

AMENDED IN ASSEMBLY AUGUST 27, 2001

AMENDED IN SENATE JULY 20, 2001

AMENDED IN SENATE JULY 17, 2001

CALIFORNIA LEGISLATURE—2001–02 SECOND EXTRAORDINARY SESSION

SENATE BILL

No. 78

Introduced by Senators Polanco and Sher

May 17, 2001

~~An act to amend Sections 341.5, 359, and 379 of, to amend and repeal Section 367 of, to add Sections 365.1, 454.10, and 454.11 to, and to add~~
An act to add Chapter 5.6 (commencing with Section 25465) to Division 15 of the Public Resources Code), to amend Sections 341.5, 359, 365, 367, 368, 369, 377, 379, 1731, and 9601 of, to add Sections 365.1, 367.2, 454.10, and 454.11 to, and to add Article 16 (commencing with Section 399.20) and Article 17 (commencing with Section 399.30) to Chapter 2.3 of Part 1 of Division 1 of, to repeal Section 361 of, to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal and add Section 330 of, the Public Utilities Code, and to amend Sections 80002 and 80110 of the Water Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as amended, Polanco. Electric Utility Rate Stabilization Act of 2001.

(1) Existing provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations regulated by the Public Utilities Commission of



uneconomic transition costs for a certain period of time, and requires the commission to establish a mechanism for recovery of these costs.

This bill would also provide for recovery by a specified electrical corporation of qualified costs, as defined, subject to verification *by the commission and the state auditor* and approval by the commission, if the *electrical* corporation and its holding company enter into a specified binding and enforceable agreement with the state for performance of various requirements including, the sale to retail end-use customers of and the application of cost-based rates to all electricity produced by generation assets owned by the corporation, dedication of certain generation output to the state, conveyance of certain lands to ~~the state~~ *a trust*, termination of *certain* actual or potential litigation, agreement to resume procurement of full electricity requirements for its service area as soon as it is ~~deemed creditworthy~~ *given at least an investment grade rating by one or more nationally recognized rating agencies* or January 1, 2003, whichever is sooner, providing an irrevocable option *to the state* to purchase transmission facilities *owned by the electrical corporation at the net book value, and application of agreement to administer any power procurement contract as the Department of Water Resources may request. The bill would express the intent of the Legislature that a specified tax refund be applied to reduction or elimination of past debt of the electrical corporation.* The bill would require the commission, until December 15, 2006, to approve an irrevocable financing order, *as defined*, for the recovery by the electrical corporation of an electrical corporation debt repayment set-aside *to repay electric market stabilization bonds, in an amount which bonds may not to exceed \$2,500,000,000 of qualified costs for net undercollected costs and \$400,000,000 for interest on those uncollected costs.* The bill would require the electrical corporation *debt* repayment set-aside established pursuant to these provisions to be paid exclusively by customers ~~with electric loads exceeding 500 kilowatt billing demand in the electrical corporation's service territory with a maximum peak demand exceeding 20 kilowatts based on the usage of the prior year.~~ The bill would enact various other related provisions in that regard, including authorizing the issuance of electricity market stabilization bonds by ~~the electrical corporation~~ *a financing entity, as defined*, secured by the *debt repayment* set-aside, and requiring the approval of the commission of those bonds. The bill would ~~require the electrical corporation to apply the net proceeds from the sale of electricity market stabilization bonds to certain of the~~



~~corporation's debts~~ state the intent of the Legislature that revenues derived from the issuance of electricity market stabilization bonds not be expended on debt or charges imposed on the electrical corporation by the independent Power Exchange, the Independent System Operator, or wholesale electricity suppliers for energy purchased on or before January 18, 2001.

(2) Existing law requires the commission to identify certain generation-related costs of electrical corporations that are uneconomic under the restructuring of the electrical industry, and provides for recovery of those uneconomic costs by the *electrical* corporations from customers in a specified manner.

This bill would provide that these and certain related provisions ~~are repealed on~~ shall not be applicable to an electrical corporation that has entered into a specified agreement with the state after January 1, 2002.

(3) The Public Utilities Act provides for the continued regulation by the commission of the facilities for the generation of electricity owned by any public utility prior to January 1, 1997, but pursuant to Chapter 2 of the 2001–02 First Extraordinary Session, also prohibits any disposal of a facility of this nature prior to January 1, 2006.

This bill would enact new provisions authorizing the commission to require an electrical corporation, *upon application by the electrical corporation*, to make direct investments in generation facilities, and providing for the commission to approve rates sufficient to support that investment. The bill would prohibit the commission, on or before January 1, 2006, from reducing a specified electrical corporation's authorized rate of return on ~~generation assets~~ *equity* below a certain level, if the electrical corporation has entered into the specified binding and enforceable agreement with the state described above in paragraph (1).

(4) Existing law requires the Public Utilities Commission to authorize direct transactions between electricity suppliers and end-use customers.

This bill would authorize, commencing January 1, 2003, a retail end-use customer to elect service from an alternate provider during an open enrollment period upon payment of a fee to the Department of Water Resources equivalent to the department's net unavoidable cost of power procurement that is directly attributable to that customer, and payment of an exit fee, except as specified, equivalent to the excess, if any, of the customer's proportionate share of total actual procurement costs, including financing costs and proportionate share of



administrative costs associated with these provisions, incurred by the department during the period the customer purchased power from the department, over the revenues collected by the department from the customer during that period of time. The bill would authorize a retail end-use customer to elect to purchase power through a direct transaction during an open enrollment period without being subject to the fees described above when specified conditions are met. The bill would require the Public Utilities Commission to adopt regulations regarding the ability of direct transaction customers to become electrical corporation customers.

(5) Existing law authorizes the Public Utilities Commission to establish rates for public utilities.

The bill would require the commission to establish the Ratepayer Benefit Account with separate subaccounts for the electrical corporation that has entered into the agreement described in paragraph (1). The bill would require that up to \$1,500,000,000 recovered by the electrical corporation from any litigation or agreement relative to the charging, either directly or indirectly, of excessive costs for power by electric power generators, suppliers, and marketers, and excessive costs for natural gas charged, either directly or indirectly, to natural gas suppliers or marketers prior to January 18, 2001, be credited to the account. The bill would require that moneys credited to the Ratepayer Benefit Account subaccount be held in trust on behalf of the ratepayers.

(6) Provisions of the Public Utilities Act restructuring the electrical industry establish a process for the recovery by electrical corporations of uneconomic costs during a transition period that began on January 1, 1998, and ends for an electrical corporation on the earlier of March 31, 2002, or the date that the electrical corporation fully recovers its uneconomic costs. Existing law imposes a rate freeze and a rate reduction during the transition period to remain in effect until March 31, 2002, unless the electrical corporation fully recovers its uneconomic costs at an earlier date. The electrical corporation is at risk for those costs not recovered during that time period. Existing law requires the Public Utilities Commission to establish an effective mechanism that ensures the recovery of transition costs.

This bill would exempt from that assignment of the risk of unrecovered costs an electrical corporation that has entered into an agreement as described in paragraph (1) with the state. The bill would require the commission to establish an effective mechanism that ensures recovery of qualified costs, as defined, from customers, as specified, in



the service territory in which the electrical corporation provided electric service as of January 15, 2001.

The bill would allow the commission, notwithstanding any other provision of law, to establish rates that enable the electrical corporation to recover, on a timely basis, consistent with the electrical corporation having and maintaining an investment grade rating, all reasonable costs of producing power and ancillary services from utility retained generation dedicated to the service of bundled service customers.

(7) The Public Utilities Act requires retail suppliers of electric services to disclose sources of electrical generation, as prescribed, and requires that those retail suppliers report specified information to the State Energy Resources Conservation and Development Commission (Energy Commission).

This bill would create the California Renewables Portfolio Standards Program, which would establish a portfolio standard of electricity from eligible renewable energy resources, as defined, that a retail seller, as defined, would be required to purchase or generate.

(8) Existing law provides that a violation of the Public Utilities Act is a crime.

This bill, by enacting new requirements relative to an electrical corporation's corporation, would thereby impose a state-mandated local program.

~~(5)~~

(9) Existing law providing for the restructuring of the electrical industry provides for creation of a Power Exchange to provide an efficient competitive auction for power that ~~meet~~ meets the loads of all exchange customers at efficient prices.

This bill would repeal these provisions. The bill would make other changes to various electrical restructuring provisions and would add legislative findings in that regard.

~~(6)~~

(10) This bill would enact other related provisions.

~~(7)~~

(11) 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) The wholesale electricity market in California is grossly
- 4 dysfunctional, characterized by an abuse of seller market power
- 5 that has resulted in unjust and unreasonable wholesale prices for
- 6 electricity.
- 7 (b) As a result of the state’s dysfunctional wholesale market,
- 8 residential and business consumers have endured the largest single
- 9 retail rate increase in the state’s history, the state’s largest electrical
- 10 corporation is bankrupt, a second electrical corporation is on the
- 11 verge of insolvency, and reliable electricity service has been
- 12 jeopardized.
- 13 (c) Regulatory jurisdiction to ensure just and reasonable
- 14 wholesale prices rests wholly with the Federal Energy Regulatory
- 15 Commission (FERC).
- 16 (d) Although state policymakers, including state and federal
- 17 legislative leaders, the Governor, and governors of other western
- 18 states, have requested FERC to impose regional price caps to
- 19 achieve just and reasonable wholesale prices, FERC has refused to
- 20 do so.
- 21 (e) The current financial condition of the electrical
- 22 corporations doing business in this state, and the unstable
- 23 condition of the electric utility market in California is
- 24 unsustainable.
- 25 (f) It is in the state’s interest to have functional creditworthy
- 26 utilities providing essential electricity service to California
- 27 consumers at just and reasonable rates.
- 28 (g) The burden of ~~assuring~~ *restoring* a utility’s creditworthiness
- 29 should not be borne by the state’s ratepayers alone, but should be
- 30 achieved through contributions from the ~~utility, its parent~~
- 31 ~~company~~ *utility’s shareholders*, creditors, and ratepayers.
- 32 (h) For making a substantial contribution toward making a
- 33 utility a creditworthy entity, ratepayers should receive tangible
- 34 benefits equivalent to the value of their contribution in making a
- 35 utility creditworthy.



1 (i) It is the intent of the Legislature, through the enactment of
2 the act adding this section, to set the conditions under which an
3 electrical corporation may become creditworthy and meet its
4 obligations to serve consumers with reliable electricity service at
5 just and reasonable rates.

6 SEC. 2. Chapter 5.6 (commencing with Section 25465) is
7 added to Division 15 of the Public Resources Code, to read:

8

9 CHAPTER 5.6. CALIFORNIA RENEWABLES PORTFOLIO STANDARDS
10 PROGRAM

11

12 25465. For purposes of this chapter, the following terms have
13 the following meanings.

14 (a) "Eligible renewable energy resource" means an electric
15 generating facility or solar thermal energy system that reduces the
16 consumption of electricity through the use of renewable resources
17 and that meets all of the following criteria:

18 (1) Uses wind, solar, geothermal, or biomass as its primary
19 fuel.

20 (2) Improves the resource diversity in the electricity market that
21 serves the state, and increases the reliability of the state's
22 electricity system. The commission shall deem an electric
23 generating facility or solar thermal energy system to satisfy this
24 requirement if it meets any one of the following criteria:

25 (A) It is located within or interconnected to the control area of
26 the California Independent System Operator, the Los Angeles
27 Department of Water and Power, or the Imperial Irrigation
28 District.

29 (B) Its power is sold under a direct bilateral contract to a retail
30 seller and its energy is scheduled into the control area of the
31 California Independent System Operator, the Los Angeles
32 Department of Water and Power, or the Imperial Irrigation
33 District.

34 (C) It meets other fact-based criteria established by the
35 commission.

36 (b) "Eligible existing renewable energy resource" means an
37 electric generating facility that satisfies all criteria in subdivision
38 (a) and is in existence before January 1, 2001. Any facility that
39 sells its output to an electrical corporation under a contract
40 entered into prior to 1996 under the federal Public Utilities



1 *Regulatory Policies Act of 1978 (P.L. 95-617) shall be considered*
2 *an eligible existing renewable energy resource.*

3 (c) *“Eligible new renewable energy resource” means output*
4 *from an electric generating facility that satisfies all criteria in*
5 *subdivision (a) and meets at least one of the following criteria:*

6 (1) *The facility commenced initial operation on or after*
7 *January 1, 2001.*

8 (2) *The output represents incremental production from*
9 *repowered or refurbished existing facilities and project additions*
10 *completed on or after January 1, 2001, as measured by the*
11 *production of kilowatthours above the five-year average of the*
12 *kilowatthours delivered from the project during the five-year*
13 *period ending December 31, 2000.*

14 (3) *The output represents incremental output above levels*
15 *specified in contracts for facilities defined in subdivision (b).*

16 (d) (1) *For an electrical corporation, “renewable energy*
17 *credit” means a tradable certificate of proof, certified by the*
18 *commission, that one kilowatthour of electricity was generated by*
19 *an eligible renewable energy resource.*

20 (2) *For a local publicly owned electric utility, “renewable*
21 *energy credit” means a tradable certificate that one kilowatthour*
22 *of electricity was generated by an eligible new renewable energy*
23 *resource.*

24 (e) *“Biomass” means any of the following:*

25 (1) *Agricultural crops and agricultural wastes and residues.*

26 (2) *Landfill gas.*

27 (3) *Solid wood waste materials including waste pallets, crates,*
28 *dunnage, manufacturing and construction wood wastes (other*
29 *than pressure-treated, chemically treated or lead-painted wood*
30 *wastes), and landscape or right-of-way tree trimmings.*

31 (4) *Wood and wood wastes and residues that meet all of the*
32 *following requirements:*

33 (A) *Have been harvested pursuant to an approved timber*
34 *harvest plan prepared in accordance with the Z’berg-Nejedly*
35 *Forest Practice Act of 1973 (Chapter 8 (commencing with Section*
36 *4511) of Part 2 of Division 4.*

37 (B) *Have been harvested for purposes of forest fire fuel*
38 *reduction or forest-stand improvement.*

39 (C) *Do not transport or cause the transportation of species*
40 *known to harbor insect or disease pests outside zones of infestation*



1 or current quarantine zones, as identified by the Department of
2 Food and Agriculture or the State Board of Forestry and Fire
3 Protection.

