

AMENDED IN SENATE AUGUST 27, 2002

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 19, 2002

AMENDED IN SENATE JUNE 5, 2002

AMENDED IN ASSEMBLY JANUARY 9, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 117

Introduced by Assembly Member Migden

January 22, 2001

An act to amend Sections ~~331~~ 218.3, 366, 394, and 394.25 of, and to add ~~Section~~ *Sections 331.1, 366.2, and 381.1* to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 117, as amended, Migden. Electrical restructuring: aggregation.

(1) Existing law, relating to transactions between electricity suppliers and end-use customers, authorizes various entities to aggregate electrical loads, and defines an “aggregator” as one of those entities that provides 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 electrical 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 community choice aggregator to file an implementation plan with the Public Utilities Commission in order for the commission to determine ~~whether a cost-recovery~~ *cost-recovery mechanism shall to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical corporation's bundled customers.* 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 and electrical corporation costs, as described. *The bill would require the commission to prepare and submit to the Legislature, on or before January 1, 2006, a report on community choice aggregation.* Because a violation of an order or decision of the commission is a crime, this bill would impose a state-mandated local program.

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

The bill would require the commission, *not later than July 15, 2003, to establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a community choice aggregation program, may apply to become administrators for cost-effective energy efficiency and conservation programs.* The bill would require the commission, *if a community choice aggregator is not the administrator,* 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 choice aggregator's customers are eligible, to the community choice aggregator's territory without regard to customer class. Under the bill, the commission would be authorized to order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary for an equitable and cost-effective allocation of program activities.

(3) Existing law defines "electric service provider" as an entity that offers electrical service to residential and small commercial customers, but not including an electrical corporation and requires these providers to register with the commission.



This bill would instead define “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, but not including an electrical corporation *or a person employing cogeneration technology or producing electricity from other than conventional power sources, for its own use or the use of its tenants or an adjacent property and not for sale or transmission to others.*

This bill would provide that, if a customer of an electric service provider *or community choice aggregator* is involuntarily returned to service provided by an electrical corporation, any reentry fees imposed on that customer are to be the obligation of the electric service provider *or community choice aggregator*, except as specified. The bill would require the electric service provider *or community choice aggregator*, as a condition to its registration, to post a bond or demonstrate insurance sufficient to cover paying those reentry fees.

(4) 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. ~~Section 331 of the Public Utilities Code is 218.3~~
2 ~~of the Public Utilities Code is amended to read:~~
3 218.3. “Electric service provider” means an entity that offers
4 electrical service to ~~residential and small commercial~~ customers;
5 ~~but within the service territory of an electrical corporation, as~~
6 ~~defined in Section 218, but does not include an entity that offers~~
7 ~~electrical service solely to service customer load consistent with~~
8 ~~subdivision (b) of Section 218, and does not include an electrical~~
9 corporation, as defined in Section 218, or a public agency that
10 offers electrical service to residential and small commercial
11 customers within its jurisdiction, or within the service territory of
12 a local publicly owned electric utility. “Electric service provider”
13 includes the unregulated affiliates and subsidiaries of an electrical
14 corporation, as defined in Section 218.



1 SEC. 2. Section 331.1 is added to the Public Utilities Code, to
2 read:

3 331.1. For purposes of this chapter, “community choice
4 aggregator” means any of the following entities, if that entity is not
5 within the jurisdiction of a local publicly owned electric utility that
6 provided electrical service as of January 1, 2003:

7 (a) Any city, county, or city and county whose governing board
8 elects to combine the loads of its residents, businesses, and
9 municipal facilities in a communitywide electricity buyers’
10 program.

11 (b) Any group of cities, counties, or cities and counties whose
12 governing boards have elected to combine the loads of their
13 programs, through the formation of a joint powers agency
14 established under Chapter 5 (commencing with Section 6500) of
15 Division 7 of Title 1 of the Government Code.

16 SEC. 3. Section 366 of the Public Utilities Code is amended
17 to read:

18 366. (a) The commission shall take actions as needed to
19 facilitate direct transactions between electricity suppliers and ~~end~~
20 ~~use~~ end-use customers. Customers shall be entitled to aggregate
21 their ~~electric~~ electrical loads on a voluntary basis, provided that
22 each customer does so by a positive written declaration. If no
23 positive declaration is made by a customer, that customer shall
24 continue to be served by the existing electrical corporation or its
25 successor in interest, *except aggregation by community choice*
26 *aggregators, accomplished pursuant to Section 366.2.*

27 (b) Aggregation of customer electrical load shall be authorized
28 by the commission for all customer classes, including, but not
29 limited, to small commercial or residential customers.
30 Aggregation may be accomplished by private market aggregators,
31 ~~cities, counties,~~ special districts, or on any other basis made
32 available by market opportunities and agreeable by positive
33 written declaration by individual consumers, *except aggregation*
34 *by community choice aggregators, which shall be accomplished*
35 *pursuant to Section 366.2.*

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

1 SEC. 4. Section 366.2 is added to the Public Utilities Code, to
2 read:

3 366.2. (a) (1) Customers shall be entitled to aggregate their
4 electric loads as members of their local community with
5 community choice aggregators.

