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CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 8

**Introduced by Assembly Members Migden, Diaz, and Oropeza
Member Keeley**
(Coauthors: Senators Alpert, Bowen, and Peace)
(Coauthors: Assembly Members Kehoe, Vargas, and Wayne)

January 16, 2001

~~An act to amend Section 335 of, and to add Section 342 to, the Public Utilities Code, relating to public utilities. An act to amend Sections 332.1 and 360.5 of, to add Section 332.2 to, and to repeal and add Section 390 of, the Public Utilities Code, and to amend Sections 80106, 80130, 80132, and 80200 of, and to repeal Section 80114 of, the Water Code, relating to energy, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 8, as amended, ~~Migden-Keeley. Electrical restructuring: Oversight Board: Independent System Operator~~ *Electric power.*

(1) The Public Utilities Act requires the Public Utilities Commission to establish a ceiling of \$0.065 per kilowatthour on the energy component of electric bills for residential, small commercial, and lighting customers of the San Diego Gas and Electric Company,



through December 31, 2002, retroactive to June 1, 2000. The commission may extend the ceiling through December 2003. Existing law requires the commission to determine that portion of each existing electrical corporation's retail rate effective on January 5, 2001, that is equal to the difference between the generation related component of the retail rate and the sum of the costs of the utility's own generation, qualifying facility contracts, existing bilateral contracts, and ancillary services, to be known as the California Procurement Adjustment. Existing law requires the commission to further determine the amount of the California Procurement Adjustment that is allocable to the power sold by the Department of Water Resources, which is payable by each electrical corporation to the department for deposit in the Department of Water Resources Electric Power Fund, and known as the Fixed Department of Water Resources Set-Aside.

This bill would instead require the commission to establish a ceiling of \$0.065 per kilowatthour on the energy component of electric bills for electricity supplied to residential, small commercial, and street lighting customers by the San Diego Gas and Electric Company, through December 31, 2002, retroactive to June 1, 2000. The bill would require the commission to also establish a frozen rate of \$0.065 per kilowatthour on the energy component of electric bills for electricity supplied to all customers by the San Diego Gas and Electric Company not subject to the ceiling imposed by existing law, through December 31, 2002, retroactive to February 7, 2001. The bill would provide that a frozen rate established shall not result in any retroactive recovery of undercollections by the San Diego Gas and Electric Company. The bill would require the commission to determine the California Procurement Adjustment and the Fixed Department of Water Resources Set-Aside for those customers, as prescribed. The bill would make related statements about the construction of the bill. Since a violation of a rule or order of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.

Existing law requires the Public Utilities Commission to calculate the California Procurement Adjustment based on the generation related component of the retail rate of an electric corporation effective January 5, 2001.

This bill would clarify that the generation related component of the electricity purchased by the Department of Water Resources and made available to retail end-use customers is revenue of the department, and not the serving electrical corporation.



(2) Existing law provides for a short-run avoided cost methodology for pricing electricity generated by a nonutility, small power production or cogeneration facility (QF), as defined.

This bill would repeal that law and instead require the Public Utilities Commission in accordance with specified federal law to establish the price to be paid by a public utility electrical corporation for power sold and delivered by a QF.

(3) Existing law authorizes the Department of Water Resources to contract with an electrical corporation to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as the agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services, and requires the commission, at the request of the department, to order such actions. Under existing law, upon the delivery of power to them, the retail end-use customers are deemed to have purchased that power from the department.

This bill would modify the existing transmission, distribution, and related service provisions to authorize the department to contract with an electrical corporation to transmit or provide for the transmission of, and distribute all power made available by the department, and provide, as the agent of the department, billing, collection, and other related services on terms and conditions that reasonably compensate the electrical corporation for its services and adequately secure payment to the department, and would make corresponding changes to the commission's requirement to order that service at the request of the department.

(3.5) Existing law authorizes the department to enter into contracts for the purchase of electric power and to sell power to retail end-use customers and to local publicly owned electric utilities. Existing law requires the commission to take necessary action to ensure that all, or a portion of, the component rates that are available to electrical corporations for the purchase of their net short position of electricity are used to recover the revenue requirements for the purchase and sale functions described in this paragraph.

This bill would repeal that commission requirement.

(4) Existing law authorizes the department to issue revenue bonds for purposes described in (3.5) not to exceed a certain amount, containing specified terms and conditions, upon authorization by written determination of the department and with the approval of the Director of Finance and the Treasurer.



This bill would, instead, prohibit the issuance of the bonds in an aggregate amount greater than \$10,000,000,000.

(5) This bill would make other related clarifying and technical changes.

