SENATE COMMITTEE ON ENERGY, UTILITIES AND COMMUNICATIONS
Senator Ben Hueso, Chair
2021 - 2022 Regular

Bill No:	SB 612	**Hearing Date:**	4/26/2021
Author:	Portantino		
Version:	4/13/2021 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Nidia Bautista		

SUBJECT: Electrical corporations and other load-serving entities: allocation of legacy resources

DIGEST: This bill requires the California Public Utilities Commission (CPUC) to require electric investor-owned utilities (IOUs) to offer to community choice aggregators (CCAs) and electric service providers (ESPs) an allocation of product attributes from legacy electrical resources paid for through exit fees of the departing load. The bill defines these product attributes as requirements of the Renewable Portfolio Standard (RPS) Program, resource adequacy (RA), resources that do not emit greenhouse gases (GHG), and other attributes that have regulatory compliance or other identified market value.

ANALYSIS:

Existing law:

1) Establishes the California Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations. (California Constitution Article XII, §1-6)

2) Authorizes the CPUC to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. (Public Utilities Code §451)

3) Requires the CPUC to authorize and facilitate direct transactions between electric service providers (ESPs) and retail end-use customers, but suspends direct transactions except as expressly authorized. (Public Utilities Code §365.1)

4) Requires the CPUC to authorize direct transactions for nonresidential end-use customers, subject to an annual maximum allowable total kilowatt hour (kWh) limit established, as specified, for each electrical corporation, to be achieved

following a now-completed three-to-five-year phase-in period. (Public Utilities Code §365.1(b))

5) Requires the CPUC, on or before June 1, 2019, to issue an order specifying, among other things, an increase in the annual maximum allowable total kWh limit by 4,000 gigawatt hours (GWh) and to apportion that increase among the service territories of the electrical corporations. (Public Utilities Code §365.1(e))

6) Requires the CPUC, by June 1, 2020, to provide the Legislature with recommendations on the adoption and implementation of a 2nd direct transactions reopening schedule and requires that the CPUC make specified findings with respect to those recommendations, including that the recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers. (Public Utilities Code §365.1(f))

7) Requires that the bundled retail customers of an electrical corporation not experience any cost increase as a result of retail customers electing service from another provider or from implementation of a community choice aggregator (CCA) program. Requires the CPUC to ensure that the departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. (Public Utilities Code §365.2 and 366.3)

8) Authorizes a CCA to aggregate the electrical load of interested electricity consumers within its boundaries and requires a CCA to file an implementation plan with the CPUC in order for the CPUC to determine a cost-recovery mechanism to be imposed on the CCA to prevent a shifting of costs to an electrical corporation's bundled customers. (Public Utilities Code §366.2)

This bill:

1) Requires an electric IOU, by July 1, 2022, and, not less than once every three years thereafter, to offer an allocation of each product, as defined, arising from legacy resources, as defined, to its bundled customers and to other LSEs, defined to include ESPs and CCAs, serving–departing load customers, as defined, who bear cost responsibility for those resources.

2) Authorizes a LSE within the service territory of the electric IOU to elect to receive all or a portion of the vintaged proportional share of products allocated to its end-use customers and, if so, require it to pay to the electric IOU the

CPUC-established market price benchmark for the vintage proportional share of products received.

3) Requires that an electric IOU offer the products allocated to departing load customers that a LSE declines to elect to receive in the wholesale market through regular solicitations and requires that all revenues received through these solicitations be credited toward reducing any nonbypassable charge paid by bundled and departing load customers to recover the costs of legacy resources.

4) Requires the CPUC to recognize and account for the value of all products in the electric IOU's legacy resource portfolio in determining the nonbypassable charge to be paid by bundled and departing load customers to recover the costs of legacy resources.

Background

Electric utilities: There are two main types of electric utilities serving customers in the state, one is an investor-owned utility (IOU) and the other is a publicly owned utility (POU).

