

AMENDED IN SENATE SEPTEMBER 6, 2001

AMENDED IN ASSEMBLY MAY 24, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 9

Introduced by Assembly Member Migden
(Coauthor: Senator Alarcon)

May 15, 2001

An act to amend Sections 331, 366, and 381 of the Public Utilities Code, relating to public utilities.

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 authorize a community choice aggregators, authorize any municipality or any group of municipalities acting together~~ aggregator to aggregate the electrical load of interested electricity consumers within its boundaries.

Under the bill, any community choice aggregator would be obligated to the Department of Water Resources for an amount equal to the net unavoidable cost, calculated as prescribed, of power procurement for the department attributable to the customers of the community choice aggregator including, but not limited to, any financing costs, as determined by the department.

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

~~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 require the administrator of cost-effective energy efficiency and conservation programs to direct a proportional share of its approved energy efficiency program activities for which the community aggregator's customers are eligible, to the community aggregator's territory.~~

Vote: 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 9
14 of the 2001-02 Second Extraordinary Session of the Legislature:

(1) Any ~~municipality~~ *city, county, or city and county* 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~~ *cities, counties, or cities and counties* whose governing boards have elected to combine the loads of their programs, *through the formation of a joint powers authority established under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.*

~~(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

1 hardware and software systems for the Power Exchange and the
2 Independent System Operator, respectively, and that may
3 undertake other activities, as needed, as ordered by the
4 commission.

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

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

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

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

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

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

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

35 ~~(c) (1) Any municipality or any group of municipalities acting~~
36 ~~together~~

37 *(c) If a public agency seeks to serve as a community aggregator*
38 *on behalf of residential customers, it shall be obligated to offer the*
39 *opportunity to purchase electricity to all residential customers*
40 *within its jurisdiction.*

(d) (1) A *community choice aggregator* 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~~ *community choice aggregator* 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~~ *community choice aggregator* 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~~ *community choice aggregator* 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~~ *community choice* 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~~ *community choice* aggregation program. If no negative declaration is made by a customer, that customer shall be served through the ~~municipality's~~ *community choice* aggregation program.

(3) A ~~municipality or group of municipalities~~ *community choice aggregator* 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~~ *The implementation plan, and any subsequent changes to it, shall be considered and adopted at a duly noticed public hearing.* Any *community choice* 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~~ *community choice aggregator* establishing load aggregation shall prepare a statement of intent with the implementation plan. The plan shall include all of the following:

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

3 (B) Ratesetting and other costs to participants.

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

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

7 (E) Termination of the program.

8 (4) All electrical corporations shall cooperate fully with
9 ~~municipalities~~ *cities, counties, or cities and counties* that
10 investigate, pursue, or implement community choice aggregation
11 programs. Cooperation shall include providing ~~municipalities~~
12 ~~with all billing and load data. Electrical~~ *cities, counties, or cities*
13 *and counties with appropriate billing and load data, including, but*
14 *not limited to, data detailing energy needs and patterns of usage,*
15 *as determined by the commission, and in accordance with*
16 *procedures established by the commission. Electrical* corporations
17 shall continue to provide all metering, billing, collection, and
18 customer service to retail customers that participate in ~~municipal~~
19 *community choice* aggregation programs. Bills sent by the
20 electrical corporation to retail customers shall identify the
21 ~~municipal~~ *community choice* aggregator as providing the energy
22 component of the bill. The commission shall determine the terms
23 and conditions under which the electrical corporation provides
24 services to ~~municipal~~ *community choice* aggregators and retail
25 customers.

26 (5) (A) A city, county, or city and county that elects to
27 implement a ~~municipal aggregation program~~ *community choice*
28 *aggregation program within its jurisdiction* pursuant to this
29 chapter ~~may~~ shall do so by ordinance.

30 (B) Two or more ~~municipalities~~ *cities, counties, or cities and*
31 *counties* may participate as a group in a ~~municipal~~ *community*
32 *choice* aggregation pursuant to this chapter, through a joint powers
33 authority ~~or other means~~ *established pursuant to Chapter 5*
34 *(commencing with Section 6500) of Division 7 of Title 1 of the*
35 *Government Code*, if each entity adopts an ordinance pursuant to
36 subparagraph (A).

