

**Assembly Bill No. 9**

\_\_\_\_\_

Passed the Assembly    September 13, 2001

\_\_\_\_\_  
*Chief Clerk of the Assembly*

\_\_\_\_\_

Passed the Senate    September 13, 2001

\_\_\_\_\_  
*Secretary of the Senate*

\_\_\_\_\_

This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2001, at \_\_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Sections 331 and 366 of, and to add Section 381.1 to, the Public Utilities Code, relating to public utilities.

## LEGISLATIVE COUNSEL'S DIGEST

AB 9, 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. The bill would require a retail end-use customer electing to purchase power from a community choice 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.



*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 9 of the 2001–02 Second 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) “Microgeneration 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) If a public agency seeks to serve as a community aggregator on behalf of residential customers, it shall be obligated to offer the opportunity to purchase electricity to all residential customers 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 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 community choice aggregator may group retail electricity customers to solicit bids, broker, and contract for electric power and energy services for those customers. The 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 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 customers shall identify the community choice 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 community choice aggregators and retail customers.

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

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

(6) Following adoption of aggregation through the ordinance described in paragraph (5), such a program shall allow any retail customer to opt out and choose any supplier or provider as provided by applicable commission policies. Delivery services shall be provided at the same rates, terms, and conditions, as approved by the commission, for community choice aggregation customers and customers who have entered into a direct transaction where applicable, as determined by the commission. 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). Customers who return to the electrical corporation for procurement services shall be subject to the same terms and conditions as are applicable to other returning direct access customers from the same class, as determined by the commission, as authorized by the commission pursuant to this code or any other provision of law. No community choice aggregation customer returning to default service may be charged for any cost associated with obligations incurred on behalf of the customer that were paid by the customer or the community choice aggregator during the time the customer was served by the community choice aggregator. 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 community choice 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 30 days in advance of the date of commencing 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:

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

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

(B) The community choice aggregator may contract with the electrical corporation for the 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 community choice 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.

(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.

(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.

(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.



Approved \_\_\_\_\_, 2001

\_\_\_\_\_  
*Governor*