(5.5) 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.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

~~(1) The existing restructuring of the electrical services industry within the Public Utilities Act provides for the establishment of an Independent System Operator and a Power Exchange as separately incorporated public benefit, nonprofit corporations. An Electricity Oversight Board (Oversight Board) is also established to oversee the Independent System Operator and the Power Exchange in order to ensure the success of electric industry restructuring and to ensure a reliable supply of electricity in the transition to a new market structure. The Oversight Board is granted various powers in order to carry out these purposes.~~

~~This bill would expand the authority of the Oversight Board to act on any matters made subject to the approval or determination by the Oversight Board under law, and to investigate any matter and otherwise act consistent with these provisions to ensure that the interests of California's citizens and consumers are served, protected, and represented in relation to the electric transmission grid and generation system and related costs.~~

~~The bill would require that electric generation and transmission facilities be subject to various prescribed availability standards. The bill would require the Independent System Operator to annually prepare and submit to the Oversight Board a proposed protocol for the scheduling of transmission and generation equipment outages for the purpose of maintenance, repair, or upgrade, that is required to be reviewed, approved or revised by the Oversight Board after notice and public hearing. The bill would require the Independent System Operator to utilize the approved protocol for the purpose of scheduling maintenance or other planned outages of equipment and to submit a coordinated outage plan to the Oversight Board. The bill would require~~



~~the Independent System Operator to develop and submit proposed generation facility maintenance criteria for approval by the Oversight Board after notice and public hearing. The bill would require the Independent System Operator to maintain records of generation facility outages and provide those records to the Oversight Board on a daily basis. The bill would require entities that own or operate certain electric generating facilities to provide reports on a monthly basis to the Oversight Board that identify any periods the facilities were unavailable to produce electricity or were available at reduced capacity. The bill would authorize the Independent System Operator and the Oversight Board to engage in audits or inspection of facilities that fail to comply with procedures, criteria, or standards established pursuant to these provisions. The bill would require owners or operators of generation or transmission facilities to provide the Independent System Operator and the Oversight Board with information and access to the facilities as necessary to accomplish reasonable audits and inspections. The bill would authorize the Oversight Board to assess a monetary penalty against an owner or operator of a facility found to have failed to comply with criteria, standards, or procedures established pursuant to these provisions. Since a violation of the Public Utilities Act is a crime under existing provisions of law, the bill would create a state-mandated local program by expanding the definition of a crime.~~

~~(2) 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 2/3. 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 335 of the Public Utilities Code is~~
- 2 ~~SECTION 1. Section 332.1 of the Public Utilities Code is~~
- 3 ~~amended to read:~~
- 4 332.1. (a) (1) It is the intent of the Legislature to enact Item
- 5 1 (revised) on the commission’s August 21, 2000 agenda, entitled
- 6 “Opinion Modifying Decision (D.) D.00-06-034 and



1 D.00-08-021 to Regarding Interim Rate Caps for San Diego Gas
2 and Electric Company,” as modified below.

3 (2) It is also the intent of the Legislature that to the extent that
4 the Federal Energy Regulatory Commission orders refunds to
5 electrical corporations pursuant to their findings, the commission
6 shall ensure that any refunds are returned to customers.

7 (b) The commission shall establish a ceiling of six and
8 five-tenth cents (\$0.065) per kilowatt hour on the energy
9 component of electric bills for *electricity supplied to* residential,
10 small commercial, and street lighting customers ~~of~~ *by* the San
11 Diego Gas and Electric Company, through December 31, 2002,
12 retroactive to June 1, 2000. If the commission finds it in the public
13 interest, this ceiling may be extended through December 2003 and
14 may be adjusted as provided in subdivision (d).

15 (c) The commission shall establish an accounting procedure to
16 track and recover reasonable and prudent costs of providing
17 electric energy to retail customers unrecovered through retail bills
18 due to the application of the ceiling provided for in subdivision (b).
19 The accounting procedure shall utilize revenues associated with
20 sales of energy from utility-owned or managed generation assets
21 to offset an undercollection, if undercollection occurs. The
22 accounting procedure shall be reviewed periodically by the
23 commission, but not less frequently than semiannually. The
24 commission may utilize an existing proceeding to perform the
25 review. The accounting procedure and review shall provide a
26 reasonable opportunity for San Diego Gas and Electric Company
27 to recover its reasonable and prudent costs of service over a
28 reasonable period of time.

29 (d) If the commission determines that it is in the public interest
30 to do so, the commission, after the date of the completion of the
31 proceeding described in subdivision (g), may adjust the ceiling
32 from the level specified in subdivision (b), *and may adjust the*
33 *frozen rate from the levels specified in subdivision (f)*, consistent
34 with the Legislature’s intent to provide substantial protections for
35 customers of the San Diego Gas and Electric Company and their
36 interest in just and reasonable rates and adequate service.

