

Date June 26, 2009

Item No. 10

LOCAL AGENCY FORMATION COMMISSION
AGENDA PACKET CONTENTS LIST *

- Memo from Nancy C. Miller, Interim Executive Officer
- Senate Bill No. 695
- Letter from LAFCO to Senators Kehoe and Wright, dated June 26, 2009
- Proposed Amendment to Senate Bill 695
- _____
- _____
- _____
- _____
- _____
- _____

Exceeds 20 pages; see file to review
Available for review at City Hall, Room 244

Completed by: Alisa Furuzawa

Date: June 23, 2009

***This list reflects the explanatory documents provided**

San Francisco Local Agency Formation Commission

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. 415.554.5184
Fax. 415.554.5163

TO: LAFCo Commissioners

FROM: Nancy C. Miller, Interim Executive Officer

DATE: June 26, 2009

SUBJECT: Item 10: Executive Officer's Report: Senate Bill 695. (Discussion Item)

Background: Senate Bill 695 (SB 695) was introduced by California State Senator Christine Kehoe on February 27, 2009. As currently drafted, section 2 of the bill would prohibit the rights of retail end-use customers to receive electrical service from a provider other than an electrical corporation, including aggregators, until the Legislature lifted this suspension by further statute. It would also place a cap on the total market share an electric service provider could obtain. This cap would affect CCAs, since CCAs generally obtain their supply of electricity from electric service providers.

Update: In an attempt to amend the language of SB 695 to specifically exempt CCAs, Michael Campbell has worked with the SFPUC legislative team and I have worked with Senator Kehoes' staff to have SB 695 amended. Additionally the Sierra Club and other stakeholders have been involved to amend the language as well. According to earlier correspondence, Senator Kehoe has agreed to, but has yet to implement, the requested amendments.

RECOMMENDATION:

The Interim Executive Officer recommends that the Commission authorize the Chair to submit a letter to Senator Kehoe, and Senator Roderick Wright, a listed co-author, on behalf of the Commission requesting that SB 695 be amended to specifically exclude community choice aggregators from the definition of "other provider", and to eliminate any market cap limitations imposed on other providers when the electricity is sold to customers of community choice aggregators.

Executive Officer's Report: Senate Bill 695
June 26, 2009
Page 2 of 2

Attachments:
SB 695
Letter From Commission
Proposed Amendments

AMENDED IN SENATE MAY 28, 2009
AMENDED IN SENATE APRIL 29, 2009
AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 695

**Introduced by Senator Kehoe
(Coauthor: Senator Wright)**

February 27, 2009

An act to amend Sections 327, 382, ~~and 739.1~~ 739.1, and 747 of, and to add Sections 365.1, 739.9, and 745 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 695, as amended, Kehoe. Electricity: rates.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical 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 prohibit the commission from requiring or permitting an electrical corporation to employ mandatory or default time-variant pricing for residential customers prior to January 1, 2016, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand response programs. The bill would require the commission to only approve an electrical corporation's use of time-variant pricing for residential customers, *beginning January 1, 2016*, if those residential customers

have the option to not receive service pursuant to time-variant pricing and incur no additional costs as a result of the exercise of that option.

(2) Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer.

This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes at or below 200% of the federal poverty guideline levels, and require that the cost of the program, with respect to electrical corporations, be recovered on an equal cent-per-kilowatthour basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008. For a public utility that is both an electrical corporation and a gas corporation, the bill would require that the cost of the program be recovered on an equal cent-per-kilowatthour or per-therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.

(3) Existing law relative to electrical restructuring requires that the electrical corporations and gas corporations that participate in the CARE program administer low-income energy efficiency and rate assistance programs described in specified statutes, and undertake certain actions in administering specified energy efficiency and weatherization programs.

This bill would require that electrical corporations, in administering the specified energy efficiency and weatherization programs, to target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage *by occupant of the dwelling units* and develop programs that specifically target *rehabilitation and weatherization of existing dwelling units and new construction* by, and new and retrofit appliances for, nonprofit affordable housing providers. The bill would require the commission to require electrical corporations to deploy enhanced low-income energy efficiency (LIEE) programs, as defined, ~~designed to reach as many eligible customers as practicable by December 31, 2014, particularly targeting those, by not later than December 31, 2020, to ensure that all eligible low-income electricity and gas customers are given the opportunity to participate in low-income energy efficiency programs, including customers occupying apartment houses or similar multiunit residential structures, and would~~

require the commission and electrical corporations and gas corporations to expend all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this requirement.

(4) Existing law relative to electrical restructuring requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers.

Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers.

Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law provides that the department is entitled to recover certain expenses resulting from its purchases and sales of electricity and authorizes the commission to enter into an agreement with the department relative to cost recovery. That law prohibits the commission from increasing the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities, until the department has recovered the costs of electricity it procured for electrical corporation retail end-use customers. That law also suspends the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the prohibition that the commission not increase the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities. The bill would authorize the commission to increase the rates charged residential

customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year. This authorization would be subject to the limitation that rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90% of the system average rate, as defined. The bill would authorize the commission to increase the rates for participants in the CARE program, subject to certain limitations. The bill would require the commission to authorize direct transactions subject to a phase-in schedule of not less than 3 years and not more than 5 years, and subject to total and yearly direct transaction limits established, as specified, for each electrical corporation. The bill would continue the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.