6 (2) 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 (3) If a customer opts out of a community choice aggregator's
11 program, or has no community choice program available, that
12 customer shall have the right to continue to be served by the
13 existing electrical corporation or its successor in interest.

14 (b) If a public agency seeks to serve as a community choice
15 aggregator, it shall offer the opportunity to purchase electricity to
16 all residential customers within its jurisdiction.

17 (c) (1) Notwithstanding Section 366, a community choice
18 aggregator is hereby authorized to aggregate the electrical load of
19 interested electricity consumers within its boundaries to reduce
20 transaction costs to consumers, provide consumer protections, and
21 leverage the negotiation of contracts. However, the community
22 choice aggregator may not aggregate electrical load if that load
23 is served by a local publicly owned electric utility, as defined in
24 subdivision (d) of Section 9604. A community choice aggregator
25 may group retail electricity customers to solicit bids, broker, and
26 contract for electricity and energy services for those customers.
27 The community choice aggregator may enter into agreements for
28 services to facilitate the sale and purchase of electricity and other
29 related services. Those service agreements may be entered into by
30 a single city or county, a city and county, or by a group of cities,
31 cities and counties, or counties.

32 (2) Under community choice aggregation, customer
33 participation may not require a positive written declaration, but
34 all customers shall be informed of their right to opt out of the
35 community choice aggregation program. If no negative
36 declaration is made by a customer, that customer shall be served
37 through the community choice aggregation program.

38 (3) A community choice aggregator establishing electrical
39 load aggregation pursuant to this section shall develop an
40 implementation plan detailing the process and consequences of

1 aggregation. The implementation plan, and any subsequent
2 changes to it, shall be considered and adopted at a duly noticed
3 public hearing. The implementation plan shall contain all of the
4 following:

5 (A) An organizational structure of the program, its operations,
6 and its funding.

7 (B) Ratesetting and other costs to participants.

8 (C) Provisions for disclosure and due process in setting rates
9 and allocating costs among participants.

10 (D) The methods for entering and terminating agreements with
11 other entities.

12 (E) The rights and responsibilities of program participants,
13 including, but not limited to, consumer protection procedures,
14 credit issues, and shutoff procedures.

15 (F) Termination of the program.

16 (G) A description of the third parties that will be supplying
17 electricity under the program, including, but not limited to,
18 information about financial, technical, and operational
19 capabilities.

20 (4) A community choice aggregator establishing electrical
21 load aggregation shall prepare a statement of intent with the
22 implementation plan. Any community choice load aggregation
23 established pursuant to this section shall provide for the following:

24 (A) Universal access.

25 (B) Reliability.

26 (C) Equitable treatment of all classes of customers.

27 (D) Any requirements established by state law or by the
28 commission concerning aggregated service.

29 (5) In order to determine the cost-recovery mechanism to be
30 imposed on the community choice aggregator pursuant to
31 subdivisions (d), (e), and (f) that shall be paid by the customers of
32 the community choice aggregator to prevent shifting of costs, the
33 community choice aggregator shall file the implementation plan
34 with the commission, and any other information requested by the
35 commission that the commission determines is necessary to
36 develop the cost-recovery mechanism in subdivisions (d), (e), and
37 (f).

38 (6) The commission shall notify any electrical corporation
39 serving the customers proposed for aggregation that an



1 *implementation plan initiating community choice aggregation has*
2 *been filed, within 10 days of the filing.*

3 *(7) Within 90 days after the community choice aggregator*
4 *establishing load aggregation files its implementation plan, the*
5 *commission shall certify that it has received the implementation*
6 *plan, including any additional information necessary to determine*
7 *a cost-recovery mechanism. After certification of receipt of the*
8 *implementation plan and any additional information requested,*
9 *the commission shall then provide the community choice*
10 *aggregator with its findings regarding any cost recovery that must*
11 *be paid by customers of the community choice aggregator to*
12 *prevent a shifting of costs as provided for in subdivisions (d), (e),*
13 *and (f).*

14 *(8) No entity proposing community choice aggregation shall*
15 *act to furnish electricity to electricity consumers within its*
16 *boundaries until the commission determines the cost-recovery that*
17 *must be paid by the customers of that proposed community choice*
18 *aggregation program, as provided for in subdivisions (d), (e), and*
19 *(f). The commission shall designate the earliest possible effective*
20 *date for implementation of a community choice aggregation*
21 *program, taking into consideration the impact on any annual*
22 *procurement plan of the electrical corporation that has been*
23 *approved by the commission.*