37 (e) For purposes of this section, “small commercial customer”
38 includes, but is not limited to, all San Diego Gas and Electric
39 Company accounts on Rate Schedule A of the San Diego Gas and
40 Electric Company, all accounts of customers who are “general



1 acute care hospitals,” as defined in Section 1250 of the Health and
2 Safety Code, all San Diego Gas and Electric Company accounts
3 of customers who are public or private schools for pupils in
4 kindergarten or any of grades 1 to 12, inclusive, *restaurants*,
5 *shopping centers*, and all accounts on Rate Schedule AL-TOU
6 under 100 kilowatts.

7 ~~(f) The commission shall establish a program for large~~
8 ~~commercial, agricultural, and industrial customers who buy~~
9 ~~energy from the San Diego Gas and Electric Company, on a~~
10 ~~voluntary basis, at the election of the customer, to set the energy~~
11 ~~component of their bills at six and five-tenths cents (\$0.065) per~~
12 ~~kilowatt hour with a true-up after a year. The commission shall~~
13 ~~establish an initial frozen rate of six and five-tenths cents (\$0.065)~~
14 ~~per kilowatt hour on the energy component of electric bills for~~
15 ~~electricity supplied to all customers by the San Diego Gas and~~
16 ~~Electric Company not subject to subdivision (b), for the time~~
17 ~~period ending with the end of the rate freeze for the Pacific Gas and~~
18 ~~Electric Company and the Southern California Edison Company~~
19 ~~pursuant to Section 368, retroactive to February 7, 2001. The~~
20 ~~commission shall consider the comparable energy components of~~
21 ~~rates for comparable customer classes served by the Pacific Gas~~
22 ~~and Electric Company and the Southern California Edison~~
23 ~~Company and, if it determines it to be in the public interest, the~~
24 ~~commission may adjust this frozen rate, and may do so, retroactive~~
25 ~~to February 7, 2001. In determining the California Procurement~~
26 ~~Adjustment and the Fixed Department of Water Resources~~
27 ~~Set-Aside pursuant to Section 360.5 for customers subject to this~~
28 ~~subdivision, the commission shall utilize a retail rate consistent~~
29 ~~with the rate for the energy component of electric bills as~~
30 ~~determined in this subdivision, in place of the retail rate in effect~~
31 ~~on January 5, 2001. This section shall be construed to modify the~~
32 ~~payment provisions, but may not be construed to modify the~~
33 ~~electric procurement obligations of the Department of Water~~
34 ~~Resources, pursuant to any contract or agreement in accordance~~
35 ~~with Division 27 (commencing with Section 80000) of the Water~~
36 ~~Code, and in effect as of February 7, 2001, between the~~
37 ~~Department of Water Resources and San Diego Gas and Electric~~
38 ~~Company.~~

39 (g) The commission shall institute a proceeding to examine the
40 prudence and reasonableness of the San Diego Gas and Electric



1 Company in the procurement of wholesale energy on behalf of its
2 customers, for a period beginning at the latest on June 1, 2000. If
3 the commission finds that San Diego Gas and Electric Company
4 acted imprudently or unreasonably, the commission shall issue
5 orders that it determines to be appropriate affecting the retail rates
6 of San Diego Gas and Electric Company customers including, but
7 not limited to, refunds.

8 *(h) Nothing in this section shall be construed to limit the*
9 *authority of the Department of Water Resources pursuant to*
10 *Division 27 (commencing with Section 80000) of the Water Code,*
11 *including without limitation, the authority to fix and establish the*
12 *procedure and charges for the sale or other disposal of power*
13 *purchased by the department and sold to retail end-use customers*
14 *and the authority to recover its revenue requirements.*

15 *SEC. 2. Section 332.2 is added to the Public Utilities Code, to*
16 *read:*

17 *332.2. Rates set by the commission that are subject to*
18 *subdivision (f) of Section 332.1 shall not result in any retroactive*
19 *recovery of undercollections by the San Diego Gas and Electric*
20 *Company.*

21 *SEC. 3. Section 360.5 of the Public Utilities Code is amended*
22 *to read:*

23 *360.5. (a) As used in this section, "department" means the*
24 *Department of Water Resources.*

25 *(b) For each kilowatt-hour made available by the department to*
26 *retail end-use customers pursuant to Division 27 (commencing*
27 *with Section 80000) of the Water Code, the department is entitled*
28 *to and shall receive as revenue the generation related component*
29 *of the retail rate in effect January 5, 2001, for the serving electrical*
30 *corporation, and that electrical corporation is not entitled to that*
31 *revenue. This subdivision is declaratory of existing law.*

