

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN SENATE MAY 5, 2011

SENATE BILL

No. 855

Introduced by Senator Kehoe

February 18, 2011

~~An act to amend Section 4351 of the Food and Agricultural Code, relating to race tracks. An act to amend Section 365.1 of the Public Utilities Code, relating to electricity.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 855, as amended, Kehoe. ~~State Race Track Leasing Commission. Electric service: direct transactions.~~

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

Existing law, relative to electrical restructuring, requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. Existing law, enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end-use customers at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law suspended the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, as defined, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity

under that law. Existing law continues the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions. Existing law requires the commission to authorize direct transactions for nonresidential end-use customers subject to a reopening schedule adopted and implemented by July 1, 2010, that will phase in over a period of not less than 3 years and not more than 5 years, and subject to an annual maximum allowable total kilowatthour limit established for each electrical corporation. The annual maximum allowable total kilowatthour limit is required to be established for each electrical corporation at the maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12-month period between April 1, 1998, and October 11, 2009.

This bill would modify the annual maximum allowable total kilowatthour limit for each electrical corporation to include the total kilowatthours of new load previously authorized and implemented by the commission pursuant to a specified statute. The bill would require the commission to adopt a specified schedule to phase in the allowable amount of increased kilowatthours by July 1, 2012, instead of July 1, 2010. The bill would change an existing requirement that the commission review and modify its currently effective rules governing direct transactions to instead authorize the commission to perform such review and modification.

~~Existing law establishes, until January 1, 2013, the State Race Track Leasing Commission which is composed of the Secretary of Food and Agriculture, the Director of Finance, and the Director of General Services, and 3 other individuals, as specified, who are appointed by the Governor. The commission is authorized to enter into leases and agreements for the use of specified property owned or controlled by the 22nd District Agricultural Association.~~

~~This bill would extend the operative date of the provision establishing the commission until January 1, 2018.~~

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

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

- 1 *SECTION 1. Section 365.1 of the Public Utilities Code is*
- 2 *amended to read:*

1 365.1. (a) Except as expressly authorized by this section, and
2 subject to the limitations in subdivisions (b) and (c), the right of
3 retail end-use customers pursuant to this chapter to acquire service
4 from other providers is suspended until the Legislature, by statute,
5 lifts the suspension or otherwise authorizes direct transactions. For
6 purposes of this section, “other provider” means any person,
7 corporation, or other entity that is authorized to provide electric
8 service within the service territory of an electrical corporation
9 pursuant to this chapter, and includes an aggregator, broker, or
10 marketer, as defined in Section 331, and an electric service
11 provider, as defined in Section 218.3. “Other provider” does not
12 include a community choice aggregator, as defined in Section
13 331.1, and the limitations in this section do not apply to the sale
14 of electricity by “other providers” to a community choice
15 aggregator for resale to community choice aggregation electricity
16 consumers pursuant to Section 366.2.

17 (b) The commission shall allow individual retail nonresidential
18 end-use customers to acquire electric service from other providers
19 in each electrical corporation’s distribution service territory, up to
20 a maximum allowable total kilowatthours annual limit. The
21 maximum allowable annual limit shall be established by the
22 commission for each electrical corporation at the maximum total
23 kilowatthours supplied by all other providers to distribution
24 customers of that electrical corporation during any sequential
25 12-month period between April 1, 1998, and ~~the effective date of~~
26 ~~this section. Within six months of the effective date of this section,~~
27 ~~or by July 1, 2010, whichever is sooner, October 11, 2009, plus~~
28 *the total kilowatthours of new load previously authorized by statute*
29 *and implemented by the commission pursuant to Chapter 337 of*
30 *the Statutes of 2009. By July 1, 2012, the commission shall adopt*
31 *and implement a reopening schedule that commences immediately*
32 *and will phase in the allowable amount of increased kilowatthours*
33 *over a period of not less than three years, and not more than five*
34 *years, raising the allowable limit of kilowatthours supplied by*
35 *other providers in each electrical corporation’s distribution service*
36 *territory from the number of kilowatthours provided by other*
37 *providers as of the effective date of this section, to the maximum*
38 *allowable annual limit for that electrical corporation’s distribution*
39 *service territory. The commission—shall may review and, if*
40 *appropriate, modify its currently effective rules governing direct*

1 transactions, but ~~that~~ *any such* review shall not delay the start of
2 the phase-in schedule.

