079.10b to the Civil Code,~~
to amend Section 25402.9 of the Public Resources Code, and
to amend Sections 777.1 and 779.2 of, and to add Chapter 7.6
(commencing with Section 2833) to Part 2 of Division 1 of, the Public
Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 998, as amended, De León. Energy efficiency, renewable energy,
and distributed generation on-bill repayment programs.

Under existing law, the Public Utilities Commission has regulatory
authority over public utilities, including electrical corporations
and gas corporations, as defined. Existing law authorizes the
commission to fix the rates and charges for every public utility, and
requires that those rates and charges be just and reasonable.

This bill would require the commission to require an electrical
corporation and gas corporation with 100,000 or more service
connections in the state to develop and implement an on-bill
repayment program, as defined, for eligible energy efficiency,
renewable energy, and distributed generation investments, financed
pursuant to an agreement with an OBR partner, as defined, on terms
that the commission approves and ensures that the terms are just and
reasonable. The bill would require the commission ensure that any
on-bill repayment program approved by the commission include certain
elements. The bill would authorize the commission to require an
electrical corporation or gas corporation to treat any resulting
shortfall in payment for electric or gas service consistent with the
rules established by the commission for a customer's failure to pay
for electric or gas service. The bill would authorize the commission
to order an electrical corporation or gas corporation with less than
100,000 service connections in the state to establish on-bill
repayment programs based upon each utility's individual
circumstances.

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

Because the provisions of this bill would require action by the
commission to implement its requirements, a violation of the

commission's orders would impose a state-mandated local program by creating a new crime.

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

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

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

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

~~SECTION 1. Section 2079.10b is added to the Civil Code, to read:~~

~~2079.10b. (a) On or after July 1, 2013, every seller of real property subject to an on bill repayment obligation, pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2 of Division 1 of the Public Utilities Code, shall deliver to the buyer an on bill repayment notice and disclosure as adopted by the Public Utilities Commission pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 2835 of the Public Utilities Code.~~

~~(b) Upon delivery of the completed notice and disclosure form to the buyer of real property, the seller or agent is not required to provide additional information relative to the on bill repayment contract and the information in the notice and disclosure form is adequate to inform the buyer about the existence of the energy efficiency, renewable energy, or distributed generation improvement, the on bill repayment program contract, and the repayment obligation that will be assigned to and assumed by the buyer upon beginning electric or gas service pursuant to Section 2835 of the Public Utilities Code.~~

~~SEC. 2. SECTION 1. Section 25402.9 of the Public Resources Code is amended to read:~~

~~25402.9. (a) On or before July 1, 1996, the commission shall develop, adopt, and publish an informational booklet to educate and inform homeowners, rental property owners, renters, sellers, brokers, and the general public about the statewide home energy rating program adopted pursuant to Section 25942.~~

~~(b) In the development of the booklet, the commission shall consult with representatives of the Department of Real Estate, the Department of Housing and Community Development, the Public Utilities Commission, investor-owned and municipal utilities, cities and counties, real estate licensees, home builders, mortgage lenders, home appraisers and inspectors, home energy rating organizations, contractors who provide home energy services, consumer groups, and environmental groups.~~

~~(c) It is the intent of the Legislature that when the informational booklet is next updated, as existing resources permit or as private resources are made available, that the booklet include information about home energy conservation and about on-bill repayment programs developed and implemented pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2 of Division 1 of the Public Utilities Code. The commission may charge a fee for the informational booklet to recover its costs under this section.~~

~~SEC. 3. SEC. 2. Section 777.1 of the~~

Public Utilities Code is amended to read:

777.1. (a) If an electrical, gas, heat, or water corporation furnishes residential service to residential occupants through a master meter in a multiunit residential structure, mobilehome park, or permanent residential structure in a labor camp, as defined in Section 17008 of the Health and Safety Code, and the owner, manager, or operator of the structure or park is listed by the corporation as the customer of record, the corporation shall make every good faith effort to inform the residential occupants, by means of a written notice posted on the door of each residential unit at least 15 days prior to termination, when the account is in arrears, that service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each residential unit, the corporation shall post two copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice shall further inform the residential occupants that they have the right to become customers, to whom the service will then be billed, without being required to pay any amount which may be due on the delinquent account. The notice also shall specify, in plain language, what the residential occupants are required to do in order to prevent the termination of, or to reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the corporation who can assist the residential occupants in continuing service; and the address and telephone number of a qualified legal services project, as defined in Section 6213 of the Business and Professions Code, which has been recommended by the local county bar association. The notice shall be in English and the languages listed in Section 1632 of the Civil Code.