(5) Existing law requires the commission to prepare and submit to the Governor and the Legislature a written report on an annual basis before February 1 of each year on the costs of programs and activities conducted by an electrical corporation or gas corporation that has more than a specified number of customers in California.

This bill would also require the report to contain the commission's recommendations for actions that can be undertaken during the upcoming year to limit utility cost increases, consistent with the state's carbon reduction, energy, and environmental goals. The bill would require the commission to annually require electrical and gas corporations to study and report to the commission on measures that they recommend be undertaken to limit cost increases.

~~(5)~~

(6) 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 certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

~~(6)~~

(7) 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.

(7)

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

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 327 of the Public Utilities Code is
2 amended to read:

3 327. (a) The electrical corporations and gas corporations that
4 participate in the California Alternate Rates for Energy program,
5 as established pursuant to Section 739.1, shall administer
6 low-income energy efficiency and rate assistance programs
7 described in Sections 382, 739.1, 739.2, and 2790, subject to
8 commission oversight. In administering the programs described
9 in Section 2790, the electrical corporations and gas corporations,
10 to the extent practicable, shall do all of the following:

11 (1) Continue to leverage funds collected to fund the program
12 described in subdivision (a) with funds available from state and
13 federal sources.

14 (2) Work with state and local agencies, community-based
15 organizations, and other entities to ensure efficient and effective
16 delivery of programs.

17 (3) Encourage local employment and job skill development.

18 (4) Maximize the participation of eligible participants.

19 (5) Work to reduce consumers electric and gas consumption,
20 and bills.

21 (6) For electrical corporations, target energy efficiency and solar
22 programs to upper-tier and multifamily customers in a manner that
23 will result in long-term permanent reductions in electricity usage
24 *by occupants of the dwelling units*, and develop programs that
25 specifically target *rehabilitation and weatherization of existing*
26 *dwelling units and new construction* by, and new and retrofit
27 appliances for, nonprofit affordable housing providers.

28 (7) *For electrical corporations and for public utilities that are*
29 *both electrical corporations and gas corporations, allocate the*
30 *costs of the CARE program on an equal cents per kilowatthour or*

1 *equal cents per therm basis to all classes of customers that were*
2 *subject to the surcharge that funded the program on January 1,*
3 *2008.*

4 (b) If the commission requires low-income energy efficiency
5 programs to be subject to competitive bidding, the ~~electric~~
6 ~~electrical~~ and gas ~~corporation~~ *corporations* described in
7 subdivision (a), as part of their bid evaluation criteria, shall
8 consider both cost-of-service criteria and quality-of-service criteria.
9 The bidding criteria, at a minimum, shall recognize all of the
10 following factors:

11 (1) The bidder's experience in delivering programs and services,
12 including, but not limited to, weatherization, appliance repair and
13 maintenance, energy education, outreach and enrollment services,
14 and bill payment assistance programs to targeted communities.

15 (2) The bidder's knowledge of the targeted communities.

16 (3) The bidder's ability to reach targeted communities.

17 (4) The bidder's ability to utilize and employ people from the
18 local area.

19 (5) The bidder's general contractor's license and evidence of
20 good standing with the Contractors' State License Board.

21 (6) The bidder's performance quality as verified by the funding
22 source.

23 (7) The bidder's financial stability.

24 (8) The bidder's ability to provide local job training.

25 (9) Other attributes that benefit local communities.

26 (c) Notwithstanding subdivision (b), the commission may
27 modify the bid criteria based upon public input from a variety of
28 sources, including representatives from low-income communities
29 and the program administrators identified in subdivision (b), in
30 order to ensure the effective and efficient delivery of high quality
31 low-income energy efficiency programs.

32 SEC. 2. Section 365.1 is added to the Public Utilities Code, to
33 read:

34 365.1. (a) Except as expressly authorized by this section, and
35 subject to the limitations in subdivisions (b) and (c), the right of
36 retail end-use customers pursuant to this chapter to acquire service
37 from other providers is suspended until the Legislature, by statute,
38 lifts the suspension or otherwise authorizes direct transactions. For
39 purposes of this section, "other provider" means any person,
40 corporation, or other entity that ~~was~~ *is* authorized to provide electric

1 service within the service territory of an electrical corporation
2 pursuant to this chapter, and includes ~~electric service providers,~~
3 an aggregator, broker, or marketer, as defined in Section 331, and
4 an electric service provider, ~~as defined in Section 218.3.~~

5 ~~(b) Notwithstanding subdivision (a), the~~ *The* commission may
6 allow individual retail nonresidential end-use customers to acquire
7 electric service from ~~electric service~~ *other* providers, subject to
8 the limitation that the total annual kilowatthours supplied by all
9 ~~electric service~~ *other* providers to distribution customers of an
10 electrical corporation shall not exceed the maximum total annual
11 level of kilowatthours supplied by all ~~electric service~~ *other*
12 providers, within that electrical corporation's distribution service
13 territory, for any year between April 1, 1998, and December 31,
14 2009. ~~By January 31, 2010, Within six months of the operative~~
15 *date of this section* the commission shall calculate and adopt a
16 phase-in schedule of not less than three years, and not more than
17 five years, to raise the allowable limit of kilowatthours supplied
18 by other providers from the number of kilowatthours provided by
19 other providers as of the operative date of this section, to the
20 maximum total annual level for each electrical corporation's
21 distribution service territory.

