

Assembly Bill No. 80

CHAPTER 837

An act to add Section 366.1 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 24, 2002. Filed
with Secretary of State September 24, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 80, Havice. Aggregation: Magnolia Power Project.

(1) Existing law suspends the right of retail end-use customers to acquire direct access service from certain electricity suppliers after a period of time to be determined by the Public Utilities Commission until the Department of Water Resources no longer supplies electricity under a certain provision of law.

This bill would provide that, notwithstanding the above provision of law, a city with rights and obligations to the Magnolia Power Project, as defined, may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction, if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants. This provision would not become operative until the commission implements a cost-recovery mechanism applicable to customers electing to purchase electricity from an alternate provider beginning February 1, 2001, in accordance with specified criteria that are declared to be declaratory of existing law, and submits a report on that implementation to specified committees of the Legislature. The bill would require retail end-use customers purchasing power from a community aggregator to reimburse the department and the electrical corporation that previously serviced the customer, for specified costs, as determined by the commission. Because under the Public Utilities Act a violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. (a) It is the intent of the Legislature, in enacting the act adding this section, to recognize contributions made in response to California's need for the expedited investment in and development of new environmentally superior electrical generation projects.

(b) It is further the intent of the Legislature to avoid the potential delay in adding new electrical generating capacity that might be caused if certain project participants are not allowed to utilize community aggregation to deliver their share of the project output to customers within their jurisdiction.

SEC. 2. Section 366.1 is added to the Public Utilities Code, to read:

366.1. (a) As used in this section, the following terms have the following meanings:

(1) "Department" means the Department of Water Resources with respect to its power program described in Chapter 2 (commencing with Section 80100) of Division 27 of the Water Code.

(2) "Existing project participant" means a city with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement, dated May 1, 2001.

(3) "Magnolia Power Project" means a proposed natural gas-fired electric generating facility to be located at an existing site in Burbank and for which an application for certification has been filed with the State Energy Resources Conservation and Development Act (Docket No. 00-SIT-1) and deemed data adequate pursuant to the expedited six-month licensing process established under Section 25550 of the Public Resources Code.

(b) Notwithstanding Section 80110 of the Water Code or Commission Decision 01-09-060, if the Magnolia Power Project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants, an existing project participant may serve as a community aggregator on behalf of all retail end-use customers within its jurisdiction.

(c) Subdivision (b) shall not become operative until both of the following occur:

(1) The commission implements a cost-recovery mechanism, consistent with subdivision (d), that is applicable to customers that elected to purchase electricity from an alternate provider between February 1, 2001, and the effective date of the act adding this section.

(2) The commission submits a report certifying its satisfaction of paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.



(d) (1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the department's power purchase costs, as well as power purchase contract obligations incurred as of January 1, 2003, that are recoverable from electrical corporation customers in commission-approved rates. It is the further intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that the provisions in this subdivision are consistent with the requirements of Section 360.5 and Division 27 (commencing with Section 80000) of the Water Code, and are therefore declaratory of existing law.

(e) A retail end-use customer purchasing power from a community aggregator pursuant to subdivision (b) shall reimburse the department for all of the following:

(1) A charge equivalent to the charge which would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to an agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, that charge shall be payable until all obligations of the Department of Water Resources pursuant to Division 27 of the Water Code are fully paid or otherwise discharged.

(2) The costs of the department, equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from a community aggregator, through the expiration of all then existing power purchase contracts entered into by the department.

(f) A retail end-use customer purchasing power from a community aggregator pursuant to subdivision (b) shall reimburse the electrical corporation that previously served the customer for all of the following:

(1) The electrical corporation's unrecovered past undercollections, including all financing costs attributable to that customer, that the commission lawfully determines may be recovered in rates.

(2) The costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable power purchase contract costs attributable to the customer, as determined by the commission, for the period commencing with the customer's purchases of electricity from the community aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

(g) (1) A charge or cost imposed pursuant to subdivision (e), and all revenues received to pay the charge or cost, shall be the property of the



Department of Water Resources. A charge or cost imposed pursuant to subdivision (f), and all revenues received to pay the charge or cost, shall be the property of the particular electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to assure that the revenues received to pay a charge or cost payable pursuant to this section are promptly remitted to the party entitled to those revenues.

(2) A charge or cost imposed pursuant to this section shall be nonbypassable.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the Magnolia Power Project and a city with rights and obligations to the Magnolia Power Project under the Magnolia Power Project Planning Agreement dated May 1, 2001, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

