

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 , 366, 394, and 394.25 of, and to add Section 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 ~~electric~~ *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 mechanism shall be imposed on the community choice aggregator* and would prohibit the commission from approving any plan for community choice aggregation subsequent to September 20, 2001, unless, as a condition of approval, exit fees are imposed on customers electing to participate in the community choice aggregation plan in an amount sufficient to recover any reasonably unavoidable past or future power procurement costs incurred by the electrical corporation for bundled service customers or by the Department of Water Resources and to prevent cost shifting to remaining customers served by the electrical corporation or the Department of Water Resources. *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.* 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 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.

(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 ~~include a provider of electricity to a community choice aggregator within the definition of an "electric service provider."~~ *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.*

This bill would provide that if a customer of an electric service provider 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, *except as specified.* The bill



would require the electric service provider, 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
2 amended to read:

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

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

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

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

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

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



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

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

8 (f) “Microgeneration facility” means a cogeneration facility
9 of less than one megawatt.

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

15 (h) “Restructuring trusts” means the two tax-exempt public
16 benefit trusts established by Decision 96-08-038 of the
17 commission to provide for design and development of the
18 hardware and software systems for the Power Exchange and the
19 Independent System Operator, respectively, and that may
20 undertake other activities, as needed, as ordered by the
21 commission.

22 (i) “Small commercial customer” means a customer that has
23 a maximum peak demand of less than 20 kilowatts.

24 SEC. 2. Section 366 of the Public Utilities Code is amended
25 to read:

26 366. (a) (1) The commission shall take actions as needed to
27 facilitate direct transactions between electricity suppliers and
28 end-use customers. Customers shall be entitled to aggregate their
29 electric loads as individual consumers with private aggregators, or
30 as members of their local community with community choice
31 aggregators.

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

35 (3) Customers may aggregate their loads through a public
36 process with community choice aggregators, if each customer is
37 given an opportunity to opt out of their community’s aggregation
38 program.

39 (4) If a customer makes no positive declaration to aggregate
40 with a private aggregator, opts out of a community choice



1 aggregator's program, or has no community choice program
2 available, that customer shall continue to be served by the existing
3 electrical corporation or its successor in interest.

4 (b) Private aggregation of customer electrical load shall be
5 authorized by the commission for all customer classes, including,
6 but not limited to, small commercial or residential customers.
7 Private aggregation may be accomplished by private market
8 aggregators, special districts, and public agencies not qualifying
9 as community choice aggregators, or on any other basis made
10 available by market opportunities and agreeable by positive
11 written declaration by individual consumers.

12 (c) If a public agency seeks to serve as a community choice
13 aggregator on behalf of residential customers, it shall be obligated
14 to offer the opportunity to purchase electricity to all residential
15 customers within its jurisdiction.

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

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

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



1 changes to it, shall be considered and adopted at a duly noticed
2 public hearing. ~~The implementation plan shall be filed with the~~
3 ~~commission.~~ *hearing. The implementation plan shall contain all*
4 *of the 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 (F) *Termination of the program.*

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

18 (A) Universal access.

19 (B) Reliability.

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

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

23 (5) In order to determine the ~~exit fees to be imposed~~
24 ~~cost-recovery mechanism to be imposed on the community choice~~
25 ~~aggregator pursuant to subdivision (e) subdivisions (e), (f), and~~
26 ~~(g) that shall be paid by the customers of the community choice~~
27 ~~aggregator to prevent shifting of costs, the community choice~~
28 ~~aggregator establishing load aggregation shall include in its~~
29 ~~implementation plan all of the following:~~

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

32 ~~(B) Ratesetting and other costs to participants.~~

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

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

37 ~~(E) The rights and responsibilities of program participants.~~

38 ~~(F) Termination of the program.~~

39 ~~(G) Any additional information the commission determines is~~
40 ~~necessary to determine exit fees as provided for in subdivision (e).~~



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

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

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

20 (8) No entity specified in subdivision (b) of Section 331
21 proposing community choice aggregation shall act to furnish
22 electricity to electricity consumers within its boundaries until the
23 commission has determined whether ~~an exit fee~~ *cost-recovery*
24 must be paid by the customers of that proposed community choice
25 aggregation program. The commission shall designate the earliest
26 possible effective date for implementation of a community choice
27 aggregation program, taking into consideration the impact on ~~the~~
28 *any annual procurement plan of the electrical corporation that has*
29 *been approved by the commission*.

