ASSEMBLY BILL No. 9

Introduced by Assembly Member Migden

May 15, 2001

An act to amend Sections 331, 366, and 381 of the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as introduced, Migden. Electrical restructuring: aggregation.

(1) Existing law, relating to transactions between electricity suppliers and end-use customers, authorizes specified entities to aggregate electrical loads, and defines an ''aggregator'' as one of those specified entities that provides specified power supply services, including combining the loads of multiple end-use customers and facilitating the sale and purchase of electrical energy, transmission, and other services on behalf of the end-use customers.

This bill would, instead, authorize customers to aggregate their electric loads as individual consumers with private aggregators, as defined, or as members of their local community with community choice aggregators, as defined. The bill would, with regard to community choice aggregators, authorize any municipality or any group of municipalities acting together to aggregate the electrical load of interested electricity consumers within its boundaries, as prescribed.

(2) Existing law requires the Public Utilities Commission to order specified electrical corporations to collect and spend certain funds for prescribed public benefit programs, cost-effective energy efficiency, and conservation.

The bill would require the commission to authorize municipal aggregators to file for a pro rata share of energy efficiency funds collected from their customers by electrical corporations. The bill would require the commission to authorize a municipality to spend the funds on energy efficiency measures that benefit its customers, subject to any rules adopted by the commission to ensure accurate accounting, verification, and adherence to a plan filed by the entity.

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

Vote: $^2/_3$. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 331 of the Public Utilities Code is amended to read:

331. The definitions set forth in this section govern the construction of this chapter.

(a) ‘‘Broker’’ means an entity that arranges the sale and purchase of electric energy, transmission, and other services between buyers and sellers, but does not take title to any of the power sold.

(b) ‘‘Community choice aggregator’’ or ‘‘municipal aggregator’’ means any of the following *entities, if that entity is not within the jurisdiction of a municipal utility district that provided electrical service as of the effective date of amendments to this section made by Assembly Bill 48 of the 2001–02 First Extraordinary Session of the Legislature*:

(1) Any municipality whose governing board elects to combine the loads of its residents, businesses, and municipal facilities in a communitywide electricity buyers’ program.

(2) Any group of municipalities whose governing boards have elected to combine the loads of their programs.

(3) Any county or irrigation district whose governing board has elected to administer the combined programs of consenting municipalities within its jurisdiction.

(4) Any county or irrigation district whose governing board elects to combine the loads of its residents, businesses, and facilities in unincorporated areas.

(5) Any municipal utility district that did not provide electrical service as of the effective date of amendments to this section made by Assembly Bill 48 of the 2001–02 First Extraordinary Session of the Legislature.

(c) ‘‘Direct transaction’’ means a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services.

(d) ‘‘Fire wall’’ means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) ‘‘Marketer’’ means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) ‘‘Microcogeneration facility’’ means a cogeneration facility of less than one megawatt.

(g) ‘‘Private Aggregator’’ means any marketer, broker, or public agency not qualifying as a community choice aggregator that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers.

(h) ‘‘Restructuring trusts’’ means the two tax-exempt public benefit trusts established by Decision D. 96-08-038 of the commission to provide for design and development of the hardware and software systems for the Power Exchange and the Independent System Operator, respectively, and that may undertake other activities, as needed, as ordered by the commission.

(i) ‘‘Small commercial customer’’ means a customer that has a maximum peak demand of less than 20 kilowatts.

SEC. 2. Section 366 of the Public Utilities Code is amended to read:

366. (a) (1) The commission shall take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers. Customers shall be entitled to aggregate their electric loads as individual consumers with private aggregators, or as members of their local community with community choice aggregators.

(2) Customers may aggregate their loads with private aggregators on a voluntary basis, if each customer does so by a positive written declaration.

(3) Customers may aggregate their loads through a public process with community choice aggregators, if each customer is given an opportunity to opt out of their community's aggregation program.

(4) If a customer makes no positive declaration to aggregate with a private aggregator, opts out of a community choice aggregator's program, or has no community choice program available, that customer shall continue to be served by the existing electrical corporation or its successor in interest.

(b) Private aggregation of customer electrical load shall be authorized by the commission for all customer classes, including, but not limited to small commercial or residential customers. Private aggregation may be accomplished by private market aggregators, special districts, and public agencies not qualifying as community choice aggregators, or on any other basis made available by market opportunities and agreeable by positive written declaration by individual consumers.

(c) (1) Any municipality or any group of municipalities acting together is hereby authorized to aggregate the electrical load of interested electricity consumers within its boundaries to reduce transaction costs to consumers, provide consumer protections, and leverage the negotiation of contracts. However, the municipality or group of municipalities may not aggregate electrical load if that load is served by a local publicly owned electric utility, as defined in subdivision (d) of Section 9604. A municipality or group of municipalities may group retail electricity customers to solicit bids, broker, and contract for electric power and energy services for those customers. The municipality or group of municipalities may enter into agreements for services to facilitate the sale and purchase of electric energy and other related services. Those service agreements may be entered into by a single city or county, a city and county, or by a group of cities, cities and counties, or counties.