4 (f) (1) “Retail Seller” means an entity engaged in the retail
5 sale or provision of electricity to end-use customers, including, but
6 not limited to, either or both of the following:

7 (A) An electrical corporation, as defined in Section 218 of the
8 Public Utilities Code.

9 (B) An electric service provider as defined in Section 218.3 of
10 the Public Utilities Code.

11 (2) For purposes of this subdivision, “retail seller” does not
12 include retail load served on site or under an over-the-fence
13 arrangement consistent with Section 218 of the Public Utilities
14 Code or local publicly owned electrical utilities, as defined in
15 subdivision (d) of Section 9604 of the Public Utilities Code.

16 (g) “Portfolio standard” means the specified percentage of
17 electricity generated by eligible renewable energy resources that
18 a retail seller is required to purchase in any given year, as
19 established by the commission pursuant to Section 25465.5.

20 (h) “Public utility” means an electrical corporation subject to
21 regulation by the Public Utilities Commission under Section 216
22 of the Public Utilities Code.

23 25465.3. The commission, in consultation with the Public
24 Utilities Commission, and the Independent System Operator or
25 any successor entity, shall do all of the following:

26 (a) Certify eligible new and existing renewable energy
27 resources that it determines meet the criteria described in
28 subdivisions (a) and (b) of Section 25465.

29 (b) Design and implement a system of tradable renewable
30 energy credits to facilitate and verify compliance by retail sellers
31 and to ensure that the renewable energy represented by those
32 credits is counted only once for the purpose of meeting the
33 portfolio standard of this or any other state or for verifying retail
34 product claims in this or any other state. The commission may issue
35 credits to the owners of eligible new renewable energy resources.

36 (c) Allocate and administer funds from the Renewable
37 Resource Trust Fund established under paragraph (8) of
38 subdivision (f) of Section 840 of the Public Utilities Code to
39 complement the provisions of this chapter, to support a diversity of



1 *renewable resources and technologies, and to promote emerging*
2 *renewable technologies.*

3 25465.5. (a) *The commission shall establish a portfolio*
4 *standard requiring all retail sellers to purchase or generate a*
5 *minimum quantity of output from available eligible new renewable*
6 *energy resources as a specified percentage of total kilowatthours*
7 *sold to its retail end-use customers. The commission shall establish*
8 *the minimum uniform percentage of eligible new renewable energy*
9 *resources to be procured by retail sellers according to the*
10 *following schedule, and to the extent there is sufficient renewable*
11 *resource supply to meet these procurement targets:*

12 (1) *At least 1 percent by June 1, 2003.*

13 (2) *At least 2 percent by January 1, 2005.*

14 (3) *At least 5 percent by January 1, 2007.*

15 (4) *At least 8 percent by January 1, 2009.*

16 (5) *At least 10 percent beginning on January 1, 2010 and*
17 *continuing until January 1, 2020.*

18 (6) (A) *The commission shall increase the percentage of retail*
19 *sales required from eligible new renewable energy resources if an*
20 *increase is necessary, in combination with the statewide*
21 *contribution of eligible existing renewable energy resources, to*
22 *produce the minimum percentages of total statewide retail sales*
23 *from all eligible renewable energy resources according to the*
24 *following schedule:*

25 (i) *10 percent by June 1, 2003.*

26 (ii) *12 percent by January 1, 2005.*

27 (iii) *15 percent by January 1, 2007.*

28 (iv) *18 percent by January 1, 2009.*

29 (v) *20 percent by January 1, 2010.*

30 (B) *The commission shall notify all retail providers at least one*
31 *year prior to increasing the requirement for procuring eligible new*
32 *renewable resources.*

33 (b) *Notwithstanding any other requirement of this section, the*
34 *commission shall establish a mechanism to ensure that compliance*
35 *with the portfolio standard will not result in incremental*
36 *procurement costs for retail sellers that exceed one and one half*
37 *cents (\$0.015) per kilowatthour of eligible renewable energy*
38 *resource generation in 2001 dollars. The calculation of*
39 *incremental procurement costs shall be determined by the price of*



1 *renewable energy credits established pursuant to subdivision (b)*
2 *of Section 25465.3.*

3 *(c) Each electrical corporation shall include plans to meet its*
4 *obligations pursuant to this section as part of a procurement plan*
5 *submitted to the Public Utilities Commission, and the Public*
6 *Utilities Commission shall authorize each electrical corporation*
7 *to fully recover in rates all reasonable costs of implementing and*
8 *administering the California Renewables Portfolio Standard*
9 *authorized pursuant to this section.*

10 25465.7. *The commission shall commence proceedings for*
11 *implementing the California Renewables Portfolio Standard on or*
12 *before 90 days after the effective date of this section. The*
13 *commission shall adopt final implementing regulations on or*
14 *before June 1, 2002.*

15 25465.9. *The Department of Water Resources shall make all*
16 *efforts it determines to be reasonable to comply with this chapter.*

17 SEC.2.5. Section 330 of the Public Utilities Code is repealed.

18 SEC. 3. Section 330 is added to the Public Utilities Code, to
19 read:

20 330. (a) The Legislature finds and declares all of the
21 following:

22 (1) The delivery of electricity over transmission and
23 distribution systems is currently regulated, and will continue to be
24 regulated to ensure system safety, reliability, environmental
25 protection, and fair access for all market participants.

26 (2) Reliable electric service is of utmost importance to the
27 safety, health, and welfare of the state's citizenry and economy. It
28 is the intent of the Legislature that electric industry restructuring
29 should enhance the reliability of the interconnected regional
30 transmission systems, and provide strong coordination and
31 enforceable protocols for all users of the power grid.

32 (3) It is important that sufficient supplies of electric generation
33 will be available to maintain the reliable service to the citizens and
34 businesses of the state.

35 (4) Reliable electric service depends on conscientious
36 inspection and maintenance of transmission and distribution
37 systems.

38 (5) The people of California expect the utilities and the
39 government of the state to assure safe and reliable electric service
40 at a just and reasonable price.



1 (6) The decision of the California Public Utilities Commission
2 in Decision 95-12-063, modified by Decision 96-01-009, to
3 diminish the obligation of regulated electric utilities to serve their
4 California customers with electric energy has severely ~~harm~~
5 ~~both the customers and the utilities~~ *impacted the delivery of safe*
6 *and reliable electric service at a just and reasonable price.*

7 (7) As the direct result of that policy, utilities divested
8 themselves of facilities essential to their ability to meet their
9 obligation to serve, including sales of electric generation facilities
10 to third parties, and transfer of operational control of transmission
11 facilities to the Independent System Operator (ISO), an entity
12 subject to dual control by state and federal authorities.

13 (8) As the direct result of that policy, utilities have been unable
14 to fully serve their customers with electric energy, and have been
15 required to acquire electric energy through purchases in wholesale
16 markets.

17 (9) As the direct result of that policy, utilities and California
18 authorities have been unable to maintain electric service stability
19 or reliability.

20 (10) Wholesale electricity markets have been characterized by
21 the existence of seller market power, and will continue to be
22 characterized in the future by seller market power, until state and
23 federal authorities act cooperatively to eliminate that market
24 power.

25 (11) The scope and scale of seller market power have increased
26 with the utility divestiture of powerplants and transfer of
27 operational control of the transmission system to the ISO, as has
28 the cost to utilities and their retail customers.

29 (12) Prices for electric energy sold for resale, which are under
30 the jurisdiction of the federal government, have not been just and
31 reasonable since May 1, 2000, due to the existence and exercise of
32 seller market power.

33 (13) Between May 1, 2000, and May 1, 2001, California
34 utilities and their retail customers have paid *at least* \$8.9 billion in
35 excess cost due to seller market power.

36 (14) The wholesale electricity market institutions created by
37 the commission in D. 95-12-063, and envisioned by Assembly Bill
38 1890 have collapsed, with the result that there is no transparent day
39 ahead or hour ahead market and no pricing transparency in



1 wholesale markets at the present time or for the foreseeable future.
2 Specifically:

3 (A) The Power Exchange as envisioned by Assembly Bill 1890
4 is defunct.

5 (B) The utilities as load serving entities are unable to
6 participate in the wholesale markets because sellers do not
7 consider them creditworthy.

8 (C) The state through the Department of Water Resources
9 (DWR) has been forced to purchase electric energy in place of the
10 utilities, in a manner characterized by extreme secrecy intended to
11 reduce collusion and fraud by wholesale sellers.

12 (D) The ISO has become a significant buyer of last resort
13 through out-of-market purchases for energy when the utilities and
14 the DWR refuse to pay excessive prices, or when sellers withhold
15 energy from forward markets through failures to bid.

16 (15) The existence of seller market power in the California
17 wholesale electric markets affecting California has been formally
18 found and determined by the Federal Energy Regulatory
19 Commission (FERC).

20 (16) Federal authorities have been unwilling to take effective
21 action to relieve wholesale prices or mitigate seller market power,
22 contrary to their legal obligation.

23 (17) In order to restore the credit and operational capability of
24 the utilities and to enable the DWR to make purchases at
25 market-power driven prices, the commission has increased retail
26 electric rates by an annual amount of over \$7 billion since January
27 4, 2001, so that electric rates in California are among the highest
28 in the nation.

29 (18) Since January 2001, California has been beset by actual
30 and threatened blackouts due to supply withholding by wholesale
31 sellers, who use both direct and indirect means to make electric
32 energy unavailable.

33 (19) The reduction in reliability is directly related to the faulty,
34 now partially collapsed market structure and institutions created
35 by the commission Decision 95-12-063, and as codified by
36 Assembly Bill 1890.

37 (20) The state has a duty to its people to assure the reliability
38 of the electricity supply system, which has been undermined by the
39 orders of the Public Utilities Commission in Decision 95-12-063.



1 (21) The expectations and assumptions that the policy changes
2 embodied in Assembly Bill 1890 would result in consumer
3 benefits, enhanced reliability, lower rates and technological
4 innovation have proven illusory.

5 (22) Many owners of powerplants located within the California
6 ISO control area are not required to consider the local need for
7 power before purporting to schedule their supplies for export to
8 other control areas. Most generators in other control areas
9 throughout the western interconnection are controlled by
10 vertically-integrated utilities with an obligation to assure adequate
11 service to the customers within their respective service territories.

12 (23) It is essential to the public health, safety and welfare of the
13 people of the state that the California ISO have control over the
14 unit commitment and dispatch of powerplants located within the
15 ISO control area in order to assure the provision of reliable service
16 to the customers located therein.

17 (24) Fully empowering state entities, including the
18 commission, the utilities, the ISO and the DWR to overcome seller
19 market power, reduce prices for electric energy and restore grid
20 reliability is in the public interest.

21 (b) The purpose of this chapter is to return electrical
22 corporations to creditworthiness ~~in order sufficient~~ to enable them
23 to invest in generation and procure energy *at reasonable and*
24 *competitive costs*. The Legislature finds this purpose is in the
25 public interest.

26 SEC. 4. Section 341.5 of the Public Utilities Code is amended
27 to read:

28 341.5. (a) The Independent System Operator bylaws shall
29 contain provisions that identify those matters specified in
30 subdivision (b) of Section 339 as matters within state jurisdiction.
31 The bylaws shall also contain provisions which state that
32 California's bylaws approval function with respect to the matters
33 specified in subdivision (b) of Section 339 shall not preclude the
34 Federal Energy Regulatory Commission from taking any action
35 properly within its jurisdiction necessary to address undue
36 discrimination or other violations of the Federal Power Act (16
37 U.S.C.A. Sec. 791a et seq.) or to exercise any other commission
38 responsibility under the Federal Power Act.

39 (b) Any necessary bylaw changes to implement the provisions
40 of Section 335, 337, 338, 339, or subdivision (a) of this section,



1 or changes required pursuant to an agreement as contemplated by
2 subdivision (a) of this section with a participating state for a
3 regional organization, shall be effective upon approval of the
4 respective governing boards and the Oversight Board and
5 acceptance for filing by the Federal Energy Regulatory
6 Commission.

7 SEC. 5. Article 4 (commencing with Section 355) of Chapter
8 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

9 SEC. 6. Section 359 of the Public Utilities Code is amended
10 to read:

11 359. (a) It is the intent of the Legislature ~~to~~ to improve
12 reliability, to support mutual assistance among load serving
13 entities, to achieve equitable pricing policies in the western states,
14 and to improve the access of consumers served by the Independent
15 System Operator to functional and transparent markets.

16 (b) The preferred means by which the objectives described in
17 subdivision (a) should be realized is through the adoption of a
18 regional compact or other comparable agreement among
19 cooperating party states.