32 *(c) The commission shall determine that portion of each*
33 *existing electrical corporation's retail rate effective on January 5,*
34 *2001, that is equal to the difference between the generation related*
35 *component of the retail rate and the sum of the costs of the utility's*
36 *own generation, qualifying facility contracts, existing bilateral*
37 *contracts, and ancillary services. That portion of the retail rate*
38 *shall be known as the California Procurement Adjustment. The*
39 *commission shall further determine the amount of the California*
40 *Procurement Adjustment that is allocable to the power sold by the*



1 department. That amount shall be payable, by each electrical
2 corporation, upon receipt by the electrical corporation of the
3 revenues from its retail end use customers, to the department for
4 deposit in the Department of Water Resources Electric Power
5 Fund, established by Section 80200 of the Water Code. The
6 amount determined pursuant to this subdivision shall be known as
7 the Fixed Department of Water Resources Set-Aside.

8 *(d) Nothing in this section limits the department's authority*
9 *pursuant to Division 27 (commencing with Section 80000) of the*
10 *Water Code.*

11 *SEC. 4. Section 390 of the Public Utilities Code is repealed.*

12 ~~390. (a) Subject to applicable contractual terms, energy~~
13 ~~prices paid to nonutility power generators by a public utility~~
14 ~~electrical corporation based upon the commission's prescribed~~
15 ~~"short run avoided cost energy methodology" shall be determined~~
16 ~~as set forth in subdivisions (b) and (c).~~

17 ~~(b) Until the requirements of subdivision (c) have been~~
18 ~~satisfied, short run avoided cost energy payments paid to~~
19 ~~nonutility power generators by an electrical corporation shall be~~
20 ~~based on a formula that reflects a starting energy price, adjusted~~
21 ~~monthly to reflect changes in a starting gas index price in relation~~
22 ~~to an average of current California natural gas border price indices.~~
23 ~~The starting energy price shall be based on 12-month averages of~~
24 ~~recent, pre-January 1, 1996, short-run avoided energy prices paid~~
25 ~~by each public utility electrical corporation to nonutility power~~
26 ~~generators. The starting gas index price shall be established as an~~
27 ~~average of index gas prices for the same annual periods.~~

28 ~~(c) The short run avoided cost energy payments paid to~~
29 ~~nonutility power generators by electrical corporations shall be~~
30 ~~based on the clearing price paid by the independent Power~~
31 ~~Exchange if (1) the commission has issued an order determining~~
32 ~~that the independent Power Exchange is functioning properly for~~
33 ~~the purposes of determining the short-run avoided cost energy~~
34 ~~payments to be made to nonutility power generators, and either (2)~~
35 ~~the fossil-fired generation units owned, directly or indirectly, by~~
36 ~~the public utility electrical corporation are authorized to charge~~
37 ~~market-based rates and the "going forward" costs of those units~~
38 ~~are being recovered solely through the clearing prices paid by the~~
39 ~~independent Power Exchange or from contracts with the~~
40 ~~Independent System Operator, whether those contracts are~~



1 ~~market-based or based on operating costs for particular~~
2 ~~utility-owned powerplant units and at particular times when~~
3 ~~reactive power/voltage support is not yet procurable at~~
4 ~~market-based rates at locations where it is needed, and are not~~
5 ~~being recovered directly or indirectly through any other source, or~~
6 ~~(3) the public utility electrical corporation has divested 90 percent~~
7 ~~of its gas-fired generation facilities that were operated to meet load~~
8 ~~in 1994 and 1995. However, nonutility power generators subject~~
9 ~~to this section may, upon appropriate notice to the public utility~~
10 ~~electrical corporation, exercise a one-time option to elect to~~
11 ~~thereafter receive energy payments based upon the clearing price~~
12 ~~from the independent Power Exchange.~~

13 ~~(d) If a nonutility power generator is being paid short-run~~
14 ~~avoided costs energy payments by an electrical corporation by a~~
15 ~~firm capacity contract, a forecast as-available capacity contract, or~~
16 ~~a forecast as-delivered capacity contract on the basis of the~~
17 ~~clearing price paid by the independent Power Exchange as~~
18 ~~described in subdivision (c) above, the value of capacity in the~~
19 ~~clearing price, if any, shall not be paid to the nonutility power~~
20 ~~generator. The value of capacity in the clearing price, if any, equals~~
21 ~~the difference between the market clearing customer demand bid~~
22 ~~at the level of generation dispatched by the independent Power~~
23 ~~Exchange and the highest supplier bid dispatched.~~