(2) Under municipal aggregation, customer participation may not require a positive written declaration, but all customers shall be informed of their right to opt out of the municipal aggregation program. If no negative declaration is made by a customer, that

customer shall be served through the municipality's aggregation program.

(3) A municipality or group of municipalities establishing load aggregation pursuant to this section shall develop an implementation plan, for review by its citizens, detailing the process and consequences of aggregation. Any municipal load aggregation established pursuant to this section shall provide for universal access, reliability, and equitable treatment of all classes of customers and shall meet any requirements established by state law or by the commission concerning aggregated service. A municipality or group of municipalities establishing load aggregation shall prepare a statement of intent with the implementation plan. The plan shall include all of the following:

(A) An organizational structure of the program, its operations, and its funding.

(B) Ratesetting and other costs to participants.

(C) The methods for entering and terminating agreements with other entities.

(D) The rights and responsibilities of program participants.

(E) Termination of the program.

(4) All electrical corporations shall cooperate fully with municipalities that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing municipalities with all billing and load data . Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in municipal aggregation programs. Bills sent by the electrical corporation to retail customers shall identify the municipal aggregator as providing the energy component of the bill. The commission shall determine the terms and conditions under which the electrical corporation provides services to municipal aggregators and retail customers.

~~(5) A city or city and county may aggregate electrical load upon authorization by a majority vote of its city council or governing board. Two or more municipalities may as a group authorize aggregation by a majority vote of each governing body of the particular municipality as herein required.~~

(5) (A) A city, county, or city and county that elects to implement a municipal aggregation program pursuant to this chapter may do so by ordinance.

(B) Two or more municipalities may participate as a group in a municipal aggregation pursuant to this chapter, through a joint powers authority or other means, if each entity adopts an ordinance pursuant to subparagraph (A).

(6) Participation by any retail customer in a municipal aggregation program shall be voluntary. Following adoption of aggregation through the votes specified above, such a program shall allow any retail customer to opt out and choose any supplier or provider. Within 30 days of the date the aggregated entity is fully operational, a customer shall be transferred to the aggregated entity. Once enrolled in the aggregated entity, any ratepayer that chooses to opt out within 180 days of the date of enrollment may do so without penalty and shall be entitled to receive default service pursuant to paragraph (4) of subdivision (a), as if the customer was originally enrolled therein. Any re-entry fees to be imposed after the 180-day opt-out period shall be approved by the commission and shall reflect the cost of re-entry.

(7) Nothing in this section shall be construed as authorizing any city or any municipal retail load aggregator to restrict the ability of retail electric customers to obtain or receive service from any authorized service provider.

(8) *(A)* The aggregated entity shall fully inform participating customers in advance of automatic enrollment, and for not less than three consecutive billing cycles following enrollment~~,~~*. Notification may include, but is not limited to, direct mailings to customers, or inserts in water, sewer, or other utility bills. Any notification shall inform customers* of both of the following:

~~(A)~~

(i) That they are to be automatically enrolled and that the customer has the right to opt out of the aggregated entity without penalty.

~~(B)~~

(ii) The terms and conditions of the services offered.

~~(9) The electrical corporation shall include the information required pursuant to paragraph (8) in the electrical corporation's normally scheduled monthly billing process for the aggregated entity's consumers, in the following manner:~~

~~(A) Once in a normally scheduled bill mailed prior to automatic enrollment, as directed by the aggregated entity.~~

~~(B) Once a month following enrollment for not less than three consecutive normally scheduled billing cycles, as directed by the aggregated entity.~~

~~(10)~~

(B) The municipal aggregator may contract with the electrical corporation for notification required in subparagraph (A). If the aggregated entity elects to send one or more of the notifications required pursuant to subparagraph (A) in the electrical corporation's normally scheduled monthly billing process, the electrical corporation shall be entitled to recover from the aggregator all reasonable costs it incurs related to the notification or notifications. The electrical corporation shall fully cooperate with the aggregated entity in determining the feasibility and costs associated with using the electrical corporation's normally scheduled monthly billing process to provide one or more of the notifications required pursuant to subparagraph (A).

(C) Each notification shall also include a mechanism by which a ratepayer may opt out of municipal aggregated service. The opt-out may take the form of a self-addressed return postcard indicating the customer's election to remain with, or return to, service provided by the electrical corporation, or another straightforward means by which the customer may elect to derive electrical service through the electrical corporation providing service in the area.

(9) The aggregated entity shall register with the commission, which may require additional information to ensure compliance with basic consumer protection rules and other procedural matters.

~~(11)~~

(10) Once the community choice aggregator's contract is signed, the community choice aggregator shall notify the applicable electrical corporation that community choice service will commence within 30 days.