24 *(9) All electrical corporations shall cooperate fully with any*
25 *community choice aggregators that investigate, pursue, or*
26 *implement community choice aggregation programs. Cooperation*
27 *shall include providing the entities with appropriate billing and*
28 *electrical load data, including, but not limited to, data detailing*
29 *electricity needs and patterns of usage, as determined by the*
30 *commission, and in accordance with procedures established by the*
31 *commission. Electrical corporations shall continue to provide all*
32 *metering, billing, collection, and customer service to retail*
33 *customers that participate in community choice aggregation*
34 *programs. Bills sent by the electrical corporation to retail*
35 *customers shall identify the community choice aggregator as*
36 *providing the electrical energy component of the bill. The*
37 *commission shall determine the terms and conditions under which*
38 *the electrical corporation provides services to community choice*
39 *aggregators and retail customers.*

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

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

10 (11) Following adoption of aggregation through the ordinance
11 described in paragraph (10), the program shall allow any retail
12 customer to opt out and to continue to be served as a bundled
13 service customer by the existing electrical corporation, or its
14 successor in interest. Delivery services shall be provided at the
15 same rates, terms, and conditions, as approved by the commission,
16 for community choice aggregation customers and customers that
17 have entered into a direct transaction where applicable, as
18 determined by the commission. Once enrolled in the aggregated
19 entity, any ratepayer that chooses to opt out within 60 days or two
20 billing cycles of the date of enrollment may do so without penalty
21 and shall be entitled to receive default service pursuant to
22 paragraph (3) of subdivision (a). Customers that return to the
23 electrical corporation for procurement services shall be subject to
24 the same terms and conditions as are applicable to other returning
25 direct access customers from the same class, as determined by the
26 commission, as authorized by the commission pursuant to this
27 code or any other provision of law. Any reentry fees to be imposed
28 after the opt-out period specified in this paragraph, shall be
29 approved by the commission and shall reflect the cost of reentry.
30 The commission shall exclude any amounts previously determined
31 and paid pursuant to subdivisions (d), (e), and (f) from the cost of
32 reentry.

33 (12) Nothing in this section shall be construed as authorizing
34 any city or any community choice retail load aggregator to restrict
35 the ability of retail electricity customers to obtain or receive
36 service from any authorized electric service provider in a manner
37 consistent with law.

38 (13) (A) The community choice aggregator shall fully inform
39 participating customers at least twice within two calendar months,
40 or 60 days, in advance of the date of commencing automatic

1 enrollment. Notifications may occur concurrently with billing
2 cycles. Following enrollment, the aggregated entity shall fully
3 inform participating customers for not less than two consecutive
4 billing cycles. Notification may include, but is not limited to, direct
5 mailings to customers, or inserts in water, sewer, or other utility
6 bills. Any notification shall inform customers of both of the
7 following:

8 (i) That they are to be automatically enrolled and that the
9 customer has the right to opt out of the community choice
10 aggregator without penalty.

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

12 (B) The community choice aggregator may request the
13 commission to approve and order the electrical corporation to
14 provide the notification required in subparagraph (A). If the
15 commission orders the electrical corporation to send one or more
16 of the notifications required pursuant to subparagraph (A) in the
17 electrical corporation's normally scheduled monthly billing
18 process, the electrical corporation shall be entitled to recover from
19 the community choice aggregator aggregator all reasonable
20 incremental costs it incurs related to the notification or
21 notifications. The electrical corporation shall fully cooperate with
22 the community choice aggregator in determining the feasibility
23 and costs associated with using the electrical corporation's
24 normally scheduled monthly billing process to provide one or more
25 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 electrical energy service provided by the electrical corporation, or
31 another straightforward means by which the customer may elect
32 to derive electrical energy service through the electrical
33 corporation providing service in the area.

34 (14) The community choice aggregator shall register with the
35 commission, which may require additional information to ensure
36 compliance with basic consumer protection rules and other
37 procedural matters.

38 (15) Once the community choice aggregator's contract is
39 signed, the community choice aggregator shall notify the

1 applicable electrical corporation that community choice service
2 will commence within 30 days.

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

7 (17) An electrical corporation shall recover from the
8 community choice aggregator any costs reasonably attributable to
9 the community choice aggregator, as determined by the
10 commission, of implementing this section, including, but not
11 limited to, all business and information system changes, except for
12 transaction-based costs as described in this paragraph. Any costs
13 not reasonably attributable to a community choice aggregator
14 shall be recovered from ratepayers, as determined by the
15 commission. All reasonable transaction-based costs of notices,
16 billing, metering, collections, and customer communications or
17 other services provided to an aggregator or its customers shall be
18 recovered from the aggregator or its customers on terms and at
19 rates to be approved by the commission.