24 ~~(e) Short-run avoided energy cost payments made pursuant to~~
25 ~~this section are in addition to contractually specified capacity~~
26 ~~payments. Nothing in this section shall be construed to affect,~~
27 ~~modify or amend the terms and conditions of existing nonutility~~
28 ~~power generators' contracts with respect to the sale of energy or~~
29 ~~capacity or otherwise.~~

30 ~~(f) Nothing in this section shall be construed to limit the level~~
31 ~~of transition cost recovery provided to utilities under electric~~
32 ~~industry restructuring policies established by the commission.~~

33 ~~(g) The term "going forward costs" shall include, but not be~~
34 ~~limited to, all costs associated with fuel transportation and fuel~~
35 ~~supply, administrative and general, and operation and~~
36 ~~maintenance; provided that, for purposes of this section, the~~
37 ~~following shall not be considered "going forward costs": (1)~~
38 ~~commission approved capital costs for capital additions to~~
39 ~~fossil-fueled powerplants, provided that such additions are~~
40 ~~necessary for the continued operation of the powerplants utilized~~



1 ~~to meet load and such additions are not undertaken primarily to~~
2 ~~expand, repower or enhance the efficiency of plant operations; or,~~
3 ~~(2) commission-approved operating costs for particular~~
4 ~~utility owned powerplant units and at particular times when~~
5 ~~reactive power/voltage support is not yet procurable at~~
6 ~~market-based rates in locations where it is needed, provided that~~
7 ~~the recovery shall end on December 31, 2001.~~

8 *SEC. 5. Section 390 is added to the Public Utilities Code, to*
9 *read:*

10 *390. (a) As used in this section, unless the context otherwise*
11 *requires, the following terms have the following meanings:*

12 *(1) "Power" means electric power and energy, including, but*
13 *not limited to, capacity and output, or any of them.*

14 *(2) "QF" means a qualifying small power production facility*
15 *or a qualifying cogeneration facility within the meaning of*
16 *Sections 201 and 210 of Title II of the Public Utility Regulatory*
17 *Policies Act of 1978 (16 U.S.C. Secs. 796(17), (18) and 824a-3),*
18 *including any amendments to that act, and the regulations adopted*
19 *for those sections under that act by the Federal Energy Regulatory*
20 *Commission.*

21 *(3) "Public Utility Regulatory Policies Act of 1978" means*
22 *federal Public Law 95-617, including any amendments to that act.*

23 *(4) "PURPA" means the Public Utility Regulatory Policies Act*
24 *of 1978 and the regulations adopted under that act by the Federal*
25 *Energy Regulatory Commission.*

26 *(b) The commission shall establish the price to be paid by a*
27 *public utility electrical corporation to a QF for power. The*
28 *commission shall establish the price in accordance with PURPA.*

29 *SEC. 6. Section 80106 of the Water Code is amended to read:*

30 *80106. (a) The department may contract with the related*
31 *electrical corporation or its successor in the performance of related*
32 *service, for the electrical corporation or its successor in the*
33 *performance of related service, to transmit or provide for the*
34 *transmission of, and distribute the all power made available by the*
35 *department, and, as agent of the department, provide billing,*
36 *collection, and other related services, as agent of the department,*
37 *on terms and conditions that reasonably compensate the electrical*
38 *corporation for its services, and adequately secure payment to the*
39 *department.*



1 (b) At the request of the department, the commission shall
 2 order the related electrical corporation or its successor in the
 3 performance of related service, to transmit or provide for the
 4 transmission of, and distribute ~~the~~ *all power made available by the*
 5 *department, and, as agent of the department, provide billing,*
 6 *collection, and other related services, as agent of the department,*
 7 *on terms and conditions that reasonably compensate the electrical*
 8 *corporation for its services, and adequately secure payment to the*
 9 *department.*

10 *SEC. 6.5. Section 80114 of the Water Code, as added by*
 11 *Chapter 4 of the Statutes of 2001, is repealed.*

12 ~~80114. The commission shall take those actions necessary to~~
 13 ~~ensure that all, or a portion of, the component rates that are~~
 14 ~~available to electrical corporations for the purchase of their net~~
 15 ~~short position of electricity are used to recover the revenue~~
 16 ~~requirements established pursuant to this division.~~