30 (9) All electrical corporations shall cooperate fully with any of
31 the entities specified in subdivision (b) of Section 331 that
32 investigate, pursue, or implement community choice aggregation
33 programs. Cooperation shall include providing the entities with
34 appropriate billing and load data, including, but not limited to, data
35 detailing energy needs and patterns of usage, as determined by the
36 commission, and in accordance with procedures established by the
37 commission. Electrical corporations shall continue to provide all
38 metering, billing, collection, and customer service to retail
39 customers that participate in community choice aggregation
40 programs. Bills sent by the electrical corporation to retail



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

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

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

15 (11) Following adoption of aggregation through the ordinance
16 described in paragraph (10), the program shall allow any retail
17 customer to opt out and choose any supplier or provider as
18 provided by applicable commission policies. Delivery services
19 shall be provided at the same rates, terms, and conditions, as
20 approved by the commission, for community choice aggregation
21 customers and customers who have entered into a direct
22 transaction where applicable, as determined by the commission.
23 Once enrolled in the aggregated entity, any ratepayer that chooses
24 to opt out within 60 days or two billing cycles of the date of
25 enrollment may do so without penalty and shall be entitled to
26 receive default service pursuant to paragraph (4) of subdivision
27 (a). Customers who return to the electrical corporation for
28 procurement services shall be subject to the same terms and
29 conditions as are applicable to other returning direct access
30 customers from the same class, as determined by the commission,
31 as authorized by the commission pursuant to this code or any other
32 provision of law. Any reentry fees to be imposed after the opt-out
33 period specified in this paragraph shall be approved by the
34 commission and shall reflect the cost of reentry. The commission
35 shall exclude any amounts previously determined and paid
36 pursuant to ~~subdivision (e)~~ subdivisions (e), (f), and (g) from the
37 cost of reentry.

38 (12) Nothing in this section shall be construed as authorizing
39 any city or any community choice retail load aggregator to restrict
40 the ability of retail electric customers to obtain or receive service



1 from any authorized service provider in a manner consistent with
2 law.

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

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

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

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

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

35 (14) The aggregated entity shall register with the commission,
36 which may require additional information to ensure compliance
37 with basic consumer protection rules and other 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 may recover from ratepayers all
8 reasonable costs, as determined by the commission, of
9 implementing Assembly Bill 117 of the 2001–02 Regular Session,
10 including, but not limited to, all business and information system
11 changes, except for transaction-based costs as described in this
12 paragraph. All reasonable transaction-based costs of notices,
13 billing, metering, collections, and customer communications or
14 other services provided by an aggregator or its customers shall be
15 recovered from the aggregator or its customers on terms and at
16 rates to be approved by the commission.

17 ~~(e) The commission shall not approve any community choice~~
18 ~~aggregation plan subsequent to September 20, 2001, unless, as a~~
19 ~~condition of approval of the plan, exit fees are imposed on~~
20 ~~customers electing to participate in the community choice~~
21 ~~aggregation plan in an amount sufficient to recover any reasonably~~
22 ~~unavoidable past or future power procurement costs incurred by~~
23 ~~the electrical corporation for bundled service customers or by the~~
24 ~~Department of Water Resources pursuant to Division 27~~
25 ~~(commencing with Section 80000) of the Water Code and to~~
26 ~~prevent costs shifting to remaining customers served by the~~
27 ~~electrical corporation or the Department of Water Resources.~~

28 ~~(1) At a minimum, the exit fees shall be equivalent to the~~
29 ~~charges that would otherwise be imposed on the customer by the~~
30 ~~commission to recover bond related costs pursuant to any~~
31 ~~agreement between the commission and the Department of Water~~
32 ~~Resources pursuant to Section 80110 of the Water Code, which~~
33 ~~charges shall be payable until any obligations of the Department~~
34 ~~of Water Resources pursuant to Division 27 (commencing with~~
35 ~~Section 80000) of the Water Code are fully paid or otherwise~~
36 ~~discharged. Exit fees relating to any bond charges shall be the~~
37 ~~property of the Department of Water Resources.~~