- IOUs: privately owned electrical corporations, such as Southern California Edison (SCE), that provide monopoly services in distinct, defined geographic territories. Customers of IOUs who receive both energy procurement and distribution services from the utility are considered "bundled-customers." IOUs are rate-regulated by the CPUC to ensure they provide service at a just and reasonable rate. IOUs also have an obligation to serve all customers in their service territory and serve as providers-of-last-resort.

- POUs: publicly owned utilities, such as Los Angeles Department and Water, are governed by a local governing board, perhaps a city council or other elected body. Similar to IOUs, POUs provide monopoly services in distinct defined geographic areas. However, unlike IOU customers, POU customers can not receive energy procurement services from an entity that is not the POU.

Load-serving entities (LSEs). Several other types of entities, referred to in statute as, LSEs, procure electric generation resources and services on behalf of customers within the service territory of electric IOUs. In addition to electric IOUs, California's LSEs include:

- Electric Service Providers (ESPs): procure electricity to end-use customers who choose the services of the ESP instead of the incumbent electric IOU. An

ESP uses the transmission and distribution infrastructure of the electric IOU to deliver electricity to the customer. Customers of ESPs are considered direct access (DA) customers. They are often large companies or entities who likely have staff whose responsibility it is to manage the entity's electricity (such as, a college campus, medical campus, etc.). Statute directs the CPUC to establish a maximum load cap in each electric IOU's service territory to limit DA customers. With few exceptions, the number of DA customers has been mostly stable since the program was capped after the California energy crisis in the early 2000s when some ESPs went out-of-business and customers had to be unexpectedly defaulted back to the electric IOU.

- Community Choice Aggregators (CCAs): local government entities, such as Marin Clean Energy, by which local governments choose to procure or generate electricity on behalf of local residents while using the incumbent electric IOU's transmission and distribution infrastructure and billing services. An individual customer within the territory of a CCA is automatically opted-in to have energy procured from the CCA, based on the implementation schedule, when the customer's local government elects to join or establish the CCA. However, the customer retains the option to return to the procurement service of the incumbent electric IOU. Notwithstanding CCA outreach, customers of CCAs may never notice they have been opted-in to the CCA, as the electric utility bill continues to be sent by the electric IOU for both the energy procurement and the distribution and transmission services. However, a close inspection of the utility bill would show a line item that notes the procurement of energy resources coming from the CCA.

Departing load. The CPUC has regulated electric IOUs for about a century. However, the CPUC's experience regulating CCAs is much more limited. In 2002, statute first allowed the formation of CCAs. It was not until nearly a decade later that the first CCA—Marin Clean Energy—came into existence. The motivation for a local government to join or create a CCA can be many, but, in general, there is an element of local control and, to varying degrees, a belief that rates would be lower as compared to the electric IOU. Today, there are over 20 CCAs operating in the state with over 11 million customers (per estimates from California Community Choice Association (CalCCA)), with an expectation that the number of customers served by CCAs is likely to continue to grow.

Power Charge Indifference Adjustment (PCIA). When customers migrate away from the procurement services of the incumbent electric IOU as either a DA or CCA customer, statute requires the CPUC to ensure that customers leaving the utility do not burden remaining utility customers with costs which were incurred to serve the departing customers. Statute also requires the CPUC to ensure that

departing load customers do not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. In order to ensure this "customer indifference," CCAs and DA customers are required to pay an exit fee – the PCIA – to account for the costs incurred on their behalf and to ensure remaining customers are not affected by the choice of these customers (or their local governments) to depart their load. The PCIA is the mechanism to ensure that the customers who remain with the utility do not end up taking on the long-term financial obligations the utility incurred on behalf of now-departed customers. Examples of such financial obligations include utility expenditures to build power plants and, more commonly, long-term power purchase contracts with independent power producers. These departing load customers may represent a significant fraction of the customers within the electric IOU service territory. Without the PCIA, the remaining percent of customers would need to assume financial obligations incurred in anticipation of serving those customers that now receive energy procurement services from a CCA or DA customer.

