

AMENDED IN ASSEMBLY AUGUST 30, 2001

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**

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**Introduced by Senators Polanco and Sher**

May 17, 2001

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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 365.2, 365.3, 367.2, ~~454.10~~, and ~~454.11~~ to, and to add Article 15.5 (commencing with Section 399.10) and 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, ~~80010~~, 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 a trust~~ *application of revenues from electricity market stabilization bonds to repay specified debt, confirmation of specified payments relating to qualified facilities, restriction on paying a distribution to shareholders of cash, liquid assets, or property*, termination of certain actual or potential litigation, agreement to resume procurement of full electricity requirements for its service area as soon as it is 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 *with specified requirements* to purchase transmission facilities owned by the electrical corporation at 2 times the net book value, and agreement to administer any power procurement contract as the Department of Water Resources may request. The bill would ~~express the intent of the Legislature~~ *also require the electrical corporation to agree in the agreement* that a specified tax refund be applied to ~~reduction~~ *reduce or elimination of* eliminate past debt of the electrical corporation.

*The bill would require the commission, on or before January 1, 2002, to determine the allocation of electricity to be provided by the Department of Water Resources under its power procurement contracts to the customers of each electrical corporation. The bill would require each electrical corporation to file a procurement plan with the commission within a specified period after the commission determines that allocation of electricity. The bill would require the commission to review and adopt the procurement plan, as specified.*

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, which bonds may



not exceed *qualified costs* of \$2,500,000,000 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 in the electrical corporation's service territory with a maximum peak demand exceeding 20 kilowatts, based on the usage of the prior year *excluding specified standby service*. The bill would enact various other related provisions in that regard, including authorizing the issuance of electricity market stabilization bonds by a financing entity, as defined, secured by the debt repayment set-aside, and requiring ~~the approval of the commission~~ *approval* of those bonds. The bill would ~~state the intent of the Legislature that~~ *prohibit* revenues derived from the issuance of electricity market stabilization bonds ~~not to~~ be expended on debt or charges imposed on the electrical corporation by the ~~Independent~~ *independent* Power Exchange, the Independent System Operator, or wholesale electricity suppliers for energy purchased on or before January 18, 2001. *The bill would exempt specified customer load provided by customer generation, as defined, from having to pay for the qualified costs.*

(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 shall not *on or after January 1, 2002* 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 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 permit a residential end-use customer to purchase electric power from an electric service provider if the power is 80% from a renewable energy source as approved by the State Energy Resources Conservation and Development Commission, and the residential user pays 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.*

*The bill would also authorize, commencing January 1, 2003, a retail end-use customer to elect service from an ~~alternate~~ electric service 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. *The bill would exempt from having to pay exit fees certain retail end-use customers who were parties to direct transaction contracts commencing before specified dates. The bill would also provide for new customer generation, as specified.**

(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~~ *50% of the first one billion dollars, and 100% of all additional dollars*, 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 any refunds, reimbursements, or other financial penalties ordered by the commission in a specified proceeding to be paid with respect to the electrical corporation to be credited to the Ratepayer Benefit 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, would thereby impose a state-mandated local program.

(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 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.

(10) *Existing law permits the Department of Water Resources through rates and charges to recover its electric procurement costs and to repay bonds, as specified.*

*This bill would make all rates, charges, and fees established by the Public Utilities Commission to recover the department's costs, as defined, nonbypassable, except as specified. The bill would make these rates, charges, and fees disconnectible to the same extent as rates, charges, and fees payable to an electrical corporation. The bill would require the commission for customer rates established by the commission after the effective date of this act, in allocating the department's financing costs, as defined, to customer rates for department power purchases, to allocate those costs at a uniform rate per kilowatthour of department-procured electricity consumed by all bundled service customers.*

(11) This bill would enact other related provisions.

~~(11)~~

(12) 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 restoring a utility’s creditworthiness should  
29 not be borne by the state’s ratepayers alone, but should be achieved  
30 through contributions from the utility’s shareholders, creditors,  
31 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~~ *do all of the following*:  
 3 (1) *Set the conditions under which an electrical corporation*  
 4 *may become creditworthy and meet its obligations to serve*  
 5 *consumers with reliable electricity service at just and reasonable*  
 6 *rates.*  
 7 (2) *Provide guidance to electrical corporations and the Public*  
 8 *Utilities Commission for the prospective procurement of electricity*  
 9 *by an electrical corporation.*  
 10 (3) *Ensure that each electrical corporation whose customers*  
 11 *are currently being served by the Department of Water Resources*  
 12 *resumes responsibility for procurement needs that are not being*  
 13 *met by the Department of Water Resources on January 1, 2003, or*  
 14 *the date of restoration of its credit rating to investment grade.*  
 15 (4) *Direct the Public Utilities Commission to review each*  
 16 *electrical corporation’s procurement plan in a manner that assures*  
 17 *creation of a diversified procurement portfolio, assures just and*  
 18 *reasonable electricity rates, provides certainty to the electrical*  
 19 *corporation in order to enhance its financial stability and*  
 20 *creditworthiness, and eliminates the need, with specified*  
 21 *exceptions, for after-the-fact reasonableness review of an*  
 22 *electrical corporation’s prospective electricity procurement*  
 23 *performed consistent with an approved procurement plan.*

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

26  
 27 CHAPTER 5.6. CALIFORNIA RENEWABLES PORTFOLIO STANDARDS  
 28 PROGRAM  
 29

30 25465. For purposes of this chapter, the following terms have  
 31 the following meanings.

32 (a) “Eligible renewable energy resource” means an electric  
 33 generating facility or solar thermal energy system that reduces the  
 34 consumption of electricity through the use of renewable resources  
 35 and that meets all of the following criteria:

- 36 (1) Uses wind, solar, geothermal, or biomass as its primary  
 37 fuel.  
 38 (2) Improves the resource diversity in the electricity market  
 39 that serves the state, and increases the reliability of the state’s  
 40 electricity system. The commission shall deem an electric



1 generating facility or solar thermal energy system to satisfy this  
2 requirement if ~~it meets any~~ *at least* one of the following criteria  
3 *are met*:

4 (A) It is located within or interconnected to the control area of  
5 the California Independent System Operator, the Los Angeles  
6 Department of Water and Power, or the Imperial Irrigation  
7 District.

8 (B) Its power is sold under a direct bilateral contract to a retail  
9 seller and its energy is scheduled into the control area of the  
10 California Independent System Operator, the Los Angeles  
11 Department of Water and Power, or the Imperial Irrigation  
12 District.

13 (C) It meets other fact-based criteria established by the  
14 commission.