20 (18) At the request and expense of any community choice
21 aggregator, electrical corporations shall install, maintain and
22 calibrate metering devices at mutually agreeable locations within
23 or adjacent to the community aggregator's political boundaries.
24 The electrical corporation shall read the metering devices and
25 provide the data collected to the community aggregator at the
26 aggregator's expense. To the extent that the community aggregator
27 requests a metering location that would require alteration or
28 modification of a circuit, the electrical corporation shall only be
29 required to alter or modify a circuit if such alteration or
30 modification does not compromise the safety, reliability or
31 operational flexibility of the electrical corporation's facilities. All
32 costs incurred to modify circuits pursuant to this paragraph, shall
33 be born by the community aggregator.

34 (d) (1) It is the intent of the Legislature that each retail end-use
35 customer that has purchased power from an electrical corporation
36 on or after February 1, 2001, should bear a fair share of the
37 Department of Water Resources' electricity purchase costs, as well
38 as electricity purchase contract obligations incurred as of the
39 effective date of the act adding this section, that are recoverable
40 from electrical corporation customers in commission-approved

1 rates. It is further the intent of the Legislature to prevent any
2 shifting of recoverable costs between customers.

3 (2) The Legislature finds and declares that this subdivision is
4 consistent with the requirements of Division 27 (commencing with
5 Section 80000) of the Water Code and Section 360.5, and is
6 therefore declaratory of existing law.

7 (e) A retail end-use customer that purchases electricity from a
8 community choice aggregator pursuant to this section shall pay
9 both of the following:

10 (1) A charge equivalent to the charges that would otherwise be
11 imposed on the customer by the commission to recover bond
12 related costs pursuant to any agreement between the commission
13 and the Department of Water Resources pursuant to Section 80110
14 of the Water Code, which charge shall be payable until any
15 obligations of the Department of Water Resources pursuant to
16 Division 27 (commencing with Section 80000) of the Water Code
17 are fully paid or otherwise discharged.

18 (2) Any additional costs of the Department of Water Resources,
19 equal to the customer's proportionate share of the Department of
20 Water Resources' estimated net unavoidable electricity purchase
21 contract costs as determined by the commission, for the period
22 commencing with the customer's purchases of electricity from the
23 community choice aggregator, through the expiration of all then
24 existing electricity purchase contracts entered into by the
25 Department of Water Resources.

26 (f) A retail end-use customer purchasing electricity from a
27 community choice aggregator pursuant to this section shall
28 reimburse the electrical corporation that previously served the
29 customer for all of the following:

30 (1) The electrical corporation's unrecovered past
31 undercollections for electricity purchases, including any financing
32 costs, attributable to that customer; that the commission lawfully
33 determines may be recovered in rates.

34 (2) Any additional costs of the electrical corporation
35 recoverable in commission-approved rates, equal to the share of
36 the electrical corporation's estimated net unavoidable electricity
37 purchase contract costs attributable to the customer, as
38 determined by the commission, for the period commencing with the
39 customer's purchases of electricity from the community choice

1 aggregator, through the expiration of all then existing electricity
2 purchase contracts entered into by the electrical corporation.

3 (g) (1) Any charges imposed pursuant to subdivision (e) shall
4 be the property of the Department of Water Resources. Any charges
5 imposed pursuant to subdivision (f) shall be the property of the
6 electrical corporation. The commission shall establish
7 mechanisms, including agreements with, or orders with respect to,
8 electrical corporations necessary to ensure that charges payable
9 pursuant to this section shall be promptly remitted to the party
10 entitled to payment.

11 (2) Charges imposed pursuant to subdivisions (d), (e), and (f)
12 shall be nonbypassable.

13 (h) Notwithstanding Section 80110 of the Water Code, the
14 commission shall authorize community choice aggregation only if
15 the commission imposes a cost-recovery mechanism pursuant to
16 subdivisions (d), (e), (f), and (g). Except as provided by this
17 subdivision, this section shall not alter the suspension by the
18 commission of direct purchases of electricity from alternate
19 providers other than by community choice aggregators, pursuant
20 to Section 80110 of the Water Code.

21 (i) (1) The commission shall not authorize community choice
22 aggregation until it implements a cost-recovery mechanism,
23 consistent with subdivisions (d), (e), and (f), that is applicable to
24 customers that elected to purchase electricity from an alternate
25 provider between February 1, 2001, and January 1, 2003.

26 (2) The commission shall not authorize community choice
27 aggregation until it submits a report certifying compliance with
28 paragraph (1) to the Senate Energy, Utilities and Communications
29 Committee, or its successor, and the Assembly Committee on
30 Utilities and Commerce, or its successor.

31 (3) The commission shall not authorize community choice
32 aggregation until it has adopted rules for implementing
33 community choice aggregation.

34 (j) The commission shall prepare and submit to the Legislature,
35 on or before January 1, 2006, a report regarding the number of
36 community choices aggregations, the number of customers served
37 by community choice aggregations, third party suppliers to
38 community choice aggregations, compliance with this section, and
39 the overall effectiveness of community choice aggregation
40 programs.