37 ~~(6) Participation by any retail customer in a municipal~~
38 ~~aggregation program shall be voluntary. Following adoption of~~

39 ~~(6) Following adoption of aggregation through the votes~~
40 ~~specified above ordinance described in paragraph (5), such a~~

1 program shall allow any retail customer to opt out and choose any
 2 supplier ~~or provider. Within 30 days of the date the aggregated~~
 3 ~~entity is fully operational, a customer shall be transferred to the~~
 4 ~~aggregated entity or provider as provided by applicable~~
 5 *commission policies. Delivery services shall be provided at the*
 6 *same rates, terms, and conditions, as approved by the commission,*
 7 *for community choice aggregation customers and customers who*
 8 *have entered into a direct transaction where applicable, as*
 9 *determined by the commission.* Once enrolled in the aggregated
 10 entity, any ratepayer that chooses to opt out within 180 days of the
 11 date of enrollment may do so without penalty and shall be entitled
 12 to receive default service pursuant to paragraph (4) of subdivision
 13 (a), ~~as if the customer was originally enrolled therein.~~ *Customers*
 14 *who return to the electrical corporation for procurement services*
 15 *shall be subject to the same terms and conditions as are applicable*
 16 *to other returning direct access customers from the same class, as*
 17 *determined by the commission, as authorized by the commission*
 18 *pursuant to this code or any other provision of law. No community*
 19 *choice aggregation customer returning to default service may be*
 20 *charged for any cost associated with obligations incurred on*
 21 *behalf of the customer that were paid by the customer or the*
 22 *community choice aggregator during the time the customer was*
 23 *served by the community choice aggregator.* Any re-entry fees to
 24 be imposed after the 180-day opt-out period shall be approved by
 25 the commission and shall reflect the cost of re-entry.

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

30 (8) (A) The aggregated entity shall fully inform participating
 31 customers ~~in advance of 30 days in advance of the date of~~
 32 *commencing* automatic enrollment, and for not less than three
 33 consecutive billing cycles following enrollment. Notification may
 34 include, but is not limited to, direct mailings to customers, or
 35 inserts in water, sewer, or other utility bills. Any notification shall
 36 inform customers of both of the following:

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

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

1 (B) The ~~municipal~~ *community choice* aggregator may contract
2 with the electrical corporation for notification required in
3 subparagraph (A). If the aggregated entity elects to send one or
4 more of the notifications required pursuant to subparagraph (A) in
5 the electrical corporation's normally scheduled monthly billing
6 process, the electrical corporation shall be entitled to recover from
7 the aggregator all reasonable costs it incurs related to the
8 notification or notifications. The electrical corporation shall fully
9 cooperate with the aggregated entity in determining the feasibility
10 and costs associated with using the electrical corporation's
11 normally scheduled monthly billing process to provide one or
12 more of the notifications required pursuant to subparagraph (A).

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

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

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

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

32 (12) *An electrical corporation may recover from ratepayers all*
33 *reasonable costs, as determined by the commission, of*
34 *implementing Assembly Bill 9 of the 2001–02 Second*
35 *Extraordinary Session, including, but not limited to, all business*
36 *and information system changes, except for transaction-based*
37 *costs as described in this paragraph. All reasonable*
38 *transaction-based costs of notices, billing, metering, collections,*
39 *and customer communications or other services provided by an*
40 *aggregator or its customers shall be recovered from the aggregator*

1 *or its customers on terms and at rates to be approved by the*
2 *commission.*

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

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

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

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

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

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

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

28 (1) Cost-effective energy efficiency and conservation activities
29 shall be funded at not less than the following levels commencing
30 January 1, 1998, through December 31, 2001: for San Diego Gas
31 and Electric Company a level of thirty-two million dollars
32 (\$32,000,000) per year; for Southern California Edison Company
33 a level of ninety million dollars (\$90,000,000) for each of the years
34 1998, 1999, and 2000; fifty million dollars (\$50,000,000) for 2001;
35 and for Pacific Gas and Electric Company a level of one hundred
36 six million dollars (\$106,000,000) per year.