20 (c) The agreement described in subdivision (b) should provide
21 for all of the following:

22 (1) An equitable process for the appointment or confirmation
23 by party states of members of the governing board of the regional
24 organization.

25 (2) Mechanisms by which each party state, jointly or
26 separately, can oversee effectively the actions of the Independent
27 System Operator as those actions relate to the assurance of
28 electricity system reliability within the party state and to matters
29 that affect electricity sales to the retail customers of the party state
30 or otherwise affect the general welfare of the electricity consumers
31 and the general public of the party state.

32 (3) The adherence by publicly owned and investor-owned
33 utilities located in party states to enforceable standards and
34 protocols to protect the reliability of the interconnected regional
35 transmission and distribution systems.

36 SEC. 7. Section 361 of the Public Utilities Code is repealed.

37 SEC. 7.5. *Section 365 of the Public Utilities Code is amended*
38 *to read:*

39 365. The actions of the commission pursuant to this chapter
40 shall be consistent with the findings and declarations contained in



1 Section 330. In addition, the commission shall do all of the
2 following:

3 (a) Facilitate the efforts of the state's electrical corporations to
4 develop and obtain authorization from the Federal Energy
5 Regulatory Commission for the creation and operation of an
6 Independent System Operator and an independent Power
7 Exchange, for the determination of which transmission and
8 distribution facilities are subject to the exclusive jurisdiction of the
9 commission, and for approval, to the extent necessary, of the cost
10 recovery mechanism established as provided in Sections 367 to
11 376, inclusive. The commission shall also participate fully in all
12 proceedings before the Federal Energy Regulatory Commission in
13 connection with the Independent System Operator and the
14 independent Power Exchange, and shall encourage the Federal
15 Energy Regulatory Commission to adopt protocols and
16 procedures that strengthen the reliability of the interconnected
17 transmission grid, encourage all publicly owned utilities in
18 California to become full participants, and maximize
19 enforceability of such protocols and procedures by all market
20 participants.

21 (b) (1) Authorize direct transactions between electricity
22 suppliers and end use customers, subject to implementation of the
23 nonbypassable charge referred to in Sections 367 to 376, inclusive.
24 Direct transactions shall commence simultaneously with the start
25 of an Independent System Operator and Power Exchange referred
26 to in subdivision (a). The simultaneous commencement shall
27 occur as soon as practicable, but no later than January 1, 1998. The
28 commission shall develop a phase-in schedule at the conclusion of
29 which all customers shall have the right to engage in direct
30 transactions. Any phase-in of customer eligibility for direct
31 transactions ordered by the commission shall be equitable to all
32 customer classes and accomplished as soon as practicable,
33 consistent with operational and other technological
34 considerations, and shall be completed for all customers by
35 January 1, 2002.

36 (2) Customers shall be eligible for direct access irrespective of
37 any direct access phase-in implemented pursuant to this section if
38 at least one-half of that customer's electrical load is supplied by
39 energy from a renewable resource provider certified pursuant to
40 Section 383, provided however that nothing in this section shall



1 provide for direct access for electric consumers served by
2 municipal utilities unless so authorized by the governing board of
3 that municipal utility.

4 *(c) Notwithstanding subdivision (b), the commission may not*
5 *authorize any new or replacement direct transactions for retail*
6 *customers until January 1, 2003. Commencing January 1, 2003,*
7 *any retail end-use customer may elect to purchase power through*
8 *a direct transaction during an open enrollment period without*
9 *being subject to subdivision (d) when the total load that could be*
10 *served within the service territory of the electrical corporation*
11 *through direct transactions is less than or equal to the difference*
12 *between the total load within the service territory of the electrical*
13 *corporation and the sum of that electrical corporation's retained*
14 *generation, electrical corporation power purchase contracts, and*
15 *long term power purchase contracts procured by the department*
16 *to serve that electrical corporation's customers. A percentage of*
17 *the load available for direct transactions under this subdivision*
18 *shall be set aside for residential and small commercial customers*
19 *with peak loads less than or equal to 20 kilowatthours. The*
20 *commission shall determine the percentage of load that shall be set*
21 *aside for the customers under this subdivision.*

22 *(1) The department shall submit information on its long term*
23 *power purchase contracts to the commission in a time frame that*
24 *allows the commission to meet its obligations under this*
25 *subdivision. Within 90 days after the effective date, and every 6*
26 *months thereafter, the commission shall determine and publish the*
27 *load available for direct transactions, which is not subject to*
28 *subdivision (d), and the percentage of load set aside for residential*
29 *and commercial customers.*

30 *(2) Within 30 days after the date of publishing the load*
31 *available for direct transactions, the commission shall establish*
32 *an open enrollment period. Large commercial and industrial*
33 *customers with peak loads greater than 20 kilowatthours electing*
34 *to take service through direct transactions shall submit a notice to*
35 *switch to the electrical corporation within 60 days after date that*
36 *the available load is published. Residential and small commercial*
37 *customers with peak loads less than or equal to 20 kilowatthours*
38 *electing to take service through direct transactions shall submit a*
39 *notice to switch to the electrical corporation within 180 days after*
40 *the date that the available load is published. The commission shall*



1 *determine the percentage of total load represented by each*
2 *customer class and shall allocate load availability for direct*
3 *transactions in these same proportions.*

4 *(d) Commencing January 1, 2003, any retail end-use customer*
5 *purchasing power from an electrical corporation may elect to*
6 *purchase power from an alternate provider upon payment of the*
7 *fees described in subdivision (e) and, unless the exception*
8 *described in subdivision (f) applies, the fee described in*
9 *subdivision (f).*

10 *(e) Any retail end-use customer electing to purchase power*
11 *from an alternate provider pursuant to subdivision (d) shall pay an*
12 *exit fee equal to the excess, if any, of the customer's proportionate*
13 *share of total actual procurement costs, including financing costs*
14 *and proportionate share of administrative costs associated with*
15 *this section, incurred by the Department of Water Resources*
16 *during the period during which the customer purchased power*
17 *from the Department of Water Resources pursuant to Division 27*
18 *(commencing with Section 80000) of the Water Code, over the*
19 *revenues collected by the Department of Water Resources from the*
20 *customer during that period, as determined by the Department of*
21 *Water Resources.*

22 *(f) (1) In addition to paying the fee described in subdivision*
23 *(e), any retail end-use customer electing to purchase power from*
24 *an alternate provider pursuant to subdivision (d) shall also pay an*
25 *additional exit fee equal to the customer's proportionate share of*
26 *the Department of Water Resource's estimated net unavoidable*
27 *cost of power procurement for the period commencing*
28 *immediately after the commencement of purchases from an*
29 *alternate provider through the expiration of any then existing*
30 *contracts for power entered into by the Department of Water*
31 *Resources, as the proportionate share and unavoidable cost are*
32 *determined by the Department of Water Resources, unless the*
33 *exception in paragraph (2) applies.*

34 *(2) Retail end-use customers electing to purchase power from*
35 *an alternate provider may not be required to pay the fee described*
36 *in this subdivision to the extent that, as of the customer's*
37 *commencement of purchase from an alternate provider, the total*
38 *load, measured in aggregate annual megawatt hours, available for*
39 *direct transactions within the service territory of the electrical*
40 *corporation, as determined by the commission pursuant to*



1 *subdivision (h) is less than or equal to the difference between the*
2 *total load within the service territory of the electrical corporation*
3 *and the sum of the power available from that electrical*
4 *corporation's retained generation, then existing electrical*
5 *corporation power purchase contracts, and power purchase*
6 *contracts procured by the Department of Water Resources to serve*
7 *customers within that electrical corporation's service territory.*

8 (g) *Nothing in this section relieves customers of the*
9 *nonbypassable charges for qualified costs provided for in Section*
10 *369.*

11 (h) *The commission shall adopt regulations regarding the*
12 *ability of direct transaction customers to become electrical*
13 *corporation customers. The regulations may include a*
14 *requirement that direct transaction customers give reasonable*
15 *notice to the electrical corporation before the electrical*
16 *corporation is required to provide service to those customers.*

17 (i) *“Effective date,” for purposes of this section, means the*
18 *effective date of the act amending this section in the 2001–02*
19 *Second Extraordinary Session.*

20 SEC. 8. Section 365.1 is added to the Public Utilities Code, to
21 read:

22 365.1. The actions of the commission pursuant to this chapter
23 shall be consistent with the findings and declarations contained in
24 Section 330.

25 SEC. 9. Section 367 of the Public Utilities Code is amended
26 to read:

27 367. The commission shall identify and determine those costs
28 and categories of costs for generation-related assets and
29 obligations, consisting of generation facilities, generation-related
30 regulatory assets, nuclear settlements, and power purchase
31 contracts, including, but not limited to, restructurings,
32 renegotiations or terminations thereof approved by the
33 commission, that were being collected in commission-approved
34 rates on December 20, 1995, and that may become uneconomic as
35 a result of a competitive generation market, in that these costs may
36 not be recoverable in market prices in a competitive market, and
37 appropriate costs incurred after December 20, 1995, for capital
38 additions to generating facilities existing as of December 20, 1995,
39 that the commission determines are reasonable and should be
40 recovered, provided that these additions are necessary to maintain



1 the facilities through December 31, 2001. These uneconomic costs
2 shall include transition costs as defined in subdivision (f) of
3 Section 840, and shall be recovered from all customers or in the
4 case of fixed transition amounts, from the customers specified in
5 subdivision (a) of Section 841, on a nonbypassable basis and shall:

6 (a) Be amortized over a reasonable time period, including
7 collection on an accelerated basis, consistent with not increasing
8 rates for any rate schedule, contract, or tariff option above the
9 levels in effect on June 10, 1996; provided that, the recovery shall
10 not extend beyond December 31, 2001, except as follows:

11 (1) Costs associated with employee-related transition costs as
12 set forth in subdivision (b) of Section 375 shall continue until fully
13 collected; provided, however, that the cost collection shall not
14 extend beyond December 31, 2006.

15 (2) Power purchase contract obligations shall continue for the
16 duration of the contract. Costs associated with any buy-out,
17 buy-down, or renegotiation of the contracts shall continue to be
18 collected for the duration of any agreement governing the buy-out,
19 buy-down, or renegotiated contract; provided, however, no power
20 purchase contract shall be extended as a result of the buy-out,
21 buy-down, or renegotiation.

22 (3) Costs associated with contracts approved by the
23 commission to settle issues associated with the Biennial Resource
24 Plan Update may be collected through March 31, 2002; provided
25 that only 80 percent of the balance of the costs remaining after
26 December 31, 2001, shall be eligible for recovery.

27 (4) Nuclear incremental cost incentive plans for the San Onofre
28 nuclear generating station shall continue for the full term as
29 authorized by the commission in Decision 96-01-011 and Decision
30 96-04-059; provided that the recovery shall not extend beyond
31 December 31, 2003.

32 (5) Costs associated with the exemptions provided in
33 subdivision (a) of Section 374 may be collected through March 31,
34 2002, provided that only fifty million dollars (\$50,000,000) of the
35 balance of the costs remaining after December 31, 2001, shall be
36 eligible for recovery.

37 (6) Fixed transition amounts, as defined in subdivision (d) of
38 Section 840, may be recovered from the customers specified in
39 subdivision (a) of Section 841 until all rate reduction bonds



1 associated with the fixed transition amounts have been paid in full
2 by the financing entity.

3 (b) Be based on a calculation mechanism that nets the negative
4 value of all above market utility-owned generation-related assets
5 against the positive value of all below market utility-owned
6 generation related assets. For those assets subject to valuation, the
7 valuations used for the calculation of the uneconomic portion of
8 the net book value shall be determined not later than December 31,
9 2001, and shall be based on appraisal, sale, or other divestiture.
10 The commission's determination of the costs eligible for recovery
11 and of the valuation of those assets at the time the assets are
12 exposed to market risk or retired, in a proceeding under Section
13 455.5, 851, or otherwise, shall be final, and notwithstanding
14 Section 1708 or any other provision of law, may not be rescinded,
15 altered or amended.

16 (c) Be limited in the case of utility-owned fossil generation to
17 the uneconomic portion of the net book value of the fossil capital
18 investment existing as of January 1, 1998, and appropriate costs
19 incurred after December 20, 1995, for capital additions to
20 generating facilities existing as of December 20, 1995, that the
21 commission determines are reasonable and should be recovered,
22 provided that the additions are necessary to maintain the facilities
23 through December 31, 2001. All "going forward costs" of fossil
24 plant operation, including operation and maintenance,
25 administrative and general, fuel and fuel transportation costs,
26 *prior to December 31, 2000*, shall be recovered solely from
27 independent Power Exchange revenues or from contracts with the
28 Independent System Operator, provided that for the purposes of
29 this chapter, the following costs may be recoverable pursuant to
30 this section:

31 (1) Commission-approved operating costs for particular
32 utility-owned fossil powerplants or units, at particular times when
33 reactive power/voltage support is not yet procurable at
34 market-based rates in locations where it is deemed needed for the
35 reactive power/voltage support by the Independent System
36 Operator, provided that the units are otherwise authorized to
37 recover market-based rates and provided further that for an
38 electrical corporation that is also a gas corporation and that serves
39 at least four million customers as of December 20, 1995, the
40 commission shall allow the electrical corporation to retain any



1 earnings from operations of the reactive power/voltage support
2 plants or units and shall not require the utility to apply any portions
3 to offset recovery of transition costs. Cost recovery under the cost
4 recovery mechanism shall end on December 31, 2001.