17 *SEC. 7. Section 80130 of the Water Code is amended to read:*

18 80130. The department may incur indebtedness and issue
 19 bonds as evidence thereof, provided that bonds may not be issued
 20 in an amount the debt service on which, to the extent payable from
 21 the fund, is ~~expected~~ *estimated* by the department to exceed the
 22 amounts ~~expected~~ *estimated* to be available in the fund for their
 23 payment. ~~In no event shall the~~ *The department may not* authorize
 24 the issuance of bonds (excluding notes issued in anticipation of the
 25 issuance of bonds and retired from the proceeds of those bonds) ~~in~~
 26 ~~an aggregate amount greater than the amount calculated by~~
 27 ~~multiplying by a factor of four the annual revenues generated by~~
 28 ~~the California Procurement Adjustment, as determined by the~~
 29 ~~commission pursuant to Section 360.5 in an aggregate amount~~
 30 ~~greater than ten billion dollars (\$10,000,000,000). Refunding of~~
 31 ~~bonds to obtain a lower interest rate shall not be included in the~~
 32 ~~calculation of the aggregate amount.~~ In addition, before the
 33 issuance of bonds *in a public offering*, the department shall
 34 establish a mechanism to ensure that the bonds will be sold at
 35 investment grade ratings and repaid on a timely basis from pledged
 36 revenues. This mechanism may include, but is not limited to, an
 37 agreement between the department and the commission as
 38 described in Section 80110.

39 *SEC. 8. Section 80132 of the Water Code is amended to read:*

1 80132. (a) Bonds may be issued by the department upon
2 authorization by written determination of the director of the
3 department with the approval of the Director of Finance and the
4 State Treasurer. The Department of Finance shall notify the
5 Chairperson of the Joint Legislative Budget Committee and the
6 chairperson of the committee in each house that considers
7 appropriations of its written determination. The bonds shall be
8 sold at such prices and in such manner, and on such terms and
9 conditions, as shall be specified in such determination, and such
10 determination may contain or authorize any other provision,
11 condition, or limitation not inconsistent herewith and such
12 provisions as may be deemed reasonable and proper for the
13 security of the bondholders. Bonds may mature at such time or
14 times, and bear interest at such rate or rates, which may be fixed
15 or variable and be determined by reference to an index or such
16 other method, as shall be specified in such determination. Neither
17 the person executing the determination to issue bonds nor any
18 person executing bonds shall be personally liable therefor or be
19 subject to any personal liability or accountability by reason of the
20 issuance thereof.

21 (b) In the discretion of the department, any bonds may be
22 secured by a trust agreement by and between the department and
23 a corporate trustee, which may be any trust company or bank
24 having trust powers within or without the state, or the State
25 Treasurer. Notwithstanding any other provision of law, the State
26 Treasurer shall not be deemed to have a conflict of interest by
27 reason of acting as such trustee. The department may enter into
28 such contracts or arrangements as it shall deem to be necessary or
29 appropriate for the issuance and further security of the bonds.

30 (c) Bonds shall be legal investments for all trust funds, the
31 funds of all insurance companies, banks both commercial and
32 savings, trust companies, executors, administrators, trustees, and
33 other fiduciaries, for state school funds, pension funds, and, for
34 any funds that may be invested in county, school, or municipal
35 bonds.

36 (d) Notwithstanding that bonds may be payable from a special
37 fund, they shall be deemed to be negotiable instruments for all
38 purposes.



1 (e) Any and all bonds, their transfer and the income therefrom
2 shall at all times be free from taxation of every kind by the state
3 and by all political subdivisions of the state.

4 (f) Bonds shall not be deemed to constitute a debt or liability of
5 the state or of any political subdivision thereof, other than the
6 department, or a pledge of the faith and credit of the state or of any
7 such political subdivision, ~~other than the department~~, but shall be
8 payable solely from the funds herein provided for. All bonds shall
9 contain a statement to the following effect: “Neither the faith and
10 credit nor the taxing power of the State of California is pledged to
11 the payment of the principal of or interest on this bond.” The
12 issuance of bonds shall not directly or indirectly or contingently
13 obligate the state or any political subdivision thereof to levy or to
14 pledge any form of taxation whatever therefor or to make any
15 appropriation for their payment.

16 (g) The department may pledge or assign any revenues under
17 any obligation entered into, and rights to receive the same, and
18 moneys on deposit in the fund and income or revenue derived from
19 the investment thereof, as security for the department’s obligations
20 hereunder. It is the intention of the Legislature that any pledge of
21 moneys, revenues, or property made by the department shall be
22 valid and binding from the time when the pledge is made; that the
23 moneys, revenues, or property so pledged and thereafter collected
24 from retail end use customers, or paid directly or indirectly to or
25 for the account of the department, is hereby made, and shall
26 immediately be, subject to the lien of such pledge without any
27 physical delivery thereof or further act; that the lien of any such
28 pledge shall be valid and binding as against all parties having
29 claims of any kind in tort, contract, or otherwise against the
30 department irrespective of whether such parties have notice
31 thereof, and that no resolution or instrument by which such pledge
32 or lien created pursuant to this subdivision is expressed,
33 confirmed, or approved need be filed or recorded in order to
34 perfect such pledge or lien. The provisions hereof shall in all
35 respects govern the creation, perfection, priority, and enforcement
36 of any lien created hereby or hereunder.

