MEMORANDUM

To: Members of the California Senate Appropriations Committee
    Staff of the California Senate Appropriations Committee

CC: CA State Assembly Members
    CA State Senators
    Honorable Governor Jerry Brown

From: Lane Sharman
    On behalf of Californians for Energy Choice
    Executive Director, San Diego Energy District Foundation

Date: July 28, 2014

RE: AB 2145 Economic Impact to the State of California & Local Government

The purpose of this memorandum is to estimate the likely fiscal impact of AB 2145 to the State of California and local governments within California. It takes into account the historical actions of California's Investor Owned Utilities (IOU) in relationship to Community Choice Aggregation (CCA). Calculations for the estimates and a summary of the methodology are provided as footnotes.

Executive Summary

Three provisions in AB 2145 would result in an estimated $7.1 million annual fiscal impact to the State of California. These costs would result from increased litigation in the courts and increased staffing requirements of the California Public Utilities Commission (CPUC) due to these provisions of the bill, as described in this memorandum.

Government is not the same as the commercial, retail market as affirmed by the Senate Energy, Utilities and Communications Committee in its June 23, 2014 Bill Analysis. Government exists distinctly and independently of this market. As such, local governments engage in the electricity sector in a way that is distinct from the IOUs and thus should not be regulated like an IOU. AB 2145 demonstrates the willingness of the IOUs to impose new costs on the State in their efforts to curtail competition from Community Choice programs.

Background

Assembly Member Steven Bradford is the AB 2145 author. Originally, the bill contained an “Opt-In” element. A firestorm of protest eliminated this option known to all as an effective torpedo to CCA formation. However, as amended, every element will result in additional costs to the State of California and local government.

IOUs oppose the will of the people to introduce competition and choice into the electrical markets. Since the introduction of the law enabling Community Choice Aggregation (AB 117), the historical record is clear. In PG&E territory, the IOU waged a relentless PR campaign against the formation of the San Joaquin Valley Power Authority, the Marin Clean Energy, and CleanPowerSF. The obstruction is documented in the record of Senator Mark Leno’s Senate Select Committee on Renewable Energy of 2010. The obstructions to CCA
formation included the anti-CCA initiative, Proposition 16, which failed at the ballot box despite approximately $46M having been expended by PG&E in support of it.

The public relations campaign against the three emerging CCAs was so relentless and costly to the formation process that SB 790 (Leno) was enacted to establish an IOU Code of Conduct relative to CCAs. Since the protections afforded by SB 790 do not apply to legislation, the IOUs have constructed AB 2145 as another malicious attempt to undermine competition from Community Choice programs.

The CPUC regulates the IOUs for good reason. As natural monopolies with private shareholders, the IOU’s duty is to maximize profit and protect their franchise. By contrast, it is the will of the State and a majority of the people to regulate the environment and the economy in a responsible manner and this is accomplished through thousands of local water, sanitary and energy districts subject to local oversight, the Brown Act, and the California Public Records Act (CPRA). AB 2145 transforms a CCA into an entity regulated both by the CPUC and a local board. Over-regulation is what the State seeks to avoid especially when there is no justification for the additional cost.

AB 2145 burdens a CCA with CPUC oversight when local oversight and debate is working. It is yet another costly attack on CCA innovation in energy choice and environmental stewardship. If AB 2145 becomes law, a host of new costs will plague the State, local governments and ratepayers seeking to form and operate CCAs in the most efficient and responsible manner possible.

Provision: CPUC To Resolve Complaints – >$800,000 in annual State costs!
The bill extensively amends Section 366.2 of the Public Utilities Code and one such amendment will trigger new costs within the Office of Ratepayer Advocates (ORA) of at least $800,000. It is very likely that the total cost to the State will be 2-3 times this amount.

These costs result from shifting the venue of complaints. Presently, as with any local, California special district, CCA complaints are heard and resolved locally. It is the burden of local districts to hear local complaints. This is both efficient and cost-effective. Under this provision, the new venue for complaints is the California Public Utilities Commission.

In addition, under this provision, a “complaint” is not specific to CCA customers. Complaints can originate from the IOUs, their interest groups which are many, or individual customers. An array of new complaints can be expected. $800,000 is a 5% percent increase in the staff of the ORA required to address these new complaints. According to the provision, the complaint must be expedited causing additional government staff or consultants to be paid to meet this hurdle. $800,000 is a minimum floor of new costs.

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1 5% Increase in the Office of Ratepayer Advocates energy budget = $803,000
Provision: Guarantee of 5 Year Rate Certainty - >$5 million in annual State costs
The bill currently reads that IOUs “shall provide projected” rates for 5 years into the future but that CCA rates “shall be provided” for five years. This provision imposes a price guarantee on a CCA but not an IOU. This provision will result in significant appeals to the California Public Utilities Commission (CPUC) for special rate relief by CCAs when confronted with unpredictable changes in the energy market. The provision will trigger litigation which the State will fund in the courts and which the CPUC will fund through additional staff competent to hear cases related to this new obligation.

Extrapolating on the budgets of the California Judiciary, the CPUC and the Office of Ratepayer Advocates (ORA), the annual estimate is $5 million to the State for this provision. The cost could be significantly higher due to the discriminatory nature of the provision triggering litigation by advocates for energy reform and open markets.