38 ~~(2) Any other exit fees imposed pursuant to this section shall be~~
39 ~~the property of the electrical corporation or the Department of~~
40 ~~Water Resources, as applicable, and as determined by the~~



1 ~~commission. The commission shall establish mechanisms,~~
2 ~~including agreements with, or orders with respect to, electrical~~
3 ~~corporations necessary to ensure that exit fees imposed pursuant~~
4 ~~to this section are promptly remitted to the entity entitled to~~
5 ~~payment.~~

6 ~~(3) Exit fees imposed pursuant to this section may be made~~
7 ~~payable at one time or over a period of time, at the discretion of the~~
8 ~~commission, but shall be nonbypassable.~~

9 ~~(4) Any exit fees imposed pursuant to this section that rely on~~
10 ~~forecasted costs shall be revised by the commission as necessary~~
11 ~~to reflect changes due to a determination of actual costs. These~~
12 ~~revisions shall include, but not be limited to, reductions in costs to~~
13 ~~the Department of Water Resources due to the following:~~

14 ~~(A) Refunds made by the Federal Energy Regulatory~~
15 ~~Commission.~~

16 ~~(B) Contract terminations and contract renegotiations to~~
17 ~~reduce costs.~~

18 ~~(5) When exit fee revisions are made, customers who have paid~~
19 ~~the exit fee shall be refunded the difference between the exit fee~~
20 ~~they paid and the newly computed exit fee.~~

21 ~~(f)~~

22 *(e) (1) It is the intent of the Legislature that each retail end-use*
23 *customer that has purchased power from an electrical corporation*
24 *on or after February 1, 2001, regardless of whether the customer*
25 *thereafter takes service from an alternate provider, including a*
26 *community choice aggregator, should bear a pro rata share of the*
27 *Department of Water Resources' power purchase costs, as well as*
28 *power purchase contract obligations incurred as of the effective*
29 *date of the act adding this subdivision, that are recoverable from*
30 *electrical corporation customers in commission-approved rates. It*
31 *is further the intent of the Legislature to prevent any shifting of*
32 *recoverable costs from customers who take service from an*
33 *alternate provider, including a community choice aggregator, to*
34 *electrical corporation customers.*

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



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

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

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

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

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

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

32 (2) *Any additional costs of the electrical corporation*
33 *recoverable in commission-approved rates, equal to the share of*
34 *the electrical corporation's estimated net unavoidable power*
35 *purchase contract costs attributable to the customer, as*
36 *determined by the commission, for the period commencing with the*
37 *customer's purchases of electricity from the community choice*
38 *aggregator, through the expiration of all then existing power*
39 *purchase contracts entered into by the electrical corporation.*



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

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

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

20 (j) (1) The commission shall not authorize community choice
21 aggregation until it implements a cost recovery mechanism,
22 consistent with subdivisions (e), (f), and (g) that is applicable to
23 customers that elected to purchase electricity from an alternate
24 provider between February 1, 2001, and the effective date of the
25 act adding this subdivision.

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

33 381.1. The commission shall require the administrator of
34 cost-effective energy efficiency and conservation programs to
35 direct a proportional share of its approved energy efficiency
36 program activities for which the community choice aggregator’s
37 customers are eligible, to the community choice aggregator’s
38 territory without regard to customer class. To the extent that energy
39 efficiency and conservation programs are targeted to specific
40 locations to avoid or defer transmission or distribution system



1 upgrades, the targeted expenditures shall continue irrespective of
2 whether the loads in those locations are served by an aggregator
3 or by an electrical corporation. The commission shall also direct
4 the administrator to work with the community choice aggregator,
5 to provide advance information where appropriate about the likely
6 impacts of energy efficiency programs and to accommodate any
7 unique community program needs by placing more, or less,
8 emphasis on particular approved programs to the extent that these
9 special shifts in emphasis in no way diminish the effectiveness of
10 broader statewide or regional programs. If the community choice
11 aggregator proposes energy efficiency programs other than
12 programs already approved for implementation in its territory, it
13 shall do so under established commission policies and procedures.