15 (b) “Eligible existing renewable energy resource” means an  
16 electric generating facility that satisfies all criteria in subdivision  
17 (a) and ~~is~~ *was* in existence before January 1, 2001. Any facility that  
18 sells its output to an electrical corporation under a contract entered  
19 into prior to 1996 under the federal Public Utilities Regulatory  
20 Policies Act of 1978 (P.L. 95-617) shall be considered an eligible  
21 existing renewable energy resource.

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

25 (1) The facility commenced initial operation on or after  
26 January 1, 2001.

27 (2) The output represents incremental production from  
28 repowered or refurbished existing facilities and project additions  
29 completed on or after January 1, 2001, as measured by the  
30 production of kilowatthours above the five-year average of the  
31 kilowatthours delivered from the project during the five-year  
32 period ending December 31, 2000.

33 (3) The output represents incremental output above levels  
34 specified in contracts for facilities defined in subdivision (b).

35 (d) (1) For an electrical corporation, “renewable energy  
36 credit” means a tradable certificate of proof, certified by the  
37 commission, that one kilowatthour of electricity was generated by  
38 an eligible renewable energy resource.

39 (2) For a local publicly owned electric utility, “renewable  
40 energy credit” means a tradable certificate that one kilowatthour



1 of electricity was generated by an eligible new renewable energy  
2 resource.

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

4 (1) Agricultural crops and agricultural wastes and residues.

5 (2) Landfill gas.

6 (3) Solid wood waste materials including waste pallets, crates,  
7 dunnage, manufacturing and construction wood wastes (other than  
8 pressure-treated, chemically treated or lead-painted wood wastes),  
9 and landscape or right-of-way tree trimmings.

10 (4) Wood and wood wastes and residues that meet all of the  
11 following requirements:

12 (A) Have been harvested pursuant to an approved timber  
13 harvest plan prepared in accordance with the Z’berg-Nejedly  
14 Forest Practice Act of 1973 (Chapter 8 (commencing with Section  
15 4511) of Part 2 of Division 4.

16 (B) Have been harvested for purposes of forest fire fuel  
17 reduction or forest-stand improvement.

18 (C) Do not transport or cause the transportation of species  
19 known to harbor insect or disease pests outside zones of infestation  
20 or current quarantine zones, as identified by the Department of  
21 Food and Agriculture or the State Board of Forestry and Fire  
22 Protection.

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

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

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

30 ~~(2) For purposes of this subdivision, “retail seller” does not~~

31 (2) “Retail seller” does not include retail load served on site or  
32 under an over-the-fence arrangement consistent with Section 218  
33 of the Public Utilities Code ~~or~~, or a local publicly owned electrical  
34 ~~utilities utility~~, as defined in subdivision (d) of Section 9604 of the  
35 Public Utilities Code.

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



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

4 25465.3. The commission, in consultation with the Public  
5 Utilities Commission, and the Independent System Operator or  
6 any successor entity, shall do all of the following:

7 (a) Certify eligible new and existing renewable energy  
8 resources that it determines meet the criteria described in  
9 subdivisions (a) ~~and (b)~~, (b), and (c) of Section 25465.

10 (b) Design and implement a system of tradable renewable  
11 energy credits to facilitate and verify compliance by retail sellers  
12 and to ensure that the renewable energy represented by those  
13 credits is counted only once for the purpose of meeting the  
14 portfolio standard of this or any other state or for verifying retail  
15 product claims in this or any other state. The commission may  
16 issue credits to the owners of eligible new renewable energy  
17 resources.

18 (c) Allocate and administer funds from the Renewable  
19 Resource Trust Fund ~~established under paragraph (8) of~~  
20 ~~subdivision (f) of Section 840 of the Public Utilities Code to~~  
21 complement the provisions of this chapter, to support a diversity  
22 of renewable resources and technologies, and to promote  
23 emerging renewable technologies.

24 25465.5. (a) The commission shall establish a portfolio  
25 standard requiring all retail sellers to purchase or generate a  
26 minimum quantity of output from available eligible new  
27 renewable energy resources as a specified percentage of total  
28 kilowatthours sold to its retail end-use customers. The commission  
29 shall establish the minimum uniform percentage of eligible new  
30 renewable energy resources to be procured by retail sellers  
31 according to the following schedule, and to the extent there is  
32 sufficient renewable resource supply to meet these procurement  
33 targets:

- 34 (1) At least 1 percent by June 1, 2003.  
35 (2) At least 2 percent by January 1, 2005.  
36 (3) At least 5 percent by January 1, 2007.  
37 (4) At least 8 percent by January 1, 2009.  
38 (5) At least 10 percent beginning on January 1, 2010 and  
39 continuing until January 1, 2020.



1 (6) (A) The commission shall increase the percentage of retail  
2 sales required from eligible new renewable energy resources if an  
3 increase is necessary, in combination with the statewide  
4 contribution of eligible existing renewable energy resources, to  
5 produce the minimum percentages of total statewide retail sales  
6 from all eligible renewable energy resources according to the  
7 following schedule:

8 (i) 10 percent by June 1, 2003.

9 (ii) 12 percent by January 1, 2005.

10 (iii) 15 percent by January 1, 2007.

11 (iv) 18 percent by January 1, 2009.

12 (v) 20 percent by January 1, 2010.

13 (B) The commission shall notify all retail ~~providers~~ *sellers* at  
14 least one year prior to increasing the requirement for procuring  
15 eligible new renewable resources.

16 (b) Notwithstanding any other requirement of this section, the  
17 commission shall establish a mechanism to ensure that compliance  
18 with the portfolio standard will not result in incremental  
19 procurement costs for retail sellers that exceed one and one half  
20 cents (\$0.015) per kilowatthour of eligible renewable energy  
21 resource generation in 2001 dollars. The calculation of  
22 incremental procurement costs shall be determined by the price of  
23 renewable energy credits established pursuant to subdivision (b)  
24 of Section 25465.3.

25 (c) Each electrical corporation shall include plans to meet its  
26 obligations pursuant to this section as part of a procurement plan  
27 submitted to the Public Utilities Commission, and the Public  
28 Utilities Commission shall authorize each electrical corporation to  
29 fully recover in rates all reasonable costs of implementing and  
30 administering the California Renewables Portfolio Standard  
31 authorized pursuant to this section.

32 25465.7. The commission shall commence proceedings for  
33 implementing the California Renewables Portfolio Standard on or  
34 before 90 days after the effective date of this section. The  
35 commission shall adopt final implementing regulations on or  
36 before June 1, 2002.

37 25465.9. The Department of Water Resources shall make all  
38 efforts it determines to be reasonable to comply with this chapter.