5 (2) An electrical corporation that, as of December 20, 1995,
6 served at least four million customers, and that was also a gas
7 corporation that served less than four thousand customers, may
8 recover, pursuant to this section, 100 percent of the uneconomic
9 portion of the fixed costs paid under fuel and fuel transportation
10 contracts that were executed prior to December 20, 1995, and were
11 subsequently determined to be reasonable by the commission, or
12 100 percent of the buy-down or buy-out costs associated with the
13 contracts to the extent the costs are determined to be reasonable by
14 the commission.

15 (d) Be adjusted throughout the period through March 31, 2002,
16 to track accrual and recovery of costs provided for in this
17 subdivision. Recovery of costs prior to December 31, 2001, shall
18 include a return as provided for in Decision 95-12-063, as
19 modified by Decision 96-01-009, together with associated taxes.

20 (e) (1) Be allocated among the various classes of customers,
21 rate schedules, and tariff options to ensure that costs are recovered
22 from these classes, rate schedules, contract rates, and tariff
23 options, including self-generation deferral, interruptible, and
24 standby rate options in substantially the same proportion as similar
25 costs are recovered as of June 10, 1996, through the regulated retail
26 rates of the relevant electric utility, provided that there shall be a
27 firewall segregating the recovery of the costs of competition
28 transition charge exemptions such that the costs of competition
29 transition charge exemptions granted to members of the combined
30 class of residential and small commercial customers shall be
31 recovered only from these customers, and the costs of competition
32 transition charge exemptions granted to members of the combined
33 class of customers, other than residential and small commercial
34 customers, shall be recovered only from these customers.

35 (2) Individual customers shall not experience rate increases as
36 a result of the allocation of transition costs. However, customers
37 who elect to purchase energy from suppliers other than the Power
38 Exchange through a direct transaction, may incur increases in the
39 total price they pay for electricity to the extent the price for the
40 energy exceeds the Power Exchange price.



1 (3) The commission shall retain existing cost allocation
2 authority, provided the firewall and rate freeze principles are not
3 violated.

4 ~~(f) The provisions of this section shall be repealed as of January~~
5 ~~1, 2002.~~

6 (f) *On and after January 1, 2002, this section shall not be*
7 *applicable to an electrical corporation that has entered into an*
8 *agreement with the state under subdivision (b) of Section 399.21,*
9 *except that references in Sections 368, 369, 370, 371, 372, 373,*
10 *and 374 to the costs described in this section shall continue to refer*
11 *to those costs.*

12 SEC. 9.2. *Section 367.2 is added to the Public Utilities Code,*
13 *to read:*

14 367.2. (a) *The commission shall establish a Ratepayer*
15 *Benefit Account with a separate subaccount for each electrical*
16 *corporation that has entered into an agreement pursuant to*
17 *subdivision (b) of Section 399.21. The following funds shall be*
18 *credited to the electrical corporation's subaccount:*

19 (1) *Fifty percent of the first billion dollars, and one hundred*
20 *percent of the subsequent billion dollars resulting from any*
21 *litigation or agreement relative to the charging, either directly or*
22 *indirectly, of excessive costs for power by electric power*
23 *generators, suppliers, and marketers and excessive costs for*
24 *natural gas charged either directly or indirectly by natural gas*
25 *suppliers or marketers, prior to January 18, 2001.*

26 (2) *Revenues derived pursuant to Section 80210 of the Water*
27 *Code.*

28 (b) *The commission shall from time to time in proportion to the*
29 *class percentage rate increases adopted in the commission's*
30 *Decision Number 01-05-064 for the ratepayers of an electrical*
31 *corporation, refund to each ratepayer in a class based on*
32 *consumption of power; moneys in the electrical corporation's*
33 *Ratepayer Benefit Account subaccount through an immediate bill*
34 *credit or, in the alternative, a reduction in rates in the same*
35 *proportionate manner.*

36 (c) *All funds held by an electrical corporation that are required*
37 *by this section to be credited to the Ratepayer's Benefit Account*
38 *subaccount of the corporation are property of the ratepayers of*
39 *that electrical corporation and are held in trust on their behalf.*



1 SEC. 9.4. Section 368 of the Public Utilities Code is amended
2 to read:

3 368. Each electrical corporation shall propose a cost recovery
4 plan to the commission for the recovery of the uneconomic costs
5 of an electrical corporation's generation-related assets and
6 obligations identified in Section 367. The commission shall
7 authorize the electrical corporation to recover the costs pursuant
8 to the plan if the plan meets the following criteria:

9 (a) The cost recovery plan shall set rates for each customer
10 class, rate schedule, contract, or tariff option, at levels equal to the
11 level as shown on electric rate schedules as of June 10, 1996,
12 provided that rates for residential and small commercial customers
13 shall be reduced so that these customers shall receive rate
14 reductions of no less than 10 percent for 1998 continuing through
15 2002. These rate levels for each customer class, rate schedule,
16 contract, or tariff option shall remain in effect until the earlier of
17 March 31, 2002, or the date on which the commission-authorized
18 costs for utility generation-related assets and obligations have
19 been fully recovered. ~~The~~ Unless the electrical corporation has
20 entered into a binding and enforceable agreement pursuant to
21 subdivision (b) of Section 399.21, the electrical corporation shall
22 be at risk for those costs not recovered during that time period.
23 Each utility shall amortize its total uneconomic costs, to the extent
24 possible, such that for each year during the transition period its
25 recorded rate of return on the remaining uneconomic assets does
26 not exceed its authorized rate of return for those assets. For
27 purposes of determining the extent to which the costs have been
28 recovered, any over-collections recorded in Energy Costs
29 Adjustment Clause and Electric Revenue Adjustment Mechanism
30 balancing accounts, as of December 31, 1996, shall be credited to
31 the recovery of the costs.

32 (b) The cost recovery plan shall provide for identification and
33 separation of individual rate components such as charges for
34 energy, transmission, distribution, public benefit programs, and
35 recovery of uneconomic costs. The separation of rate components
36 required by this subdivision shall be used to ensure that customers
37 of the electrical corporation who become eligible to purchase
38 electricity from suppliers other than the electrical corporation pay
39 the same unbundled component charges, other than energy, that a
40 bundled service customer pays. No cost shifting among customer



1 classes, rate schedules, contract, or tariff options shall result from
2 the separation required by this subdivision. Nothing in this
3 provision is intended to affect the rates, terms, and conditions or
4 to limit the use of any Federal Energy Regulatory
5 Commission-approved contract entered into by the electrical
6 corporation prior to the effective date of this provision.

7 (c) In consideration of the risk that the uneconomic costs
8 identified in Section 367 may not be recoverable within the period
9 identified in subdivision (a) of Section 367, an electrical
10 corporation that, as of December 20, 1995, served more than four
11 million customers, and was also a gas corporation that served less
12 than four thousand customers, shall have the flexibility to employ
13 risk management tools, such as forward hedges, to manage the
14 market price volatility associated with unexpected fluctuations in
15 natural gas prices, and the out-of-pocket costs of acquiring the risk
16 management tools shall be considered reasonable and collectible
17 within the transition freeze period. This subdivision applies only
18 to the transaction costs associated with the risk management tools
19 and shall not include any losses from changes in market prices.

20 (d) In order to ensure implementation of the cost recovery plan,
21 the limitation on the maximum amount of cost recovery for
22 nuclear facilities that may be collected in any year adopted by the
23 commission in Decision 96-01-011 and Decision 96-04-059 shall
24 be eliminated to allow the maximum opportunity to collect the
25 nuclear costs within the transition cap period.

26 (e) As to an electrical corporation that is also a gas corporation
27 serving more than four million California customers, so long as
28 any cost recovery plan adopted in accordance with this section
29 satisfies subdivision (a), it shall also provide for annual increases
30 in base revenues, effective January 1, 1997, and January 1, 1998,
31 equal to the inflation rate for the prior year plus two percentage
32 points, as measured by the consumer price index. The increase
33 shall do both of the following:

34 (1) Remain in effect pending the next general rate case review,
35 which shall be filed not later than December 31, 1997, for rates that
36 would become effective in January 1999. For purposes of any
37 commission-approved performance-based ratemaking
38 mechanism or general rate case review, the increases in base
39 revenue authorized by this subdivision shall create no presumption



1 that the level of base revenue reflecting those increases constitute
2 the appropriate starting point for subsequent revenues.

3 (2) Be used by the utility for the purposes of enhancing its
4 transmission and distribution system safety and reliability,
5 including, but not limited to, vegetation management and
6 emergency response. To the extent the revenues are not expended
7 for system safety and reliability, they shall be credited against
8 subsequent safety and reliability base revenue requirements. Any
9 excess revenues carried over shall not be used to pay any monetary
10 sanctions imposed by the commission.

11 (f) The cost recovery plan shall provide the electrical
12 corporation with the flexibility to manage the renegotiation,
13 buy-out, or buy-down of the electrical corporation's power
14 purchase obligations, consistent with review by the commission to
15 assure that the terms provide net benefits to ratepayers and are
16 otherwise reasonable in protecting the interests of both ratepayers
17 and shareholders.

18 (g) An example of a plan authorized by this section is the
19 document entitled "Restructuring Rate Settlement" transmitted to
20 the commission by Pacific Gas and Electric Company on June 12,
21 1996.

22 *SECTION 9.6. Section 369 of the Public Utilities Code is*
23 *amended to read:*

24 369. (a) (1) The commission shall establish an effective
25 mechanism that ensures recovery of transition costs referred to in
26 Sections 367, 368, 375, and 376, and subject to the conditions in
27 Sections 371 to 374, inclusive, from all existing and future
28 consumers in the service territory in which the utility provided
29 electricity services as of December 20, 1995; provided, that the
30 costs shall not be recoverable for new customer load or
31 incremental load of an existing customer where the load is being
32 met through a direct transaction and the transaction does not
33 otherwise require the use of transmission or distribution facilities
34 owned by the utility. However, the obligation to pay the
35 competition transition charges cannot be avoided by the formation
36 of a local publicly owned electrical corporation on or after
37 December 20, 1995, or by annexation of any portion of an
38 electrical corporation's service area by an existing local publicly
39 owned electric utility.

40 ~~This section shall~~



1 (2) *This subdivision does not apply to service taken under*
2 *tariffs, contracts, or rate schedules that are on file, accepted, or*
3 *approved by the Federal Energy Regulatory Commission, unless*
4 *otherwise authorized by the Federal Energy Regulatory*
5 *Commission.*

6 (b) (1) *The commission also shall establish an effective*
7 *mechanism that ensures recovery from all existing and future*
8 *consumers in the service territory in which the utility provided*
9 *electricity services as of January 15, 2001 of qualified costs*
10 *described in Section 399.20, subject to Section 399.25, provided*
11 *that the costs may not be recoverable for either of the following:*

12 (A) (i) *New customer load being met through a direct*
13 *transaction or (ii) incremental load of an existing customer being*
14 *met through a direct transaction where the customer's load as of*
15 *January 15, 2001 was greater than or equal to 20 kilowatts, in each*
16 *case where the direct transaction does not otherwise require the*
17 *use of transmission and distribution facilities owned by the utility.*

18 (B) *Customer load or incremental load of an existing customer*
19 *being met by new gas fired or renewable electric generation*
20 *facilities that serve retail load that are located onsite or under an*
21 *over-the-fence arrangement consistent with Section 218.*

22 (2) *The commission shall develop regulations to verify that*
23 *customers asserting exemptions under subparagraphs (A) and (B)*
24 *of paragraph (1) legitimately qualify as new or incremental*
25 *customer loads.*

26 (3) *The obligation to pay the electrical corporation debt*
27 *repayment set-aside may not be avoided by the formation of a local*
28 *publicly owned electrical corporation on or after January 15,*
29 *2001, or by annexation of any portion of an electrical*
30 *corporation's service area by an existing local publicly owned*
31 *electric utility, as defined in subdivision (d) of Section 9604.*

32 SEC. 9.8. *Section 377 of the Public Utilities Code is amended*
33 *to read:*

34 377. (a) *The commission shall continue to regulate the*
35 *facilities for the generation of electricity owned by any public*
36 *utility prior to January 1, 1997, that are subject to commission*
37 *regulation until the owner of those facilities has applied to the*
38 *commission to dispose of those facilities and has been authorized*
39 *by the commission under Section 851 to undertake that disposal.*
40 *Notwithstanding any other provision of law, no facility for the*



1 generation of electricity owned by a public utility may be disposed
2 of prior to January 1, 2006. The commission shall ensure that
3 public utility generation assets ~~remain dedicated to service for the~~
4 ~~benefit of California ratepayers.~~, *qualifying facility contracts, and*
5 *other bilateral contracts remain dedicated for the benefit of the*
6 *public utility's bundled service customers, provided that nothing*
7 *in this section shall be construed to compel any electrical*
8 *corporation to renew or renegotiate an expiring contract. For*
9 *purposes of this section, utility owned generation, qualifying*
10 *facility contracts and other bilateral contracts shall be referred to*
11 *as "utility retained generation." This section does not apply to the*
12 *transfer or sale of generation plants that are located outside*
13 *California and are owned exclusively by companies not based in*
14 *California.*