22 (c) The commission shall not authorize additional direct
23 transactions pursuant to subdivision (b) unless both of the following
24 conditions are met:

25 (1) (A) Other providers are subject to the same requirements
26 that are applicable to the state's three largest electrical corporations
27 pursuant to the resource adequacy requirements established by the
28 commission pursuant to Section 380, the renewables portfolio
29 standard requirements established by the commission pursuant to
30 Article 16 (commencing with Section 399.11), and the requirements
31 for the electricity sector adopted by the State Air Resources Board
32 pursuant to the California Global Warming Solutions Act of 2006
33 (Division 25.5 (commencing with Section 38500) of the Health
34 and Safety Code). This requirement is made notwithstanding any
35 prior decision of the commission *to the contrary*.

36 (B) It is the intent of the Legislature in enacting this paragraph
37 that as a condition for allowing direct transactions, the resource
38 adequacy requirements, the renewable portfolio standard
39 requirements, and the requirements for reducing emissions of
40 greenhouse gases be applied in a competitively neutral manner.

1 (2) (A) The commission utilizes a mechanism that allocates
2 the net *capacity* costs of new generation resources acquired by an
3 electrical corporation ~~to meet system or local area reliability needs,~~
4 ~~on a fully nonbypassable basis, for the benefit of those customers~~
5 ~~identified in clauses (i), (ii), and (iii), to meet system or local area~~
6 ~~reliability needs established by the commission pursuant to Section~~
7 ~~380, either through a contract with a third party, pursuant to~~
8 ~~commission authorization, or through direct ownership of the~~
9 ~~generation resource by the electrical corporation, pursuant to~~
10 ~~commission direction, order, on a fully nonbypassable basis, to~~
11 all of the following:

- 12 (i) Bundled service customers of the electrical corporation.
13 (ii) Customers that purchase electricity through a direct
14 transaction with other providers.
15 (iii) Customers of community choice aggregators.

16 (B) The resource adequacy benefits of new generation resources
17 acquired by an electrical corporation ~~to meet system or local area~~
18 ~~reliability needs pursuant to subparagraph (A), shall be allocated~~
19 ~~to all customers who pay their net costs. It is the intent of the~~
20 ~~Legislature that the mechanism generally be consistent with that~~
21 ~~adopted by the commission in Decision 06-07-029, as modified~~
22 ~~by Decision 07-11-05, but that an net capacity costs. Net capacity~~
23 ~~costs shall be determined by subtracting the energy and ancillary~~
24 ~~services value of the resource from the total costs paid by the~~
25 ~~electrical corporation pursuant to a contract with a third party or~~
26 ~~the annual revenue requirement for the resource if the electrical~~
27 ~~corporation directly owns the resource. An energy auction shall~~
28 ~~not be required as a condition of employing the mechanism, but~~
29 ~~may be allowed, to value the electrical output as a means to~~
30 ~~establish the energy and ancillary services value of the resource~~
31 ~~for purposes of determining the net costs of capacity to be~~
32 ~~recovered from customers pursuant to this paragraph, and the~~
33 ~~allocation of the net capacity costs of contracts with third parties~~
34 ~~shall be allowed for the terms of those contracts.~~†

35 (C) It is the intent of the Legislature, in enacting this
36 ~~subparagraph~~ *paragraph*, to ensure that the customers to whom
37 the net costs and benefits of capacity are allocated are not required
38 to pay for the cost of electricity they do not consume.

39 (d) The commission may report to the Legislature on the efficacy
40 of authorizing individual retail end-use residential customers to

1 enter into direct transactions, including appropriate consumer
2 protections.

3 SEC. 3. Section 382 of the Public Utilities Code is amended
4 to read:

5 382. (a) Programs provided to low-income electricity
6 customers, including, but not limited to, targeted energy-efficiency
7 services and the California Alternate Rates for Energy program
8 shall be funded at not less than 1996 authorized levels based on
9 an assessment of customer need.

10 (b) In order to meet legitimate needs of electric and gas
11 customers who are unable to pay their electric and gas bills and
12 who satisfy eligibility criteria for assistance, recognizing that
13 electricity is a basic necessity, and that all residents of the state
14 should be able to afford essential electricity and gas supplies, the
15 commission shall ensure that low-income ratepayers are not
16 jeopardized or overburdened by monthly energy expenditures.
17 Energy expenditure may be reduced through the establishment of
18 different rates for low-income ratepayers, different levels of rate
19 assistance, and energy efficiency programs.

20 (c) Nothing in this section shall be construed to prohibit electric
21 and gas providers from offering any special rate or program for
22 low-income ratepayers that is not specifically required in this
23 section.

