

AMENDED IN SENATE APRIL 24, 2002
AMENDED IN SENATE SEPTEMBER 14, 2001
AMENDED IN SENATE JULY 18, 2001
AMENDED IN SENATE JULY 9, 2001
AMENDED IN ASSEMBLY APRIL 26, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001
CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 57

Introduced by Assembly Member Wright

December 4, 2000

An act to add Section 399.10 to the Public Utilities Code, relating to public utilities, ~~and~~ making an appropriation therefor, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 57, as amended, Wright. Electrical corporations: procurement plans.

(1) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity.

This bill would state findings and declarations regarding providing guidance to electrical corporations and the ~~Public Utilities Commission~~ *commission* for the procurement of electricity *and electricity demand reductions* by an electrical corporation and providing for review by the commission of procurement plans of electrical corporations.

This bill would amend the act to require the commission to review and adopt a procurement plan for each electrical corporation in accordance with elements, incentive mechanisms, and objectives set forth in the bill.

The bill would authorize the commission to engage a highly capable independent consultant or advisory service to evaluate risk management and strategy. The bill would require the commission to adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation’s proposed procurement plan or resulting from or related to its approved procurement plan, and to determine the impact of a proposed divestiture on an electrical corporations procurement plan.

The bill would allow an electrical corporation that serves less than 500,000 retail customers within the state to file with the commission a request for exemption from the provisions of the bill, which requested exemption the commission would be required to grant upon a showing of good cause.

(2) Existing law makes a violation of *the* provisions of the Public Utilities Act a crime.

This bill, by imposing new requirements on electrical corporations, would expand the scope of that crime, and thus impose a state-mandated local program.

(3) 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.

(4) The bill would appropriate \$600,000 from the Public Utilities Commission Utility Reimbursement Account to the ~~Public Utilities Commission~~ *commission* for the purposes of implementing this bill.

(5) *The bill would declare that it is to take effect immediately as an urgency statute.*

Vote: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. It is the intent of the Legislature to do all of the
2 following:



1 (a) Provide guidance to electrical corporations and the Public
2 Utilities Commission for the prospective procurement of
3 electricity *and electricity demand reductions* by an electrical
4 corporation.

5 (b) Ensure, by no later than January 1, 2003, that each electrical
6 corporation whose customers are currently being served by the
7 Department of Water Resources will resume procurement for
8 those needs that are not being met by the Department of Water
9 Resources.

10 (c) Direct the Public Utilities Commission to review each
11 electric corporation's procurement plan in a manner that *complies*
12 *with the commission-adopted integrated resource plan, and*
13 assures creation of a diversified procurement portfolio, assures
14 just and reasonable electricity rates, provides certainty to the
15 electrical corporation in order to enhance its financial stability and
16 creditworthiness, and eliminates the need, with specified
17 exceptions, for after-the-fact reasonableness reviews of an
18 electrical corporation's prospective electricity procurement
19 performed consistent with an approved procurement plan.

20 SEC. 2. Section 399.10 is added to the Public Utilities Code,
21 to read:

22 399.10. (a) Each electrical corporation shall file a proposed
23 procurement plan with the commission ~~90~~ 60 days after the
24 commission specifies the allocation of electricity, including
25 quantity, characteristics, and duration of electricity delivery, to be
26 provided by the Department of Water Resources under its power
27 purchase agreements to the customers of the electrical corporation.
28 The proposed procurement plan shall specify the date the electrical
29 corporation intends to resume procurement of electricity for its
30 retail customers, consistent with its obligation to serve, which shall
31 be referred to for purposes of this subdivision as the "proposed
32 commencement date." The commission shall review and adopt a
33 procurement plan as specified in subdivisions (b), (c), and (d) no
34 later than ~~60~~ 90 days prior to the proposed commencement ~~date~~.
35 ~~No later than January 1, 2002, the commission shall specify the~~
36 ~~allocation of electricity, including quantity, characteristics, and~~
37 ~~duration of electricity delivery, to be provided by the Department~~
38 ~~of Water Resources under its power purchase agreements to the~~
39 ~~customers of each electrical corporation, which shall be reflected~~
40 ~~in an electrical corporation's proposed procurement plan.~~ *date.*



