

AMENDED IN SENATE MARCH 23, 2004

SENATE BILL

No. 1575

Introduced by Senator Soto

February 19, 2004

An act to amend Sections 218, 366, and 366.2 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1575, as amended, Soto. Direct transactions: community choice aggregation.

The Public Utilities Act requires the Public Utilities Commission to take actions as needed to facilitate direct transactions between electricity suppliers and end-use customers, and authorizes the voluntary aggregation of customers' electrical loads. The act specifically authorizes customers to aggregate their electrical loads as members of their local community with community choice aggregators, and authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries. *The act requires a retail end-use customer that purchases electricity from a community choice aggregator to pay charges imposed to recover certain costs of the Department of Water Resources and to reimburse an electrical corporation that previously served the customer for certain costs.* The act defines terms for its purposes.

This bill would *exempt from those charges a joint powers authority serving electricity within the boundaries of a former military base that has been closed by the federal government.* The bill would make technical, nonsubstantive changes to ~~those~~ other related provisions.

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

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

1 SECTION 1. Section 218 of the Public Utilities Code is
2 amended to read:

3 218. (a) “Electrical corporation” includes every corporation
4 or person owning, controlling, operating, or managing any electric
5 plant for compensation within this state, except where electricity
6 is generated on or distributed by the producer through private
7 property solely for its own use or the use of its tenants and not for
8 sale or transmission to others.

9 (b) “Electrical corporation” does not include a corporation or
10 person employing cogeneration technology or producing power
11 from other than a conventional power source for the generation of
12 electricity solely for any one or more of the following purposes:

13 (1) Its own use or the use of its tenants.

14 (2) The use of or sale to not more than two other corporations
15 or persons solely for use on the real property at which the
16 electricity is generated or on real property immediately adjacent
17 thereto, unless there is an intervening public street constituting the
18 boundary between the real property on which the electricity is
19 generated and the immediately adjacent property and one or more
20 of the following applies:

21 (A) The real property on which the electricity is generated and
22 the immediately adjacent real property is not under common
23 ownership or control, or that common ownership or control was
24 gained solely for purposes of sale of the electricity so generated
25 and not for other business purposes.

26 (B) The useful thermal output of the facility generating the
27 electricity is not used on the immediately adjacent property for
28 petroleum production or refining.

29 (C) The electricity furnished to the immediately adjacent
30 property is not utilized by a subsidiary or affiliate of the
31 corporation or person generating the electricity.

32 (3) Sale or transmission to an electrical corporation or state or
33 local public agency, but not for sale or transmission to others,
34 unless the corporation or person is otherwise an electrical
35 corporation.

36 (c) “Electrical corporation” does not include a corporation or
37 person employing landfill gas technology for the generation of
38 electricity for any one or more of the following purposes:



1 (1) Its own use or the use of not more than two of its tenants
2 located on the real property on which the electricity is generated.

3 (2) The use of or sale to not more than two other corporations
4 or persons solely for use on the real property on which the
5 electricity is generated.

6 (3) Sale or transmission to an electrical corporation or state or
7 local public agency.

8 (d) “Electrical corporation” does not include a corporation or
9 person employing digester gas technology for the generation of
10 electricity for any one or more of the following purposes:

11 (1) Its own use or the use of not more than two of its tenants
12 located on the real property on which the electricity is generated.

13 (2) The use of or sale to not more than two other corporations
14 or persons solely for use on the real property on which the
15 electricity is generated.

16 (3) Sale or transmission to an electrical corporation or state or
17 local public agency, provided, however, that the sale or
18 transmission of the electricity service to a retail customer shall
19 only be provided through the transmission system of the existing
20 local publicly owned electric utility or electrical corporation of
21 that retail customer.

22 (e) The amendments made to this section by Chapter 880 of the
23 Statutes of 1988 do not apply to any corporation or person
24 employing cogeneration technology or producing power from
25 other than a conventional power source for the generation of
26 electricity that physically produced electricity prior to January 1,
27 1989, and furnished that electricity to immediately adjacent real
28 property for use thereon prior to January 1, 1989.

29 SEC. 2. Section 366 of the Public Utilities Code is amended
30 to read:

31 366. (a) The commission shall take actions as needed to
32 facilitate direct transactions between electricity suppliers and
33 end-use customers. Customers may aggregate their electrical loads
34 on a voluntary basis, if each customer does so by a positive written
35 declaration. If no positive declaration is made by a customer, that
36 customer shall continue to be served by the existing electrical
37 corporation or its successor in interest, except aggregation by
38 community choice aggregators, accomplished pursuant to Section
39 366.2.