37 *SEC. 9. Section 80200 of the Water Code is amended to read:*
38 80200. (a) There is hereby established in the State Treasury
39 the Department of Water Resources Electric Power Fund.
40 Notwithstanding Section 13340 of the Government Code, all



1 moneys in the fund are continuously appropriated, without regard
2 to fiscal year, to the department, and shall be available for the
3 purposes of this division. It is the intent of the Legislature that this
4 fund be a continuation of the fund created in Chapter 3 of the
5 Statutes of 2001 (SB 7 of the First 2001–02 Extraordinary
6 Session).

7 (b) All revenues payable to the department under this division
8 shall be deposited in the fund. Notwithstanding any other
9 provision of law, interest accruing on money in the fund shall
10 remain in the fund and shall be used for the purposes of this
11 division. Payments from the fund may be made only for the
12 purposes authorized by this division, including, but not limited to,
13 payments for any of the following:

14 (1) The cost of electric power and transmission, scheduling,
15 and other related expenses incurred by the department.

16 (2) The pooled money investment rate on funds advanced for
17 electric power purchases prior to the receipt of payment for those
18 purchases by the purchasing entity.

19 (3) Payment of any bonds or other contractual obligations
20 authorized by this division.

21 (4) Repayment to the General Fund of appropriations made to
22 the fund pursuant hereto or hereafter for purposes of this division,
23 appropriations made to the Department of Water Resources
24 Electric Power Fund, and General Fund moneys expended by the
25 department pursuant to the Governor’s Emergency Proclamation
26 dated January 17, 2001. ~~It is the intent of the Legislature that such~~
27 *That* repayment *shall* be made as soon as practicable.

28 (c) Except as provided in subdivision (b) of Section 5 of the
29 statute adding this section, the administrative costs of the
30 department incurred in administering this division shall be
31 provided in the annual Budget Act.

32 (d) Obligations authorized by this division shall be payable
33 solely from the fund. Neither the full faith and credit nor the taxing
34 power of the state are or may be pledged for any payment under
35 any obligation authorized by this division.

36 (e) While any obligations of the department incurred under this
37 division remain outstanding and not fully performed or
38 discharged, the rights, powers, duties, and existence of the
39 department and the commission shall not be diminished or
40 impaired in any manner that will affect adversely the interests and



1 rights of the holders of or parties to such obligations. The
 2 department may include this pledge and undertaking of the state
 3 in the department’s obligations.

4 *SEC. 10. The provisions of Division 27 of the Water Code,*
 5 *including amendments made thereto in this act and the provisions*
 6 *of Section 360.5 of the Public Utilities Code, including*
 7 *amendments made thereto in this act are severable. If any*
 8 *provision of Division 27 of the Water Code, including amendments*
 9 *made thereto in this act or the provisions of Section 360.5*
 10 *including amendments made thereto in this act or application*
 11 *thereof are held to be invalid, such invalidity shall not affect other*
 12 *provisions of either Division 27 of the Water Code or provisions of*
 13 *Section 360.5 of the Public Utilities Code.*

14 *SEC. 10.5. No reimbursement is required by this act pursuant*
 15 *to Section 6 of Article XIII B of the California Constitution*
 16 *because the only costs that may be incurred by a local agency or*
 17 *school district will be incurred because this act creates a new crime*
 18 *or infraction, eliminates a crime or infraction, or changes the*
 19 *penalty for a crime or infraction, within the meaning of Section*
 20 *17556 of the Government Code, or changes the definition of a*
 21 *crime within the meaning of Section 6 of Article XIII B of the*
 22 *California Constitution.*

23 *SEC. 11. This act is an urgency statute necessary for the*
 24 *immediate preservation of the public peace, health, or safety*
 25 *within the meaning of Article IV of the Constitution and shall go*
 26 *into immediate effect. The facts constituting the necessity are:*

27 *To help avoid rolling blackouts in California, it is necessary that*
 28 *this act take effect immediately.*

29 ~~amended to read:~~

30 ~~335. In order to ensure that the interests of the people of~~
 31 ~~California are served, a five-member Electricity Oversight Board~~
 32 ~~is hereby created as provided in Section 336. For purposes of this~~
 33 ~~chapter, any reference to the Oversight Board shall mean the~~
 34 ~~Electricity Oversight Board. Its functions shall be all of the~~
 35 ~~following:~~

36 ~~(a) To oversee the Independent System Operator and the Power~~
 37 ~~Exchange.~~