- 1 (b) An electrical corporation's proposed procurement plan
2 shall include, but is not limited to, *all of* the following:
- 3 (1) An assessment of the price risk associated with the
4 electrical corporation's portfolio, including any utility-retained
5 generation, existing power purchase and exchange contracts, and
6 proposed contracts or purchases under which an electrical
7 corporation will procure electricity, *electricity demand*
8 *reductions*, and electricity-related products and the remaining
9 open position to be served via spot market transactions.
- 10 (2) A definition of each electricity product, electricity-related
11 product, and procurement related financial product, including
12 support and justification for the product type and amount to be
13 procured under the plan.
- 14 (3) The duration of the plan.
- 15 (4) The duration, timing, and range of quantities of each
16 product to be procured.
- 17 (5) A competitive procurement process under which the
18 electrical corporation may request bids for procurement-related
19 services, including the format and criteria of that procurement
20 process.
- 21 (6) An incentive mechanism, if any incentive mechanism is
22 proposed, including the type of transactions to be covered by that
23 mechanism, their respective procurement benchmarks, and other
24 parameters needed to determine the sharing of risks and benefits.
- 25 (7) The upfront standards and criteria by which the
26 acceptability and eligibility for rate recovery of a proposed
27 procurement transaction will be known by the electrical
28 corporation prior to execution of the transaction. This shall include
29 an expedited approval process for the commission's review of
30 proposed contracts and subsequent approval or rejection thereof.
31 The electrical corporation shall propose alternative procurement
32 choices in the event a contract is rejected.
- 33 (8) Procedures for updating the procurement plan.
- 34 (9) A showing that the procurement plan will create or maintain
35 a diversified procurement portfolio consisting of both short-term
36 and long-term electricity and electricity-related *and demand*
37 *reductions* products.
- 38 (10) The electrical corporation's risk management policy,
39 strategy, and practices including specific measures of price
40 stability.



1 (11) A plan to achieve appropriate increases in diversity of
2 ownership and diversity of fuel supply of nonutility electrical
3 generation.

4 (12) A mechanism for recovery of reasonable administrative
5 costs related to procurement in the generation component of rates.

6 (c) The commission shall review and accept, modify, or reject
7 each electrical corporation's procurement plan. The commission's
8 review shall consider each electrical corporation's individual
9 procurement situation, and shall give strong consideration to that
10 situation in determining which one or more of the features set forth
11 in this subdivision shall apply to that electrical corporation. A
12 procurement plan approved by the commission shall contain one
13 or more of the following features, provided that the commission
14 ~~shall~~ *may* not approve a feature or mechanism for an electrical
15 corporation if it finds that the feature or mechanism would impair
16 the restoration of an electrical corporation's creditworthiness or
17 would lead to a deterioration of an electrical corporation's
18 creditworthiness:

19 (1) A competitive procurement process under which the
20 electrical corporation may request bids for procurement-related
21 services. The commission shall specify the format of that
22 procurement process, as well as criteria to ensure that the auction
23 process is open and adequately subscribed. Any purchases made
24 in compliance with the commission-authorized process shall be
25 recovered in the generation component of rates.

26 (2) An incentive mechanism that establishes a procurement
27 benchmark or benchmarks and authorizes the electrical
28 corporation to procure from the market, subject to comparing the
29 electrical corporation's performance to the
30 commission-authorized benchmark or benchmarks. The incentive
31 mechanism shall be clear, achievable, and contain quantifiable
32 objectives and standards. The incentive mechanism shall contain
33 balanced risk and reward incentives ~~and will~~ *that* limit the risk and
34 reward of an electrical corporation.

35 (3) Upfront achievable standards and criteria by which the
36 acceptability and eligibility for rate recovery of a proposed
37 procurement transaction will be known by the electrical
38 corporation prior to the execution of the bilateral contract for the
39 transaction. The commission shall provide for expedited review
40 and either approve or reject the individual contracts submitted by



1 the electrical corporation to ensure compliance with its
2 procurement plan. To the extent the commission rejects a proposed
3 contract pursuant to this criteria, the commission shall designate
4 alternative procurement choices obtained in the procurement plan
5 that will be recoverable for ratemaking purposes.

6 (d) A procurement plan approved by the commission shall
7 accomplish each of the following objectives:

8 (1) Enable the electrical corporation to fulfill its obligation to
9 serve its customers at just and reasonable rates.

10 (2) Eliminate the need for after-the-fact reasonableness
11 reviews of an electrical corporation's actions in compliance with
12 an approved procurement plan, including resulting electricity
13 procurement contracts, practices, and related expenses. However,
14 the commission may establish a regulatory process to verify and
15 assure that each contract was administered in accordance with the
16 terms of the contract, and contract disputes which may arise are
17 reasonably resolved.