24 ~~(d) The commission shall allocate funds necessary to meet the~~
25 ~~low-income objectives in this section.~~

26 (e)

27 (d) Beginning in 2002, an assessment of the needs of
28 low-income electricity and gas ratepayers shall be conducted
29 periodically by the commission with the assistance of the
30 Low-Income Oversight Board. The assessment shall evaluate
31 low-income program implementation and the effectiveness of
32 weatherization services and energy efficiency measures in
33 low-income households. The assessment shall consider whether
34 existing programs adequately address low-income electricity and
35 gas customers' energy expenditures, hardship, language needs,
36 and economic burdens.

37 ~~(f) The commission shall require electrical corporations to~~
38 ~~deploy enhanced low-income energy efficiency programs designed~~
39 ~~to reach as many eligible customers as practicable by December~~
40 ~~31, 2014, particularly targeting those~~

1 (e) The commission shall, by not later than December 31, 2020,
2 ensure that all eligible low-income electricity and gas customers
3 are given the opportunity to participate in low-income energy
4 efficiency programs, including customers occupying apartments
5 or similar multiunit residential structures. The commission and
6 electrical corporations and gas corporations shall make all
7 reasonable efforts to coordinate ratepayer-funded programs with
8 other energy conservation and efficiency programs and to obtain
9 additional federal funding to support actions undertaken pursuant
10 to this subdivision. For purposes of this subdivision, “enhanced
11 programs” are programs that provide long-term reductions in
12 energy consumption at the dwelling unit based on an audit or
13 assessment of the dwelling unit, and may include improved
14 insulation, energy efficient appliances, measures that utilize solar
15 energy, and other improvements to the physical structure.

16 (f) The commission shall allocate funds necessary to meet the
17 low-income objectives in this section.

18 SEC. 4. Section 739.1 of the Public Utilities Code is amended
19 to read:

20 739.1. (a) As used in this section, the following terms have the
21 following meanings:

22 (1) “Baseline quantity” has the same meaning as defined in
23 Section 739.

24 (2) “California Solar Initiative” means the program providing
25 ratepayer funded incentives for eligible solar energy systems
26 adopted by the commission in Decision 05-12-044 and Decision
27 06-01-024, as modified by Article 1 (commencing with Section
28 2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with
29 Section 25780) of Division 15 of the Public Resources Code.

30 (3) “CalWORKs program” means the program established
31 pursuant to the California Work Opportunity and Responsibility
32 to Kids Act (Chapter 2 (commencing with Section 11200) of Part
33 3 of Division 9 of the Welfare and Institutions Code).

34 (4) “Public goods charge” means the nonbypassable separate
35 rate component imposed pursuant to Article 7 (commencing with
36 Section 381) of Chapter 2.3 and the nonbypassable system benefits
37 charge imposed pursuant to the Reliable Electric Service
38 Investments Act (Article 15 (commencing with Section 399) of
39 Chapter 2.3).

1 (b) (1) The commission shall establish a program of assistance
2 to low-income electric and gas customers with annual household
3 incomes at or below 200 percent of the federal poverty guideline
4 levels, the cost of which shall not be borne solely by any single
5 class of customer. ~~For an electrical corporation or public utility~~
6 ~~that is both an electrical corporation and a gas corporation, the~~
7 ~~costs, shall be recovered on an equal cent-per-kilowatt-hour or~~
8 ~~per-therm basis from all classes of customers that were subject to~~
9 ~~the surcharge that funded the program on January 1, 2008.~~ The
10 program shall be referred to as the California Alternate Rates for
11 Energy or CARE program. The commission shall ensure that the
12 level of discount for low-income electric and gas customers
13 correctly reflects the level of need.

14 (2) *The commission may, subject to the limitation in paragraph*
15 *(4), increase the rates in effect for CARE program participants*
16 *for electricity usage up to 130 percent of baseline quantities by*
17 *the annual percentage increase in benefits under the CalWORKs*
18 *program as authorized by the Legislature for the fiscal year in*
19 *which the rate increase would take effect, but not to exceed 3*
20 *percent per year.*

21 (3) *Beginning January 1, 2019, the commission may, subject to*
22 *the limitation in paragraph (4), establish rates for CARE program*
23 *participants pursuant to this section and Sections 739 and 739.9,*
24 *subject to both of the following:*

25 (A) *The requirements of subdivision (b) of Section 382 that the*
26 *commission ensure that low-income ratepayers are not jeopardized*
27 *or overburdened by monthly energy expenditures.*

28 (B) *The requirement that the level of the discount for low-income*
29 *electricity and gas ratepayers correctly reflects the level of need*
30 *as determined by the needs assessment conducted pursuant to*
31 *subdivision (e) of Section 382.*

32 (4) *Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80*
33 *percent of the corresponding tier 1, tier 2, and tier 3 rates charged*
34 *to residential customers not participating in the CARE program,*
35 *excluding any Department of Water Resources bond charge*
36 *imposed pursuant to Division 27 (commencing with Section 80000)*
37 *of the Water Code, the CARE surcharge portion of the public goods*
38 *charge, any charge imposed pursuant to the California Solar*
39 *Initiative, and any charge imposed to fund any other program that*
40 *exempts CARE participants from paying the charge.*