15 (b) *Notwithstanding any other provision of law, the commission*
16 *shall establish rates that enable the public utility electrical*
17 *corporation to recover on a timely basis, consistent with the*
18 *electrical corporation having and maintaining an investment*
19 *grade credit rating, all reasonable costs of producing power and*
20 *ancillary services from utility retained generation dedicated to the*
21 *service of bundled service customers. Those rates shall ensure that*
22 *the public utility electrical corporation is able to recover*
23 *reasonable operating and capital costs, including a reasonable*
24 *return of an on the public utility electrical corporation's*
25 *investment in owned generation assets.*

26 (1) *Operating costs shall include all customary categories of*
27 *operating costs, including, but not limited to, fuel and fuel*
28 *transportation costs both fixed and variable, operations and*
29 *maintenance expenses, remediation costs, costs of emissions*
30 *credits, direct and indirect administrative and general costs, taxes,*
31 *scheduling and dispatch costs, congestion costs, ancillary service*
32 *costs, and other transmission-related costs charged to generators.*
33 *Prior to January 1, 2004, operating costs for the San Onofre*
34 *Nuclear Generating Station Units 2 and 3 shall be recovered*
35 *pursuant to nuclear incremental cost incentive plans as authorized*
36 *by the commission in commission Decision Nos. 96-01-011 and*
37 *96-94-059.*

38 (2) *The electrical corporation's investment in generation assets*
39 *initially shall be set at the amounts recorded on its books of*
40 *account as of December 31, 2000, including reasonable*



1 sites-specific general plant and capital additions made after
2 December 31, 1995, together with their associated regulatory
3 receivable or payable for taxes. For Southern California Edison
4 Company, existing investments for Units 2 and 3 at the San Onofre
5 Nuclear Generating Station and the Palo Verde Nuclear
6 Generating Station shall be recovered over a period ending
7 December 31, 2010. Incremental capital investments placed in
8 service after December 31, 2000, will be recovered from the time
9 they are placed in service, provided that the electrical corporation
10 shall recover an allowance for funds used during construction for
11 capital projects extending for more than one year. Notwithstanding
12 the foregoing, prior to January 1, 2004, incremental capital
13 investments for the San Onofre Nuclear Generating Station Units
14 2 and 3 shall be recovered pursuant to nuclear incremental cost
15 incentive plans as authorized by the commission in commission
16 Decision Nos. 96-01-011 and 96-94-059. The cost of major capital
17 additions and improvements to a public utility's generation assets
18 shall be reviewed and approved by the commission, in the manner
19 set forth in Sections 1005 and 1005.5, in advance of the public
20 utility being required to invest in such major capital additions or
21 improvements.

22 (3) Decommissioning costs shall be recovered consistent with
23 commission decisions.

24 (c) Notwithstanding any other provision of law, the commission
25 shall do both of the following:

26 (1) Establish rates that ensure the electrical corporation's
27 entitlement to recover its reasonable procurement costs on a timely
28 basis.

29 (2) Establish procedures designed to ensure that any
30 undercollection or overcollection of procurement costs will be
31 reconciled in a timely manner and any undercollection will be
32 financed on reasonable terms consistent with the credit rating of
33 the electrical corporation as investment grade. Those procedures
34 shall include, but are not limited to, the development of a
35 framework and criteria for procurement practices the submission
36 of an annual procurement plan and the prompt approval or
37 disapproval of contracts. The commission may not exercise
38 retrospective reasonableness review of power procurement
39 contracts unless the commission finds that the contract was not



1 reasonable under the circumstances prevailing at the time the
2 contract was executed.

3 (d) The rates described in subdivisions (b) and (c) shall be
4 separate from rates established for the Department of Water
5 Resources pursuant to Division 27 (commencing with Section
6 80000) of the Water Code, and shall be established based on
7 forecasts of costs submitted by the electrical corporation.
8 Differences between revenues and authorized costs shall be
9 tracked in balancing accounts, and rates shall be adjusted not less
10 than annually. Prior to the commission establishing authorized
11 costs actual costs shall be tracked in the balancing accounts. If the
12 net balances in the electrical corporation's balancing accounts are
13 overcollected by at least five hundred million dollars
14 (\$500,000,000), that overcollection shall be refunded through a
15 remediated bill credit to customers, with each customer class of the
16 electrical corporation receiving a proportionate share of the
17 overcollection in accordance with the commission's then most
18 recent rate design and cost allocation decision for that electrical
19 corporation. If those net balances are undercollected by five
20 hundred million dollars (\$500,000,000) or more, rates shall be
21 adjusted to recover the undercollection as determined by the
22 commission in an expeditious manner consistent with enabling the
23 electrical corporation to regain and retain investment grade credit
24 status.

25 SEC. 10. Section 379 of the Public Utilities Code is amended
26 to read:

27 379. Nuclear decommissioning costs shall be recovered as a
28 nonbypassable charge until the time as the costs are fully
29 recovered. The commission may accelerate the recovery of
30 decommissioning costs consistent with the public interest.

31 SEC. 11. Article 16 (commencing with Section 399.20) is
32 added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
33 Code, to read:

34

35 Article 16. Electricity Market Stabilization

36

37 399.20. For the purposes of this article, the following terms
38 shall have the following meanings:

39 (a) (1) "Electrical corporation debt repayment set-aside"
40 means a nonbypassable rate and other charges, including, but not



1 limited to, distribution, connection, disconnection, and
2 termination rates and charges, that are authorized by the
3 commission in a financing order to allow the electrical corporation
4 to recover all or any portion of both (A) qualified costs, and (B)
5 the costs of providing, recovering, financing, or refinancing the
6 qualified costs through a plan approved by the commission in the
7 financing order, including, but not limited to, the costs of issuing,
8 servicing and retiring electricity market stabilization bonds. For
9 the purposes of this article, an electrical corporation debt
10 repayment set-aside shall be imposed on a nonbypassable basis at
11 a uniform rate per kilowatthour of electricity consumed pursuant
12 to Section 399.25.

13 (2) If requested by the electrical corporation in its application
14 for a financing order, an electrical corporation debt repayment
15 set-aside shall include nonbypassable rates and other charges to
16 recover federal and state taxes whose recovery period is modified
17 by the transactions approved in the financing order.

18 (b) “Electricity market stabilization bonds” means bonds,
19 notes, certificates of participation or beneficial interest, or other
20 evidences of indebtedness or ownership, issued pursuant to an
21 executed indenture or other agreement of a financing entity, the
22 proceeds of which are used, directly or indirectly, to provide,
23 recover, finance, or refinance qualified costs, and that are directly
24 or indirectly secured by, or payable from, ~~transition~~ *stabilization*
25 *property*.

26 (c) “Financing entity” means an electrical corporation or any
27 entity designated by the electrical corporation to issue electricity
28 market stabilization bonds *or acquire stabilization property, or*
29 *both*, pursuant to this article.

30 (d) “Financing order” means an order of the commission
31 adopted in accordance with this article approving an electrical
32 corporation debt repayment set-aside. A financing order shall
33 include, without limitation, a procedure for the expeditious
34 approval by the commission of periodic adjustments to the
35 electrical corporation debt repayment set-aside included therein to
36 ensure *timely* recovery of the qualified costs and the costs of
37 issuing, servicing, refinancing, and retiring the electricity market
38 stabilization bonds approved by the financing order.

39 (e) “Net undercollected costs” means the difference between
40 the cost of the energy *and ancillary services* provided by the



1 electrical corporation and the energy *and ancillary services* related
2 revenues received by the electrical corporation from retail
3 customers *for the period* from May 1, 2000, to January 18, 2001,
4 inclusive.

5 (f) “Qualified costs” means, with respect to an electrical
6 corporation, all of the following:

7 (1) The net undercollected costs in the amount determined
8 pursuant to Section 399.22.

9 (2) Interest associated with the net undercollected costs prior to
10 the issuance of bonds as determined pursuant to Section 399.22.

11 (g) Notwithstanding any other provision of law an electrical
12 corporation may not recover *from the proceeds of electric market*
13 *stabilization bonds* more than two billion five hundred million
14 dollars (\$2,500,000,000) of ~~qualified costs~~ *net undercollected*
15 *costs, plus interest determined under paragraph (2) of subdivision*
16 *(f), in an amount of not more than four hundred million dollars*
17 *(\$400,000,000).*

18 (h) (1) “Stabilization property” means the property right
19 created pursuant to this article including, without limitation, the
20 right, title, and interest of an electrical corporation or its transferee:

21 (A) In and to the tariff established pursuant to a financing order,
22 as adjusted from time to time in accordance with the financing
23 order, and to all revenues, collections, claims, payments, moneys,
24 or proceeds of or arising from the tariff.

25 (B) To be paid the amount that is determined in a financing
26 order to be the amount that the electrical corporation or its
27 transferee is lawfully entitled to receive pursuant to the provisions
28 of this article, *and the proceeds thereof.*

29 (C) In and to all revenues, collections, claims, payments,
30 ~~moneys, or proceeds of or arising from an electrical corporation~~
31 ~~debt repayment set-aside that is the subject of a financing order.~~
32 *monies, or proceeds of or arising from the tariffs constituting an*
33 *electrical corporation debt repayment set-aside that are the*
34 *subject of a financing order.*

35 (D) To the nonbypassable rates and other charges referred to in
36 subdivision (a) imposed pursuant to a financing order.

37 (E) In and to all rights to obtain adjustments to the tariff
38 pursuant to the terms of the financing order.

39 (2) “Stabilization property” shall constitute a current property
40 right notwithstanding the fact that the value of the property right



1 will depend on consumers using electricity or, in those instances
2 where consumers are customers of a particular electrical
3 corporation, the electrical corporation performing certain
4 services.

5 ~~(3) Stabilization property shall have all of the characteristics of
6 and be subject to all the provisions governing transition property
7 as set forth in Sections 842, 843, 844, and 845.~~

8 399.21. (a) Electricity market stabilization bonds pursuant to
9 this article may only be issued by an electrical corporation serving
10 more than 4,000,000 customers which is also a gas corporation
11 serving fewer than 5,000 customers. To issue electricity market
12 stabilization bonds the electrical corporation shall submit to the
13 commission an application to issue electricity market stabilization
14 bonds in an amount necessary to recover qualified costs. No
15 electricity market stabilization bonds may be issued without
16 commission approval.

17 (b) The commission shall approve the application (1) upon
18 verification of the qualified costs pursuant to Section 399.22, and
19 (2) upon ~~determination~~ *certification by the Director of Finance*
20 that the electrical corporation and its holding company, *to the*
21 *extent of the holding company's obligations set forth in*
22 *paragraphs (3), (5), and (9)* have entered into a binding and
23 enforceable agreement with the state in which, at a minimum, the
24 electrical corporation and its holding company agree to ~~and~~
25 ~~perform~~ all of the following:

26 (1) Sell to retail end-use customers all electricity generated by
27 assets owned by the electrical corporation and at cost-based rates
28 as determined by the commission.

29 (2) Apply the proceeds of the electricity market stabilization
30 bonds, after payment of issuance costs, in accordance with the
31 intent of subdivision (c).

32 (3) Provide the Department of Water Resources or its designee
33 with the entire output from the Sunrise generating facility for a
34 term of not less than 10 years at cost-of-service based rates ~~as~~
35 ~~determined by the commission. Terms and conditions of the~~
36 ~~agreement shall be set forth in a contract executed between the~~
37 ~~electrical corporation and its holding company, and the pursuant~~
38 *to a contract previously executed between an affiliate of the*
39 *holding company and the Department of Water Resources or its*
40 designee.



1 (4) Convey electrical corporation-owned land to ~~the state a~~
2 *trust* pursuant to Article 17 (commencing with Section 399.30).
3 *Section 851, and Section 21080 of the Public Resources Code, are*
4 *not applicable to the conveyance required under this paragraph.*

5 (5) Dismiss, with prejudice, any and all legal claims the
6 electrical corporation and its holding company may have or
7 relinquish any legal claim the electrical corporation and its holding
8 company could have had against the State of California or any
9 agency, department or subdivision thereof, the federal
10 Government, or the commission for a taking or a violation of the
11 filed rate doctrine arising from or related to the facts asserted in the
12 litigation; and any claims challenging actions taken by the
13 ~~commission, or actions that the commission failed to take, to~~
14 *commission prior to the date of the dismissal or release, or actions*
15 *that the commission failed to take prior to the dismissal or release,*
16 *to implement Assembly Bill 1 of the 2001–02 First Extraordinary*
17 *Session (Ch. 4, Stats. 2001–02 1st Ex. Sess.) and Assembly Bill*
18 *6 of the First Extraordinary Session (Ch. 2, Stats. 2001–02 1st Ex.*
19 *Sess.).*

20 (6) Resume procurement of the full net short needs and electric
21 requirements for retail customers within the electrical
22 corporation’s service area as soon as the company is ~~deemed~~
23 ~~creditworthy~~ *rated at least investment grade by one or more*
24 *nationally recognized rating agencies* or January 1, 2003,
25 whichever occurs sooner.

26 (7) Relinquish all claims against the state for commandeering
27 the electrical corporation’s block forward market contracts
28 purchased through the California Power Exchange.