~~(12)~~

(11) Once notified of a community choice aggregator program, the electrical corporation shall transfer all applicable accounts to the new supplier within a 30-day period from the date of the close of their normally scheduled monthly metering and billing process.

SEC. 3. Section 381 of the Public Utilities Code is amended to read:

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 is not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

(b) The commission shall allocate funds collected pursuant to subdivision (a), and any interest earned on collected funds, to programs that enhance system reliability and provide in-state benefits as follows:

(1) Cost-effective energy efficiency and conservation activities.

(2) Public interest research and development not adequately provided by competitive and regulated markets.

(3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

(c) The commission shall order the respective electrical corporations to collect and spend these funds, as follows:

(1) Cost-effective energy efficiency and conservation activities shall be funded at not less than the following levels commencing January 1, 1998, through December 31, 2001: for San Diego Gas and Electric Company a level of thirty-two million dollars ($32,000,000) per year; for Southern California Edison Company a level of ninety million dollars ($90,000,000) for each of the years l998, 1999, and 2000; fifty million dollars ($50,000,000) for 2001; and for Pacific Gas and Electric Company a level of one hundred six million dollars ($106,000,000) per year.

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998 through December 31, 2001: for San Diego Gas and Electric Company a level of four million dollars ($4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars ($28,500,000) per year; and for Pacific

Gas and Electric Company a level of thirty million dollars ($30,000,000) per year.

(3) In-state operation and development of existing and new and emerging renewable resource technologies shall be funded at not less than the following levels on a statewide basis: one hundred nine million five hundred thousand dollars ($109,500,000) per year for each of the years 1998, 1999, and 2000, and one hundred thirty-six million five hundred thousand dollars ($136,500,000) for 2001. To accomplish these funding levels over the period described herein the San Diego Gas and Electric Company shall spend twelve million dollars ($12,000,000) per year, the Southern California Edison Company shall expend no less than forty-nine million five hundred thousand dollars ($49,500,000) for the years 1998, 1999, and 2000, and no less than seventy-six million five hundred thousand dollars ($76,500,000) for 2001, and the Pacific Gas and Electric Company shall expend no less than forty-eight million dollars ($48,000,000) per year through the year 2001. Additional funding not to exceed seventy-five million dollars ($75,000,000) shall be allocated from moneys collected pursuant to subdivision (d) in order to provide a level of funding totaling five hundred forty million dollars ($540,000,000).

(4) Up to fifty million dollars ($50,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to implementation of subdivision (a) of Section 374. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(5) Up to ninety million dollars ($90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

(d) Notwithstanding any other provisions of this chapter, entities subject to the jurisdiction of the commission shall extend the period for competition transition charge collection up to three months beyond its otherwise applicable termination of December 31, 2001, so as to ensure that the aggregate portion of the research, environmental, and low-income funds allocated to renewable resources shall equal five hundred forty million dollars ($540,000,000) and that the costs specified in paragraphs (3), (4), and (5) of subdivision (c) are collected.

(e) Each electrical corporation shall allow customers to make voluntary contributions through their utility bill payments as either a fixed amount or a variable amount to support programs established pursuant to paragraph (3) of subdivision (b). Funds collected by electrical corporations for these purposes shall be forwarded in a timely manner to the appropriate fund as specified by the commission.

(f) The commission shall determine how to utilize funds for purposes of paragraphs (1) and (2) of subdivision (b), provided that only those research and development funds for transmission and distribution functions shall remain with the regulated public utilities under the supervision of the commission. The commission shall provide for the transfer of all research and development funds collected for purposes of paragraph (2) of subdivision (b) other than those for transmission and distribution functions and funds collected for purposes of paragraph (3) of subdivision (b) to the California Energy Resources Conservation and Development Commission pursuant to administration and expenditure criteria to be established by the Legislature.

(g) The commission's authority to collect funds pursuant to this section for purposes of paragraph (3) of subdivision (b) shall become inoperative on March 31, 2002.

(h) For purposes of this article, ''emerging renewable technology'' means a new renewable technology, including, but not limited to, photovoltaic technology, that is determined by the California Energy Resources Conservation and Development Commission to be emerging from research and development and that has significant commercial potential.

(i) The commission shall authorize municipal aggregators to file for a pro rata share of energy efficiency funds collected from their customers by electrical corporations. The commission shall authorize municipalities to spend the funds on energy efficiency measures that benefit their customers, subject to any rules adopted by the commission to ensure accurate accounting, verification, and adherence to a plan filed by the entity.

SEC. 4. *Nothing in this act relieves any customer served by a municipal aggregator of any obligation for the purchase of power* *incurred on behalf of the customer prior to the election of the aggregating entity to act as a municipal aggregator, including, but not limited to, any obligations imposed pursuant to Chapter 4 of the Statutes of 2001, First Extraordinary Session, or Section 332.1 of the Public Utilities Code, as determined by the Public Utilities Commission.*

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, that endanger the health, welfare, and safety of the people of this state, it is necessary for this act to take effect immediately.

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