

AMENDED IN ASSEMBLY MAY 24, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

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 amended, 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: $\frac{2}{3}$ —majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

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

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

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

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

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

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

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

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

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

8 (c) “Direct transaction” means a contract between any one or
9 more electric generators, marketers, or brokers of electric power
10 and one or more retail customers providing for the purchase and
11 sale of electric power or any ancillary services.

12 (d) “Fire wall” means the line of demarcation separating
13 residential and small commercial customers from all other
14 customers as described in subdivision (e) of Section 367.

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

19 (f) “Microcogeneration facility” means a cogeneration facility
20 of less than one megawatt.

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

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

33 (i) “Small commercial customer” means a customer that has
34 a maximum peak demand of less than 20 kilowatts.

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

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

1 as members of their local community with community choice
2 aggregators.

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

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

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

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

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

39 (2) Under municipal aggregation, customer participation may
40 not require a positive written declaration, but all customers shall



1 be informed of their right to opt out of the municipal aggregation
2 program. If no negative declaration is made by a customer, that
3 customer shall be served through the municipality's aggregation
4 program.

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

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

18 (B) Ratesetting and other costs to participants.

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

21 (D) The rights and responsibilities of program participants.

22 (E) Termination of the program.

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

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

38 (B) Two or more municipalities may participate as a group in
39 a municipal aggregation pursuant to this chapter, through a joint

1 powers authority or other means, if each entity adopts an ordinance
2 pursuant to subparagraph (A).

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

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

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

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

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

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

1 scheduled monthly billing process to provide one or more of the
2 notifications required pursuant to subparagraph (A).

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

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

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

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

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

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

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

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

38 (2) Public interest research and development not adequately
39 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 1998, 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

1 million dollars (\$48,000,000) per year through the year 2001.
 2 Additional funding not to exceed seventy-five million dollars
 3 (\$75,000,000) shall be allocated from moneys collected pursuant
 4 to subdivision (d) in order to provide a level of funding totaling
 5 five hundred forty million dollars (\$540,000,000).

6 (4) Up to fifty million dollars (\$50,000,000) of the amount
 7 collected pursuant to subdivision (d) may be used to resolve
 8 outstanding issues related to implementation of subdivision (a) of
 9 Section 374. Moneys remaining after fully funding the provisions
 10 of this paragraph shall be reallocated for purposes of paragraph
 11 (3).

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

19 (d) Notwithstanding any other provisions of this chapter,
 20 entities subject to the jurisdiction of the commission shall extend
 21 the period for competition transition charge collection up to three
 22 months beyond its otherwise applicable termination of December
 23 31, 2001, so as to ensure that the aggregate portion of the research,
 24 environmental, and low-income funds allocated to renewable
 25 resources shall equal five hundred forty million dollars
 26 (\$540,000,000) and that the costs specified in paragraphs (3), (4),
 27 and (5) of subdivision (c) are collected.

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

35 (f) The commission shall determine how to utilize funds for
 36 purposes of paragraphs (1) and (2) of subdivision (b), provided
 37 that only those research and development funds for transmission
 38 and distribution functions shall remain with the regulated public
 39 utilities under the supervision of the commission. The commission
 40 shall provide for the transfer of all research and development funds

1 collected for purposes of paragraph (2) of subdivision (b) other
2 than those for transmission and distribution functions and funds
3 collected for purposes of paragraph (3) of subdivision (b) to the
4 California Energy Resources Conservation and Development
5 Commission pursuant to administration and expenditure criteria to
6 be established by the Legislature.

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

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

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

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

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

35 ~~In order to address the rapid, unforeseen shortage of electric~~
36 ~~power and energy available in the state and rapid and substantial~~
37 ~~increases in wholesale energy costs and retail energy rates, that~~

- 1 ~~endanger the health, welfare, and safety of the people of this state;~~
- 2 ~~it is necessary for this act to take effect immediately.~~

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