Calculating the PCIA. The PCIA is calculated by taking the difference between the "actual portfolio cost," which represents the costs related to the utility's energy procurement and the "market value" of the portfolio. The market value is measured by a CPUC-approved methodology, known as the market price benchmark, for calculating the current market cost of renewable energy and natural gas-fueled power. If the IOU's actual portfolio cost is above-market value, the departing load customers pay their share of the difference based on their power consumption. In instances where the PCIA may be negative, departing load customers receive a credit to offset against a departing load customer's future positive PCIA. PCIA revenue does not represent a profit, rather these are customer costs, as such, any changes to the PCIA affect customers, and not the profit of any entity. Additionally, the PCIA will vary depending on when a customer departed from the electric IOU and the procurement portfolio at the time. As such, each customer pays the assigned vintage PCIA, depending on the year when the customer departed.

CPUC PCIA Rulemaking Proceeding (R. 17-06-026). In 2017, the CPUC opened a proceeding to consider alternatives to the amount that CCA and DA customers pay in order to keep remaining IOU customers financially unaffected by their departure, as required by statute. Additionally, the CPUC is required by statute to ensure departing customers do not experience cost increases, as a result of an allocation of costs that were not incurred on behalf of the departing load. In addition to the central cost allocation question, the proceeding also examines data transparency, cost stability, mechanisms to verify prudent portfolio management, and other relevant matters. The proceeding has many phases, with some earlier issues resolved in Phase 1, such as the treatment of customers who participate in

low-income rate assistance programs. In a 2018 CPUC PCIA Phase 1 Decision (D.18-10-019) focused on the equitable distribution of costs, the CPUC established a PCIA cap on rate increases, established an annual true-up, made several adjustments to the methodology to better achieve the indifference policy, and opened a second phase of the proceeding to address issues left unresolved in Phase 1, including electric IOUs' portfolio optimization. Many of the parties, including the sponsors of this bill proposed a phased approach to the proceeding with the first phase focused on correcting the PCIA methodology in the near-term and "transitioning over the next 2-3 years to a more durable framework for the future" (CCA comments, p. 19 of D. 18-10-019). The CPUC Decision stated:

> We conclude that the best course of action that is consistent with California's ambitious public policy goals, ensures compliance with the law, and protects customers is the approach that reflects the view shared among many parties: adopt a corrected benchmark methodology to determine the PCIA and the inputs thereto, while opening a second phase of this proceeding to consider the development and implementation of a comprehensive solution to the issue of excess resources in utility portfolios, one that is based on voluntary, market-based resource redistribution. (p. 72 of D. 18-10-019)

Additionally, the decision anticipated that there would likely need to be coordination with other CPUC proceedings, including the Integrated Resource Planning (IRP), Resource Adequacy (RA), and Renewable Portfolio Standard (RPS) proceedings.

CPUC tasks Working Group 3 to develop proposals. In February 2019, a Scoping Memo and Ruling was released which established a working group process, scope, and schedule for Phase 2 of the proceeding. The memo organized Phase 2 into three working groups, including Working Group 3 focused on portfolio optimization. Working Group 3 designated SCE (an electric IOU), CalCCA (representing CCAs), and Commercial Energy (an ESP) as co-chairs and listed tasks for the working group to complete. Specifically, the CPUC tasked Working Group 3 to propose: (1) an approach to the electric IOUs portfolio optimization "in order to address excess resources in utility portfolios" in a manner that is "structured so as to be compatible" with the CPUC's ongoing compliance programs; and (2) standards "for more active management of the utilities' portfolios in response to departing load in the future in order to minimize further accumulation of uneconomic costs."

Working Group 3 issues a report. The Working Group began meeting in March 2019 and, on February 21, 2020, they filed a 350+ page report, which included the specific proposals of the co-chairs. The Working Group 3 co-chairs recommended

adopting a Voluntary Allocation and Market Offer (VAMO) framework for disposition of the utilities' PCIA-eligible products – Local RA, System and Flexible RA, GHG-free energy, and RPS-eligible energy. The co-chairs proposed that electric IOUs offer PCIA-eligible LSEs voluntary allocations of PCIA-eligible resources, and then sell any unallocated resources through an annual market offer process. Parties to the proceeding provided comments to the Working Group's report with many parties expressing significant concerns or outright opposition to the proposals in the report, including several parties that argue that the Working Group's proposal for portfolio optimization does not comply with the direction to the Working Group in the Scoping Memo regarding excess resources.