3 (c) Once the commission has authorized additional direct
4 transactions pursuant to subdivision (b), it shall do both of the
5 following:

6 (1) Ensure that other providers are subject to the same
7 requirements that are applicable to the state's three largest electrical
8 corporations under any programs or rules adopted by the
9 commission to implement the resource adequacy provisions of
10 Section 380, the renewables portfolio standard provisions of Article
11 16 (commencing with Section 399.11), and the requirements for
12 the electricity sector adopted by the State Air Resources Board
13 pursuant to the California Global Warming Solutions Act of 2006
14 (Division 25.5 (commencing with Section 38500) of the Health
15 and Safety Code). This requirement applies notwithstanding any
16 prior decision of the commission to the contrary.

17 (2) (A) Ensure that, in the event that the commission authorizes,
18 in the situation of a contract with a third party, or orders, in the
19 situation of utility-owned generation, an electrical corporation to
20 obtain generation resources that the commission determines are
21 needed to meet system or local area reliability needs for the benefit
22 of all customers in the electrical corporation's distribution service
23 territory, the net capacity costs of those generation resources are
24 allocated on a fully nonbypassable basis consistent with departing
25 load provisions as determined by the commission, to all of the
26 following:

27 (i) Bundled service customers of the electrical corporation.

28 (ii) Customers that purchase electricity through a direct
29 transaction with other providers.

30 (iii) Customers of community choice aggregators.

31 (B) The resource adequacy benefits of generation resources
32 acquired by an electrical corporation pursuant to subparagraph (A)
33 shall be allocated to all customers who pay their net capacity costs.
34 Net capacity costs shall be determined by subtracting the energy
35 and ancillary services value of the resource from the total costs
36 paid by the electrical corporation pursuant to a contract with a
37 third party or the annual revenue requirement for the resource if
38 the electrical corporation directly owns the resource. An energy
39 auction shall not be required as a condition for applying this
40 allocation, but may be allowed as a means to establish the energy

1 and ancillary services value of the resource for purposes of
2 determining the net costs of capacity to be recovered from
3 customers pursuant to this paragraph, and the allocation of the net
4 capacity costs of contracts with third parties shall be allowed for
5 the terms of those contracts.

6 (C) It is the intent of the Legislature, in enacting this paragraph,
7 to provide additional guidance to the commission with respect to
8 the implementation of subdivision (g) of Section 380, as well as
9 to ensure that the customers to whom the net costs and benefits of
10 capacity are allocated are not required to pay for the cost of
11 electricity they do not consume.

12 (d) (1) If the commission approves a centralized resource
13 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
14 380, upon the implementation of the centralized resource adequacy
15 mechanism the requirements of paragraph (2) of subdivision (c)
16 shall be suspended. If the commission later orders that electrical
17 corporations cease procuring capacity through a centralized
18 resource adequacy mechanism, the requirements of paragraph (2)
19 of subdivision (c) shall again apply.

20 (2) If the use of a centralized resource adequacy mechanism is
21 authorized by the commission and has been implemented as set
22 forth in paragraph (1), the net capacity costs of generation resources
23 that the commission determines are required to meet urgent system
24 or urgent local grid reliability needs, and that the commission
25 authorizes to be procured outside of the Section 380 or Section
26 454.5 processes, shall be recovered according to the provisions of
27 paragraph (2) of subdivision (c).

28 (3) ~~Nothing in this~~ *This subdivision supplants does not supplant*
29 the resource adequacy requirements of Section 380 or the resource
30 procurement procedures established in Section 454.5.

31 (e) The commission may report to the Legislature on the efficacy
32 of authorizing individual retail end-use residential customers to
33 enter into direct transactions, including appropriate consumer
34 protections.

35 ~~SECTION 1. Section 4351 of the Food and Agricultural Code~~
36 ~~is amended to read:~~

37 ~~4351. (a) There is hereby created the State Race Track Leasing~~
38 ~~Commission which shall be composed of the Secretary of Food~~
39 ~~and Agriculture, the Director of Finance, and the Director of~~
40 ~~General Services, and three individuals, appointed by the Governor,~~

1 ~~who are members of the Board of Directors of the 22nd District~~
2 ~~Agricultural Association. The Director of Finance shall serve as~~
3 ~~chairperson of the commission. All meetings of the commission~~
4 ~~shall be open and public.~~

5 ~~(b) This section shall remain in effect only until January 1, 2018,~~
6 ~~and as of that date is repealed, unless a later enacted statute, that~~
7 ~~is enacted before January 1, 2018, deletes or extends that date.~~