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



1 SEC. 3. Section 330 is added to the Public Utilities Code, to  
2 read:

3 330. (a) The Legislature finds and declares all of the  
4 following:

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

9 (2) Reliable electric service is of utmost importance to the  
10 safety, health, and welfare of the state's citizenry and economy. It  
11 is the intent of the Legislature that electric industry restructuring  
12 should enhance the reliability of the interconnected regional  
13 transmission systems, and provide strong coordination and  
14 enforceable protocols for all users of the power grid.

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

18 (4) Reliable electric service depends on conscientious  
19 inspection and maintenance of transmission and distribution  
20 systems.

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

24 (6) The decision of the California Public Utilities Commission  
25 in Decision 95-12-063, modified by Decision 96-01-009, to  
26 diminish the obligation of regulated electric utilities to serve their  
27 California customers with electric energy has severely impacted  
28 the delivery of safe and reliable electric service at a just and  
29 reasonable price.

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

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



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

4 (10) Wholesale electricity markets have been characterized by  
5 the existence of seller market power, and will continue to be  
6 characterized in the future by seller market power, until state and  
7 federal authorities act cooperatively to eliminate that market  
8 power.

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

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

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

20 (14) The wholesale electricity market institutions created by  
21 the commission in ~~D.~~ *Decision* 95-12-063, and envisioned by  
22 Assembly Bill 1890 (*Ch. 854, Stats. 1996*) have collapsed, with the  
23 result that there is no transparent day ahead or hour ahead market  
24 and no pricing transparency in wholesale markets at the present  
25 time or for the foreseeable future. Specifically:

26 (A) The Power Exchange as envisioned by Assembly Bill 1890  
27 is defunct.

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

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

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

39 (15) The existence of seller market power in the California  
40 wholesale electric markets affecting California has been formally



1 found and determined by the Federal Energy Regulatory  
2 Commission (FERC).

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

6 (17) In order to restore the credit and operational capability of  
7 the utilities and to enable the DWR to make purchases at  
8 market-power driven prices, the commission has increased retail  
9 electric rates by an annual amount of over \$7 billion since January  
10 4, 2001, so that electric rates in California are among the highest  
11 in the nation.

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

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

20 (20) The state has a duty to its people to assure the reliability  
21 of the electricity supply system, which has been undermined by the  
22 orders of the ~~Public Utilities Commission~~ *commission* in Decision  
23 95-12-063.

24 (21) The expectations and assumptions that the policy changes  
25 embodied in Assembly Bill 1890 would result in consumer  
26 benefits, enhanced reliability, lower rates, and technological  
27 innovation have proven illusory.

28 (22) Many owners of powerplants located within the California  
29 ISO control area are not required to consider the local need for  
30 power before purporting to schedule their supplies for export to  
31 other control areas. Most generators in other control areas  
32 throughout the western interconnection are controlled by  
33 vertically-integrated utilities with an obligation to assure adequate  
34 service to the customers within their respective service territories.

35 (23) It is essential to the public health, safety, and welfare of  
36 the people of the state that the ~~California~~ ISO have control over the  
37 unit commitment and dispatch of powerplants located within the  
38 ISO control area in order to assure the provision of reliable service  
39 to the customers located therein.



1 (24) Fully empowering state entities, including the  
2 commission, the utilities, the ISO ~~and the DWR~~, *and the DWR*, to  
3 overcome seller market power, reduce prices for electric energy,  
4 and restore grid reliability is in the public interest.

5 (b) The purpose of this chapter is to return electrical  
6 corporations to creditworthiness sufficient to enable them to invest  
7 in generation and procure energy at reasonable and competitive  
8 costs. The Legislature finds this purpose is in the public interest.

9 SEC. 4. Section 341.5 of the Public Utilities Code is amended  
10 to read:

11 341.5. (a) The Independent System Operator bylaws shall  
12 contain provisions that identify those matters specified in  
13 subdivision (b) of Section 339 as matters within state jurisdiction.  
14 The bylaws shall also contain provisions which state that  
15 California's bylaws approval function with respect to the matters  
16 specified in subdivision (b) of Section 339 shall not preclude the  
17 Federal Energy Regulatory Commission from taking any action  
18 properly within its jurisdiction necessary to address undue  
19 discrimination or other violations of the Federal Power Act (16  
20 U.S.C.A. Sec. 791a et seq.) or to exercise any other commission  
21 responsibility under the Federal Power Act.

22 (b) Any necessary bylaw changes to implement the provisions  
23 of ~~Section~~ *Sections* 335, 337, 338, 339, or subdivision (a) of this  
24 section, or changes required pursuant to an agreement as  
25 contemplated by subdivision (a) of this section with a participating  
26 state for a regional organization, shall be effective upon approval  
27 of the respective governing boards and the Oversight Board and  
28 acceptance for filing by the Federal Energy Regulatory  
29 Commission.

30 SEC. 5. Article 4 (commencing with Section 355) of Chapter  
31 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

32 SEC. 6. Section 359 of the Public Utilities Code is amended  
33 to read:

34 359. (a) It is the intent of the Legislature to improve  
35 reliability, to support mutual assistance among load serving  
36 entities, to achieve equitable pricing policies in the western states,  
37 and to improve the access of consumers served by the Independent  
38 System Operator to functional and transparent markets.

39 (b) The preferred means by which the objectives described in  
40 subdivision (a) should be realized is through the adoption of a



1 regional compact or other comparable agreement among  
2 cooperating party states.

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

5 (1) An equitable process for the appointment or confirmation  
6 by party states of members of the governing board of the regional  
7 organization.

8 (2) Mechanisms by which each party state, jointly or  
9 separately, can oversee effectively the actions of the Independent  
10 System Operator as those actions relate to the assurance of  
11 electricity system reliability within the party state and to matters  
12 that affect electricity sales to the retail customers of the party state  
13 or otherwise affect the general welfare of the electricity consumers  
14 and the general public of the party state.

15 (3) The adherence by publicly owned and investor-owned  
16 utilities located in party states to enforceable standards and  
17 protocols to protect the reliability of the interconnected regional  
18 transmission and distribution systems.

