

AMENDED IN SENATE SEPTEMBER 13, 2001

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

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An act to amend Sections 331, ~~366, and 381~~ *of and 366 of, and to add Section 381.1 to*, 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 authorize a community choice 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. The bill would require a retail end-use customer electing to purchase power from a community aggregator to pay specified amounts for Department of Water Resources costs, as defined. The bill would require the commission to ensure that the net unavoidable costs of power procurement by any electrical corporation are not shifted onto the electrical corporation's remaining customers.~~

(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 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 9 of the 2001–02 Second  
14 Extraordinary Session of the Legislature:

(1) Any 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 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.

(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~~ 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

1 end-use customers. Customers shall be entitled to aggregate their  
2 electric loads as individual consumers with private aggregators, or  
3 as members of their local community with community choice  
4 aggregators.

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

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

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

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

25 (c) If a public agency seeks to serve as a community aggregator  
26 on behalf of residential customers, it shall be obligated to offer the  
27 opportunity to purchase electricity to all residential customers  
28 within its jurisdiction.

29 (d) (1) A community choice aggregator is hereby authorized  
30 to aggregate the electrical load of interested electricity consumers  
31 within its boundaries to reduce transaction costs to consumers,  
32 provide consumer protections, and leverage the negotiation of  
33 contracts. However, the community choice aggregator may not  
34 aggregate electrical load if that load is served by a local publicly  
35 owned electric utility, as defined in subdivision (d) of Section  
36 9604. A community choice aggregator may group retail electricity  
37 customers to solicit bids, broker, and contract for electric power  
38 and energy services for those customers. The community choice  
39 aggregator may enter into agreements for services to facilitate the  
40 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 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 community choice aggregation program. If no negative declaration is made by a customer, that customer shall be served through the community choice aggregation program.

(3) A community choice aggregator establishing load aggregation pursuant to this section shall develop an implementation plan detailing the process and consequences of aggregation. 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 community choice aggregator 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 cities, counties, or cities and counties that investigate, pursue, or implement community choice aggregation programs. Cooperation shall include providing cities, counties, or cities and counties with appropriate billing and load data, including, but not limited to, data detailing energy needs and patterns of usage, as determined by the commission, and in accordance with procedures established by the commission. Electrical corporations shall continue to provide all metering, billing, collection, and customer service to retail customers that participate in community choice aggregation programs. Bills sent by the electrical corporation to retail

1 customers shall identify the community choice aggregator as  
2 providing the energy component of the bill. The commission shall  
3 determine the terms and conditions under which the electrical  
4 corporation provides services to community choice aggregators  
5 and retail customers.

6 (5) (A) A city, county, or city and county that elects to  
7 implement a community choice aggregation program within its  
8 jurisdiction pursuant to this chapter shall do so by ordinance.

9 (B) Two or more cities, counties, or cities and counties may  
10 participate as a group in a community choice aggregation pursuant  
11 to this chapter, through a joint powers authority established  
12 pursuant to Chapter 5 (commencing with Section 6500) of  
13 Division 7 of Title 1 of the Government Code, if each entity adopts  
14 an ordinance pursuant to subparagraph (A).

15 (6) Following adoption of aggregation through the ordinance  
16 described in paragraph (5), such a program shall allow any retail  
17 customer to opt out and choose any supplier or provider as  
18 provided by applicable commission policies. Delivery services  
19 shall be provided at the same rates, terms, and conditions, as  
20 approved by the commission, for community choice aggregation  
21 customers and customers who have entered into a direct  
22 transaction where applicable, as determined by the commission.  
23 Once enrolled in the aggregated entity, any ratepayer that chooses  
24 to opt out within 180 days of the date of enrollment may do so  
25 without penalty and shall be entitled to receive default service  
26 pursuant to paragraph (4) of subdivision (a). Customers who  
27 return to the electrical corporation for procurement services shall  
28 be subject to the same terms and conditions as are applicable to  
29 other returning direct access customers from the same class, as  
30 determined by the commission, as authorized by the commission  
31 pursuant to this code or any other provision of law. No community  
32 choice aggregation customer returning to default service may be  
33 charged for any cost associated with obligations incurred on behalf  
34 of the customer that were paid by the customer or the community  
35 choice aggregator during the time the customer was served by the  
36 community choice aggregator. Any re-entry fees to be imposed  
37 after the 180-day opt-out period shall be approved by the  
38 commission and shall reflect the cost of re-entry.

39 (7) Nothing in this section shall be construed as authorizing any  
40 city or any community choice retail load aggregator to restrict the

1 ability of retail electric customers to obtain or receive service from  
2 any authorized service provider.