CPUC issues Proposed Decision (PD). Just a few weeks ago, on April 5th, a PD was issued to address many of the recommendations in the report and the multitude of comments from parties. The recently issued PD seeks to adopt only some of the recommendations from the Working Group 3 report, in some cases outright declining to approve specific proposals, and in other cases recommending further review with other related proceedings. The PD raises overall concerns that "CalCCA's interpretation of the 'excess resources' conflicts with the plain language of our decision [reference to previous decision]." Parties and the CPUC argued that the CPUC had previously specifically declined to create a long-term claim on low-cost utility owned generation by DA customers simply because those resources were included in the indifference portfolio." (p. 13 of the PD). The PD is currently open for comments from parties, and an expected final decision can happen as early as May 6th, although, it is more likely in June.

SB 612. This bill seeks to adopt, in principle, the overall nature of the Working Group 3 proposals. SB 612 would require the CPUC to require electric IOUs, by July 1, 2022, and not less than once every three years, to offer an allocation of each product from legacy resources to its bundled customers and to other LSEs serving departing load who bear cost responsibility for those resources. The specific products, as defined in the bill, include: renewable energy resources that help satisfy RPS requirements, including requirement for long-term contracts, resources to meet RA, GHG-free resources, or any future generating attributes that have regulatory compliance. This bill also includes additional direction to the CPUC and electric IOUs regarding the approach to allocating these products. Specified approaches include mandating electric IOUs to offer products in the wholesale market through regular solicitations, for products were LSEs declined to elect to receive their portion of the vintage proportional share of products allocated to its end use customers, as proposed by this bill.

SB 612 v. CPUC PD. SB 612 was introduced in early March, prior to a CPUC PD being issued. Currently, key provisions of this bill run counter to the PD. These include mandating electric IOUs to offer allocations related to resource adequacy,

GHG-free, elements of RPS products. The CPUC notes the expectation of a voluntary, market-based allocation based on previous CPUC decisions and adopted principles for the PCIA proceeding.

With regards to RA: the PD expresses concerns that there is no expectation that "any of the [electric] IOUs will have excess RA in the near future," citing the pending retirement of Diablo Canyon Nuclear Power Plant as a significant factor in the need to preserve RA resources. The PD also notes that based on the CPUC's review of IRP filings, they "find that each of the electric IOUs will need to procure additional resources to meet 2024-2026 reliability needs." Additionally, the PD expresses the need to ensure compatibility with the ongoing efforts to ensure reliable access to electricity and the many existing CPUC RA compliance proceedings. Moreover, the PD states that the Working Group "proposal is not properly tailored to minimize the risks that [electric] IOUs will not be able to comply with RA requirements, or that the allocations would create market inefficiencies for RA."

With regards to RPS products: the PD approves the Working Group's proposal for a voluntary allocation and market offers of PCIA-eligible RPS resources to the extent that it is consistent with CPUC's compliance program and proceedings and tailored to mitigate risks. However, the PD declines to adopt some of the specific elements of the Working Group 3 proposal. Parties acknowledge that electric IOUs' RPS portfolios include significant amounts of uneconomic RPS resources that were contracted for in the early days of the RPS program when contract prices were much higher. As a result, the market values for the RPS portfolios have declined over time as the market price of renewable energy has decreased. The unsold RPS results in a zero valuation and, consequently, associated PCIA increases. In the case of long-term sales, the PD declines to direct electric IOUs to structure long-term sales in a particular manner and suggested market offers would be reviewed in the RPS proceeding.

With regards to GHG-free resources: The PD acknowledged the potential of undervaluing of GHG-Free resources in the PCIA methodology but stated it was "outside the scope of this phase of the proceeding as set forth in the 2019 Scoping Memo and 2020 Scoping Memo." However, the PD proposes to incorporate the issue into a later point of the proceeding. The PD recommends in the interim that the CPUC extend, through the end of 2023, SCE's approach to GHG-free resources approved in a previous resolution.