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

20 ~~SEC. 7.5. Section 365 of the Public Utilities Code is amended~~  
21 ~~to read:~~

22 ~~365. The actions of the commission pursuant to this chapter~~  
23 ~~shall be consistent with the findings and declarations contained in~~  
24 ~~Section 330. In addition, the commission shall do all of the~~  
25 ~~following:~~

26 ~~(a) Facilitate the efforts of the state's electrical corporations to~~  
27 ~~develop and obtain authorization from the Federal Energy~~  
28 ~~Regulatory Commission for the creation and operation of an~~  
29 ~~Independent System Operator and an independent Power~~  
30 ~~Exchange, for the determination of which transmission and~~  
31 ~~distribution facilities are subject to the exclusive jurisdiction of the~~  
32 ~~commission, and for approval, to the extent necessary, of the cost~~  
33 ~~recovery mechanism established as provided in Sections 367 to~~  
34 ~~376, inclusive. The commission shall also participate fully in all~~  
35 ~~proceedings before the Federal Energy Regulatory Commission in~~  
36 ~~connection with the Independent System Operator and the~~  
37 ~~independent Power Exchange, and shall encourage the Federal~~  
38 ~~Energy Regulatory Commission to adopt protocols and~~  
39 ~~procedures that strengthen the reliability of the interconnected~~  
40 ~~transmission grid, encourage all publicly owned utilities in~~



1 ~~California to become full participants, and maximize~~  
2 ~~enforceability of such protocols and procedures by all market~~  
3 ~~participants.~~

4 ~~(b) (1) Authorize direct transactions between electricity~~  
5 ~~suppliers and end-use customers, subject to implementation of the~~  
6 ~~nonbypassable charge referred to in Sections 367 to 376, inclusive.~~  
7 ~~Direct transactions shall commence simultaneously with the start~~  
8 ~~of an Independent System Operator and Power Exchange referred~~  
9 ~~to in subdivision (a). The simultaneous commencement shall~~  
10 ~~occur as soon as practicable, but no later than January 1, 1998. The~~  
11 ~~commission shall develop a phase-in schedule at the conclusion of~~  
12 ~~which all customers shall have the right to engage in direct~~  
13 ~~transactions. Any phase-in of customer eligibility for direct~~  
14 ~~transactions ordered by the commission shall be equitable to all~~  
15 ~~customer classes and accomplished as soon as practicable,~~  
16 ~~consistent with operational and other technological~~  
17 ~~considerations, and shall be completed for all customers by~~  
18 ~~January 1, 2002.~~

19 ~~(2) Customers shall be eligible for direct access irrespective of~~  
20 ~~any direct access phase-in implemented pursuant to this section if~~  
21 ~~at least one-half of that customer's electrical load is supplied by~~  
22 ~~energy from a renewable resource provider certified pursuant to~~  
23 ~~Section 383, provided however that nothing in this section shall~~  
24 ~~provide for direct access for electric consumers served by~~  
25 ~~municipal utilities unless so authorized by the governing board of~~  
26 ~~that municipal utility.~~

27 ~~(c) Notwithstanding subdivision (b), the commission may not~~  
28 ~~authorize any new or replacement direct transactions for retail~~  
29 ~~customers until January 1, 2003. Commencing January 1, 2003,~~  
30 ~~any retail end-use customer may elect to purchase power through~~  
31 ~~a direct transaction during an open enrollment period without~~  
32 ~~being subject to subdivision (d) when the total load that could be~~  
33 ~~served within the service territory of the electrical corporation~~  
34 ~~through direct transactions is less than or equal to the difference~~  
35 ~~between the total load within the service territory of the electrical~~  
36 ~~corporation and the sum of that electrical corporation's retained~~  
37 ~~generation, electrical corporation power purchase contracts, and~~  
38 ~~long term power purchase contracts procured by the department to~~  
39 ~~serve that electrical corporation's customers. A percentage of the~~  
40 ~~load available for direct transactions under this subdivision shall~~



1 be set aside for residential and small commercial customers with  
2 peak loads less than or equal to 20 kilowatthours. The commission  
3 shall determine the percentage of load that shall be set aside for the  
4 customers under this subdivision.

5 (1) The department shall submit information on its long term  
6 power purchase contracts to the commission in a time frame that  
7 allows the commission to meet its obligations under this  
8 subdivision. Within 90 days after the effective date, and every 6  
9 months thereafter, the commission shall determine and publish the  
10 load available for direct transactions, which is not subject to  
11 subdivision (d), and the percentage of load set aside for residential  
12 and commercial customers.

13 (2) Within 30 days after the date of publishing the load  
14 available for direct transactions, the commission shall establish an  
15 open enrollment period. Large commercial and industrial  
16 customers with peak loads greater than 20 kilowatthours electing  
17 to take service through direct transactions shall submit a notice to  
18 switch to the electrical corporation within 60 days after date that  
19 the available load is published. Residential and small commercial  
20 customers with peak loads less than or equal to 20 kilowatthours  
21 electing to take service through direct transactions shall submit a  
22 notice to switch to the electrical corporation within 180 days after  
23 the date that the available load is published. The commission shall  
24 determine the percentage of total load represented by each  
25 customer class and shall allocate load availability for direct  
26 transactions in these same proportions.

27 (d) Commencing January 1, 2003, any retail end-use customer  
28 purchasing power from an electrical corporation may elect to  
29 purchase power from an alternate provider upon payment of the  
30 fees described in subdivision (e) and, unless the exception  
31 described in subdivision (f) applies, the fee described in  
32 subdivision (f).

33 (e) Any retail end-use customer electing to purchase power  
34 from an alternate provider pursuant to subdivision (d) shall pay an  
35 exit fee equal to the excess, if any, of the customer's proportionate  
36 share of total actual procurement costs, including financing costs  
37 and proportionate share of administrative costs associated with  
38 this section, incurred by the Department of Water Resources  
39 during the period during which the customer purchased power  
40 from the Department of Water Resources pursuant to Division 27



1 ~~(commencing with Section 80000) of the Water Code, over the~~  
2 ~~revenues collected by the Department of Water Resources from the~~  
3 ~~customer during that period, as determined by the Department of~~  
4 ~~Water Resources.~~

5 ~~(f) (1) In addition to paying the fee described in subdivision~~  
6 ~~(e), any retail end-use customer electing to purchase power from~~  
7 ~~an alternate provider pursuant to subdivision (d) shall also pay an~~  
8 ~~additional exit fee equal to the customer's proportionate share of~~  
9 ~~the Department of Water Resource's estimated net unavoidable~~  
10 ~~cost of power procurement for the period commencing~~  
11 ~~immediately after the commencement of purchases from an~~  
12 ~~alternate provider through the expiration of any then existing~~  
13 ~~contracts for power entered into by the Department of Water~~  
14 ~~Resources, as the proportionate share and unavoidable cost are~~  
15 ~~determined by the Department of Water Resources, unless the~~  
16 ~~exception in paragraph (2) applies.~~