1 amended to read:

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

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

8 (b) “Community choice aggregator” means any of the
9 following entities, if that entity is not within the jurisdiction of a
10 municipal utility district that provided electrical service as of the
11 effective date of amendments to this section made by Assembly
12 Bill 117 of the 2001–02 Regular Session of the Legislature:

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

17 (2) Any group of cities, counties, or cities and counties whose
18 governing boards have elected to combine the loads of their
19 programs, through the formation of a joint powers authority
20 established under Chapter 5 (commencing with Section 6500) of
21 Division 7 of Title 1 of the Government Code.

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

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

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

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

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

~~(h) “Restructuring trusts” means the two tax-exempt public benefit trusts established by Decision 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 choice aggregator on behalf of residential customers, it shall be obligated~~

1 to offer the opportunity to purchase electricity to all residential
2 customers within its jurisdiction.

3 (d) (1) A community choice aggregator is hereby authorized
4 to aggregate the electrical load of interested electricity consumers
5 within its boundaries to reduce transaction costs to consumers,
6 provide consumer protections, and leverage the negotiation of
7 contracts. However, the community choice aggregator may not
8 aggregate electrical load if that load is served by a local publicly
9 owned electric utility, as defined in subdivision (d) of Section
10 9604. A community choice aggregator may group retail electricity
11 customers to solicit bids, broker, and contract for electric power
12 and energy services for those customers. The community choice
13 aggregator may enter into agreements for services to facilitate the
14 sale and purchase of electric energy and other related services.
15 Those service agreements may be entered into by a single city or
16 county, a city and county, or by a group of cities, cities and
17 counties, or counties.

18 (2) Under community choice aggregation, customer
19 participation may not require a positive written declaration, but all
20 customers shall be informed of their right to opt out of the
21 community choice aggregation program. If no negative
22 declaration is made by a customer, that customer shall be served
23 through the community choice aggregation program.

24 (3) A community choice aggregator establishing load
25 aggregation pursuant to this section shall develop an
26 implementation plan detailing the process and consequences of
27 aggregation. The implementation plan, and any subsequent
28 changes to it, shall be considered and adopted at a duly noticed
29 public hearing. The implementation plan shall contain all of the
30 following:

31 (A) An organizational structure of the program, its operations,
32 and its funding.

33 (B) Ratesetting and other costs to participants.

34 (C) Provisions for disclosure and due process in setting rates
35 and allocating costs among participants.

36 (D) The methods for entering and terminating agreements with
37 other entities.

38 (E) The rights and responsibilities of program participants.

39 (F) Termination of the program.

~~(4) A community choice aggregator establishing load aggregation shall prepare a statement of intent with the implementation plan. Any community choice load aggregation established pursuant to this section shall provide for the following:~~

~~(A) Universal access.~~

~~(B) Reliability.~~

~~(C) Equitable treatment of all classes of customers.~~

~~(D) Any requirements established by state law or by the commission concerning aggregated service.~~

~~(5) In order to determine the cost-recovery mechanism to be imposed on the community choice aggregator pursuant to subdivisions (e), (f), and (g) that shall be paid by the customers of the community choice aggregator to prevent shifting of costs, the community choice aggregator shall file the implementation plan with the commission, and any other information requested by the commission that the commission determines is necessary to develop the cost-recovery mechanism in subdivisions (e), (f), and (g).~~

~~(6) The commission shall notify any electrical corporation serving the customers proposed for aggregation that an implementation plan initiating community choice aggregation has been filed within 10 days of the filing.~~

~~(7) Within 90 days after the community choice aggregator establishing load aggregation files its implementation plan, the commission shall certify that it has received the implementation plan, including any additional information necessary to determine a cost-recovery mechanism. Upon certification, the commission shall then provide the community choice aggregator with its findings on whether or not cost-recovery must be paid by customers of the community choice aggregator to prevent a shifting of costs as provided for in subdivisions (e), (f), and (g).~~

~~(8) No entity specified in subdivision (b) of Section 331 proposing community choice aggregation shall act to furnish electricity to electricity consumers within its boundaries until the commission has determined whether cost-recovery must be paid by the customers of that proposed community choice aggregation program. The commission shall designate the earliest possible effective date for implementation of a community choice aggregation program, taking into consideration the impact on any~~

1 annual procurement plan of the electrical corporation that has been
2 approved by the commission.

3 (9) All electrical corporations shall cooperate fully with any of
4 the entities specified in subdivision (b) of Section 331 that
5 investigate, pursue, or implement community choice aggregation
6 programs. Cooperation shall include providing the entities with
7 appropriate billing and load data, including, but not limited to, data
8 detailing energy needs and patterns of usage, as determined by the
9 commission, and in accordance with procedures established by the
10 commission. Electrical corporations shall continue to provide all
11 metering, billing, collection, and customer service to retail
12 customers that participate in community choice aggregation
13 programs. Bills sent by the electrical corporation to retail
14 customers shall identify the community choice aggregator as
15 providing the energy component of the bill. The commission shall
16 determine the terms and conditions under which the electrical
17 corporation provides services to community choice aggregators
18 and retail customers.