18 (3) *Complies with the commission-adopted integrated resource*
19 *plan.*

20 (4) Ensure timely recovery of prospective procurement costs
21 incurred pursuant to an approved procurement plan. The
22 commission shall establish rates based on forecasts of
23 procurement costs adopted by the commission, actual
24 procurement costs incurred, or combination thereof, as
25 determined by the commission. The commission shall establish
26 power procurement balancing accounts to track the differences
27 between recorded revenues and costs incurred pursuant to an
28 approved procurement plan. The commission shall review the
29 power procurement balancing accounts, not less than
30 semiannually, and shall adjust rates or order refunds, as necessary,
31 to promptly amortize a balancing account. Until January 1, 2006,
32 this adjustment shall occur no later than when the power
33 procurement balancing account adjustment is overcollected or
34 undercollected in an amount that exceeds 5 percent of the electrical
35 corporation's actual recorded generation revenues for the prior
36 calendar year excluding revenues collected for the Department of
37 Water Resources. After January 1, 2006, this adjustment shall
38 occur when deemed appropriate by the commission consistent
39 with the objectives of this section.

40 ~~(4)~~



1 (5) Moderate the price risk associated with serving its retail
2 customers, including the price risk embedded in its long-term
3 supply contracts, by authorizing an electrical corporation to enter
4 into financial and other electricity-related product contracts.

5 ~~(5)~~

6 (6) Provide for just and reasonable rates, with an appropriate
7 balancing of price stability and price level in the electrical
8 corporation's procurement plan.

9 (e) The commission shall provide for the periodic review and
10 prospective modification of an electrical corporation's
11 procurement plan.

12 (f) The commission may engage a highly capable independent
13 consultant or advisory service to evaluate risk management and
14 strategy. The reasonable costs of any consultant or advisory
15 service is a reimbursable expense and eligible for funding pursuant
16 to Section 631.

17 (g) The commission shall adopt appropriate procedures to
18 ensure the confidentiality of any market sensitive information
19 submitted in an electrical corporation's proposed procurement
20 plan or resulting from or related to its approved procurement plan,
21 including, but not limited to, proposed or executed power purchase
22 agreements, data request responses, or consultant reports, or any
23 combination, provided that the Office of Ratepayer Advocates and
24 other consumer groups that are nonmarket participants shall be
25 provided access to this information under confidentiality
26 procedures authorized by the commission.

27 (h) Nothing in this section alters, modifies, or amends the
28 commission's oversight of affiliate transactions under its rules and
29 decisions or the commission's existing authority to investigate and
30 penalize an electrical corporation's alleged fraudulent activities,
31 or to disallow costs incurred as a result of gross incompetence,
32 fraud, abuse, or similar grounds.

33 (i) An electrical corporation that serves less than 500,000
34 electric retail customers within the state may file with the
35 commission a request for exemption from this section, which the
36 commission shall grant upon a showing of good cause.

37 (j) Prior to its approval pursuant to Section 851 of any
38 divestiture of generation assets owned by an electrical corporation
39 on September 1, 2001, the commission shall determine the impact
40 of the proposed divestiture on the electrical corporation's



1 procurement rates and shall approve a divestiture only to the extent
2 it finds, taking into account the ~~impact~~ *effect* of the divestiture on
3 procurement rates, that the divestiture is in the public interest and
4 will result in net ratepayer benefits. Any electrical corporation's
5 procurement necessitated as a result of the divestiture of
6 generation assets on or after the effective date of the act adding this
7 subdivision shall be subject to the mechanisms and procedures set
8 forth in this section only if its actual cost is less than the recent
9 historical cost of the divested generation assets, or if the
10 commission deems that procurement eligible when it approves the
11 divestiture.

12 SEC. 3. Nothing in this act is intended to imply that
13 procurement of electricity from third parties is the preferred
14 method of fulfilling an electrical corporation's obligation to serve
15 its customers at just and reasonable rates.

16 SEC. 4. No reimbursement is required by this act pursuant to
17 Section 6 of Article XIII B of the California Constitution because
18 the only costs that may be incurred by a local agency or school
19 district will be incurred because this act creates a new crime or
20 infraction, eliminates a crime or infraction, or changes the penalty
21 for a crime or infraction, within the meaning of Section 17556 of
22 the Government Code, or changes the definition of a crime within
23 the meaning of Section 6 of Article XIII B of the California
24 Constitution.

25 SEC. 5. The sum of six hundred thousand dollars (\$600,000)
26 is hereby appropriated from the Public Utilities Commission
27 Utility Reimbursement Account in the General Fund to the Public
28 Utilities Commission for the purposes of implementing this act.

29 *SEC. 6. This act is an urgency statute necessary for the*
30 *immediate preservation of the public peace, health, or safety*
31 *within the meaning of Article IV of the Constitution and shall go*
32 *into immediate effect. The facts constituting the necessity are:*

33 *In order that the Public Utilities Commission may undertake the*
34 *review and approval of each electric corporation's procurement*
35 *plan at the earliest possible time, in a manner consistent with this*
36 *act, it is necessary that this act take effect immediately.*



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2 CORRECTIONS
3 Text — Page 8.
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