Provision: Three County Limitation – >$1.3 million in annual State costs
The bill currently limits any new CCA to a geographic limitation of not more than three contiguous counties. Many sparsely populated counties in Northern and Central California do not have populations sufficient to enable forming and operating a CCA. The arbitrariness of this provision is certain to trigger petitions to the legislature to amend the law allowing counties with smaller populations to become a part of some CCA in violation of this provision. The annual cost, as a floor, to the State Legislature and the Courts is estimated to be $1.3 million based on the number of likely cases to be brought before the legislature and the courts.

Fiscal Impact to Local Governments Including CCAs and Ratepayers
Marin Clean Energy (MCE) and Sonoma Clean Power (SCP) operate today in PG&E territory. If AB 2145 becomes law, an array of new costs arises from CPUC oversight of these local CCAs. AB 2145 in its convoluted language and conditions require new CPUC rule making. For example, AB 2145 contains the requirement that CCAs produce “A description of the third parties that will be supplying electricity under the program, including, but not limited to, complete information about financial, technical, and operational capabilities.” Including but not limited to? That kind of language is a recipe for fishing expeditions by the IOUs.

To address the CPUC complaint process, which might inundate a CCA, at least one and as many as three or more legal specialists will have to be on staff to address complaints before the CPUC. In order to meet the fast-track requirement of the complaint process, there will have to be increased staff capacity. The IOUs have armies of lawyers. And, they use those lawyers liberally according to their historical CCA antipathy. For each CCA in California, expect $250,000 in additional operating expense as a floor.

There are approximately seventeen Counties and Cities in California in varying stages of CCA formation. AB 2145 will directly impact their effort at formation. During the formation process and operation, the local government will be required to fund personnel capable of adjudicating complaints before the CPUC. Additionally, the formation process will require

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2 1% Workload Increase of the CPUC Energy Division = $1,580,000 and a 0.1% Increase in the Judiciary = $3,600,000
3 0.5% Workload Increase in the Legislature = $1,347,000
careful consideration of the three county limitation. Lastly, many CCA implementation efforts will terminate because it is not feasible to meet the 5-year rate guarantee. These costs in lost opportunity and regulatory hurdles are in the tens of millions of dollars as a floor.

Conclusions
AB 2145 represents the intent of the IOUs to undermine competition in the electricity markets by imposing restrictions on Community Choice that will result in significant new annual costs to the State. AB 2145 demonstrates the will of the IOUs to impose new costs on the State while providing no redeeming benefits.

Anti-competitive geographic barriers will increase rates and costs over time to those municipalities not able to establish or join a geographically non-contiguous CCA. The reach of shared services beyond the boundaries of a city or county’s jurisdiction is actually common. Consider the Joint Powers Authority, School Project for Utility Rate Reduction (SPURR), which procures natural gas for school districts throughout California. AB 2145 discriminates against CCAs and favors the unambiguous market share of California’s IOUs.

5-Year Rate Setting will increase costs due to complaints and material labor for handling such complaints within the CPUC. It alone might materially impede any further CCA formation in California. Why impose such a requirement on a CCA when no such requirement exists for any utility including the IOUs?

Historically, the IOUs have demonstrated a distinct distaste for local control over the supply of energy as enabled by Community Choice Law. PG&E spent $46+ Million to defeat CCA formation through its sponsorship and promotion of Proposition 16 in 2010. Among the IOUs, it has a large and proven appetite to defeat energy competition where and when it emerges in its service territory. SDG&E thwarted the desires of the Cities of Chula Vista and San Marcos to form CCAs. Positions in local government are funded by SDG&E creating a distinct conflict within those cities to pursue CCA formation. No monopoly wants a challenge to its status. Yet, with Direct Access and Community Choice Aggregation, California is slowly emerging as a model for competitive and cleaner energy.

AB 2145 introduces a plethora of costly, cumbersome regulations like tasking local governments and CCAs with complaint adjudication using the complex procedures of the CPUC. AB 2145 demonstrates the intent of the IOUs to impose new costs and to undermine Community Choice Aggregation as a viable option for Californians.

Meanwhile, Marin Clean Energy (MCE) and Sonoma Clean Power (SCP) prove that a CCA can deliver cheaper and cleaner energy, using the same rules of renewable energy accounting as the IOUs. Despite the many misrepresentations of the rates and renewable energy content by the author and proponents of AB 2145, both MEA and now SCP are delivering material cost-savings to their customer bases, and doing so in a way that lowers costs to the state. AB 2145 is meant to reverse this dynamic, and in attempting to do so, will engender increased costs to the State.

Passing AB 2145 would be a disservice to the many needy programs of education, welfare, infrastructure, judiciary and others of the State. The bill creates a web of new, public costs.
AB 2145 discourages an emerging, successful alternative in responsible and affordable energy for the people of California.

Respectfully Submitted:

Lane W. Sharman Jr

NB: The author thanks Bruce Wolfe, a member of Californians for Energy Choice, who contributed materially to the Memorandum.

A Note To The Estimation Methodology
The author's methodology was to assess the workload increase; determine its gross cost; then divide that cost into the total, relevant budget to come up with a working percentage. Other economic parameters and historical facts acted as general weights to the estimation process.

Additional References
Marin Clean Energy www.marincleanenergy.org
Sonoma Clean Power www.sonomacleanpower.org
SB 790 http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0751-0800/sb_790_cfa_20110908_165051_sen_floor.html