17 ~~(2) Retail end-use customers electing to purchase power from~~  
18 ~~an alternate provider may not be required to pay the fee described~~  
19 ~~in this subdivision to the extent that, as of the customer's~~  
20 ~~commencement of purchase from an alternate provider, the total~~  
21 ~~load, measured in aggregate annual megawatt hours, available for~~  
22 ~~direct transactions within the service territory of the electrical~~  
23 ~~corporation, as determined by the commission pursuant to~~  
24 ~~subdivision (h) is less than or equal to the difference between the~~  
25 ~~total load within the service territory of the electrical corporation~~  
26 ~~and the sum of the power available from that electrical~~  
27 ~~corporation's retained generation, then existing electrical~~  
28 ~~corporation power purchase contracts, and power purchase~~  
29 ~~contracts procured by the Department of Water Resources to serve~~  
30 ~~customers within that electrical corporation's service territory.~~

31 ~~(g) Nothing in this section relieves customers of the~~  
32 ~~nonbypassable charges for qualified costs provided for in Section~~  
33 ~~369.~~

34 ~~(h) The commission shall adopt regulations regarding the~~  
35 ~~ability of direct transaction customers to become electrical~~  
36 ~~corporation customers. The regulations may include a requirement~~  
37 ~~that direct transaction customers give reasonable notice to the~~  
38 ~~electrical corporation before the electrical corporation is required~~  
39 ~~to provide service to those customers.~~



1 (i) ~~“Effective date,” for purposes of this section, means the~~  
2 ~~effective date of the act amending this section in the 2001-02~~  
3 ~~Second Extraordinary Session.~~

4 ~~SEC. 8. Section 365.1 is added to the Public Utilities Code, to~~  
5 ~~read:~~

6 ~~365.1. The actions of the commission pursuant to this chapter~~  
7 ~~shall be consistent with the findings and declarations contained in~~  
8 ~~Section 330.~~

9 *SEC. 7.5. Section 365.1 is added to the Public Utilities Code,*  
10 *to read:*

11 *365.1. The actions of the commission pursuant to this chapter*  
12 *shall be consistent with the findings and declarations contained in*  
13 *Section 330.*

14 ~~SEC. 8. Section 365.2 is added to the Public Utilities Code, to~~  
15 ~~read:~~

16 *365.2. (a) Notwithstanding any other provision of law, the*  
17 *right of retail end-use customers to enter into new contracts for*  
18 *direct transactions shall be suspended as of August 25, 2001, and*  
19 *the commission may not authorize any new or replacement direct*  
20 *transactions for retail end-use customers until January 1, 2003,*  
21 *and then only pursuant to this section.*

22 *(b) Commencing January 1, 2003, any retail end-use customer*  
23 *purchasing power from an electrical corporation may elect to*  
24 *purchase power from an electric service provider upon payment of*  
25 *the fee described in subdivision (c) and, unless the exception*  
26 *described in subdivision (d) applies, the fee described in*  
27 *subdivision (d).*

28 *(c) Any retail end-use customer electing to purchase power*  
29 *from an electric service provider pursuant to subdivision (b) shall*  
30 *pay an exit fee equal to the excess, if any, of the customer’s*  
31 *proportionate share of total actual procurement costs, including*  
32 *financing costs and proportionate share of administrative costs*  
33 *associated with this section, incurred by the Department of Water*  
34 *Resources during the period during which the customer purchased*  
35 *power from the Department of Water Resources pursuant to*  
36 *Division 27 (commencing with Section 80000) of the Water Code,*  
37 *over the revenues collected by the Department of Water Resources*  
38 *from the customer during that period, as determined by the*  
39 *Department of Water Resources.*



1 (d) (1) In addition to paying the fee described in subdivision  
2 (c), a retail end-use customer electing to purchase power from an  
3 electric service provider pursuant to subdivision (b) shall also pay  
4 an additional exit fee equal to the customer's proportionate share  
5 of the Department of Water Resource's estimated net unavoidable  
6 cost of power procurement for the period commencing  
7 immediately after the commencement of purchases from an  
8 alternate provider through the expiration of all then existing  
9 contracts for power entered into by the Department of Water  
10 Resources, as the proportionate share and unavoidable cost are  
11 determined by the Department of Water Resources, unless the  
12 exception in paragraph (2) applies.

13 (2) A retail end-use customer electing to purchase power from  
14 an electric service provider may not be required to pay the fee  
15 described in this subdivision to the extent that, as of the customer's  
16 commencement of purchase from an alternate provider, the total  
17 load, measured in aggregate annual megawatt hours, available for  
18 direct transactions within the service territory of the electrical  
19 corporation, as determined by the commission, is less than the  
20 difference between the total load within the service territory of the  
21 electrical corporation and the sum of the electrical corporation's  
22 retained generation as of August 24, 2001, and the minimum  
23 delivery obligations under then existing power purchase contracts  
24 of that electrical corporation as of August 24, 2001, and power  
25 purchase contracts, not including renewals effectuated at the  
26 discretion of the Department of Water Resources, procured by the  
27 Department of Water Resources to serve customers within that  
28 electrical corporation's service territory as of August 24, 2001.

29 (e) (1) The department shall submit information on its long  
30 term power purchase contracts to the commission in a time frame  
31 that allows the commission to meet its obligations under this  
32 subdivision. Within 90 days after the effective date, and every 6  
33 months thereafter, the commission shall determine and publish the  
34 load available for direct transactions, which is not subject to  
35 subdivision (d).

36 (2) Within 30 days after the date of publishing the load  
37 available for direct transactions, the commission shall establish  
38 an open enrollment period. Any customer electing to take service  
39 through direct transactions shall submit a notice to switch to the



1 *electrical corporation within 90 days after the date that the*  
2 *available load was published.*

3 *(f) Nothing in this section relieves customers of the*  
4 *nonbypassable charges for qualified costs provided for in Section*  
5 *369.*

6 *(g) The commission shall adopt regulations regarding the*  
7 *ability of direct transaction customers to become electrical*  
8 *corporation customers. The regulations may include a*  
9 *requirement that direct transaction customers give reasonable*  
10 *notice to the electrical corporation before the electrical*  
11 *corporation is required to provide service to those customers.*

12 *(h) (1) A retail end-use customer that was a party to a direct*  
13 *transaction contract with a term commencing on or before May 1,*  
14 *2000, and extending through August 24, 2001, or later, may not be*  
15 *subject to any charge associated with any power purchase or*  
16 *financing costs incurred by the Department of Water Resources or*  
17 *its successor.*

18 *(2) A retail end-use customer that took continuous service*  
19 *under a direct transaction contract for the period commencing on*  
20 *or before May 1, 2000, and extending through January 17, 2001,*  
21 *or later, may not be subject to any charge associated with qualified*  
22 *costs pursuant to subdivision (f) of Section 399.20. Such a charge*  
23 *may not be assessed against facilities operated by the University*  
24 *of California or California State University.*

