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AB-2316 Public Utilities Commission: customer renewable energy subscription programs and the community renewable energy program. (2021-2022)

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Assembly Bill No. 2316

CHAPTER 350

An act to add Sections 769.3 and 913.15 to the Public Utilities Code, relating to electricity.

[Approved by Governor September 16, 2022. Filed with Secretary of State September 16, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2316, Ward. Public Utilities Commission: customer renewable energy subscription programs and the community renewable energy program.

Existing law vests the Public Utilities Commission with regulatory authority over public utilities, including electrical corporations. Under existing law, the Green Tariff Shared Renewables Program requires an electrical corporation with 100,000 or more customers in California to file with the commission an application requesting approval of a tariff to implement a program enabling ratepayers to participate directly in offsite electrical generation facilities that use eligible renewable energy resources. Existing law requires the commission to develop programs to increase the adoption of renewable generation among residential customers in disadvantaged communities, and, acting pursuant to that requirement, the commission has adopted, among others, the Disadvantaged Communities Green Tariff program and the Community Solar Green Tariff program.

Existing law imposes various requirements on public works projects, as defined, including a requirement that, at minimum, all workers employed on a public works project be paid the general prevailing rate of per diem wages for work of a similar character in the locality in which a public work is performed, as specified. Existing law requires that contractor and subcontractor payroll records subject to prevailing wage requirements be verified by written declaration under the penalty of perjury, as specified.

This bill would require the commission, on or before March 31, 2024, to evaluate each customer renewable energy subscription program, as described, to determine if the program meets specified goals, to authorize the termination or modification of a program that does not meet those goals, and to determine whether it would be beneficial to ratepayers to establish a community renewable energy program. The bill would require the commission, on or before July 1, 2024, to establish that program if doing so would be beneficial to ratepayers and to require each electrical corporation to participate in that program. The bill would require each community choice aggregator and electric service provider, within 180 days of the establishment of that program, to notify the commission whether it will participate in the program and would authorize a community choice aggregator or electric service provider to begin participating in, or end its participation in, that program at any time by notifying the commission. The bill would require the community renewable energy program, if established, to be complementary to, and consistent with, specified requirements of the California Building Standards Code, ensure at least 51% of its capacity serves low-income customers, prohibit its costs from being paid by nonparticipating customers, require that the construction of its community renewable energy facilities comply with specified prevailing wage requirements, provide bill credits to subscribers, and prioritize the maximum use of state and federal incentives and accelerate its implementation to ensure that time- or quantity-limited federal incentives can be obtained for the benefit of subscribers, as specified. Because the bill would expand the crime of the penalty of perjury, it would impose a state-mandated local program. The bill would require the commission, on or before March 31, 2024, to report to the

Legislature on its actions taken as a result of its evaluation of each customer renewable energy subscription program, its justification for terminating, modifying, or retaining each program, and whether it would be beneficial to ratepayers to establish the community renewable energy program. The bill would also require the commission, within 24 months of establishing the community renewable energy program and annually thereafter, to submit a report to the Legislature on the facilities deployed, and customers subscribed, pursuant to that program.

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

Because the above provisions would be part of the act and a violation of a commission action implementing this bill's requirements would be a crime, the bill would impose a state-mandated local program.

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 Local Program: yes

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

SECTION 1. (a) It is the intent of the Legislature to create a community renewable energy program so that all Californians, especially those unable to host a rooftop solar system, realize the benefits of distributed generation through a cost-effective program that provides benefits to all ratepayers.

(b) The Legislature further intends to facilitate community renewable energy options that can help the state cost effectively meet the energy efficiency mandates in the California Building Standards Code.

(c) The Legislature further intends to support robust low-income customer participation in the community renewable energy program that may be established for electrical corporations pursuant to Section 769.3 of the Public Utilities Code.

SEC. 2. Section 769.3 is added to the Public Utilities Code, to read:

769.3. (a) For purposes of this section, the following definitions apply:

(1) "Community choice aggregator" has the same meaning as defined in Section 331.1.

(2) "Customer renewable energy subscription program" does not include the net energy metering program specified in Sections 2827 and 2827.1 or the Multifamily Affordable Housing Solar Roofs Program established pursuant to Chapter 9.5 (commencing with Section 2870) of Part 2. "Customer renewable energy subscription program" includes an alternative designed for growth among residential customers in disadvantaged communities pursuant to paragraph (1) of subdivision (b) of Section 2827.1.

(3) "Low-income customer" means either of the following:

(A) An individual or household who qualifies for one or more of the following programs:

(i) The California Alternate Rates for Energy (CARE) program described in Section 739.1.

(ii) The Family Electric Rate Assistance (FERA) program described in Section 739.12.

(iii) The CalFresh program established pursuant to Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 of the Welfare and Institutions Code.

(iv) The federal Supplemental Nutrition Assistance Program (SNAP) (Chapter 51 (commencing with Section 2011) of Title 7 of the United States Code).

(v) The Low-income Heating Energy Assistance Program (LIHEAP) (42 U.S.C. Sec. 8621).

