

SENATE BILL

No. 48

Introduced by Senator Morrow

May 17, 2001

An act to add Section 332.2 to the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as introduced, Morrow. Public utilities: bilateral forward contracts.

Existing law prohibits, prior to June 1, 2001, the Public Utilities Commission from implementing the part of any decision that authorizes electrical corporations to purchase from exchanges other than the Power Exchange.

This bill would repeal that prohibition. The bill would authorize an electrical corporation to achieve and thereafter maintain a portfolio of electricity supplies for its bundled service customers consisting of no less than 50%, and no greater than 95%, forward contracts. The bill would prohibit the portfolio of an electrical corporation that maintains the above-stated supply portfolio mix from being subject to reasonableness reviews by the commission. The bill would require the commission to deem reasonable, and not engage in a reasonableness review of certain contracts that meet guidelines established by the bill.

This bill would require each electrical corporation to file with the commission, quarterly, a report describing its then-current annual supply portfolio of long-term forward contracts and financial contracts, together with an explanation of whether and how the contracts meet the specified guidelines. Because a violation of the Public Utilities Act is

a crime, this bill would impose a state-mandated local program by varying the definition 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. (a) The Legislature finds and declares that the
2 customers of an electrical corporation, defined by Section 218 of
3 the Public Utilities Code, will benefit from an increased reliance
4 on longer-term contracts and a lessened reliance on spot
5 (day-ahead and real-time) markets. Increased reliance on
6 longer-term purchases will bring needed price stability to all
7 consumers and may attract new electric supply into the state of
8 California.

9 (b) It is the intent of the Legislature to provide guidance for the
10 procurement of electricity by an electrical corporation, and to
11 establish standards under which the procurement will be deemed
12 reasonable, and to eliminate the need for after-the-fact
13 reasonableness reviews of an electrical corporation’s electricity
14 procurement contracts, practices, and related expenses.

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

17 332.2. (a) It is the intent of the Legislature that an electrical
18 corporation, defined by Section 218, shall, no later than July 1,
19 2001, achieve and thereafter maintain a portfolio of electricity
20 supplies for its bundled service customers consisting of forward
21 contracts sufficient to satisfy no less than 50 percent, and no
22 greater than 95 percent, of that portion of the electrical
23 corporation’s peak monthly demand that is not already served
24 through pre-existing long-term supply commitments. As long as
25 an electrical corporation maintains a supply portfolio mix within
26 forward contract commitments within this range, its portfolio is
27 not subject to reasonableness reviews by the commission.



1 (b) The commission shall deem reasonable, and shall not
2 engage in a reasonableness review of, any of the following:

3 (1) A contract entered into by an electrical corporation in
4 accordance with the guidelines set forth by this section.

5 (2) A contract, for which, upon application by the electrical
6 corporation, the commission has granted approval. For all
7 contracts approved pursuant to this paragraph, there shall be no
8 after-the-fact review, whether based on the individual contracts,
9 the electrical corporation's portfolio, or otherwise.

10 (c) Standardized forward contracts shall be deemed reasonable
11 when any of the following circumstances exist:

12 (1) The contract is entered into pursuant to, or on terms
13 comparable with, the results of an open, competitive bidding
14 process. One acceptable form for an open, competitive bid is a
15 request for proposals (RFP). The commission shall deem
16 reasonable any contract the price of which is within the range of
17 prices that is no higher than the lowest 25 percent of the bids
18 received during that particular RFP or other bidding process. An
19 RFP shall be considered open and competitive if the request was
20 distributed to at least 15 potential suppliers, and notice of the RFP
21 was posted on the electrical corporation's website concurrently
22 with the distribution of the RFP.

23 (2) The price of any contract is lower than the electrical
24 corporation's then-current annual volume-weighted portfolio
25 cost, as calculated by the electrical corporation; so long as the
26 portfolio cost is determined excluding any generation assets
27 retained by the electrical corporation and all pre-existing contracts
28 as of the date of enactment.

29 (3) The contract was entered into by the electrical corporation
30 through a power exchange, the Independent System Operator, or
31 any other market recognized by the commission.

32 (4) The contract was executed by the electrical corporation
33 prior to December 31, 2000.

34 (d) A nonstandard contract for electricity, including, but not
35 limited to, a tolling agreement, a peaking service agreement, a
36 load-following service agreement, an ancillary services
37 agreement, or other agreement for a service that is not traded on
38 an exchange, shall be deemed reasonable if the contract price is
39 below the electrical corporation's then-current annual
40 volume-weighted supply portfolio cost as calculated by the



1 electrical corporation; as long as the portfolio cost is determined
2 excluding any generation assets retained by the electrical
3 corporation and all pre-existing contracts as of the date of
4 enactment.

5 Any fuel costs associated with contracts under this subdivision
6 shall also be deemed reasonable.

7 (e) Electrical corporations are hereby authorized to enter into
8 financial and other contracts to moderate the price risk associated
9 with long-term forward contracts. Contracts under this
10 subdivision may be gas-based or electricity-based. Contracts
11 under this subdivision and the premiums paid by the electrical
12 corporations for the contracts shall be deemed reasonable if the
13 contracts are entered into by the electrical corporation for the
14 purpose of hedging the price risk associated with the electrical
15 corporation's procurement portfolio.

16 (f) No restriction shall be placed on the number or length of
17 forward contracts entered into by any electrical corporation
18 pursuant to this section.

19 (g) Electrical corporations should be encouraged to enter into
20 purchase transactions with renewable energy developers. These
21 transactions shall be deemed reasonable if contract prices for
22 renewable energy are less than or equal to 115 percent of the annual
23 average price of the lowest winning bid established pursuant to
24 paragraph (1) of subdivision (c).

25 (h) Under the protection of Section 583, each electrical
26 corporation shall file with the commission, on a quarterly basis a
27 report describing its then-current annual supply portfolio of
28 long-term forward contracts and financial contracts, together with
29 an explanation of whether and how those contracts that make up
30 the supply portfolio meet the guidelines set forth in this section.
31 The commission may verify the accuracy of these quarterly
32 submissions for the sole purpose of ensuring that these guidelines
33 are satisfied.

34 SEC. 3. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.
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