38 ~~(b) (1) To exercise the exclusive right to decline to confirm the~~
 39 ~~appointments of members of the governing board of the~~
 40 ~~Independent System Operator.~~



1 ~~(2) To determine the composition and terms of service and to~~
2 ~~exercise the exclusive right to decline to confirm the appointments~~
3 ~~of specific members of the governing board of the Power~~
4 ~~Exchange.~~

5 ~~(e) To serve as an appeal board for majority decisions of the~~
6 ~~Independent System Operator governing board, as they relate to~~
7 ~~matters subject to exclusive state jurisdiction, as specified in~~
8 ~~Section 339.~~

9 ~~(d) Those members of the Power Exchange governing board~~
10 ~~whose appointments the Oversight Board has the exclusive right~~
11 ~~to decline to confirm include proposed governing board members~~
12 ~~representing agricultural end users, industrial end users,~~
13 ~~commercial end users, residential end users, end users at large,~~
14 ~~nonmarket participants, and public interest groups.~~

15 ~~(e) To act on any matters made subject to approval or~~
16 ~~determination by the Oversight Board under law.~~

17 ~~(f) To investigate any matter and otherwise act consistent with~~
18 ~~this chapter to ensure that the interests of California's citizens and~~
19 ~~consumers are served, protected, and represented in relation to the~~
20 ~~electric transmission grid and generation system and related costs.~~

21 ~~SEC. 2. Section 342 is added to the Public Utilities Code, to~~
22 ~~read:~~

23 ~~342. (a) The Legislature finds and declares that electric~~
24 ~~generation and transmission facilities are critical infrastructure~~
25 ~~and their predictable availability is essential to the public welfare.~~

26 ~~(b) Electric generation and transmission facilities shall be~~
27 ~~subject to availability standards, in accordance with this section.~~

28 ~~(c) Owners or operators of electric generating facilities in the~~
29 ~~State of California shall comply with all standards approved or~~
30 ~~established pursuant to this chapter.~~

31 ~~(d) The Independent System Operator shall prepare and submit~~
32 ~~to the Oversight Board, a proposed protocol for the scheduling of~~
33 ~~transmission and generation equipment outages for the purposes~~
34 ~~of maintenance, repair, or upgrade. The Independent System~~
35 ~~Operator shall resubmit this protocol, including any proposed~~
36 ~~revisions of the protocol, at least annually. The Oversight Board~~
37 ~~shall review and approve or direct revision of the proposed~~
38 ~~protocol as it determines is appropriate and necessary to protect the~~
39 ~~public interest after notice and public hearing. The Independent~~
40 ~~System Operator shall utilize an approved protocol for the purpose~~



1 of scheduling maintenance or other planned outages of equipment
2 including the preparation of a coordinated outage plan. The
3 Independent System Operator shall prepare and submit to the
4 Oversight Board, a coordinated outage plan that shall be updated
5 not less than once each quarter.

6 ~~(e) The Independent System Operator shall develop and submit
7 to the Oversight Board proposed generation facility maintenance
8 criteria. The Oversight Board shall review the proposed
9 generation maintenance criteria and approve or direct revision of
10 the criteria as it determines necessary to protect the public interest
11 after notice and public hearing.~~

12 ~~(f) The Independent System Operator shall maintain records of
13 generation facility outages and shall provide those records to the
14 Oversight Board on a daily basis. Each entity that owns or operates
15 an electric generating facility in California with a rated maximum
16 combined capacity of 50 megawatts or greater for all units at a
17 single location, shall provide a monthly report to the Independent
18 System Operator and the Oversight Board that identifies any
19 periods during the preceding month when the facility was
20 unavailable to produce electricity or was available only at reduced
21 capacity. The report shall identify the reasons for any such
22 unavailability or reduced capacity.~~

23 ~~(g) The Independent System Operator and the Oversight Board
24 may engage in audits or inspection of facilities that fail to comply
25 with procedures, criteria, or standards established pursuant to this
26 section or for which compliance is in question. Owners or
27 operators of generation or transmission facilities shall provide
28 information and access to the Independent System Operator and
29 the Oversight Board as necessary to accomplish reasonable audit
30 or inspection. The Oversight Board may, on petition of the
31 Independent System Operator or acting on its own motion, and
32 after public notice and hearing, assess a monetary penalty against
33 the owner or operator of a facility found to have failed to comply
34 with criteria, standards, or procedures approved or established
35 pursuant to this section.~~

36 ~~SEC. 3. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty~~



1 ~~for a crime or infraction, within the meaning of Section 17556 of~~
2 ~~the Government Code, or changes the definition of a crime within~~
3 ~~the meaning of Section 6 of Article XIII B of the California~~
4 ~~Constitution.~~

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