14 SEC. 4. Section 394 of the Public Utilities Code is amended
15 to read:

16 394. (a) As used in this section, “electric service provider”
17 means an entity that offers electrical service to ~~residential and~~
18 ~~small commercial customers, or a provider of electricity to a~~
19 ~~community choice aggregator, as defined in Section 331, but does~~
20 *customers within the service territory of an electrical corporation,*
21 *but does not include an electrical corporation, as defined in Section*
22 *218, or a public agency that offers electrical service to residential*
23 *and small commercial customers within its jurisdiction, or within*
24 *the service territory of a local publicly owned electric utility.*
25 “Electric service provider” includes the unregulated affiliates and
26 subsidiaries of an electrical corporation, as defined in Section 218.

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

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

33 (2) Current telephone number.

34 (3) Current address.

35 (4) Agent for service of process.

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

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

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



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

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

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

34 (c) Any registration filing approved by the commission prior to
35 the effective date of this section which does not comply in all
36 respects with the requirements of subdivision (a) of Section 394
37 shall nevertheless continue in force and effect so long as within 90
38 days of the effective date of this section the electric service
39 provider undertakes to supplement its registration filing to the
40 satisfaction of the commission. Any registration that is not



1 supplemented by the required information within the time set forth
2 in this subdivision shall be suspended by the commission and shall
3 not be reinstated until the commission has found the registration
4 to be in full compliance with subdivision (a) of Section 394.

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

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

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

23 SEC. 5. Section 394.25 of the Public Utilities Code is
24 amended to read:

25 394.25. (a) The commission may enforce the provisions of
26 Sections 2102, 2103, 2104, 2105, 2107, 2108, and 2114 against
27 electric service providers as if those electric service providers were
28 public utilities as defined in these code sections. Notwithstanding
29 the above, nothing in this section grants the commission
30 jurisdiction to regulate electric service providers other than as
31 specifically set forth in this part. Electric service providers shall
32 continue to be subject to the provisions of Sections 2111 and 2112.
33 Upon a finding by the commission's executive director that there
34 is evidence to support a finding that the electric service provider
35 has committed an act constituting grounds for suspension or
36 revocation of registration as set forth in subdivision (b) of Section
37 394.25, the commission shall notify the electric service provider
38 in writing and notice an expedited hearing on the suspension or
39 revocation of the electric service provider's registration to be held
40 within 30 days of the notification to the electric service provider



1 of the executive director's finding of evidence to support
2 suspension or revocation of registration. The commission shall,
3 within 45 days after holding the hearing, issue a decision on the
4 suspension or revocation of registration, which shall be based on
5 findings of fact and conclusions of law based on the evidence
6 presented at the hearing. The decision shall include the findings of
7 fact and the conclusions of law relied upon.

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

11 (1) Making material misrepresentations in the course of
12 soliciting customers, entering into service agreements with those
13 customers, or administering those service agreements.

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

17 (3) Where the commission finds that there is evidence that the
18 electric service provider is not financially or operationally capable
19 of providing the offered electric service.

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

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

35 (d) The commission shall require any electric service provider
36 whose registration is revoked pursuant to paragraph (4) of
37 subdivision (b) to refund all of the customer credit funds that the
38 electric service provider received from the State Energy Resources
39 Conservation and Development Commission pursuant to
40 paragraph (1) of subdivision (e) of Section 383.5. The repayment



1 of these funds shall be in addition to all other penalties and fines
2 appropriately assessed the electric service provider for committing
3 those acts under other provisions of law. All customer credit funds
4 refunded under this subdivision shall be deposited in the
5 Renewable Resource Trust Fund for redistribution by the State
6 Energy Resources Conservation and Development Commission
7 pursuant to Section 383.5. This subdivision may not be construed
8 to apply retroactively.

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

22 SEC. 6. 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.