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

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

28 (11) Following adoption of aggregation through the ordinance
29 described in paragraph (10), the program shall allow any retail
30 customer to opt out and choose any supplier or provider as
31 provided by applicable commission policies. Delivery services
32 shall be provided at the same rates, terms, and conditions, as
33 approved by the commission, for community choice aggregation
34 customers and customers who have entered into a direct
35 transaction where applicable, as determined by the commission.
36 Once enrolled in the aggregated entity, any ratepayer that chooses
37 to opt out within 60 days or two billing cycles of the date of
38 enrollment may do so without penalty and shall be entitled to
39 receive default service pursuant to paragraph (4) of subdivision
40 (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. Any reentry fees to be imposed after the opt-out period specified in this paragraph shall be approved by the commission and shall reflect the cost of reentry. The commission shall exclude any amounts previously determined and paid pursuant to subdivisions (e), (f), and (g) from the cost of reentry.~~

~~(12) 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 in a manner consistent with law.~~

~~(13) (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 incremental 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.~~

~~(14) 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.~~

~~(15) 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.~~

~~(16) 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.~~

~~(17) An electrical corporation may recover from ratepayers all reasonable costs, as determined by the commission, of implementing Assembly Bill 117 of the 2001-02 Regular 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) 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, regardless of whether the customer thereafter takes service from an alternate provider, including a community choice aggregator, should bear a pro rata share of the Department of Water Resources' power purchase costs, as well as power purchase contract obligations incurred as of the effective date of the act adding this subdivision, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs from customers who take service from an alternate provider, including a community choice aggregator, to electrical corporation customers.~~

~~(2) To the extent that any shifting of recoverable costs would occur, in the determination of the commission, those costs shall be recovered from each customer class in proportion to the load of each class that is served by alternate providers, including community choice aggregators.~~

~~(3) The Legislature finds that this subdivision is consistent with the requirements of Chapter 4 of the Statutes of 2001, First Extraordinary Session, and is therefore declaratory of existing law.~~

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

~~(1) A charge equivalent to the charges that would otherwise be imposed on the customer by the commission to recover bond related costs pursuant to any agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, which charge shall be payable until any obligations of the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code are fully paid or otherwise discharged.~~

~~(2) Any additional costs of the Department of Water Resources, equal to the customer's proportionate share of the Department of Water Resources' estimated net unavoidable power purchase contract costs as determined by the commission, for the period commencing with the customer's purchases of electricity from the community choice aggregator, through the expiration of all then existing power purchase contracts entered into by the Department of Water Resources.~~

~~(g) A retail end-use customer purchasing power from a community choice aggregator pursuant to this section shall reimburse the electrical corporation that previously served the customer for all of the following:~~

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

~~(2) Any additional 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 choice aggregator, through the expiration of all then existing power purchase contracts entered into by the electrical corporation.

(h) (1) Any charges imposed pursuant to subdivision (f) shall be the property of the Department of Water Resources. Any charges imposed pursuant to subdivision (g) shall be the property of the electrical corporation. The commission shall establish mechanisms, including agreements with, or orders with respect to, electrical corporations necessary to assure that charges payable pursuant to this section shall be promptly remitted to the party entitled to payment.

(2) Charges imposed pursuant to this section shall be nonbypassable.

(i) Notwithstanding Section 80110 of the Water Code, the commission shall authorize community choice aggregation only if a cost recovery mechanism is imposed, as the commission determines necessary pursuant to subdivisions (e), (f), and (g). Except as provided by this subdivision, the provisions of Assembly Bill 117 of the 2001-02 Regular Session shall not be construed to alter the suspension by the commission of direct purchases of power from alternate providers pursuant to Section 80110 of the Water Code.

(j) (1) The commission shall not authorize community choice aggregation until it implements a cost recovery mechanism, consistent with subdivisions (e), (f), and (g) 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 subdivision.

(2) The commission shall not authorize community choice aggregation until it submits a report certifying compliance with paragraph (1) to the Senate Energy, Utilities and Communications Committee, or its successor, and the Assembly Committee on Utilities and Commerce, or its successor.

SEC. 3.—

SEC. 5. Section 381.1 is added to the Public Utilities Code, to read:

381.1. *The (a) No later than July 15, 2003, the commission shall establish policies and procedures by which any party, including, but not limited to, a local entity that establishes a*

1 community choice aggregation program, may apply to become
2 administrators for cost-effective energy efficiency and
3 conservation programs established pursuant to Section 381. In
4 determining whether to approve an application to become
5 administrators, the commission shall consider the value of
6 program continuity and planning certainty and the value of
7 allowing competitive opportunities for potentially new
8 administrators. The commission shall weigh the benefits of the
9 party's proposed program to ensure that the program meets the
10 following objectives:

11 (1) Is consistent with the goals of the existing programs
12 established pursuant to Section 381.

