

AMENDED IN SENATE APRIL 29, 2015

AMENDED IN SENATE APRIL 27, 2015

AMENDED IN SENATE APRIL 14, 2015

SENATE BILL

No. 286

Introduced by Senator Hertzberg

February 19, 2015

An act to amend Section 365.1 of, and to add Section 395.5 to, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 286, as amended, Hertzberg. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, 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 that will phase in over a period of not less than 3 years and not more than 5 years, and is subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation.

The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, ~~as specified.~~ *meeting specified portfolio content categories.*

This bill would require the commission to adopt and implement a schedule that implements a 2nd phase-in period for expanding direct transactions for individual retail nonresidential end-use customers over a period of not more than 3 years, raising the allowable limit of kilowatthours that can be supplied by other providers in each electrical corporation's distribution service territory to 8,000 gigawatt hours above the amount determined by the commission for the first phase-in period. The bill would require the commission to ensure that 51% of the new direct transactions are for electricity products from eligible renewable energy resources *meeting the portfolio content categories.* The bill would require that an electrical corporation continue to provide direct access customers with support functions, as specified, through its own employees, except that construction of distribution system equipment and line clearance tree trimming may be performed under contract with the electrical corporation. The bill would prohibit an electric service provider from offering consolidated billing beginning January 1, 2016.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by expanding the operation of a crime.

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. The Legislature finds and declares all of the
2 following:

3 (a) As the state's electrical system evolves to include more
4 electricity generated by eligible renewable energy resources and
5 distributed generation, electrical corporations must continue to
6 facilitate safe and reliable transactions for electricity. Whether it
7 comes from efficient natural gas powerplants, large wind or solar
8 facilities, or customer-owned generation, including rooftop
9 photovoltaics, fuel cells, or combined heat and power systems, the
10 role of electrical corporations will be to ensure that electricity
11 moves from suppliers to customers. In effect, the electrical
12 corporations will become transmission and distribution companies,
13 connecting customers with the electrical mix they want when and
14 where they need it.

15 (b) California already has a few examples for this business
16 model, including community choice aggregation and direct access.
17 Direct access allows a customer to receive electricity through a
18 direct transaction with an electric service provider, rather than
19 from the electrical corporation. The electricity is delivered over
20 the electrical corporation's transmission and distribution grid and
21 the direct access customer pays the utility for providing
22 transmission and distribution service.

23 (c) Direct access was suspended in California in 2001, despite
24 not being a contributing component to the market manipulation,
25 blackouts, and price spikes that led to the energy crisis of 2000–01.
26 In 2010, the right of individual retail nonresidential end-use
27 customers to acquire electric service through a direct transaction
28 was reopened, but subject to limitations on the amount of electricity
29 that could be delivered through those transactions.

30 (d) Direct access customers currently pay charges for electrical
31 grid maintenance and pay nonbypassable charges on the
32 distribution of electricity to support public purpose programs,
33 including the California Alternate Rates for Energy program, which

1 supports affordable electric service for low-income customers, and
2 energy efficiency programs. Other providers of electric service,
3 including electric service providers and community choice
4 aggregators, are required to follow the same laws, rules, and
5 regulations as electrical corporations with respect to resource
6 adequacy (Section 380 of the Public Utilities Code), procurement
7 of electricity pursuant to the California Renewables Portfolio
8 Standard Program (Article 16 (commencing with Section 399.11)
9 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code),
10 and for reducing emissions of greenhouse gases pursuant to the
11 California Global Warming Solutions Act of 2006 (Division 25.5
12 (commencing with Section 38500) of the Health and Safety Code).

13 (e) The Public Utilities Commission is required to ensure local
14 area reliability needs for the benefit of both bundled and unbundled
15 electric service customers. If the commission determines that new
16 resources are needed for reliability, the costs are to be shared
17 equitably, on a fully nonbypassable basis, amongst all customers,
18 whether the customer receives their electricity from the electrical
19 corporation, a community choice aggregator, or an electric service
20 provider. The cost allocation mechanism ensures that there is no
21 cost shift to bundled customers of the electrical corporation.

22 (f) A growing number of businesses are recognizing the
23 importance of managing their energy supplies and are seeking
24 more control over their energy management decisions. Many of
25 these businesses also want options to contract for electricity, with
26 up to 100 percent of that electricity coming from eligible renewable
27 energy resources. However, because of the statutory limitations
28 placed upon direct transactions, most businesses lack the means
29 and necessary tools to make cost-effective energy decisions, which
30 makes California less business friendly than other states with more
31 direct access options.

32 (g) Given high demand for direct transactions, it is in the interest
33 of the state to expand the right to direct access opportunities,
34 especially to provide options for acquiring electricity from
35 renewable sources of generation.

36 SEC. 2. Section 365.1 of the Public Utilities Code is amended
37 to read:

38 365.1. (a) Except as expressly authorized by this section, and
39 subject to the limitations in subdivisions (b) and (c), the right of
40 retail end-use customers pursuant to this chapter to acquire service

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

14 (b) (1) During the first phase-in period for expanding access
15 to direct transactions, the commission shall allow individual retail
16 nonresidential end-use customers to acquire electric service from
17 other providers in each electrical corporation’s distribution service
18 territory, up to a maximum allowable total kilowatthours annual
19 limit. During this first phase-in period for expanding access to
20 direct transactions, the maximum allowable annual limit shall be
21 established by the commission for each electrical corporation at
22 the maximum total kilowatthours supplied by all other providers
23 to distribution customers of that electrical corporation during any
24 sequential 12-month period between April 1, 1998, and the
25 effective date of this section. Within six months of the effective
26 date of this section, or by July 1, 2010, whichever is sooner, the
27 commission shall adopt and implement a reopening schedule that
28 commences immediately and will phase in the allowable amount
29 of increased kilowatthours over a period of not less than three
30 years, and not more than five years, raising the allowable limit of
31 kilowatthours supplied by other providers in each electrical
32 corporation’s distribution service territory from the number of
33 kilowatthours provided by other providers as of the effective date
34 of this section, to the maximum allowable annual limit for that
35 electrical corporation’s distribution service territory. The
36 commission shall review and, if appropriate, modify its currently
37 effective rules governing direct transactions, but that review shall
38 not delay the start of the phase-in schedule.