(b) The corporation is not required to make service available to the residential occupants unless each residential occupant or a representative of the residential occupants agrees to the terms and conditions of service and meets the requirements of law and the corporation's rules and tariffs. However, if one or more of the residential occupants or the representative of the residential occupants are willing and able to assume responsibility for subsequent charges to the account to the satisfaction of the corporation, or if there is a physical means, legally available to the corporation, of selectively terminating service to those residential occupants who have not met the requirements of the corporation's rules and tariffs or for whom the representative of the residential occupants is not responsible, the corporation shall make service available to those residential occupants who have met those requirements or on whose behalf those requirements have been met.

(c) If prior service for a period of time or other demonstration of credit worthiness is a condition for establishing credit with the corporation, residence and proof of prompt payment of rent or other credit obligation during that period of time acceptable to the corporation is a satisfactory equivalent.

(d) Any residential occupant who becomes a customer of the corporation pursuant to this section whose periodic payments, such as rental payments, include charges for residential electrical, gas, heat, or water service, where those charges are not separately stated, may deduct from the periodic payment each payment period all reasonable charges paid to the corporation for those services during the preceding payment period.

(e) If a corporation furnishes residential service subject to

subdivision (a), the corporation shall not terminate that service in any of the following situations:

(1) During the pendency of an investigation by the corporation of a customer dispute or complaint.

(2) If the customer has been granted an extension of the period for payment of a bill.

(3) For an indebtedness owed by the customer to any other person or corporation or if the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, or water corporation demanding payment therefor. This paragraph does not apply to an on-bill repayment obligation established pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2.

(4) If a delinquent account relates to another property owned, managed, or operated by the customer.

(5) If a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

(f) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the residential occupant or the representative of the residential occupants may commence an action for the recovery of all of the following:

(1) Reasonable costs and expenses incurred by the residential occupant or the representative of the residential occupants related to restoration of service.

(2) Actual damages related to the termination of service.

(3) Reasonable attorney's fees of the residential occupants, the representative of the residential occupants, or each of them, incurred in the enforcement of this section, including, but not limited to, enforcement of a lien.

(g) Notwithstanding any other provision of law, and in addition to any other remedy provided by law, if the owner, manager, or operator, by any act or omission, directs, permits, or fails to prevent a termination of service while any residential unit receiving that service is occupied, the corporation may commence an action for the recovery of all of the following:

(1) Delinquent charges accruing prior to the expiration of the notice prescribed by subdivision (a).

(2) Reasonable costs incurred by the corporation related to the restoration of service.

(3) Reasonable attorney's fees of the corporation incurred in the enforcement of this section or in the collection of delinquent charges, including, but not limited to, enforcement of a lien.

If the court finds that the owner, manager, or operator has paid the amount in arrears prior to termination, the court shall allow no recovery of any charges, costs, damages, expenses, or fees under this subdivision from the owner, manager, or operator.

An abstract of any money judgment entered pursuant to subdivision (f) or (g) of this section shall be recorded pursuant to Section 697.310 of the Code of Civil Procedure.

(h) No termination of service subject to this section may be effected without compliance with this section, and any service wrongfully terminated shall be restored without charge to the residential occupants or customer for the restoration of the service.

In the event of a wrongful termination by the corporation, the corporation shall, in addition, be liable to the residential occupants or customer for actual damages resulting from the termination and for the costs of enforcement of this section, including, but not limited to, reasonable attorney's fees, if the residential occupants or the representative of the residential occupants made a good faith effort to have the service continued without interruption.

(i) The commission shall adopt rules and orders necessary to implement this section and shall liberally construe this section to accomplish its purpose of ensuring that service to residential occupants is not terminated due to nonpayment by the customer unless the corporation has made every reasonable effort to continue service to the residential occupants. The rules and orders shall include, but are not limited to, reasonable penalties for a violation of this section, guidelines for assistance to residents in the enforcement of this section, and requirements for the notice prescribed by subdivision (a), including, but not limited to, clear wording, large and boldface type, and comprehensive instructions to ensure full notice to the resident.