1 (5) Rates charged to CARE program participants shall not have
2 more than three tiers. An electrical corporation that does not have
3 a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order
4 to moderate the impact on program participants whose usage
5 exceeds 130 percent of baseline quantities, shall be phased in to
6 80 percent of the corresponding rates charged to residential
7 customers not participating in the CARE program, excluding any
8 Department of Water Resources bond charge imposed pursuant
9 to Division 27 (commencing with Section 80000) of the Water
10 Code, the CARE surcharge portion of the public goods charge,
11 any charge imposed pursuant to the California Solar Initiative,
12 and any other charge imposed to fund a program that exempts
13 CARE participants from paying the charge. For an electrical
14 corporation that does not have a tier 3 CARE rate that introduces
15 a tier 3 CARE rate, the initial rate shall be no more than 150
16 percent of the CARE baseline rate. Any additional revenues
17 collected by an electrical corporation resulting from the adoption
18 of a tier 3 CARE rate shall, until the utility's next periodic general
19 rate case review of cost allocation and rate design, be credited to
20 reduce rates of residential ratepayers not participating in the
21 CARE program with usage above 130 percent of baseline
22 quantities.

23 (b)

24 (c) The commission shall work with the public utility electrical
25 and gas corporations to establish penetration goals. The
26 commission shall authorize recovery of all administrative costs
27 associated with the implementation of the CARE program that the
28 commission determines to be reasonable, through a balancing
29 account mechanism. Administrative costs shall include, but are
30 not limited to, outreach, marketing, regulatory compliance,
31 certification and verification, billing, measurement and evaluation,
32 and capital improvements and upgrades to communications and
33 processing equipment.

34 (e)

35 (d) The commission shall examine methods to improve CARE
36 enrollment and participation. This examination shall include, but
37 need not be limited to, comparing information from CARE and
38 the Universal Lifeline Telephone Service (ULTS) to determine
39 the most effective means of utilizing that information to increase
40 CARE enrollment, automatic enrollment of ULTS customers who

1 are eligible for the CARE program, customer privacy issues, and
2 alternative mechanisms for outreach to potential enrollees. The
3 commission shall ensure that a customer consents prior to
4 enrollment. The commission shall consult with interested parties,
5 including ULTS providers, to develop the best methods of
6 informing ULTS customers about other available low-income
7 programs, as well as the best mechanism for telephone providers
8 to recover reasonable costs incurred pursuant to this section.

9 ~~(d)~~

10 (e) (1) The commission shall improve the CARE application
11 process by cooperating with other entities and representatives of
12 California government, including the California Health and Human
13 Services Agency and the Secretary of California Health and Human
14 Services, to ensure that all gas and electric customers eligible for
15 public assistance programs in California that reside within the
16 service territory of an electrical corporation or gas corporation,
17 are enrolled in the CARE program. To the extent practicable, the
18 commission shall develop a CARE application process using the
19 existing ULTS application process as a model. The commission
20 shall work with public utility electrical and gas corporations and
21 the Low-Income Oversight Board established in Section 382.1 to
22 meet the low-income objectives in this section.

23 (2) The commission shall ensure that an electrical corporation
24 or gas corporation with a commission-approved program to provide
25 discounts based upon economic need in addition to the CARE
26 program, including a Family Electric Rate Assistance program,
27 utilize a single application form, to enable an applicant to
28 alternatively apply for any assistance program for which the
29 applicant may be eligible. It is the intent of the Legislature to allow
30 applicants under one program, that may not be eligible under that
31 program, but that may be eligible under an alternative assistance
32 program based upon economic need, to complete a single
33 application for any commission-approved assistance program
34 offered by the public utility.

35 ~~(e)~~

36 (f) The commission's program of assistance to low-income
37 electric and gas customers shall, as soon as practicable, include
38 nonprofit group living facilities specified by the commission, if
39 the commission finds that the residents in these facilities
40 substantially meet the commission's low-income eligibility

1 requirements and there is a feasible process for certifying that the
2 assistance shall be used for the direct benefit, such as improved
3 quality of care or improved food service, of the low-income
4 residents in the facilities. The commission shall authorize utilities
5 to offer discounts to eligible facilities licensed or permitted by
6 appropriate state or local agencies, and to facilities, including
7 women's shelters, hospices, and homeless shelters, that may not
8 have a license or permit but provide other proof satisfactory to the
9 utility that they are eligible to participate in the program.

10 ~~(f)~~

11 ~~(g)~~ It is the intent of the Legislature that the commission ensure
12 CARE program participants are afforded the lowest possible
13 electric and gas rates and, to the extent possible, are exempt from
14 additional surcharges attributable to the energy crisis of 2000-01.