Comments. CalCCA also does not agree with the CPUC's legal interpretation in the proceeding. Additionally, CalCCA would like the CPUC to resolve all the RPS issues in the PCIA proceeding, instead of punting to the RPS proceeding. CalCCA

expresses frustration with the delays of the CPUC PCIA proceeding to resolve the issues related to allocation of attributes from PCIA-products. In that regard, CalCCA is not alone. However, as noted above, many of the parties, including CalCCA, supported a phased process of the PCIA proceeding. Nonetheless, there was an expectation that once the Working Group 3 report was issued, in February 2020, it would be months, not over a year, before the CPUC would issue a proposed decision for that portion of the proceeding. It is noteworthy that the release of the report occurred just weeks prior to the COVID-19 pandemic shelter-at-home orders and related impacts of the pandemic which likely affected the workload and pace of the CPUC proceeding. However, there is validity to the concerns that the lack of resolution on these issues poses challenges for all customers, both bundled and unbundled, as LSEs make decisions about procuring energy resources to meet their compliance obligations for RA, RPS, and GHG-free resources and to serve their customers. These obligations include the long-term contracting requirements included in RPS whereby LSEs must demonstrate that 65 percent of their RPS procurement resources are composed of long-term contracts (of 10 years or longer) over the course of the current and future compliance periods. However, the Legislature should proceed with caution as these decisions involve numerous complexities and intricacies that may have unintended consequences for customers – both bundled and departing load customers. In this respect, these decisions may be better addressed at the CPUC which is tasked with ensuring affordable, safe, and reliable service and can consider the full implications of these decisions. Nonetheless, the timing of the PD soon after the introduction of this bill, may have spurred action by the CPUC. As such, the Legislature may find value in a bill to direct the CPUC to resolve these issues by a specified dates. *In order to allow the CPUC to determine how best to resolve some of these issues, the author and committee may wish to remove some of the specifics about how to allocate these attributes in subdivisions (c) and (d) of this bill, while preserving the thrust of this bill*.

Prior/Related Legislation

SB 520 (Hertzberg, Chapter 408, Statutes of 2019) provided that the electric IOU is the provider of last resort (POLR), as defined, in its electric utility service territory unless provided otherwise in a service territory boundary agreement approved by the CPUC or unless the CPUC designates a LSE, as defined, for all or a portion of that service territory. The bill establishes specified requirements for the process of designating and the qualifications required of the POLR.

SB 237 (Hertzberg, Chapter 600, Statutes of 2018) directed the CPUC to make changes to the existing DA service program, which authorizes direct energy transactions between electricity suppliers and retail end-use customers. Among the

proposed changes is a requirement to increase the annual maximum allowable limit of the DA service program by 4,000 GWh for non-residential customers. The bill also directs the CPUC to provide recommendations to the Legislature, with specified findings, on the adoption and implementation of a second direct service transactions reopening schedule.

SB 350 (De León, Chapter 547, Statutes of 2015), among other things, increased the RPS and directed the CPUC to develop a process by which LSEs submit IRPs to the CPUC for review or for certification.

AB 117 (Migden, Chapter 838, Statutes of 2002) allowed cities and counties to aggregate their electric loads and provide service directly to their residents through formation of CCAs.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

California Community Choice Association, Sponsor
Mayor Libby Schaaf, Oakland
Mayor London Breed, San Francisco
Mayor Sam Liccardo, San Jose
Mayor Sasha Renée Pérez, Alhambra
Supervisor Brad Wagenknecht, Napa County District 1
Councilmember Bill Baber, La Mesa
350 Silicon Valley
American Clean Power - California
Butte Choice Energy Authority
California Choice Energy Authority
City of Agoura Hills
City of Arcadia
City of Auburn
City of Berkeley
City of Beverly Hills
City of Camarillo
City of Carlsbad
City of Carson
City of Chula Vista
City of Daly City
City of Davis
City of Downey
City of Encinitas