29 (8) *Agree to administer the power procurement contracts that*
30 *the Department of Water Resources may request the electrical*
31 *corporation to administer.*

32 (9) Provide the state with an irrevocable option for a period of
33 not less than five years to purchase the transmission facilities
34 owned by the electrical corporation at the net book value of those
35 facilities. *The state may exercise the option provided under this*
36 *paragraph only upon approval of that action by a subsequently*
37 *enacted statute.*

38 ~~(9) Apply four hundred million dollars (\$400,000,000),~~
39 ~~consisting of the tax refund of the estimated quarterly tax~~
40 ~~payments for the 2000 taxable year and an additional amount equal~~



1 ~~to the federal loss carryback that the electrical corporation would~~
2 ~~have had if it were not part of its holding company's consolidated~~
3 ~~group of taxpayers, to the reduction or elimination of the past debt~~
4 ~~of the electrical corporation in order to restore the creditworthiness~~
5 ~~of the electrical corporation by the earliest feasible date.~~

6 (c) It is the intent of the Legislature in authorizing the issuance
7 of a financing order pursuant to this article that any revenues
8 derived from the issuance of electricity market stabilization bonds
9 for the amount authorized pursuant to this article ~~shall~~ *may not* be
10 expended for the following purposes:

11 ~~(1) Not more than \$1.2 billion for payment by the electrical~~
12 ~~corporation to banks or other lending institutions for outstanding~~
13 ~~debt consisting of notes, commercial paper, or other evidence of~~
14 ~~indebtedness.~~

15 ~~(2) Not more than \$1.3 billion for payment to qualifying~~
16 ~~facilities for electricity sold to the electrical corporation by those~~
17 ~~facilities.~~

18 ~~(d) It is the intent of the Legislature that disposition of any debt~~
19 ~~or charges imposed on the electrical corporation by the power~~
20 ~~exchange, by the Independent System Operator, or by any~~
21 ~~electrical generator other than a qualifying facility for energy~~
22 ~~purchased on or before January 31, 2001, shall be the~~
23 ~~responsibility of the electrical corporation and its holding~~
24 ~~company and shall not be the responsibility of ratepayers. *for*~~
25 ~~*unpaid debt or charges imposed on the electrical corporation by*~~
26 ~~*the California Power Exchange, the California Independent*~~
27 ~~*System Operator, or by any suppliers of wholesale electricity for*~~
28 ~~*energy purchased on or before January 18, 2001, provided that this*~~
29 ~~*provision shall not restrict payments to any qualifying facility or*~~
30 ~~*bilateral contract counterparty or payments with respect to*~~
31 ~~*California Power Exchange customer credits as defined in D.*~~
32 ~~*97-08-056 of August 1, 1997, and as modified by D. 99-06-058 of*~~
33 ~~*June 10, 1999.*~~

34 *(d) It is the intent of the Legislature in authorizing the issuance*
35 *of a financing order pursuant to this article to continue the current*
36 *stand-alone tax treatment of the electrical corporation, and to*
37 *have the electrical corporation apply four hundred million dollars*
38 *(\$400,000,000) in payments due to the electrical corporation from*
39 *such stand-alone tax treatment for the 2000 taxable year,*
40 *consisting of the tax refund of the estimated quarterly tax payments*



1 *made by the electrical corporation for the 2000 taxable year and*
2 *an additional amount equal to the federal loss carryback the*
3 *electrical corporation would have had if it were not part of the*
4 *holding company's consolidated group of taxpayers, to the*
5 *reduction or elimination of the past debt of the electrical*
6 *corporation in order to restore the creditworthiness of the*
7 *electrical corporation by the earliest feasible date.*

8 (e) The binding and enforceable agreement in subdivision (b)
9 shall be enforceable *against the electrical corporation* by the
10 commission in proceedings.

11 399.22. This section shall apply to all electrical corporations
12 subject to Section 399.21.

13 (a) The commission *and the State Auditor* shall verify for an
14 electrical corporation the amount of the qualified costs and other
15 amounts permitted to be recovered through an electrical
16 corporation debt repayment set-aside within 60 days of the date of
17 submission of the amount to be verified. *To the extent that the*
18 *verification and any adjustments are not complete by that date, the*
19 *qualified costs shall be the amount submitted by the electrical*
20 *corporation.* The commission review may only be for the purpose
21 of verifying recorded amounts and making any adjustments
22 resulting from that verification. Notwithstanding any other
23 provision of law, qualified costs and other amounts permitted to be
24 recovered through an electrical corporation debt repayment
25 set-aside shall be recoverable in accordance with this article.

26 (b) (1) Notwithstanding any other provision of law, the
27 commission shall establish, within 60 days of the filing of an
28 application of an electrical corporation, an electrical corporation
29 debt repayment set-aside designed to enable the electrical
30 corporation to recover the qualified costs described in the
31 application over an amortization period to be determined
32 consistent with this article.

33 (2) The electrical corporation debt reduction set-aside shall be
34 established by the adoption of a financing order as set forth in this
35 section. The commission shall establish an electrical corporation
36 debt reduction set-aside sufficient to enable the electrical
37 corporation to recover the full amount of its qualified costs set
38 forth in the financing order.

39 (3) Customers, as specified in Section 399.25, shall continue to
40 pay the electrical corporation debt reduction set-aside in



1 accordance with the financing order until the electrical corporation
2 has recovered the qualified costs set forth in the financing order
3 and, if electricity market stabilization bonds have been issued in
4 connection therewith, until those bonds are paid in full by the
5 financing entity. *Notwithstanding any other provision of law,
6 rates, and charges included within the electrical corporation debt
7 reduction set-aside shall constitute disconnectible charges, the
8 nonpayment of which by a customer, in whole or in part, entitles
9 the electrical corporation to disconnect electric service under
10 procedures set forth in commission tariffs.*

11 (c) The commission shall issue a financing order in accordance
12 with this article to facilitate the provision, recovery, financing, or
13 refinancing of qualified costs. A financing order shall be adopted
14 only upon the application of an electrical corporation and shall
15 become effective in accordance with its terms only after the
16 electrical corporation files with the commission the electrical
17 corporation's written notice of intent to comply with all terms and
18 conditions of the financing order. ~~A financing order shall specify
19 the conditions to the implementation of the terms of that financing
20 order.~~ Notwithstanding Section 1756, Section 1759, or any other
21 provision of law, no court, except the Supreme Court, has
22 jurisdiction to review, reverse, correct, or annul any financing
23 order, or to suspend or delay the execution or operations thereof,
24 or to enjoin, restrain, or interfere with the commission in the
25 performance of its official duties in respect thereof, as provided by
26 law and the rules of the court.

27 (d) Notwithstanding Section 455.5, Section 1708, or any other
28 provision of law, except as otherwise provided in this subdivision,
29 the financing orders and the electrical corporation debt repayment
30 set-aside shall, upon the effectiveness of the financing orders, be
31 irrevocable and the commission may not have authority either by
32 rescinding, altering, or amending the financing order or otherwise,
33 to revalue or revise for ratemaking purposes the qualified costs, or
34 the costs of providing, recovering, financing, or refinancing the
35 qualified costs, determine that the electrical corporation debt
36 repayment set-aside is unjust or unreasonable, or in any way
37 reduce or impair the value of stabilization property either directly
38 or indirectly by taking the electrical corporation debt repayment
39 set-aside into account when setting other rates for the electrical
40 corporation; nor shall the amount of revenues arising with respect



1 thereto be subject to reduction, impairment, postponement, or
2 termination. Except as otherwise provided in this paragraph, the
3 state does hereby pledge and agree with the electrical corporation,
4 the owners of stabilization property, and holders of electricity
5 market stabilization bonds that the state shall neither limit nor alter
6 the electrical corporation debt repayment set-aside, stabilization
7 property, financing orders, and all rights thereunder until the
8 electrical corporation has recovered all qualified costs, and if
9 electricity market stabilization bonds have been issued in
10 connection therewith, obligations under those bonds, together
11 with the interest thereon, are fully met and discharged, provided
12 that nothing contained in this section shall preclude the limitation
13 or alteration of these matters if adequate provision is made by law
14 for the protection of the owners and holders. That pledge shall be
15 deemed to be part of a financing order upon adoption thereof by
16 the commission. Notwithstanding any other provision of this
17 section, the commission shall approve the adjustments to the
18 electrical corporation debt repayment set-aside as it determines to
19 be necessary to ensure timely recovery of all qualified costs that
20 are the subject of the pertinent financing order, and the cost of
21 capital associated with the provision, recovery, financing, or
22 refinancing thereof, including the cost of issuing, servicing, and
23 retiring any electricity market stabilization bonds issued to finance
24 qualified costs contemplated by the financing order.

25 (e) The commission shall establish procedures for the
26 expeditious processing of applications for financing orders,
27 including the approval or disapproval thereof within 60 days of the
28 electrical corporation's making application therefor. *The*
29 *commission shall provide in any financing order for a procedure*
30 *for the expeditious approval by the commission of periodic*
31 *adjustments to the electric corporation debt repayment set-aside*
32 *that is the subject of the pertinent financing order, as required by*
33 *subdivision (d). The procedure shall require the commission to*
34 *determine whether the adjustments are required on each*
35 *anniversary of the issuance of the financing order, and at the*
36 *additional intervals as may be provided for in the financing order,*
37 *and for the adjustments, if required, to be approved within 90 days*
38 *of each anniversary of the issuance of the financing order, or of*
39 *each additional interval provided for in the financing order.*



1 (f) The electrical corporation debt repayment ~~set-side~~ *set-aside*
2 shall constitute stabilization property when, and to the extent that,
3 a financing order authorizing the electrical corporation debt
4 repayment set-aside has become effective in accordance with this
5 article, and the stabilization property shall thereafter continuously
6 exist as property for all purposes with all of the rights and
7 privileges of this article for the period and to the extent provided
8 in the financing order, but in any event until (1) the electrical
9 corporation has recovered the qualified costs and (2) the electricity
10 market stabilization bonds are paid in full, including all principal,
11 interest, premium, costs, and arrearages thereon.

12 (g) *Sections 842, 843, 844, and 845 shall apply with respect to*
13 *this article, as if those provisions were set forth in this article,*
14 *subject to the following:*

15 (1) *References in Sections 842, 843, 844, and 845 to a*
16 *“financing entity” shall mean a financing entity as defined in this*
17 *article.*

18 (2) *References in Sections 842, 843, 844, and 845 to a*
19 *“financing order” shall mean a financing order as defined in this*
20 *article.*

21 (3) *References in Sections 842, 843, 844, and 845 to “fixed*
22 *transition amounts” shall mean an electric corporation debt*
23 *repayment set-aside as defined in this article.*

24 (4) *References in Sections 842, 843, 844, and 845 to “rate*
25 *reduction bonds” shall mean electricity market stabilization*
26 *bonds as defined in this article.*

27 (5) *References in Sections 842, 843, 844, and 845 to*
28 *“transition costs” shall mean qualified costs as defined in this*
29 *article.*

30 (6) *References in Sections 842, 843, 844, and 845 to*
31 *“transition property” shall mean stabilization property as defined*
32 *in this article.*

33 399.23. With respect to an electrical corporation debt
34 repayment set-aside relating to financing orders providing for
35 recovery of qualified costs, the obligation of the electrical
36 corporation to collect and remit the electrical corporation debt
37 repayment set-aside consistent with a financing order shall
38 continue irrespective of whether that electrical corporation is
39 providing electric power or other services to the retail customers
40 obligated to pay the electrical corporation repayment set-aside.



1 399.24. The authority of the commission to issue financing
2 orders providing for recovery of qualified costs shall expire on
3 December 15, 2006. The expiration of the authority shall have no
4 effect upon financing orders adopted by the commission pursuant
5 to this article or any stabilization property arising therefrom, or
6 upon the charges authorized to be levied thereunder, or the rights,
7 interests, and obligations of the electrical corporation or a
8 financing entity or holders of electricity market stabilization bonds
9 pursuant to the financing order, or the authority of the commission
10 to monitor, supervise, or take further action with respect to the
11 order in accordance with the terms of this article and of the order.