(B) An individual or household who resides within an underserved community.

(4) "Underserved community" includes each of the following:

(A) A "low-income community" as defined in Section 39713 of the Health and Safety Code.

(B) A community within an area identified as among the 25 percent most disadvantaged areas in the state according to the California Environmental Protection Agency and based on the most recent California Communities Environmental Health

Screening Tool, also known as CalEnviroScreen, that is used to identify disadvantaged communities pursuant to Section 39711 of the Health and Safety Code.

(C) A community located on lands belonging to a California Native American tribe, as defined in Section 21073 of the Public Resources Code.

(b) On or before March 31, 2024, the commission shall, in a new or existing proceeding, do both of the following:

(1) (A) Evaluate each customer renewable energy subscription program, including the Green Tariff Shared Renewables Program (Chapter 7.6 (commencing with Section 2831) of Part 2) and any program established as an alternative designed for growth among residential customers in disadvantaged communities pursuant to paragraph (1) of subdivision (b) of Section 2827.1, to determine if the program meets all of the following goals:

(i) Efficiently serves distinct customer groups.

(ii) Minimizes duplicative offerings.

(iii) Promotes robust participation by low-income customers.

(B) Consider, as part of the evaluation, the energy load migration trends among bundled and nonbundled customers and any associated risks with maintaining or creating a customer renewable energy subscription program.

(C) If the commission determines a customer renewable energy subscription program does not meet all of the goals described in subparagraph (A), authorize the termination or modification of the program.

(2) (A) Determine whether it would be beneficial to ratepayers to establish a new tariff or program for an electrical corporation, or modify an existing tariff or program administered by an electrical corporation, to establish a community renewable energy program consistent with the criteria described in subdivision (c). If the commission determines that it would be beneficial to ratepayers to establish the community renewable energy program, the commission shall, on or before July 1, 2024, establish the program as part of the same proceeding and require each electrical corporation to participate in the program.

(B) If the commission establishes a community renewable energy program pursuant to subparagraph (A), each community choice aggregator and electric service provider, within 180 days of the establishment of the program, shall notify the commission whether it will participate in the program. A community choice aggregator or electric service provider may begin participating in, or end its participation in, the program at any time by notifying the commission.

(c) The community renewable energy program, if established, shall do all of the following:

(1) Be complementary to, and consistent with, the requirements of Section 10-115 of the California Building Standards Code (Title 24 of the California Code of Regulations). For purposes of this paragraph, the commission shall consult with the Energy Commission.

(2) Ensure at least 51 percent of the program's capacity serves low-income customers.

(3) Minimize impacts to nonparticipating customers by prohibiting the program's costs from being paid by nonparticipating customers in excess of the avoided costs. Qualifying funds for financial incentives shall only be available through an appropriation by the Legislature.

(4) (A) Except as provided in subparagraph (B), require that all of the following requirements apply to the construction of a community renewable energy facility pursuant to the program:

(i) All construction workers employed in the execution of the project shall be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(ii) The owner of the community renewable energy facility shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work.

(iii) All contractors and subcontractors shall maintain payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section.

(iv) The requirement on contractors and subcontractors to pay prevailing wages pursuant to this section may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the

completion of the project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(B) Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code and subparagraph (A) shall not apply to the construction of a community renewable energy facility pursuant to the program if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages and provides for enforcement of that obligation through an arbitration procedure. For purposes of this subparagraph, "project labor agreement" has the same meaning as defined in Section 2500 of the Public Contract Code.

(5) Provide bill credits to subscribers based on the avoided costs of the program's facilities, as determined by the commission's methods for calculating the full set of benefits of distributed energy resources. The commission may use actual wholesale market prices for the energy supply portion of an avoided cost calculation or credit value.

(6) Prioritize the maximum use of state and federal incentives and accelerate implementation of the program to ensure that time- or quantity-limited federal incentives can be obtained for the benefit of subscribers. As part of this prioritization, the commission shall ensure that a community renewable energy facility participating in the community renewable energy program is eligible for an enhanced federal investment tax credit available as a qualified low-income economic benefit project pursuant to subsection (e) of Section 48 of Title 26 of the United States Code.

SEC. 3. Section 913.15 is added to the Public Utilities Code, to read:

913.15. (a) Within 24 months of establishing a community renewable energy program pursuant to Section 769.3, if applicable, and annually thereafter for the duration of the program, the commission shall submit a report to the Legislature, in compliance with Section 9795 of the Government Code, on the facilities deployed and customers subscribed, pursuant to that program, including an analysis of low-income customer participation.

(b) (1) On or before March 31, 2024, the commission shall report to the Legislature on its actions taken pursuant to subdivision (b) of Section 769.3 and its justification for terminating, modifying, or retaining each customer renewable energy subscription program pursuant to that subdivision.

(2) The requirement for submitting a report imposed under this subdivision is inoperative on January 1, 2028, pursuant to Section 10231.5 of the Government Code.

(3) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 4. 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.