13 (2) Advances the public interest in maximizing cost-effective
14 electricity savings and related benefits.

15 (3) Accommodates the need for broader statewide or regional
16 programs.

17 (b) All audit and reporting requirements established by the
18 commission pursuant to Section 381 and other statutes shall apply
19 to the parties chosen as administrators under this section.

20 (c) If a community choice aggregator is not the administrator
21 of energy efficiency and conservation programs for which its
22 customers are eligible, the commission shall require the
23 administrator of cost-effective energy efficiency and conservation
24 programs to direct a proportional share of its approved energy
25 efficiency program activities for which the community choice
26 aggregator's customers are eligible, to the community choice
27 aggregator's territory without regard to customer class. To the
28 extent that energy efficiency and conservation programs are
29 targeted to specific locations to avoid or defer transmission or
30 distribution system upgrades, the targeted expenditures shall
31 continue irrespective of whether the loads in those locations are
32 served by an aggregator or by an electrical corporation. The
33 commission shall also direct the administrator to work with the
34 community choice aggregator, to provide advance information
35 where appropriate about the likely impacts of energy efficiency
36 programs and to accommodate any unique community program
37 needs by placing more, or less, emphasis on particular approved
38 programs to the extent that these special shifts in emphasis in no
39 way diminish the effectiveness of broader statewide or regional
40 programs. If the community choice 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. The commission may order an adjustment to the share of energy efficiency program activities directed to a community aggregator's territory if necessary to ensure an equitable and cost-effective allocation of energy efficiency program activities.

~~SEC. 4.—~~

SEC. 6. Section 394 of the Public Utilities Code is amended to read:

394. (a) As used in this section, "electric service provider" means an entity that offers electrical service to customers within the service territory of an electrical corporation, but does not include an electrical corporation, as defined in Section 218, ~~or does not include an entity that offers electrical service solely to serve customer load consistent with subdivision (b) of Section 218, and does not include~~ a public agency that offers electrical service to residential and small commercial customers within its jurisdiction, or within the service territory of a local publicly owned electric utility. "Electric service provider" includes the unregulated affiliates and subsidiaries of an electrical corporation, as defined in Section 218.

(b) Each electric service provider shall register with the commission. As a precondition to registration, the electric service provider shall provide, under oath, declaration, or affidavit, all of the following information to the commission:

(1) Legal name and any other names under which the electric service provider is doing business in California.

(2) Current telephone number.

(3) Current address.

(4) Agent for service of process.

(5) State and date of incorporation, if any.

(6) Number for a customer contact representative, or other personnel for receiving customer inquiries.

(7) Brief description of the nature of the service being provided.

(8) Disclosure of any civil, criminal, or regulatory sanctions or penalties imposed within the 10 years immediately prior to registration, against the company or any owner, partner, officer, or director of the company pursuant to any state or federal consumer

1 protection law or regulation, and of any felony convictions of any
2 kind against the company or any owner, partner, officer, or director
3 of the company. In addition, each electric service provider shall
4 furnish the commission with fingerprints for those owners,
5 partners, officers, and managers of the electric service provider
6 specified by any commission decision applicable to all electric
7 service providers. The commission shall submit completed
8 fingerprint cards to the Department of Justice. Those fingerprints
9 shall be available for use by the Department of Justice and the
10 Department of Justice may transmit the fingerprints to the Federal
11 Bureau of Investigation for a national criminal history record
12 check. The commission may use information obtained from a
13 national criminal history record check conducted pursuant to this
14 section to determine an electric service provider's eligibility for
15 registration.

16 (9) Proof of financial viability. The commission shall develop
17 uniform standards for determining financial viability and shall
18 publish those standards for public comment no later than March
19 31, 1998. In determining the financial viability of the electric
20 service provider, the commission shall take into account the
21 number of customers the potential registrant expects to serve, the
22 number of kilowatthours of electricity it expects to provide, and
23 any other appropriate criteria to ensure that residential and small
24 commercial customers have adequate recourse in the event of
25 fraud or nonperformance.

26 (10) Proof of technical and operational ability. The
27 commission shall develop uniform standards for determining
28 technical and operational capacity and shall publish those
29 standards for public comment no later than March 31, 1998.

30 (c) Any registration filing approved by the commission prior to
31 the effective date of this section which does not comply in all
32 respects with the requirements of subdivision (a) of Section 394
33 shall nevertheless continue in force and effect so long as within 90
34 days of the effective date of this section the electric service
35 provider undertakes to supplement its registration filing to the
36 satisfaction of the commission. Any registration that is not
37 supplemented by the required information within the time set forth
38 in this subdivision shall be suspended by the commission and shall
39 not be reinstated until the commission has found the registration
40 to be in full compliance with subdivision (a) of Section 394.