37 (2) Research, development, and demonstration programs to
38 advance science or technology that are not adequately provided by
39 competitive and regulated markets shall be funded at not less than
40 the following levels commencing January 1, 1998 through

1 December 31, 2001: for San Diego Gas and Electric Company a
2 level of four million dollars (\$4,000,000) per year; for Southern
3 California Edison Company a level of twenty-eight million five
4 hundred thousand dollars (\$28,500,000) per year; and for Pacific
5 Gas and Electric Company a level of thirty million dollars
6 (\$30,000,000) per year.

7 (3) In-state operation and development of existing and new and
8 emerging renewable resource technologies shall be funded at not
9 less than the following levels on a statewide basis: one hundred
10 nine million five hundred thousand dollars (\$109,500,000) per
11 year for each of the years 1998, 1999, and 2000, and one hundred
12 thirty-six million five hundred thousand dollars (\$136,500,000)
13 for 2001. To accomplish these funding levels over the period
14 described herein the San Diego Gas and Electric Company shall
15 spend twelve million dollars (\$12,000,000) per year, the Southern
16 California Edison Company shall expend no less than forty-nine
17 million five hundred thousand dollars (\$49,500,000) for the years
18 1998, 1999, and 2000, and no less than seventy-six million five
19 hundred thousand dollars (\$76,500,000) for 2001, and the Pacific
20 Gas and Electric Company shall expend no less than forty-eight
21 million dollars (\$48,000,000) per year through the year 2001.
22 Additional funding not to exceed seventy-five million dollars
23 (\$75,000,000) shall be allocated from moneys collected pursuant
24 to subdivision (d) in order to provide a level of funding totaling
25 five hundred forty million dollars (\$540,000,000).

26 (4) Up to fifty million dollars (\$50,000,000) of the amount
27 collected pursuant to subdivision (d) may be used to resolve
28 outstanding issues related to implementation of subdivision (a) of
29 Section 374. Moneys remaining after fully funding the provisions
30 of this paragraph shall be reallocated for purposes of paragraph
31 (3).

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

39 (d) Notwithstanding any other provisions of this chapter,
40 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)~~

(f) 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)~~

(g) 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~~

1 ~~authorize municipalities to spend the funds on energy efficiency~~
2 ~~measures that benefit their customers, subject to any rules adopted~~
3 ~~by the commission to ensure accurate accounting, verification, and~~
4 ~~adherence to a plan filed by the entity.~~

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

13 *(h) The commission shall require the administrator of*
14 *cost-effective energy efficiency and conservation programs to*
15 *direct a proportional share of its approved energy efficiency*
16 *program activities for which the community aggregator's*
17 *customers are eligible, to the community aggregator's territory.*
18 *The commission shall also direct the administrator to work with*
19 *the community aggregator to accommodate any unique*
20 *community program needs by placing more, or less, emphasis on*
21 *particular approved programs to the extent that these special shifts*
22 *in emphasis in no way diminish the effectiveness of broader*
23 *statewide or regional programs. If the community aggregator*
24 *proposes energy efficiency programs other than programs already*
25 *approved for implementation in its territory, it shall do so under*
26 *established commission policies and procedures.*

27 *SEC. 4. A community choice aggregator is obligated to the*
28 *Department of Water Resources for an amount equal to the net*
29 *unavoidable cost of power procurement for the Department of*
30 *Water Resources attributable to the customers of the community*
31 *choice aggregator, including, but not limited to, any financing*
32 *costs, as determined by the Department of Water Resources. The*
33 *Department of Water Resources' net unavoidable cost shall be*
34 *calculated as the difference, if any, between its total actual*
35 *procurement costs and the rates collected by the Department of*
36 *Water Resources from the customer during the term of service. Any*
37 *amounts due pursuant to this section for the purchase of power*

- 1 *may be payable in installments over a term coincident with the*
- 2 *term of bonds issued to finance the purchase of that power.*

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