25 *(3) A retail end-use customer that was a party to a contract for*  
26 *a direct transaction with a term commencing on or after January*  
27 *17, 2001, through August 24, 2001, shall not be subject to any*  
28 *charge associated with power purchase costs incurred by the*  
29 *Department of Water Resources or its successor, for energy*  
30 *deliveries following the date on which the load begins to receive*  
31 *service under the direct transaction, provided that the commission*  
32 *finds that the execution of a direct transaction during the period*  
33 *specified in this paragraph shall not result in additional stranded*  
34 *costs.*

35 *(i) Notwithstanding subdivision (a), or any other provision of*  
36 *law, a residential end-use customer may at any time elect to*  
37 *purchase electricity from an electric service provider if the*  
38 *electrical energy is at least 80 percent from renewable energy*  
39 *sources as determined by the State Energy Conservation and*  
40 *Development Commission. A residential end-use customer that*



1 *elects to purchase electrical power pursuant to this subdivision*  
2 *shall pay the fee required under subdivision (c).*

3 (j) *“Effective date,” for purposes of this section, means the*  
4 *effective date of the act adding this section in the 2001–02 Second*  
5 *Extraordinary Session.*

6 SEC. 8.5. *Section 365.3 is added to the Public Utilities Code,*  
7 *to read:*

8 365.3. (a) *For purposes of this section, “customer*  
9 *generation” means a generating facility that meets both of the*  
10 *criteria set forth in paragraphs (1) and (2), or the criterion set*  
11 *forth in paragraph (3):*

12 (1) *The facility supplies the retail electricity user with electric*  
13 *energy using private transmission lines or utility transmission*  
14 *lines paid for and dedicated to the retail electricity user.*

15 (2) *The retail electricity user or its affiliate, pursuant to*  
16 *paragraph (1) of subdivision (a) of Section 372, holds an*  
17 *ownership interest in the generating facility or related property of*  
18 *the lesser of 50 percent or an interest commensurate with the user’s*  
19 *proportionate consumption of the output of the facility.*

20 (3) *The customer load is served by generation consistent with*  
21 *subdivision (b) of Section 218.*

22 (b) *Customer load that has been served by customer generation*  
23 *commencing on or before May 1, 2000, through August 24, 2001,*  
24 *is not subject to any charge associated with qualified costs as*  
25 *defined in subdivision (f) of Section 399.20 or any power purchase*  
26 *or financing costs incurred by the Department of Water Resources*  
27 *or its successor. Customer load that is served by customer*  
28 *generation for which an application for authority to construct has*  
29 *been submitted to the lead agency under the California*  
30 *Environmental Quality Act (Division 13 (commencing with*  
31 *Section 21000) of the Public Resources Code), not later than*  
32 *August 24, 2001, shall not be subject to any charge associated with*  
33 *power purchase costs incurred by the Department of Water*  
34 *Resources or its successor for energy deliveries following the date*  
35 *on which the load begins to receive service from the customer*  
36 *generation.*

37 (c) *Customer load that is served by customer generation*  
38 *installed on or after August 24, 2001, except as otherwise specified*  
39 *in subdivision (b), is not subject to any charge associated with*  
40 *power purchase costs incurred by the Department of Water*



1 *Resources or its successor for energy deliveries following the date*  
2 *on which the load begins to receive service from the customer*  
3 *generation, provided that the application of this provision shall be*  
4 *limited to the load amounts specified in subdivision (d). Eligibility*  
5 *under this subdivision shall be determined by procedures*  
6 *established by the State Energy Resources Development and*  
7 *Conservation Commission, based upon a first-come, first-served*  
8 *methodology, the load and resources in each electrical*  
9 *corporation's service territory, the fuel efficiency of the*  
10 *generation, and other pertinent criteria.*

11 *(d) The application of subdivision (c) shall be limited*  
12 *commencing January 1, 2002, to 250 megawatts of load statewide,*  
13 *and the limit shall increase by 250 megawatts statewide on each*  
14 *January 1 thereafter. If the commission determines that the total*  
15 *statewide load will exceed the sum of the electrical corporations'*  
16 *retained generation, as of August 24, 2001, and the minimum*  
17 *delivery obligations under power purchase contracts of the*  
18 *electrical corporations as of August 24, 2001, and the power*  
19 *purchase contracts, not including renewals effectuated at the*  
20 *discretion of the Department of Water Resources, procured by the*  
21 *Department of Water Resources to serve customers within the*  
22 *electrical corporations' service territories as of August 24, 2001,*  
23 *the commission shall increase the then current limit for customer*  
24 *generation pursuant to this subdivision by not less than 30 percent*  
25 *of the excess amount. The amount of any increase in customer*  
26 *generation resulting from the excess amount may not be used for*  
27 *direct access transactions or for calculating total load for direct*  
28 *transactions, under Section 365.2.*

29 *(e) This section is not applicable to a facility, located on the site*  
30 *of or immediately adjacent to an electric generating plant that is*  
31 *not owned by an electrical corporation, and that meets all of the*  
32 *following criteria:*

33 *(1) Shares common operating facilities with the electric*  
34 *generating plant.*

35 *(2) Has never been served by an electrical corporation.*

36 *(3) Does not require the use of transmission or distribution*  
37 *facilities owned by an electrical corporation.*

38 **SEC. 9.** Section 367 of the Public Utilities Code is amended  
39 to read:



1 367. The commission shall identify and determine those costs  
2 and categories of costs for generation-related assets and  
3 obligations, consisting of generation facilities, generation-related  
4 regulatory assets, nuclear settlements, and power purchase  
5 contracts, including, but not limited to, restructurings,  
6 renegotiations, or terminations thereof approved by the  
7 commission, that were being collected in commission-approved  
8 rates on December 20, 1995, and that may become uneconomic as  
9 a result of a competitive generation market, in that these costs may  
10 not be recoverable in market prices in a competitive market, and  
11 appropriate costs incurred after December 20, 1995, for capital  
12 additions to generating facilities existing as of December 20, 1995,  
13 that the commission determines are reasonable and should be  
14 recovered, provided that these additions are necessary to maintain  
15 the facilities through December 31, 2001. These uneconomic costs  
16 shall include transition costs as defined in subdivision (f) of  
17 Section 840, and shall be recovered from all customers or in the  
18 case of fixed transition amounts, from the customers specified in  
19 subdivision (a) of Section 841, on a nonbypassable basis and shall:

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

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

29 (2) Power purchase contract obligations shall continue for the  
30 duration of the contract. Costs associated with any buy-out,  
31 buy-down, or renegotiation of the contracts shall continue to be  
32 collected for the duration of any agreement governing the buy-out,  
33 buy-down, or renegotiated contract; provided, however, no power  
34 purchase contract shall be extended as a result of the buy-out,  
35 buy-down, or renegotiation.