(d) Any public agency offering aggregation services as provided for in Section 366 solely to retail electric customers within its jurisdiction that has registered with the commission prior to the enactment of this section may voluntarily withdraw its registration to the extent that it is exempted from registration under this chapter.

(e) Before reentering the market, electric service providers whose registration has been revoked shall file a formal application with the commission that satisfies the requirements set forth in Section 394.1 and demonstrates the fitness and ability of the electric service provider to comply with all applicable rules of the commission.

(f) Registration with the commission is an exercise of the licensing function of the commission, and does not constitute regulation of the rates or terms and conditions of service offered by electric service providers. Nothing in this part authorizes the commission to regulate the rates or terms and conditions of service offered by electric service providers.

~~SEC. 5.~~

SEC. 7. Section 394.25 of the Public Utilities Code is amended to read:

394.25. (a) The commission may enforce the provisions of Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against electric service providers as if those electric service providers were public utilities as defined in these code sections. Notwithstanding the above, nothing in this section grants the commission jurisdiction to regulate electric service providers other than as specifically set forth in this part. Electric service providers shall continue to be subject to the provisions of Sections 2111 and 2112. Upon a finding by the commission's executive director that there is evidence to support a finding that the electric service provider has committed an act constituting grounds for suspension or revocation of registration as set forth in subdivision (b) of Section 394.25, the commission shall notify the electric service provider in writing and notice an expedited hearing on the suspension or revocation of the electric service provider's registration to be held within 30 days of the notification to the electric service provider of the executive director's finding of evidence to support suspension or revocation of registration. The commission shall, within 45 days after holding the hearing, issue a decision on the

1 suspension or revocation of registration, which shall be based on
2 findings of fact and conclusions of law based on the evidence
3 presented at the hearing. The decision shall include the findings of
4 fact and the conclusions of law relied upon.

5 (b) An electric service provider may have its registration
6 suspended or revoked, immediately or prospectively, in whole or
7 in part, for any of the following acts:

8 (1) Making material misrepresentations in the course of
9 soliciting customers, entering into service agreements with those
10 customers, or administering those service agreements.

11 (2) Dishonesty, fraud, or deceit with the intent to substantially
12 benefit the electric service provider or its employees, agents, or
13 representatives, or to disadvantage retail electric customers.

14 (3) Where the commission finds that there is evidence that the
15 electric service provider is not financially or operationally capable
16 of providing the offered electric service.

17 (4) The misrepresentation of a material fact by an applicant in
18 obtaining a registration pursuant to Section 394.

19 (c) Pursuant to its authority to revoke or suspend registration,
20 the commission may suspend a registration for a specified period
21 or revoke the registration, or in lieu of suspension or revocation,
22 impose a moratorium on adding or soliciting additional customers.
23 Any suspension or revocation of a registration shall require the
24 electric service provider to cease serving customers within the
25 boundaries of investor-owned electric corporations, and the
26 affected customers shall be served by the electrical corporation
27 until the time when they may select service from another service
28 provider. Customers shall not be liable for the payment of any
29 early termination fees or other penalties to any electric service
30 provider under the service agreement if the serving electric service
31 provider's registration is suspended or revoked.

32 (d) The commission shall require any electric service provider
33 whose registration is revoked pursuant to paragraph (4) of
34 subdivision (b) to refund all of the customer credit funds that the
35 electric service provider received from the State Energy Resources
36 Conservation and Development Commission pursuant to
37 paragraph (1) of subdivision (e) of Section 383.5. The repayment
38 of these funds shall be in addition to all other penalties and fines
39 appropriately assessed the electric service provider for committing
40 those acts under other provisions of law. All customer credit funds

1 refunded under this subdivision shall be deposited in the
2 Renewable Resource Trust Fund for redistribution by the State
3 Energy Resources Conservation and Development Commission
4 pursuant to Section 383.5. This subdivision may not be construed
5 to apply retroactively.

6 (e) If a customer of an electric service provider *or a community*
7 *choice aggregator* is involuntarily returned to service provided by
8 an electrical corporation, any reentry fee imposed on that customer
9 that the commission deems is necessary to avoid imposing costs on
10 other customers of the electric corporation shall be the obligation
11 of the electric service provider *or a community choice aggregator*,
12 except in the case of a customer returned due to default in payment
13 or other contractual obligations or because the customer's contract
14 has expired. As a condition of its registration ~~pursuant to Section~~
15 ~~394~~, an electric service provider *or a community choice*
16 *aggregator* shall post a bond or demonstrate insurance sufficient
17 to cover those reentry fees. In the event that an electric *service*
18 provider becomes insolvent and is unable to discharge its
19 obligation to pay reentry fees, the fees shall be allocated to the
20 returning customers.

21 ~~SEC. 6.—~~

22 *SEC. 8.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.