15 ~~(g) (1) As used in this subdivision, the following terms have~~
16 ~~the following meanings:~~

17 ~~(A) "Baseline quantity" has the same meaning as defined in~~
18 ~~Section 739.~~

19 ~~(B) "California Solar Initiative" means the program providing~~
20 ~~ratepayer funded incentives for eligible solar energy systems~~
21 ~~adopted by the commission in Decision 05-12-044 and Decision~~
22 ~~06-01-024, as modified by Article 1 (commencing with Section~~
23 ~~2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with~~
24 ~~Section 25780) of Division 15 of the Public Resources Code.~~

25 ~~(C) "CalWORKs program" means the program established~~
26 ~~pursuant to the California Work Opportunity and Responsibility~~
27 ~~to Kids Act (Chapter 2 (commencing with Section 11200) of Part~~
28 ~~3 of Division 9 the Welfare and Institutions Code).~~

29 ~~(D) "Public goods charge" means the nonbypassable separate~~
30 ~~rate component imposed pursuant to Article 7 (commencing with~~
31 ~~Section 381) or Chapter 2.3 and the nonbypassable system benefits~~
32 ~~charge imposed pursuant to the Reliable Electric Service~~
33 ~~Investments Act (Article 15 (commencing with Section 399) of~~
34 ~~Chapter 2.3).~~

35 ~~(2) The commission may, subject to the limitation in paragraph~~
36 ~~(4), increase the rates in effect for CARE program participants for~~
37 ~~electricity usage up to 130 percent of baseline quantities by the~~
38 ~~annual percentage increase in benefits under the CalWORKs~~
39 ~~program as authorized by the Legislature for the fiscal year in~~

1 which the rate increase would take effect, but not to exceed 3
2 percent per year.

3 ~~(3) Beginning January 1, 2019, the commission may, subject~~
4 ~~to the limitation in paragraph (4), establish rates for CARE program~~
5 ~~participants pursuant to this section and Sections 739 and 739.9,~~
6 ~~subject to both of the following:~~

7 ~~(A) The requirements of subdivision (b) of Section 382 that the~~
8 ~~commission ensure that low-income ratepayers are not jeopardized~~
9 ~~or overburdened by monthly energy expenditures:~~

10 ~~(B) The requirement that the level of the discount for~~
11 ~~low-income electricity and gas ratepayers correctly reflects the~~
12 ~~level of need as determined by the needs assessment made pursuant~~
13 ~~to subdivision (c) of Section 382.~~

14 ~~(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80~~
15 ~~percent of the corresponding tier 1, tier 2, and tier 3 rates charged~~
16 ~~residential customers not participating in the CARE program,~~
17 ~~excluding any Department of Water Resources bond charge~~
18 ~~imposed pursuant to Division 27 (commencing with Section 80000)~~
19 ~~of the Water Code, the CARE surcharge portion of the public~~
20 ~~goods charge, any charge imposed pursuant to the California Solar~~
21 ~~Initiative, and any charge imposed to fund any other program that~~
22 ~~exempts CARE participants from paying the charge.~~

23 ~~(5) Rates charged CARE program participants shall not have~~
24 ~~more than three tiers. An electrical corporation that does not have~~
25 ~~a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order~~
26 ~~to moderate the impact on program participants whose usage~~
27 ~~exceeds 130 percent of baseline quantities, shall be phased in to~~
28 ~~80 percent of the corresponding rates charged residential customers~~
29 ~~not participating in the CARE program, excluding any Department~~
30 ~~of Water Resources bond charge imposed pursuant to Division 27~~
31 ~~(commencing with Section 80000) of the Water Code, the CARE~~
32 ~~surcharge portion of the public goods charge, any charge imposed~~
33 ~~pursuant to the California Solar Initiative, and any other charge~~
34 ~~imposed to fund a program that exempts CARE participants from~~
35 ~~paying the charge. For an electrical corporation that does not have~~
36 ~~a tier 3 CARE rate that introduces a tier 3 CARE rate, the initial~~
37 ~~rate shall be no more than 150 percent of the baseline CARE rate.~~
38 ~~Any additional revenues collected by an electrical corporation~~
39 ~~resulting from the adoption of a tier 3 CARE rate shall, until the~~
40 ~~utility's next periodic general rate case review of cost allocation~~

1 and rate design, be credited to reduce rates of residential ratepayers
2 not participating in the CARE program with usage above 130
3 percent of baseline quantities.

4 SEC. 5. Section 739.9 is added to the Public Utilities Code, to
5 read:

6 739.9. (a) The commission may, subject to the limitation in
7 subdivision (b), increase the rates charged residential customers
8 for electricity usage up to 130 percent of the baseline quantities,
9 as defined in Section 739, by the annual percentage change in the
10 Consumer Price Index from the prior year plus 1 percent, but not
11 less than 3 percent and not more than 5 percent per year. For
12 purposes of this subdivision, the annual percentage change in the
13 Consumer Price Index shall be calculated using the same formula
14 that was used to determine the annual Social Security Cost of
15 Living Adjustment on January 1, 2008. This subdivision shall
16 become inoperative on January 1, 2019, unless a later enacted
17 statute deletes or extends that date.

18 (b) The rates charged residential customers for electricity usage
19 up to the baseline quantities, including any customer charge
20 revenues, shall not exceed 90 percent of the system average rate
21 prior to January 1, 2019, and may not exceed 92.5 percent after
22 that date. For purposes of this subdivision, the system average rate
23 shall be determined by dividing the electrical corporation's total
24 revenue requirements for bundled service customers by the adopted
25 forecast of total bundled service sales.

26 (c) This section does not require the commission to increase
27 any residential rate or restrict, or otherwise limit, the authority of
28 the commission to reduce any residential rate in effect immediately
29 preceding January 1, 2010.