1 (b) Aggregation of customer electrical load shall be authorized
2 by the commission for all customer classes, including, but not
3 limited to, small commercial or residential customers.
4 Aggregation may be accomplished by private market aggregators,
5 special districts, or on any other basis made available by market
6 opportunities and agreeable by positive written declaration by
7 individual consumers, except aggregation by community choice
8 aggregators, which shall be accomplished pursuant to Section
9 366.2.

10 SEC. 3. Section 366.2 of the Public Utilities Code is amended
11 to read:

12 366.2. (a) (1) Customers shall be entitled to aggregate their
13 electric loads as members of their local community through
14 community choice aggregators.

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

19 (3) If a customer opts out of a community choice aggregator’s
20 program, or has no community choice program available, that
21 customer shall have the right to continue to be served by the
22 existing electrical corporation or its successor in interest.

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

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



1 (2) Under community choice aggregation, customer
2 participation may not require a positive written declaration, but all
3 customers shall be informed of their right to opt out of the
4 community choice aggregation program. If no negative
5 declaration is made by a customer, that customer shall be served
6 through the community choice aggregation program.

7 (3) A community choice aggregator establishing electrical load
8 aggregation pursuant to this section shall develop an
9 implementation plan detailing the process and consequences of
10 aggregation. The implementation plan, and any subsequent
11 changes to it, shall be considered and adopted at a duly noticed
12 public hearing. The implementation plan shall contain all of the
13 following:

14 (A) An organizational structure of the program, its operations,
15 and its funding.

16 (B) Ratesetting and other costs to participants.

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

19 (D) The methods for entering and terminating agreements with
20 other entities.

21 (E) The rights and responsibilities of program participants,
22 including, but not limited to, consumer protection procedures,
23 credit issues, and shutoff procedures.

24 (F) Termination of the program.

25 (G) A description of the third parties that will be supplying
26 electricity under the program, including, but not limited to,
27 information about financial, technical, and operational
28 capabilities.

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

33 (A) Universal access.

34 (B) Reliability.

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

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

38 (5) In order to determine the cost-recovery mechanism to be
39 imposed on the community choice aggregator pursuant to
40 subdivisions (d), (e), and (f) that shall be paid by the customers of



1 the community choice aggregator to prevent shifting of costs, the
2 community choice aggregator shall file the implementation plan
3 with the commission, and any other information requested by the
4 commission that the commission determines is necessary to
5 develop the cost-recovery mechanism in subdivisions (d), (e), and
6 (f).

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

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

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

32 (9) All electrical corporations shall cooperate fully with any
33 community choice aggregators that investigate, pursue, or
34 implement community choice aggregation programs. Cooperation
35 shall include providing the entities with appropriate billing and
36 electrical load data, including, but not limited to, data detailing
37 electricity needs and patterns of usage, as determined by the
38 commission, and in accordance with procedures established by the
39 commission. Electrical corporations shall continue to provide all
40 metering, billing, collection, and customer service to retail



1 customers that participate in community choice aggregation
2 programs. Bills sent by the electrical corporation to retail
3 customers shall identify the community choice aggregator as
4 providing the electrical energy component of the bill. The
5 commission shall determine the terms and conditions under which
6 the electrical corporation provides services to community choice
7 aggregators and retail customers.

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

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

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



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

6 (13) (A) The community choice aggregator shall fully inform
7 participating customers at least twice within two calendar months,
8 or 60 days, in advance of the date of commencing automatic
9 enrollment. Notifications may occur concurrently with billing
10 cycles. Following enrollment, the aggregated entity shall fully
11 inform participating customers for not less than two consecutive
12 billing cycles. Notification may include, but is not limited to,
13 direct mailings to customers, or inserts in water, sewer, or other
14 utility bills. Any notification shall inform customers of both of the
15 following:

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

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

20 (B) The community choice aggregator may request the
21 commission to approve and order the electrical corporation to
22 provide the notification required in subparagraph (A). If the
23 commission orders the electrical corporation to send one or more
24 of the notifications required pursuant to subparagraph (A) in the
25 electrical corporation's normally scheduled monthly billing
26 process, the electrical corporation shall be entitled to recover from
27 the community choice aggregator all reasonable incremental costs
28 it incurs related to the notification or notifications. The electrical
29 corporation shall fully cooperate with the community choice
30 aggregator in determining the feasibility and costs associated with
31 using the electrical corporation's normally scheduled monthly
32 billing process to provide one or more of the notifications required
33 pursuant to subparagraph (A).