12 399.25. The electrical corporation debt repayment set-aside
13 established by order of the commission pursuant to this article
14 shall be paid exclusively by customers ~~with electric loads~~
15 ~~exceeding 500 kilowatt billing demand.~~ *in the electrical*
16 *corporation's service territory with a maximum peak demand*
17 *exceeding 20 kilowatts, based on the usage of the prior year.*

18 399.26. *The commission may not establish an electrical*
19 *corporation debt repayment set-aside for the purpose of providing*
20 *for the recovery of qualified costs or issue a financing order with*
21 *regard to an electrical corporation, unless both of the following*
22 *conditions have been met:*

23 (a) *The electrical corporation has entered into a binding and*
24 *enforceable agreement under subdivision (b) of Section 399.21,*
25 *and the Director of Finance has advised the commission that the*
26 *electrical corporation has entered into the definitive agreements*
27 *which by the terms of that binding and enforceable agreement are*
28 *required to be entered into as of the time of the taking of that action.*

29 (b) *The electrical corporation has consented to an order of the*
30 *commission providing for cost-of-service based rates to apply to*
31 *generation assets owned by the electrical corporation to the extent*
32 *provided in the applicable agreement and for the period provided*
33 *in the agreement and obligating the electrical corporation not to*
34 *apply to the commission for approval to sell those generation*
35 *assets for the period provided in the agreement.*

36 399.27. (a) *Except as provided in a binding and enforceable*
37 *agreement under subdivision (b) of Section 399.21, financing*
38 *entities may issue electricity market stabilization bonds upon*
39 *approval by the commission in the pertinent financing orders. The*
40 *terms and conditions of those bonds shall be approved by the*



1 *Director of Finance in accordance with the agreement. That*
2 *approval shall be conclusive and binding and is not subject to*
3 *review or contest except in accordance with the agreement. In*
4 *connection with that approval, the Director of Finance may*
5 *engage those independent consultants as he or she determines to*
6 *be appropriate. In order to permit the Director of Finance to*
7 *contract for those purposes, the contract or agreement with any*
8 *independent consultant may include provision for the*
9 *indemnification of parties thereto, however, that contract or*
10 *agreement may not include provisions for the indemnification,*
11 *including indemnification for any costs of defense, of any party for*
12 *acts or omissions involving gross negligence, recklessness, or*
13 *willful misconduct by that party or by the party's employees,*
14 *agents, or contractors. The bonds shall be nonrecourse to the*
15 *credit or any assets of the electrical corporation, other than the*
16 *stabilization property as specified in the pertinent financing order.*

17 *(b) Electrical corporations may sell and assign all or portions*
18 *of their interest in stabilization property to an affiliate. Electrical*
19 *corporations or their affiliates may sell or assign their interests to*
20 *one or more financing entities that make that property the basis for*
21 *issuance of the bonds to the extent approved in the pertinent*
22 *financing orders. Electrical corporations, their affiliates, or*
23 *financing entities may pledge or grant a security interest in*
24 *stabilization property as collateral, directly or indirectly, for the*
25 *bonds to the extent approved in the pertinent financing orders*
26 *providing for a security interest in the stabilization property. In*
27 *addition stabilization property may be sold or assigned by (1) the*
28 *financing entity or a trustee for the holders of the bonds in*
29 *connection with the exercise of remedies upon a default, or (2) any*
30 *person acquiring the stabilization property after a sale or*
31 *assignment pursuant to this subdivision.*

32 *(c) To the extent that any interest in stabilization property is so*
33 *sold or assigned, or is so pledged as collateral or a security interest*
34 *granted therein, the commission shall authorize the electrical*
35 *corporation to contract with the financing entity that it will*
36 *continue to operate its system to provide service to its customers,*
37 *will collect amounts in respect of the fixed stabilization amounts*
38 *for the benefit and account of the financing entity, and will account*
39 *for and remit these amounts to or for the account of the financing*
40 *entity. Contracting with the financing entity in accordance with*



1 *that authorization shall not impair or negate the characterization*
2 *of the sale, assignment, or pledge, or grant of security interests as*
3 *an absolute transfer, a true sale, or security interest, as applicable.*
4 *With respect to fixed stabilization amounts relating to financing*
5 *orders providing for recovery of qualified costs, the obligation of*
6 *the electrical corporation to collect and remit the fixed*
7 *stabilization amounts consistent with a financing order shall*
8 *continue irrespective of whether that electrical corporation is*
9 *providing electric power or other services to the retail customers*
10 *obligated to pay those fixed stabilization amounts.*

11 *(d) Notwithstanding Section 1708 or any other provision of*
12 *law, any requirement under this article or a financing order that*
13 *the commission take action with respect to the subject matter of a*
14 *financing order shall be binding upon the commission, as it may*
15 *be constituted from time to time, and any successor agency*
16 *exercising functions similar to the commission and the commission*
17 *shall have no authority to rescind, alter, or amend that requirement*
18 *in a financing order. The approval by the commission in a*
19 *financing order of the issuance by an electrical corporation or a*
20 *financing entity of the bonds shall include the approvals, if any, as*
21 *may be required by Article 5 (commencing with Section 816) and*
22 *Section 701.5. Nothing in Section 701.5 shall be construed to*
23 *prohibit the issuance of the bonds upon the terms and conditions*
24 *as may be approved by the commission in a financing order.*
25 *Section 851 shall not be applicable to the transfer or pledge of, or*
26 *grant of a security interest in, stabilization property, the issuance*
27 *of the bonds, or related transactions approved in a financing order.*

28 *399.28. Any sale, assignment, or other disposition of the*
29 *utility assets, including the grant of easements and conveyances in*
30 *fee of certain lands for conservation purposes, of an electrical*
31 *corporation to the Department of Water Resources or any other*
32 *authorized state agency or authority pursuant to a binding and*
33 *enforceable agreement, as defined in Section 399.21, and any*
34 *implementing agreements described in that agreement, are not*
35 *subject to the commission's approval.*

36 SEC. 12. Article 17 (commencing with Section 399.30) is
37 added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities
38 Code, to read:

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Article 17. Conservation Lands

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399.30. (a) An electrical corporation authorized to recover qualified costs pursuant to Article 16 (commencing with Section 399.20) shall transfer to a trust specified in subdivision (b) its complete interest, as of the effective date of this section, in the lands identified in this subdivision. Lands to be transferred, if not identified by legal description or the assessor’s parcel number, shall contain sufficient information regarding the nature, general location, scope, and extent of the real property, fixtures, improvements, or facilities that would place third parties on inquiry notice of the right, title, or interest claimed by the state or its subdivisions or creations, by reason of the deed, assignment, or other instrument of conveyance. The lands identified in this subdivision shall be conveyed and held by the trust for a determination pursuant to this section, except that conservation easements shall be transferred on lands that are subject to licensure by the Federal Energy Regulatory Commission and that are producing electricity as of the effective date of the act adding this section, *and all other interests in watershed, inland, forest, desert, and coastal land or lands of potential conservation value owned by the electrical corporation on the effective date of the act adding this section shall be conveyed as they are held by the electrical corporation:*

~~(1) Fresno and Madera Counties: Jackass Meadows containing approximately 280 acres, Big Creek 3 and Big Creek 4 together consisting of approximately 253 acres, Huntington Lake, consisting of approximately 815 acres, Shaver Lake consisting of approximately 21,000 acres, and unknown acreage along Dinkey Creek.~~

(1) Fresno and Madera Counties: Jackass Meadows containing approximately 280 acres, Big Creek 3 and Big Creek 4 together consisting of approximately 253 acres, Huntington Lake, consisting of approximately 815 acres, 19,100 acres of Shaver Lake but not to include the area known as the 1500 acre Edison Specific Plan as approved in the county general plan, and unknown acreage along Dinkey Creek.

(2) Various properties in the eastern Sierra Nevada consisting of approximately 825 acres and known generically as the Lee Vining HQ property, Lundy Reservoir, Bishop Creek Canyon,



1 Bishop Creek Powerhouses 3, 5, and 6, Owens Lake, and Rush
2 Creek Powerhouse.

3 (b) The state, *acting through the Secretary of the Resources*
4 *Agency*, shall establish a trust to hold the interests in land conveyed
5 by the electrical corporation. The state shall seek the assistance of
6 qualified nonprofit organizations referenced in Section 815.3 of
7 the Civil Code to establish and operate the trust. The trust shall
8 hold the interests in land conveyed pursuant to subdivision (a) by
9 the electrical corporation.

10 (c) The trust, acting at the direction of the Secretary of the
11 Resources Agency, shall undertake a review process of the lands
12 that will consider the retention of fee title or conservation
13 easement, the use or uses of the lands, including the conservation,
14 natural resource, public recreation, and public trust values of the
15 lands, and including the possible disposition of the lands or
16 interests in land conveyed to the state. The review process shall
17 include formation of an advisory council, chaired by the secretary
18 or his or her designee, that consists equally of representatives of
19 state government, *each local government with jurisdiction over*
20 *the transferred lands, end user water authority interests*, local
21 ~~governments~~, commercial interests, and *local* conservation
22 interests. State government representatives shall be appointed
23 from among the Resources Agency, the Wildlife Conservation
24 Board, the State Lands Commission, the Department of Parks and
25 Recreation, the Department of Fish and Game, and the Coastal
26 Conservancy. Ex officio members may be appointed at the
27 discretion of the secretary. *The review process should include a*
28 *series of public meetings in communities near the lands identified*
29 *in subdivision (a) and in areas potentially affected by land use*
30 *decisions.*

31 (d) *The management plan developed by the state for lands*
32 *transferred pursuant to this section shall be consistent with any*
33 *county general plans, zoning, or such other land use management,*
34 *regulatory, or permitting requirements and procedures.*

35 (e) The purpose of the public review process is to ensure the
36 permanent conservation of these lands for their public interest
37 value, including fish, wildlife, and habitat; compatible human
38 recreation; protection of open space and aesthetic values;
39 preservation of historic and cultural resources; and protection of
40 water quality and watershed functions. An additional objective is



1 to increase management efficiency by consolidating mixed public
2 and electrical corporation lands under public ownership.

3 ~~(e)~~

4 (f) Notwithstanding subdivision (d), nonutility uses of the
5 property existing as of the time the easement or other real property
6 interest is conveyed shall be permitted to continue subject to
7 certification by the Secretary of the Resources Agency that public
8 trust values will obtain a net benefit. If otherwise consistent with
9 existing law, utility uses, including the maintenance, repair,
10 replacement, and installation of public utility infrastructure,
11 including, but not limited to, water and sewer pipelines, and
12 electric and telecommunication lines, existing as of the time the
13 easement or other real property interest is conveyed, shall be
14 permitted to continue. If otherwise consistent with existing law,
15 expansion of hydroelectric utility facilities located on the property
16 as of the time of conveyance to the state shall be permitted, subject
17 to the approval of the state and federal agencies having jurisdiction
18 over any expansion, and subject to certification by the secretary
19 that public trust values will obtain a net benefit by that expansion.

20 ~~(f)~~

21 (g) Notwithstanding subdivision (d), timber harvesting
22 activities for which permits have been obtained or that are eligible
23 to obtain renewed permits as of the effective date of the act that
24 added this section shall be permitted on the conveyed lands,
25 subject to modification based on management and disposition
26 plans approved by the state. Applications for new timber harvest
27 plans subsequent to that effective date shall be granted only upon
28 certification by the Department of Forestry and Fire Protection
29 that is approved by the Department of Fish and Game and the
30 appropriate regional water control board that the activities are
31 accompanied by a mitigation plan that results in a net benefit to
32 public trust resources.

33 ~~(g)~~

34 (h) The maintenance, repair, replacement, and installation of
35 public utility infrastructure, including, but not limited to, water
36 and sewer pipelines, and electric and telecommunications lines for
37 nonutility and other uses shall be allowed, subject to the extent
38 those activities are permitted by the terms of the management and
39 disposition plans approved by the state.

40 ~~(h)~~



1 (i) Income derived from the conveyed lands from activities
2 exclusive of hydropower generation that were authorized by the
3 electrical corporation prior to the effective date of the act that
4 added this section shall remain assets of the electrical corporation
5 or its designees. Income derived from these lands subsequent to
6 that effective date exclusive of hydropower generation shall
7 remain the property of the state and shall be used to defray
8 expenses associated with these property transfers.

9 ~~(i)~~

10 (j) The Secretary of the Resources Agency shall certify that
11 lands found to possess significant public values shall be managed
12 in perpetuity by the state to maintain or enhance those values. The
13 public review process shall not recommend actions that are
14 inconsistent with these objectives. The state shall have the right to
15 impose conditions to protect these conservation, open-space,
16 watershed, and public trust resources for all lands that are
17 eventually transferred or otherwise disposed of by the state
18 following the public review process.

19 ~~(j)~~

20 (k) The state may transfer its title or possessory interests that
21 ensure management in perpetuity for conservation of those public
22 trust values in those lands to the electrical corporation, a *local*
23 *conservancy*, state, federal, or local governmental agencies,
24 special districts, Indian tribes or tribal entities, or nonprofit
25 organizations qualified under Section 170(h) of the Internal
26 Revenue Code and Section 815.3 of the Civil Code, that are
27 competent and appropriate to own or manage the lands as required
28 by this section, along with sale of remaining possessory interest to
29 a compatible third party.

30 ~~(k)~~

31 (l) New or modified economic uses of lands found to possess
32 significant public values may occur if compatible with the primary
33 purpose of protection or enhancement of existing environmental
34 and recreational uses.

35 ~~(l)~~

36 (m) Lands not found to possess significant public values may
37 be used for land exchanges to protect other lands that possess
38 significant public values or may be disposed of to generate income
39 to acquire those other lands.