30 SEC. 6. Section 745 is added to the Public Utilities Code, to
31 read:

32 745. (a) For purposes of this section, "time-variant pricing"
33 includes time-of-use rates, critical peak pricing, and real-time
34 pricing, but does not include programs that provide customers *with*
35 discounts from standard tariff rates as an incentive to reduce
36 consumption at certain times, including peak time rebates.

37 (b) The commission shall not require or permit an electrical
38 corporation to employ mandatory or default time-variant pricing
39 for residential customers prior to January 1, 2016.

1 (c) The commission may authorize an electrical corporation to
2 offer residential customers the option of receiving service pursuant
3 to time-variant pricing and to participate in other demand response
4 programs.

5 (d) ~~The~~ *On and after January 1, 2016, the* commission shall
6 only approve an electrical corporation's use of time-variant pricing
7 if residential customers have the option to not receive service
8 pursuant to time-variant pricing and incur no additional fees and
9 surcharges as a result of the exercise of that option.

10 *SEC. 7. Section 747 of the Public Utilities Code is amended*
11 *to read:*

12 747. (a) It is the intent of the Legislature that the commission
13 reduce rates for electricity and natural gas to the lowest amount
14 possible.

15 (b) (1) The commission shall prepare a written report on the
16 costs of programs and activities conducted by each electrical
17 corporation and gas corporation that is subject to this section,
18 including activities conducted to comply with their duty to serve.
19 The report shall be completed on an annual basis before February
20 1 of each year, and shall identify, clearly and concisely, all of the
21 following:

22 ~~(1)~~

23 (A) Each program mandated by statute and its annual cost to
24 ratepayers.

25 ~~(2)~~

26 (B) Each program mandated by the commission and its annual
27 cost to ratepayers.

28 ~~(3)~~

29 (C) Energy purchase contract costs and bond-related costs
30 incurred pursuant to Division 27 (commencing with Section 80000)
31 of the Water Code.

32 ~~(4)~~

33 (D) All other aggregated categories of costs currently recovered
34 in retail rates as determined by the commission.

35 (2) *The report shall also contain the commission's*
36 *recommendations for actions that can be undertaken during the*
37 *upcoming year to limit utility cost increases, consistent with the*
38 *state's energy and environmental goals, including the state's goals*
39 *for reducing greenhouse gases.*

1 (3) *In preparing the report, the commission shall annually*
2 *require electrical and gas corporations to study and report to the*
3 *commission on measures that they recommend be undertaken to*
4 *limit cost increases.*

5 (c) As used in this section, the reporting requirements apply to
6 electrical corporations with at least 1,000,000 retail customers in
7 California and gas corporations with at least 500,000 retail
8 customers in California.

9 (d) The report required by subdivision (b) shall be submitted to
10 the Governor and the Legislature no later than February 1 of each
11 year.

12 (e) The commission shall post the report required by subdivision
13 (b) in a conspicuous area of its Internet Web site.

14 ~~SEC. 7.~~

15 *SEC. 8.* Section 80110 of the Water Code is amended to read:

16 80110. (a) The department shall retain title to all electricity
17 sold by it to the retail end-use customers. The department shall be
18 entitled to recover, as a revenue requirement, amounts and at the
19 times necessary to enable it to comply with Section 80134, and
20 shall advise the commission as the department determines to be
21 appropriate.

22 (b) The revenue requirements may also include any advances
23 made to the department hereunder or hereafter for purposes of this
24 division, or from the Department of Water Resources Electric
25 Power Fund, and General Fund moneys expended by the
26 department pursuant to the Governor's Emergency Proclamation
27 dated January 17, 2001.

28 (c) (1) For the purposes of this division and except as otherwise
29 provided in this section, the Public Utility Commission's authority
30 as set forth in Section 451 of the Public Utilities Code shall apply,
31 except any just and reasonable review under Section 451 shall be
32 conducted and determined by the department. Prior to the execution
33 of any modification of any contract for the purchase of electricity
34 by the department pursuant to this division, on or after the effective
35 date of this section, the department or the commission, as
36 applicable, shall do the following:

37 (A) The department shall notify the public of its intent to modify
38 a contract and the opportunity to comment on the proposed
39 modification.

1 (B) At least 21 days after providing public notice, the department
2 shall make a determination as to whether the proposed
3 modifications are just and reasonable. The determination shall
4 include responses to any public comments.

5 (C) No later than 70 days before the date of execution of the
6 contract modification, the department shall provide a written report
7 to the commission setting forth the justification for the
8 determination that the proposed modification is just and reasonable,
9 including documents, analysis, response to public comments, and
10 other information relating to the determination.

11 (D) Within 60 days of the date of receipt of the department's
12 written report, the commission shall review the report and make
13 public its comments. If the commission in its comments
14 recommends against the proposed modification, the department
15 shall not execute the proposed contract modification.

16 (2) This subdivision does not apply to the modification of a
17 contract modified to settle litigation to which the commission is
18 a party.

19 (3) This subdivision does not apply to the modification of a
20 contract for the purchase of electricity that is generated from a
21 facility owned by a public agency if the contract requires the public
22 agency to sell electricity to the department at or below the public
23 agency's cost of that electricity.

24 (4) This subdivision does not apply to the modification of a
25 contract to address issues relating to billing, scheduling, delivery
26 of electricity, and related contract matters arising out of the
27 implementation by the Independent System Operator of its market
28 redesign and technology upgrade program.