34 (C) Each notification shall also include a mechanism by which
35 a ratepayer may opt out of community choice aggregated service.
36 The opt out may take the form of a self-addressed return postcard
37 indicating the customer's election to remain with, or return to,
38 electrical energy service provided by the electrical corporation, or
39 another straightforward means by which the customer may elect



1 to derive electrical energy service through the electrical
2 corporation providing service in the area.

3 (14) The community choice aggregator shall register with the
4 commission, which may require additional information to ensure
5 compliance with basic consumer protection rules and other
6 procedural matters.

7 (15) Once the community choice aggregator's contract is
8 signed, the community choice aggregator shall notify the
9 applicable electrical corporation that community choice service
10 will commence within 30 days.

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

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

28 (18) At the request and expense of any community choice
29 aggregator, electrical corporations shall install, maintain and
30 calibrate metering devices at mutually agreeable locations within
31 or adjacent to the community aggregator's political boundaries.
32 The electrical corporation shall read the metering devices and
33 provide the data collected to the community aggregator at the
34 aggregator's expense. To the extent that the community aggregator
35 requests a metering location that would require alteration or
36 modification of a circuit, the electrical corporation shall only be
37 required to alter or modify a circuit if such alteration or
38 modification does not compromise the safety, reliability or
39 operational flexibility of the electrical corporation's facilities. All



1 costs incurred to modify circuits pursuant to this paragraph, shall
2 be born by the community aggregator.

3 (d) (1) It is the intent of the Legislature that each retail end-use
4 customer that has purchased power from an electrical corporation
5 on or after February 1, 2001, should bear a fair share of the
6 Department of Water Resources' electricity purchase costs, as well
7 as electricity purchase contract obligations incurred as of the
8 effective date of the act adding this section, that are recoverable
9 from electrical corporation customers in commission-approved
10 rates. It is further the intent of the Legislature to prevent any
11 shifting of recoverable costs between customers.

12 (2) The Legislature finds and declares that this subdivision is
13 consistent with the requirements of Division 27 (commencing
14 with Section 80000) of the Water Code and Section 360.5, and is
15 therefore declaratory of existing law.

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

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

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

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

39 (1) The electrical corporation's unrecovered past
40 undercollections for electricity purchases, including any financing



1 costs, attributable to that customer, that the commission lawfully
2 determines may be recovered in rates.

3 (2) Any additional costs of the electrical corporation
4 recoverable in commission-approved rates, equal to the share of
5 the electrical corporation's estimated net unavoidable electricity
6 purchase contract costs attributable to the customer, as determined
7 by the commission, for the period commencing with the
8 customer's purchases of electricity from the community choice
9 aggregator, through the expiration of all then existing electricity
10 purchase contracts entered into by the electrical corporation.

11 (g) (1) Any charges imposed pursuant to subdivision (e) shall
12 be the property of the Department of Water Resources. Any
13 charges imposed pursuant to subdivision (f) shall be the property
14 of the electrical corporation. The commission shall establish
15 mechanisms, including agreements with, or orders with respect to,
16 electrical corporations necessary to ensure that charges payable
17 pursuant to this section shall be promptly remitted to the party
18 entitled to payment.

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

21 (h) Notwithstanding Section 80110 of the Water Code, the
22 commission shall authorize community choice aggregation only if
23 the commission imposes a cost-recovery mechanism pursuant to
24 subdivisions (d), (e), (f), and (g). Except as provided by this
25 subdivision, this section shall not alter the suspension by the
26 commission of direct purchases of electricity from alternate
27 providers other than by community choice aggregators, pursuant
28 to Section 80110 of the Water Code.

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

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



1 (3) The commission shall not authorize community choice
2 aggregation until it has adopted rules for implementing
3 community choice aggregation.

4 (j) The commission shall prepare and submit to the Legislature,
5 on or before January 1, 2006, a report regarding the number of
6 community choices aggregations, the number of customers served
7 by community choice aggregations, third party suppliers to
8 community choice aggregations, compliance with this section, and
9 the overall effectiveness of community choice aggregation
10 programs.

11 *(k) Notwithstanding any other provision of law, charges*
12 *imposed pursuant to subdivision (d), (e), and (f) are not applicable*
13 *to a joint powers authority serving electricity within the*
14 *boundaries of a former military base that has been closed by the*
15 *federal government.*