1 ~~(m) Final management or disposition recommendations~~
 2 ~~concerning the lands identified in subdivision (a) are to be made~~
 3 ~~to the Secretary of the Resources Agency within two years of the~~
 4 ~~effective date of the act adding this section. Pursuant to directives~~

5 *(n) On January 1, 2003, the advisory committee will make*
 6 *recommendations to the Legislature and the Secretary of the*
 7 *Resources Agency about the final management or disposition*
 8 *recommendations concerning the lands identified in subdivision*
 9 *(a). Pursuant to directives of the secretary, and with the same*
 10 *public process established in this section, periodic reviews of the*
 11 *management of these lands or interests in these lands that are*
 12 *transferred to the state by an electrical corporation, are authorized*
 13 *in order to assess the stewardship of public trust resources.*

14 ~~(n)~~

15 *(o) Existing public access on these lands shall be maintained*
 16 *during the public review process unless a different arrangement is*
 17 *agreed upon that is separately negotiated by and between the*
 18 *electric corporation and the state.*

19 ~~(o)~~

20 *(p) Notwithstanding any other provision of law, the electrical*
 21 *corporation shall retain legal responsibility for all environmental*
 22 *liabilities arising by operation of law based on its prior ownership*
 23 *and interest in the lands conveyed to the state. The electrical*
 24 *corporation shall indemnify and hold harmless the state or the trust*
 25 *or the state's successors and assigns against liability arising out of*
 26 *the electrical corporation's use or ownership prior to the transfer,*
 27 *whether that liability is based on ownership in fee or another lesser*
 28 *interest in the conveyed lands.*

29 ~~(p)~~

30 *(q) The Secretary of the Resources Agency alone shall have the*
 31 *authority to transfer, encumber, or dispose of lands or interests in*
 32 *lands conveyed to the state by the electrical corporation, except*
 33 *that the secretary may designate a state agency or department with*
 34 *expertise in land ownership and conveyance transactions to be his*
 35 *or her designee.*

36 ~~(q) With respect to any lands transferred to a trust pursuant to~~
 37 ~~this article, the state shall provide payments in lieu of property~~
 38 ~~taxes to the affected local agency, as defined by subdivision (a) of~~
 39 ~~Section 95 of the Revenue and Taxation Code, in amounts not~~
 40 ~~greater than the property tax revenues that would have been~~



1 ~~received by the local agency if the property had continued to be~~
2 ~~owned by the electrical corporation.~~

3 (r) *With respect to any lands transferred to a trust pursuant to*
4 *this article, the state shall enter into a long-term operations and*
5 *maintenance contract with the electrical corporation for purposes*
6 *of managing those properties upon which leases, licenses, or other*
7 *developments have occurred or which have been permitted by the*
8 *county or the electrical corporation as of the effective date of the*
9 *act adding this section. The operations and maintenance contract*
10 *shall set forth the terms and conditions by which the lands shall be*
11 *managed pursuant to the conservation easements and*
12 *management plans developed by the state. Management*
13 *responsibilities shall include, but not be limited to, all of the*
14 *following:*

15 (1) *Operating and maintaining campgrounds, concessions,*
16 *and other existing developments that the electrical corporation*
17 *operated and maintained as of the effective date of the transfer.*

18 (2) *Managing existing structures and developments on the*
19 *lands, consistent with the terms and conditions of the leases or*
20 *other agreements applicable to the lands, at the time of transfer to*
21 *the state.*

22 (3) *Finalizing a recordation process as described in*
23 *subdivision (t).*

24 (s) *With respect to any lands transferred to a trust pursuant to*
25 *this article, the operations and maintenance contract between the*
26 *state and the electrical corporation shall provide that the*
27 *electrical corporation shall make payments to the county in lieu of*
28 *property taxes as though the electrical corporation continued to*
29 *own all of the lands in fee simple. The State Board of Equalization*
30 *shall continue to assess the lands and determine the amount of the*
31 *payment owed to the county as though the electrical corporation*
32 *continued to own the lands in fee simple. The electrical*
33 *corporation shall be authorized to recover any payments made to*
34 *the county from the ratepayers.*

35 (t) *In coordination with the electrical corporation and the local*
36 *county recorder, the state shall offer to all lease holders or other*
37 *holders of land use rights, an opportunity to file with the state any*
38 *leases, authorization, approvals, licenses, or other documented*
39 *rights to use specific lands not yet used as of the effective date of*
40 *the transfer of the electrical corporation's lands to the state or a*



1 *trust pursuant to this article. Those rights shall be continued by the*
2 *state for the term of the rights as set forth in any documentation.*
3 *The state shall continue the timeframe for the filings for a period*
4 *of one year after notification by the state.*

5 SEC. 13. Section 454.10 is added to the Public Utilities Code,
6 to read:

7 ~~454.10. (a) In order to assure that the service provided by~~
8 ~~electrical corporations is adequate, the commission may require~~
9 ~~each electrical corporation that provides distribution service to~~

10 454.10. (a) *Upon receiving an application from an electrical*
11 *corporation for this purpose, the commission may require or*
12 *authorize the corporation to make direct investments in electric*
13 *generation facilities whose output is dedicated to serve the*
14 *customers connected to its distribution grid.*

15 (b) *After a hearing, the commission shall approve rates*
16 *sufficient to enable the electrical corporation to recover its*
17 *reasonable costs of operation, its reasonable investment in the*
18 *electric generation facilities and a reasonable return on its*
19 *investment, in accordance with Section 451.*

20 (c) *An electric corporation may meet the obligation described*
21 *in this section by entering into projects for electric generation*
22 *facilities jointly with the California Consumer Power and*
23 *Conservation Financing Authority.*

24 (d) *The commission may conduct proceedings, enter orders*
25 *and undertake such actions as it considers necessary or appropriate*
26 *to carry out the provisions of this section.*

27 (e) *This section is declaratory of existing law.*

28 SEC. 14. Section 454.11 is added to the Public Utilities Code,
29 to read:

30 454.11. *In the case of an electrical corporation serving more*
31 *than 4,000,000 customers which is also a gas corporation serving*
32 *fewer than 5,000 customers and which has entered into a binding*
33 *and enforceable agreement pursuant to subdivision (b) of Section*
34 ~~399.21, that has been approved by the commission pursuant to~~
35 ~~subdivision (e) of Section 399.21, the commission shall not~~
36 ~~399.21, the commission may not reduce, prior to January 1, 2006,~~
37 *the authorized rate of return on generation assets below the level*
38 *approved for distribution assets in the electrical corporation's last*
39 ~~general rate case. equity of the electrical corporation below the~~
40 *return authorized in the most recent decision or decisions of the*



1 *commission prior to the effective date of the act adding this section*
2 *to the Public Utilities Code, or modify the capital structure upon*
3 *which that rate of return is established. Electricity Market*
4 *Stabilization Bonds, as defined under Section 399.20, may not be*
5 *considered indebtedness for the purposes of determining an*
6 *electrical corporation's authorized capital structure.*

7 SEC. 15. *Section 1731 of the Public Utilities Code is amended*
8 *to read:*

9 1731. (a) The commission shall set an effective date when
10 issuing an order or decision. The commission may set the effective
11 date of an order or decision prior to the date of issuance of the order
12 or decision.

13 (b) After any order or decision has been made by the
14 commission, any party to the action or proceeding, or any
15 stockholder or bondholder or other party pecuniarily interested in
16 the public utility affected, may apply for a rehearing in respect to
17 any matters determined in the action or proceeding and specified
18 in the application for rehearing. The commission may grant and
19 hold a rehearing on those matters, if in its judgment sufficient
20 reason is made to appear. No cause of action arising out of any
21 order or decision of the commission shall accrue in any court to any
22 corporation or person unless the corporation or person has filed an
23 application to the commission for a rehearing within ~~30~~ 10 days
24 after the date of issuance or within 10 days after the date of
25 issuance in the case of an order issued pursuant to either Article 5
26 (commencing with Section 816) or Article 6 (commencing with
27 Section 851) of Chapter 4 relating to security transactions and the
28 transfer or encumbrance of utility property, *or a financing order*
29 *issued in connection with qualified costs pursuant to Article 16*
30 *(commencing with Section 399.20) of Chapter 2.3. For purposes*
31 *of this article, "date of issuance" means the date when the*
32 *commission mails the order or decision to the parties to the action*
33 *or proceeding.*

34 ~~(c) No cause of action arising out of any order or decision of the~~
35 ~~commission construing, applying, or implementing the provisions~~
36 ~~of Chapter 4 of the Statutes of 2001-02 First Extraordinary~~
37 ~~Session shall accrue in any court to any corporation or person~~
38 ~~unless the corporation or person has filed an application to the~~
39 ~~commission for a rehearing within 10 days after the date of~~
40 ~~issuance of the order or decision. The commission shall issue its~~



1 ~~decision and order on rehearing within 20 days after the filing of~~
2 ~~that application.~~

3 *SEC. 16. Section 9601 of the Public Utilities Code is amended*
4 *to read:*

5 9601. (a) Except with respect to supply options of the nature
6 specified in Section 218, with the exception of paragraph (3) of
7 subdivision (b) of that section, as it existed on December 20, 1995,
8 no person, corporation, electrical corporation, or local publicly
9 owned electric utility or other governmental entity other than a
10 retail customer's existing electric service provider as of December
11 20, 1995, shall provide partial or full electric service to a retail
12 customer of a local publicly owned electric utility unless the
13 customer first confirms in writing an obligation to pay, through
14 tariff or otherwise, to the utility currently providing electric
15 service, a nonbypassable generation-related severance fee or
16 transition charge established by the regulatory body for that utility.
17 The severance fee or transition charge shall be paid directly to the
18 local publicly owned utility providing electricity service in the
19 service area in which the consumer is located.

20 (b) Except as provided in subdivision (a) of Section 374, no
21 local publicly owned electric utility or other governmental entity
22 shall provide partial or full electric service to a retail customer of
23 an electrical corporation unless the customer of that electrical
24 corporation first confirms in writing an obligation to pay, through
25 tariff or otherwise, to the electrical corporation currently
26 providing electric service, a nonbypassable generation-related
27 transition charge established by the regulatory body for that
28 electrical corporation, *and any electrical corporation debt*
29 *repayment set-aside established for that electrical corporation for*
30 *recovery of qualified costs pursuant to Article 16 (commencing*
31 *with Section 399.20) of Chapter 2.3 of Part 1 of Division 1.* The
32 charge shall be paid directly to the electrical corporation providing
33 electricity in the service area in which the consumer is located.

34 (c) No local publicly owned electric utility or electrical
35 corporation shall sell electric power to the retail customers of
36 another local publicly owned electric utility or electrical
37 corporation unless the first utility has agreed to let the second
38 utility make sales of electric power to the retail customers of the
39 first utility.

40 *SEC. 17. Section 80002 of the Water Code is amended to read:*



1 80002. Nothing in this division ~~shall~~ *may* be construed to
 2 reduce or modify any electrical corporation's obligation to serve,
 3 *except to the extent set forth in a definitive agreement*
 4 *implementing the procurement obligations of the department as*
 5 *contemplated by a binding and enforceable agreement, as defined*
 6 *in subdivision (b) of Section 399.21 of the Public Utilities Code.*
 7 *The department may enter into those agreements with an electrical*
 8 *corporation and other parties in furtherance of the foregoing, as*
 9 *it determines to be appropriate. The commission shall issue orders*
 10 ~~it determines are necessary to carry out this section.~~ Nothing in this
 11 section ~~shall~~ *may* be construed to obligate the department for any
 12 procurement cost obligations of any electrical corporation that
 13 may have existed as of ~~the effective date of this section~~ *February*
 14 *1, 2001.*

15 *SEC. 18. Section 80110 of the Water Code is amended to read:*

16 80110. The department shall retain title to all power sold by
 17 it to the retail end use customers. The department shall be entitled
 18 to recover, as a revenue requirement, amounts and at the times
 19 necessary to enable it to comply with Section 80134, and shall
 20 advise the commission as the department determines to be
 21 appropriate. Such revenue requirements may also include any
 22 advances made to the department hereunder or hereafter for
 23 purposes of this division, or from the Department of Water
 24 Resources Electric Power Fund, and General Fund moneys
 25 expended by the department pursuant to the Governor's
 26 Emergency Proclamation dated January 17, 2001. For purposes of
 27 this division and except as otherwise provided in this section, the
 28 Public Utility Commission's authority as set forth in Section 451
 29 of the Public Utilities Code shall apply, except any just and
 30 reasonable review under Section 451 shall be conducted and
 31 determined by the department. The commission may enter into an
 32 agreement with the department with respect to charges under
 33 Section 451 for purposes of this division, and that agreement shall
 34 have the force and effect of a financing order adopted in
 35 accordance with Article ~~5.5~~ *16* (commencing with Section ~~840~~
 36 *399.20*) of Chapter ~~4~~ *2.3* of Part 1 of Division 1 of the Public
 37 Utilities Code, as determined by the commission. In no case shall
 38 the commission increase the electricity charges in effect on the
 39 date that the act that adds this section becomes effective for
 40 residential customers for existing baseline quantities or usage by



1 those customers of up to 130 percent of existing baseline
 2 quantities, until such time as the department has recovered the
 3 costs of power it has procured for the electrical corporation’s retail
 4 end use customers as provided in this division. ~~After the passage~~
 5 ~~of such period of time after the effective date of this section as shall~~
 6 ~~be determined by the commission, the right of retail end use~~
 7 ~~customers pursuant to Article 6 (commencing with Section 360)~~
 8 ~~of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code~~
 9 ~~to acquire service from other providers shall be suspended until the~~
 10 ~~department no longer supplies power hereunder.~~ The department
 11 shall have the same rights with respect to the payment by retail end
 12 use customers for power sold by the department as do providers of
 13 power to such customers.

14 *SEC. 19. Notwithstanding any provision of law, the Director*
 15 *of the Department of Water Resources, acting on behalf of the*
 16 *state, may execute and deliver an agreement consistent with*
 17 *Section 399.21 of the Public Utilities Code with any electrical*
 18 *corporation.*

19 *SEC. 20.* If any part of the provisions of this act, or the
 20 application thereof to any person or circumstance, is held invalid,
 21 the remainder of this act, including the application of such part or
 22 provision to other persons or circumstances, shall not be affected
 23 thereby, and this act shall otherwise continue in full force and
 24 effect and shall otherwise be fully operative. To this end, the
 25 provisions of this act, and each of them, are hereby declared to be
 26 severable.

27 ~~SEC. 16.—~~

28 *SEC. 21.* No reimbursement is required by this act pursuant
 29 to Section 6 of Article XIII B of the California Constitution
 30 because the only costs that may be incurred by a local agency or
 31 school district will be incurred because this act creates a new crime
 32 or infraction, eliminates a crime or infraction, or changes the
 33 penalty for a crime or infraction, within the meaning of Section
 34 17556 of the Government Code, or changes the definition of a
 35 crime within the meaning of Section 6 of Article XIII B of the
 36 California Constitution.

O