29 (5) (A) For purposes of this subdivision, the department
30 proposes to "modify" a contract if there is any material change
31 proposed in the terms of the contract.

32 (B) A change to a contract is not material if it is only
33 administrative in nature or the change in ratepayer value results
34 in ratepayer savings, not to exceed twenty-five million dollars
35 (\$25,000,000) per year. For the purpose of making a determination
36 that a change is only administrative in nature or results in ratepayer
37 savings of twenty-five million dollars (\$25,000,000) or less per
38 year, the executive director of the commission shall concur in
39 writing with each of those determinations by the department.

1 (d) The commission may enter into an agreement with the
2 department with respect to charges under Section 451 for purposes
3 of this division, and that agreement shall have the force and effect
4 of a financing order adopted in accordance with Article 5.5
5 (commencing with Section 840) of Chapter 4 of Part 1 of Division
6 1 of the Public Utilities Code, as determined by the commission.

7 (e) The department shall have the same rights with respect to
8 the payment by retail end-use customers for electricity sold by the
9 department as do providers of electricity to the customers.

10 ~~SEC. 8.~~

11 *SEC. 9.* No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

20 ~~SEC. 9.~~

21 *SEC. 10.* This act is an urgency statute necessary for the
22 immediate preservation of the public peace, health, or safety within
23 the meaning of Article IV of the Constitution and shall go into
24 immediate effect. The facts constituting the necessity are:

25 In order to avert a rate crisis involving unfair and unreasonable
26 rates being charged for electric and gas service by electrical and
27 gas corporations, it is necessary that this act take effect
28 immediately.

O

**San Francisco
Local Agency
Formation Commission**

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. 415.554.5184
Fax. 415.554.5163

June 26, 2009

Senator Christine Kehoe
California State Capitol
Room 5050
Sacramento, CA 94248
(916) 651-4039

Senator Roderick D. Wright
California State Capitol
Room 5050
Sacramento, CA 94248
(916) 651-4025

Via U.S. Mail

RE: Requested Amendment to SB 695, Electricity: rates.

Dear Senators Kehoe and Wright:

As Chairman of the San Francisco Local Agency Formation Commission (SF LAFCo) I am writing on behalf of my Commission to request an amendment to SB 695.

As you may be aware, AB 117 was passed in 2002 giving local communities the ability to create Community Choice Aggregators (CCAs), which provide electricity to their citizens in place of the investor-owned utilities. San Francisco is one of the many communities that has decided to implement a CCA. As part of the implementation, the Board of Supervisors for the City and County of San Francisco has tasked SF LAFCo with monitoring, advising, and assisting the San Francisco Public Utilities Commission (SFPUC) in implementing a CCA.

During review of SB 695, I discovered language therein that could be read to prohibit CCAs from continuing forward. Since the investor-owned utilities have fought CCAs throughout the entire implementation process, I am requesting an amendment to the bill to specify it does not apply to CCAs. The language of concern in SB 695, is contained in Section 2, which would add Section 365.1 to the Public Utilities Code. As currently drafted, this provision could be seen as applying to CCAs. I do not believe it was your intent with SB 695 to suspend the creation and implementation of CCAs.

Additionally, other parts of SB 695 could be read as capping the total market share an electric service provider could attain. Electric service providers are suppliers of electricity for CCAs, since CCAs, generally, do not secure their own supply. Consequently, the total market share cap could work a corresponding limitation on CCAs. We do not believe it was your intent with SB 695 to limit the potential market share of CCAs.

Accordingly, I request that the language of this proposed statute be amended to exclude CCAs from the definition of "other provider." I also ask that the limitations on electric service providers not apply to sales to CCA customers. I suggest changing the language of proposed Public Utilities Code section 365.1, subdivision (a), to read as follows:

Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, "other provider" means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider. *"Other provider" does not include a community choice aggregator as defined in Section 331.1. The limitations in this section shall not apply to community choice aggregators, nor to the sale of electricity by "other providers" to participating customers of a community choice aggregator.*

This amendment to SB 695 is necessary so that CCAs can continue moving towards providing electrical service to their citizens. Without this language, I believe the investor-owned utilities will use this provision to argue that CCAs cannot begin implementation and operations, as intended by AB 117.

I appreciate your learned consideration of this amendment. In sum, the amendment would not take away from the important purposes of your bill, and would ensure CCAs continue moving towards implementation. If you would like to discuss the suggested amendment further, please contact me at your earliest convenience.

Sincerely,

Chairman Ross Mirkarimi
San Francisco LAFCo

San Francisco Local Agency Formation Commission

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689
Tel. 415.554.5184
Fax. 415.554.5163

PROPOSED AMENDMENT TO SENATE BILL 695

As currently drafted, the relevant portion of SB 695 reads:

365.1 (a) Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, "other provider" means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider.

The proposed amendment to SB 695 would add the following, italicized sentences to the end of the section:

365.1 (a) Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, "other provider" means any person, corporation, or other entity that is authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider. *"Other provider" does not include a community choice aggregator as defined in Section 331.1. The limitations in this section shall not apply to community choice aggregators, nor to the sale of electricity by "other providers" to participating customers of a community choice aggregator.*