(j) Nothing in this section broadens or restricts any authority of a local agency that existed prior to January 1, 1989, to adopt an ordinance protecting a residential occupant from the involuntary termination of residential public utility service.

(k) This section preempts any statute or ordinance permitting punitive damages against any owner, manager, or operator on account of an involuntary termination of residential public utility service or permitting the recovery of costs associated with the formation, maintenance, and termination of a tenants' association.

(l) For purposes of this section, "representative of the residential occupants" does not include a tenants' association.

~~SEC. 4.~~ SEC. 3. Section 779.2 of the Public Utilities Code is amended to read:

779.2. (a) No electrical, gas, heat, telephone, or water corporation may terminate residential service for nonpayment of any delinquent account or other indebtedness owed by the customer or subscriber to any other person or corporation or when the obligation represented by the delinquent account or other indebtedness was incurred with a person or corporation other than the electrical, gas, heat, telephone, or water corporation demanding payment therefor.

(b) (1) Subdivision (a) does not apply to a telephone corporation operating within service areas which furnishes billing services to the subscribers of a telephone corporation operating between service areas pursuant to tariffs on file with the commission providing for the furnishing of those billing services. The commission shall require that these tariffs also provide for adequate subscriber notice, review, and appeal procedures prior to any termination of service for nonpayment of a delinquent account.

(2) Subdivision (a) does not apply to any privately owned or publicly owned public utility which collects sanitation or sewerage charges for a public agency pursuant to agreement under Section 54346.2 of the Government Code or Section 5472.5 of the Health and Safety Code.

(3) Subdivision (a) does not apply to an on-bill repayment obligation established pursuant to Chapter 7.6 (commencing with Section 2833) of Part 2.

~~SEC. 5.~~ SEC. 4. Chapter 7.6

(commencing with Section 2833) is added to Part 2 of Division 1 of the Public Utilities Code, to read:

CHAPTER 7.6. ENERGY EFFICIENCY AND RENEWABLE ENERGY ON-BILL REPAYMENT PROGRAMS

2833. The purpose of this chapter is to establish on-bill repayment programs by electrical corporations and gas corporations, subject to the direction and supervision of the commission, to enable increased access to financing for clean energy improvements, to incentivize private investors to invest in California clean energy improvements, to stimulate the state economy by creating jobs for contractors and other persons who complete new energy improvements, and to reinforce the leadership role of the state in the new energy economy, thereby attracting clean energy manufacturing facilities and related jobs to the state.

2834. For purposes of this chapter, the following terms have the following meanings:

(a) "OBR partner" means the person or entity owed payment for eligible energy efficiency, renewable energy, or distributed generation investments pursuant to an on-bill reimbursement program, and may include, but is not limited to, a bank, savings and loan, credit union, or independent solar energy producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9. Financing may be provided in the form of a loan, lease, power purchase agreement, energy service agreement, or other financing structure as approved by the commission.

(b) "On-bill repayment program" means a program approved by the commission that enables building owners or occupants, through their regular utility billings for electric or gas service, to pay for the costs to finance eligible energy efficiency, renewable energy, or distributed generation investments pursuant to an agreement with an OBR partner.

(c) "Runs with the meter," in reference to an on-bill repayment program, means that the obligation to make on-bill repayment for energy efficiency, renewable energy, or distributed generation improvements is a condition precedent for receiving electric or gas service for the property that receives the benefits of the improvements.

2835. (a) The commission shall require each electrical corporation and gas corporation with 100,000 or more service connections in the state to develop and implement on-bill repayment programs for eligible energy efficiency, renewable energy, and distributed generation investments. The commission may order an electrical corporation or gas corporation with fewer than 100,000 service connections in the state to establish on-bill repayment programs based upon each utility's individual circumstances. Nothing in this chapter requires that the on-bill repayment programs established for each electrical corporation and gas corporation that is subject to the requirements of this chapter be identical and the commission may vary program elements for each utility based upon each utility's individual circumstances. Nothing in this chapter limits the authority of the commission to approve and supervise separate on-bill repayment programs with different features for different categories of properties, including single-family residential, multifamily residential, commercial, industrial, public buildings, and other categories of properties that the commission determines to

be appropriate. The commission shall approve the on-bill repayment programs developed by each electrical corporation and gas corporation to ensure that the terms of the program are just and reasonable and shall supervise the programs to ensure that the programs are administered in compliance with the terms approved by the commission.