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



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

6 (5) Costs associated with the exemptions provided in  
7 subdivision (a) of Section 374 may be collected through March 31,  
8 2002, provided that only fifty million dollars (\$50,000,000) of the  
9 balance of the costs remaining after December 31, 2001, shall be  
10 eligible for recovery.

11 (6) Fixed transition amounts, as defined in subdivision (d) of  
12 Section 840, may be recovered from the customers specified in  
13 subdivision (a) of Section 841 until all rate reduction bonds  
14 associated with the fixed transition amounts have been paid in full  
15 by the financing entity.

16 ~~(b) Be based on a calculation mechanism that nets the negative  
17 value of all above market utility-owned generation-related assets  
18 against the positive value of all below market utility-owned  
19 generation-related assets. For those assets subject to valuation, the  
20 valuations used for the calculation of the uneconomic portion of  
21 the net book value shall be determined not later than December 31,  
22 2001, and shall be based on appraisal, sale, or other divestiture.  
23 The commission's determination of the costs eligible for recovery  
24 and of the valuation of those assets at the time the assets are  
25 exposed to market risk or retired, in a proceeding under Section  
26 455.5, 851, or otherwise, shall be final, and notwithstanding  
27 Section 1708 or any other provision of law, may not be rescinded,  
28 altered or amended.~~

29 (e)

30 (b) Be limited in the case of utility-owned fossil generation to  
31 the uneconomic portion of the net book value of the fossil capital  
32 investment existing as of January 1, 1998, and appropriate costs  
33 incurred after December 20, 1995, for capital additions to  
34 generating facilities existing as of December 20, 1995, that the  
35 commission determines are reasonable and should be recovered,  
36 provided that the additions are necessary to maintain the facilities  
37 through December 31, 2001. All "going forward costs" of fossil  
38 plant operation, including operation and maintenance,  
39 administrative and general, fuel and fuel transportation costs, ~~prior~~  
40 ~~to~~ on or before December 31, 2000, shall be recovered solely from



1 independent Power Exchange revenues or from contracts with the  
2 Independent System Operator, provided that for the purposes of  
3 this chapter, the following costs may be recoverable pursuant to  
4 this section:

5 (1) Commission-approved operating costs for particular  
6 utility-owned fossil powerplants or units, at particular times when  
7 reactive power/voltage support is not yet procurable at  
8 market-based rates in locations where it is deemed needed for the  
9 reactive power/voltage support by the Independent System  
10 Operator, provided that the units are otherwise authorized to  
11 recover market-based rates and provided further that for an  
12 electrical corporation that is also a gas corporation and that serves  
13 at least four million customers as of December 20, 1995, the  
14 commission shall allow the electrical corporation to retain any  
15 earnings from operations of the reactive power/voltage support  
16 plants or units and shall not require the utility to apply any portions  
17 to offset recovery of transition costs. Cost recovery under the cost  
18 recovery mechanism shall end on December 31, 2001.

19 (2) An electrical corporation that, as of December 20, 1995,  
20 served at least four million customers, and that was also a gas  
21 corporation that served less than four thousand customers, may  
22 recover, pursuant to this section, 100 percent of the uneconomic  
23 portion of the fixed costs paid under fuel and fuel transportation  
24 contracts that were executed prior to December 20, 1995, and were  
25 subsequently determined to be reasonable by the commission, or  
26 100 percent of the buy-down or buy-out costs associated with the  
27 contracts to the extent the costs are determined to be reasonable by  
28 the commission.

29 ~~(d)~~

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

35 ~~(e)~~

36 (d) (1) Be allocated among the various classes of customers,  
37 rate schedules, and tariff options to ensure that costs are recovered  
38 from these classes, rate schedules, contract rates, and tariff  
39 options, including self-generation deferral, interruptible, and  
40 standby rate options in substantially the same proportion as similar



1 costs are recovered as of June 10, 1996, through the regulated retail  
2 rates of the relevant electric utility, provided that there shall be a  
3 firewall segregating the recovery of the costs of competition  
4 transition charge exemptions such that the costs of competition  
5 transition charge exemptions granted to members of the combined  
6 class of residential and small commercial customers shall be  
7 recovered only from these customers, and the costs of competition  
8 transition charge exemptions granted to members of the combined  
9 class of customers, other than residential and small commercial  
10 customers, shall be recovered only from these customers.

11 (2) Individual customers shall not experience rate increases as  
12 a result of the allocation of transition costs. However, customers  
13 who elect to purchase energy from suppliers other than the Power  
14 Exchange through a direct transaction, may incur increases in the  
15 total price they pay for electricity to the extent the price for the  
16 energy exceeds the Power Exchange price.

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

20 (f)

21 (e) On and after January 1, 2002, this section shall not be  
22 applicable to an electrical corporation that has entered into an  
23 agreement with the state under subdivision (b) of Section 399.21,  
24 except that references in Sections 368, 369, 370, 371, 372, 373,  
25 and 374 to the costs described in this section shall continue to refer  
26 to those costs.

27 SEC. 9.2. Section 367.2 is added to the Public Utilities Code,  
28 to read:

29 367.2. (a) The commission shall establish a Ratepayer  
30 Benefit Account with a separate subaccount for each electrical  
31 corporation that has entered into an agreement pursuant to  
32 subdivision (b) of Section 399.21. The following funds shall be  
33 credited to the electrical corporation's subaccount:

34 (1) Fifty percent of the first billion dollars, and one hundred  
35 percent of ~~the subsequent billion dollars~~ *all additional dollars*  
36 resulting from any litigation or agreement relative to the charging,  
37 either directly or indirectly, of excessive costs for power by  
38 electric power generators, suppliers, and marketers and excessive  
39 costs for natural gas charged either directly or indirectly by natural  
40 gas suppliers or marketers, prior to January 18, 2001.



1 ~~(2) Revenues derived pursuant to Section 80210 of the Water~~  
2 ~~Code.~~

3 (2) *Any refunds, reimbursements or other financial penalties*  
4 *ordered by the commission to be paid with respect to the electrical*  
5 *corporation in commission proceeding I. 01-04-022.*

6 (b) The commission shall from time to time in proportion to the  
7 class percentage rate increases adopted in the commission's  
8 Decision Number 01-05-064 for the ratepayers of an electrical  
9 corporation, refund to each ratepayer in a class based on  
10 consumption of power, moneys in the electrical corporation's  
11 Ratepayer Benefit Account subaccount through an immediate bill  
12 credit or, in the alternative, a reduction in rates in the same  
13 proportionate manner.

