

Senate Bill No. 237

CHAPTER 600

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

[Approved by Governor September 20, 2018. Filed with Secretary of State September 20, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 237, Hertzberg. Electricity: direct transactions.

The Public Utilities Act requires the Public Utilities Commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers, but suspends direct transactions except as expressly authorized. Existing law expressly requires the commission to authorize direct transactions for nonresidential end-use customers, subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation, to be achieved following a now completed 3-to 5-year phase-in period.

This bill would require the commission, on or before June 1, 2019, to issue an order specifying, among other things, an increase in the annual maximum allowable total kilowatthour limit by 4,000 gigawatthours and apportion that increase among the service territories of the electrical corporations.

This bill would require the commission to provide to the Legislature recommendations on the adoption and implementation of a 2nd direct transactions reopening schedule. The bill would require the commission, in developing the recommendations, to make certain findings.

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.

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

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

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

(b) The commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation’s distribution service territory, up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual limit shall be established by the commission 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 the effective date of this section. Within six months of the effective date of this section, or by July 1, 2010, whichever is sooner, the commission shall adopt and implement a reopening schedule that commences immediately and will phase in the allowable amount of increased kilowatthours over a period of not less than three years, and not more than five years, raising the allowable limit of kilowatthours supplied by other providers in each electrical corporation’s distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation’s distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

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

(1) Ensure that other providers are subject to the same requirements that are applicable to the state’s three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006

(Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.

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

- (i) Bundled service customers of the electrical corporation.
- (ii) Customers that purchase electricity through a direct transaction with other providers.
- (iii) Customers of community choice aggregators.

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

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

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

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity

through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

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

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

(e) On or before June 1, 2019, the commission shall issue an order regarding direct transactions that provides as follows:

(1) Increase the maximum allowable total kilowatthours annual limit by 4,000 gigawatthours and apportion that increase among the service territories of the electrical corporations.

(2) All residential and nonresidential customer accounts that are on direct access as of January 1, 2019, remain authorized to participate in direct transactions.

(e) (1) On or before June 1, 2020, the commission shall provide recommendations to the Legislature on implementing a further direct transactions reopening schedule, including, but not limited to, the phase-in period over which the further direct transactions shall occur for all remaining nonresidential customer accounts in each electrical corporation's service territory.

(2) In developing the recommendations pursuant to subdivision (f), the commission shall find all of the following:

(A) The recommendations are consistent with the state's greenhouse gas emission reduction goals.

(B) The recommendations do not increase criteria air pollutants and toxic air contaminants.

(C) The recommendations ensure electric system reliability.

(D) The recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.

(3) (A) The recommendations shall be provided in compliance with Section 9795 of the Government Code.

(B) Pursuant to Section 10231.5 of the Government Code, this subdivision is inoperative on June 1, 2024.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime

within the meaning of Section 6 of Article XIII B of the California Constitution.

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