City of Foster City
City of Fremont
City of Half Moon Bay
City of Hayward
City of Imperial Beach
City of La Mesa
City of Moorpark
City of Paramount
City of Pleasanton
City of Rocklin
City of San Jose
City of San Carlos
City of San Mateo
City of Santa Barbara
City of Thousand Oaks
City of West Hollywood
City of Winters
City of Woodland
Clean Power Alliance
Climate Action Campaign
Contra Costa County Board of Supervisors
County of Butte
County of El Dorado
County of San Diego
County of Santa Clara
County of Yolo
Desert Community Energy
East Bay Community Energy
eBay
Elders Climate Action, NorCal Chapter
Elders Climate Action, SoCal Chapter
League of California Cities
Local Government Commission
Los Angeles County Board of Supervisors
Marin Clean Energy
Marin County Board of Supervisors
Peninsula Clean Energy Authority
Pioneer Community Energy
Placer County Board of Supervisors
San Diego Community Power
San Mateo County Board of Supervisors
San Francisco Public Utilities Commission

San Jose Community Energy Advocates
Silicon Valley Clean Energy
Silicon Valley Leadership Group
Sonoma Clean Power Authority
Sustainable Silicon Valley
The Climate Center
Town of Colma
Town of Fairfax
Town of Loomis
Valley Clean Energy
Ventura Council of Governments
Ventura County Board of Supervisors
5 Individuals

OPPOSITION:

Pacific Gas and Electric Company
Southern California Edison
The Utility Reform Network

ARGUMENTS IN SUPPORT: As sponsors of this bill, CalCCA states:

> While CCA customers must pay their fair share of the contracts, they do not have fair access to the full range of beneficial resources these contracts provide as those benefits are retained by the IOU for their customers. As a result, CCA customers must turn to increasingly scarce markets to procure resources to serve their customers while IOU customers have a full portfolio of resources at their disposal. There is no good policy rationale for this inequitable treatment of CCA customers versus their IOU counterparts. SB 612 is simply about fairness by ensuring that both IOU and CCA customers are treated equally.

In support of this bill, East Bay Community Energy states:

> SB 612 (Portantino) will ensure that EBCE's customers have the ability to access their proportionate share of the benefits of PG&E legacy contracts they are already paying for. It would also ensure that PG&E manage its legacy contracts to maximize their value for PG&E and EBCE customers alike. At a time when our communities are facing unprecedented economic hardships, it is more important than ever that we reduce utility bills by maximizing the benefits of energy already purchased. While legacy resources produce high costs, they also produce valuable products such as

> renewable energy, hydroelectric energy, and resource adequacy. Though all customers bear cost responsibility for these legacy resources, CCA customers do not have access to any of the beneficial attributes they are paying for. SB 612 (Portantino) will address this inequity by providing fair and equal access to the benefits of legacy resources for all customers.

ARGUMENTS IN OPPOSITION: Southern California Edison expresses the following concerns regarding this bill: (1) it interferes and undermines an ongoing CPUC proceeding, (2) it conflicts with and leaves out key provisions of the existing working group joint proposal from the proceeding, and (3) this bill attempts to reopen issues that have already been decided. SCE specifically notes:

> SB 612 ignores the nuances of issues that have already been decided and circumvents the compromises that have already been agreed to… SB 612 would undermine the extensive time and resources devoted to this issue and tie the CPUC's hands on key customer protection issues, that will – and must – require input from all relevant stakeholders. To achieve the state's clean energy goals and protect California's electric customers, the State should allow these discussions to continue at the regulatory level.

The Utility Reform Network (TURN) states it does not believe this bill is "necessary or appropriate at this time." TURN notes they have been an active participant in all phases of the current PCIA rulemaking proceeding at the CPUC. They argue that while they share concerns regarding the CPUC's excessive delays in the proceeding, they do not believe the Legislature should take actions to overturn a CPUC decision. They state that "this bill seeks to require the CPUC to adopt the preferred policy outcomes of one stakeholder group in resolving a complex set of issues."

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