(b) (1) The commission shall establish requirements to be included by each electrical corporation or gas corporation in the utility's on-bill repayment programs that are submitted to the commission for approval, including, but not limited to, project eligibility criteria, the establishment of energy and cost savings evaluation standards and requirements, prepayment options, and project inspection services or requirements.

(2) ~~(A)~~ — The commission shall adopt rules for an electrical corporation, gas corporation, or agent of the utility, to provide adequate notice and disclosure to a new customer that applies to the utility for electric or gas service for a property that is subject to an on-bill repayment program contract.

~~(B) The commission shall adopt a standard notice and disclosure form for a seller of real property subject to an on-bill repayment contract to supply to a buyer of the property pursuant to Section 2079.10b of the Civil Code.~~

(3) The commission shall ensure that any on-bill repayment program for residential customers approved by the commission includes both of the following program elements:

(A) Protections and program access for middle- and low-income customers.

(B) Adequate disclosure that allows customers to knowingly weigh the benefits of investment and determine whether the investment is in the customer's best interest.

(c) (1) Investments for energy efficiency, renewable energy, and distributed generation pursuant to a commission approved on-bill repayment program are eligible for on-bill repayment, with the repayment obligation running with the meter pursuant to paragraph (5).

(2) Each electrical corporation and gas corporation shall require that the utility be provided with a copy of financing documents as a condition for providing on-bill repayment services.

(3) The on-bill repayment amount shall be listed by the electrical corporation or gas corporation as a separate line item on the utility's billing to the customer.

(4) (A) The commission shall require that on-bill repayment amounts collected by an electrical corporation, gas corporation, or the utility's agents be promptly remitted to the OBR partner.

(B) The commission may require, if the amount paid by the customer is less than the amount billed to the customer, that the amount paid by the customer be prorated in proportion to the respective charges of the electrical corporation or gas corporation and the OBR partner and require that the portion owed to the OBR partner be promptly remitted to the OBR partner. If the commission requires that payment be prorated, any shortfall in payment by the customer is a failure to pay for electric or gas service and shall be treated consistent with the rules established by the commission for a customer's failure to pay for service.

(C) For purposes of Sections 777.1 and 779.2, the on-bill repayment obligation is a payment obligation owed by the customer to

the electrical corporation or gas corporation and payment by the customer to the electrical corporation or gas corporation extinguishes that portion of the debt owed by the customer irrespective of whether the electrical corporation or gas corporation pays the OBR partner pursuant to the on-bill repayment program. The obligation of the electrical corporation or gas corporation to pay the OBR partner pursuant to the on-bill repayment program does not make the obligation owed by the consumer a debt owed to a third party pursuant to paragraph (3) of subdivision (e) of Section 777.1 or subdivision (a) of Section 779.2.

(D) If a dispute arises between the customer and the OBR partner over the customer's obligation to pay the on-bill repayment amount, the electrical corporation, gas corporation, or the utility's agent shall hold the amounts collected on behalf of the OBR partner in an interest-bearing account, if instructed to do so by a court having jurisdiction over the dispute, or by an arbitrator appointed to resolve the dispute.

(5) The obligation to pay pursuant to an on-bill repayment program contract runs with the meter. Acceptance of electric or gas service, following submission of an application for that service and receipt of the notice and disclosure pursuant to rules adopted by the commission pursuant to paragraph (2) of subdivision (b), operates as an assignment of the contract and assumption of the contractual rights and obligations of the on-bill repayment contract for the duration of service and the going forward obligation to pay on-bill reimbursement is an obligation for the receipt of electric or gas service. Acceptance of electric or gas service does not operate as an assumption of any past due amounts owed prior to the beginning of that service by the person or entity that acquires the property.

~~SEC. 6.~~ 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.