3 (8) (A) The aggregated entity shall fully inform participating  
4 customers 30 days in advance of the date of commencing  
5 automatic enrollment, and for not less than three consecutive  
6 billing cycles following enrollment. Notification may include, but  
7 is not limited to, direct mailings to customers, or inserts in water,  
8 sewer, or other utility bills. Any notification shall inform  
9 customers of both of the following:

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

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

14 (B) The community choice aggregator may contract with the  
15 electrical corporation for *the* notification required in subparagraph  
16 (A). If the aggregated entity elects to send one or more of the  
17 notifications required pursuant to subparagraph (A) in the  
18 electrical corporation's normally scheduled monthly billing  
19 process, the electrical corporation shall be entitled to recover from  
20 the aggregator all reasonable costs it incurs related to the  
21 notification or notifications. The electrical corporation shall fully  
22 cooperate with the aggregated entity in determining the feasibility  
23 and costs associated with using the electrical corporation's  
24 normally scheduled monthly billing process to provide one or  
25 more of the notifications required pursuant to subparagraph (A).

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

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

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





(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.

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

~~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 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 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~~

1 outstanding issues related to implementation of subdivision (a) of  
2 Section 374. Moneys remaining after fully funding the provisions  
3 of this paragraph shall be reallocated for purposes of paragraph  
4 (3).

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

12 (d) Notwithstanding any other provisions of this chapter,  
13 entities subject to the jurisdiction of the commission shall extend  
14 the period for competition transition charge collection up to three  
15 months beyond its otherwise applicable termination of December  
16 31, 2001, so as to ensure that the aggregate portion of the research,  
17 environmental, and low-income funds allocated to renewable  
18 resources shall equal five hundred forty million dollars  
19 (\$540,000,000) and that the costs specified in paragraphs (3), (4),  
20 and (5) of subdivision (c) are collected.

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

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

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

37 (h) The commission shall require the administrator of  
38 cost-effective energy efficiency and conservation programs to  
39 direct a proportional share of its approved energy efficiency  
40 program activities for which the community aggregator's

customers are eligible, to the community aggregator's territory. The commission shall also direct the administrator to work with the community aggregator to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures.

SEC. 4. A community choice aggregator is obligated to the Department of Water Resources for an amount equal to the net unavoidable cost of power procurement for the Department of Water Resources attributable to the customers of the community choice aggregator, including, but not limited to, any financing costs, as determined by the Department of Water Resources. The Department of Water Resources' net unavoidable cost shall be calculated as the difference, if any, between its total actual procurement costs and the rates collected by the Department of Water Resources from the customer during the term of service. Any amounts due pursuant to this section for the purchase of power may be payable in installments over a term coincident with the term of bonds issued to finance the purchase of that power.

(e) (1) Any retail end-use customer that purchases power from a community choice aggregator pursuant to this section shall pay to the Department of Water Resources both of the following amounts:

(A) The difference, if any, between the Department of Water Resources' total actual procurement costs, including financing costs, and the rates collected by the Department of Water Resources from that customer during the term of service.

(B) The Department of Water Resources' net unavoidable cost of future power procurement, including any financing costs, attributable to that customer, as determined by the Department of Water Resources.

(2) Any amounts due pursuant to this subdivision for the purchase of power may be payable in installments over a term coincident with the term of bonds issued to finance the purchase of that power.

(3) A community aggregator at the request of a participating customer shall submit a request to the Department of Water Resources for an estimate of each amount that would be due under paragraph (1) for the customer. The Department of Water Resources shall provide the estimate to the customer and to the Legislature within 30 days of the request. The estimate of each amount shall include the calculations and a description of the methodology used in making the estimates.

(f) The commission shall develop rules to ensure that the net unavoidable costs of power procurement by an electrical corporation are not shifted onto the electrical corporation's remaining customers, but are the responsibility of the electrical corporation's former customers being served by a community, municipal or private aggregator, that shall be resolved through contract assignment, reasonable exit fees, or any other reasonable means.

SEC. 3. Section 381.1 is added to the Public Utilities Code, to read:

381.1. The commission shall 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. The commission shall also direct the administrator to work with the community aggregator, to accommodate any unique community program needs by placing more, or less, emphasis on particular approved programs to the extent that these special shifts in emphasis in no way diminish the effectiveness of broader statewide or regional programs. If the community aggregator proposes energy efficiency programs other than programs already approved for implementation in its territory, it shall do so under established commission policies and procedures.

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