39 (2) The commission shall adopt and implement a second direct
40 transactions reopening schedule that commences January 1, 2016,

1 and phases in new direct transactions for individual retail
2 nonresidential end-use customers over a period of not more than
3 three years, raising the allowable limit of kilowatthours that can
4 be supplied by other providers in each electrical corporation's
5 distribution service territory to 8,000 gigawatt hours above the
6 amount determined by the commission for the first phase-in period.
7 Not less than 51 percent of the new direct transactions shall be for
8 electricity products from eligible renewable energy resources. For
9 purposes of this section, "eligible renewable energy resource" has
10 the same meaning as in the California Renewables Portfolio
11 Standard Program (Article 16 (commencing with Section 399.11)).
12 *resources meeting the requirements of subdivisions (b) and (c) of*
13 *Section 399.16.*

14 (c) Once the commission has authorized additional direct
15 transactions pursuant to subdivision (b), it shall do both of the
16 following:

17 (1) Ensure that other providers are subject to the same
18 requirements that are applicable to the state's three largest electrical
19 corporations under any programs or rules adopted by the
20 commission to implement the resource adequacy provisions of
21 Section 380, the renewables portfolio standard provisions of Article
22 16 (commencing with Section 399.11), and the requirements for
23 the electricity sector adopted by the State Air Resources Board
24 pursuant to the California Global Warming Solutions Act of 2006
25 (Division 25.5 (commencing with Section 38500) of the Health
26 and Safety Code). This requirement applies notwithstanding any
27 prior decision of the commission to the contrary.

28 (2) (A) Ensure that, in the event that the commission authorizes,
29 in the situation of a contract with a third party, or orders, in the
30 situation of utility-owned generation, an electrical corporation to
31 obtain generation resources that the commission determines are
32 needed to meet system or local area reliability needs for the benefit
33 of all customers in the electrical corporation's distribution service
34 territory, the net capacity costs of those generation resources are
35 allocated on a fully nonbypassable basis consistent with departing
36 load provisions as determined by the commission, to all of the
37 following:

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

39 (ii) Customers that purchase electricity through a direct
40 transaction with other providers.

1 (iii) Customers of community choice aggregators.

2 (B) If the commission authorizes or orders an electrical
3 corporation to obtain generation resources pursuant to subparagraph
4 (A), the commission shall ensure that those resources meet a system
5 or local reliability need in a manner that benefits all customers of
6 the electrical corporation. The commission shall allocate the costs
7 of those generation resources to ratepayers in a manner that is fair
8 and equitable to all customers, whether they receive electric service
9 from the electrical corporation, a community choice aggregator,
10 or an electric service provider.

11 (C) The resource adequacy benefits of generation resources
12 acquired by an electrical corporation pursuant to subparagraph (A)
13 shall be allocated to all customers who pay their net capacity costs.
14 Net capacity costs shall be determined by subtracting the energy
15 and ancillary services value of the resource from the total costs
16 paid by the electrical corporation pursuant to a contract with a
17 third party or the annual revenue requirement for the resource if
18 the electrical corporation directly owns the resource. An energy
19 auction shall not be required as a condition for applying this
20 allocation, but may be allowed as a means to establish the energy
21 and ancillary services value of the resource for purposes of
22 determining the net costs of capacity to be recovered from
23 customers pursuant to this paragraph, and the allocation of the net
24 capacity costs of contracts with third parties shall be allowed for
25 the terms of those contracts.

26 (D) It is the intent of the Legislature, in enacting this paragraph,
27 to provide additional guidance to the commission with respect to
28 the implementation of subdivision (g) of Section 380, as well as
29 to ensure that the customers to whom the net costs and benefits of
30 capacity are allocated are not required to pay for the cost of
31 electricity they do not consume.

32 (d) (1) If the commission approves a centralized resource
33 adequacy mechanism pursuant to subdivisions (h) and (i) of Section
34 380, upon the implementation of the centralized resource adequacy
35 mechanism the requirements of paragraph (2) of subdivision (c)
36 shall be suspended. If the commission later orders that electrical
37 corporations cease procuring capacity through a centralized
38 resource adequacy mechanism, the requirements of paragraph (2)
39 of subdivision (c) shall again apply.

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

9 (3) Nothing in this subdivision supplants the resource adequacy
10 requirements of Section 380 or the resource procurement
11 procedures established in Section 454.5.

12 (e) The commission may report to the Legislature on the efficacy
13 of authorizing individual retail end-use residential customers to
14 enter into direct transactions, including appropriate consumer
15 protections.

16 (f) An electrical corporation shall continue to provide direct
17 access customers with support functions, including, but not limited
18 to, billing, customer service, call centers, support services, and
19 line clearance tree trimming, through its own employees, except
20 that construction of distribution system equipment and line
21 clearance tree trimming may be performed pursuant to contracts
22 between the electrical corporation and another entity.

23 SEC. 3. Section 395.5 is added to the Public Utilities Code, to
24 read:

25 395.5. Beginning January 1, 2016, no electric service provider
26 shall offer consolidated billing.

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

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