14 (c) All funds held by an electrical corporation that are required  
15 by this section to be credited to the Ratepayer's Benefit Account  
16 subaccount of the corporation are property of the ratepayers of that  
17 electrical corporation and are held in trust on their behalf.

18 SEC. 9.4. Section 368 of the Public Utilities Code is amended  
19 to read:

20 368. Each electrical corporation shall propose a cost recovery  
21 plan to the commission for the recovery of the uneconomic costs  
22 of an electrical corporation's generation-related assets and  
23 obligations identified in Section 367. The commission shall  
24 authorize the electrical corporation to recover the costs pursuant  
25 to the plan if the plan meets the following criteria:

26 (a) The cost recovery plan shall set rates for each customer  
27 class, rate schedule, contract, or tariff option, at levels equal to the  
28 level as shown on electric rate schedules as of June 10, 1996,  
29 provided that rates for residential and small commercial customers  
30 shall be reduced so that these customers shall receive rate  
31 reductions of no less than 10 percent for 1998 continuing through  
32 2002. These rate levels for each customer class, rate schedule,  
33 contract, or tariff option shall remain in effect until the earlier of  
34 March 31, 2002, or the date on which the commission-authorized  
35 costs for utility generation-related assets and obligations have  
36 been fully recovered. Unless the electrical corporation has entered  
37 into a binding and enforceable agreement pursuant to subdivision

38 (b) of Section 399.21, the electrical corporation shall be at risk for  
39 those costs not recovered during that time period. Each utility shall  
40 amortize its total uneconomic costs, to the extent possible, such



1 that for each year during the transition period its recorded rate of  
2 return on the remaining uneconomic assets does not exceed its  
3 authorized rate of return for those assets. For purposes of  
4 determining the extent to which the costs have been recovered, any  
5 over-collections recorded in Energy Costs Adjustment Clause and  
6 Electric Revenue Adjustment Mechanism balancing accounts, as  
7 of December 31, 1996, shall be credited to the recovery of the  
8 costs.

9 (b) The cost recovery plan shall provide for identification and  
10 separation of individual rate components such as charges for  
11 energy, transmission, distribution, public benefit programs, and  
12 recovery of uneconomic costs. The separation of rate components  
13 required by this subdivision shall be used to ensure that customers  
14 of the electrical corporation who become eligible to purchase  
15 electricity from suppliers other than the electrical corporation pay  
16 the same unbundled component charges, other than energy, that a  
17 bundled service customer pays. No cost shifting among customer  
18 classes, rate schedules, contract, or tariff options shall result from  
19 the separation required by this subdivision. Nothing in this  
20 provision is intended to affect the rates, terms, and conditions or  
21 to limit the use of any Federal Energy Regulatory  
22 Commission-approved contract entered into by the electrical  
23 corporation prior to the effective date of this provision.

24 (c) In consideration of the risk that the uneconomic costs  
25 identified in Section 367 may not be recoverable within the period  
26 identified in subdivision (a) of Section 367, an electrical  
27 corporation that, as of December 20, 1995, served more than four  
28 million customers, and was also a gas corporation that served less  
29 than four thousand customers, shall have the flexibility to employ  
30 risk management tools, such as forward hedges, to manage the  
31 market price volatility associated with unexpected fluctuations in  
32 natural gas prices, and the out-of-pocket costs of acquiring the risk  
33 management tools shall be considered reasonable and collectible  
34 within the transition freeze period. This subdivision applies only  
35 to the transaction costs associated with the risk management tools  
36 and shall not include any losses from changes in market prices.

37 (d) In order to ensure implementation of the cost recovery plan,  
38 the limitation on the maximum amount of cost recovery for  
39 nuclear facilities that may be collected in any year adopted by the  
40 commission in Decision 96-01-011 and Decision 96-04-059 shall



1 be eliminated to allow the maximum opportunity to collect the  
2 nuclear costs within the transition cap period.

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

11 (1) Remain in effect pending the next general rate case review,  
12 which shall be filed not later than December 31, 1997, for rates that  
13 would become effective in January 1999. For purposes of any  
14 commission-approved performance-based ratemaking  
15 mechanism or general rate case review, the increases in base  
16 revenue authorized by this subdivision shall create no presumption  
17 that the level of base revenue reflecting those increases constitute  
18 the appropriate starting point for subsequent revenues.

19 (2) Be used by the utility for the purposes of enhancing its  
20 transmission and distribution system safety and reliability,  
21 including, but not limited to, vegetation management and  
22 emergency response. To the extent the revenues are not expended  
23 for system safety and reliability, they shall be credited against  
24 subsequent safety and reliability base revenue requirements. Any  
25 excess revenues carried over shall not be used to pay any monetary  
26 sanctions imposed by the commission.

27 (f) The cost recovery plan shall provide the electrical  
28 corporation with the flexibility to manage the renegotiation,  
29 buy-out, or buy-down of the electrical corporation's power  
30 purchase obligations, consistent with review by the commission to  
31 assure that the terms provide net benefits to ratepayers and are  
32 otherwise reasonable in protecting the interests of both ratepayers  
33 and shareholders.

34 (g) An example of a plan authorized by this section is the  
35 document entitled "Restructuring Rate Settlement" transmitted to  
36 the commission by Pacific Gas and Electric Company on June 12,  
37 1996.

38 SECTION 9.6. Section 369 of the Public Utilities Code is  
39 amended to read:



1 369. (a) (1) The commission shall establish an effective  
2 mechanism that ensures recovery of transition costs referred to in  
3 Sections 367, 368, 375, and 376, and subject to the conditions in  
4 Sections 371 to 374, inclusive, from all existing and future  
5 consumers in the service territory in which the utility provided  
6 electricity services as of December 20, 1995; provided, that the  
7 costs shall not be recoverable ~~for~~ *from* new customer load or  
8 incremental load of an existing customer where the load is being  
9 met through a direct transaction and the transaction does not  
10 otherwise require the use of transmission or distribution facilities  
11 owned by the utility. However, the obligation to pay the  
12 competition transition charges cannot be avoided by the formation  
13 of a local publicly owned electrical corporation on or after  
14 December 20, 1995, or by annexation of any portion of an  
15 electrical corporation's service area by an existing local publicly  
16 owned electric utility.

17 (2) This subdivision does not apply to service taken under  
18 tariffs, contracts, or rate schedules that are on file, accepted, or  
19 approved by the Federal Energy Regulatory Commission, unless  
20 otherwise authorized by the Federal Energy Regulatory  
21 Commission.

22 (b) (1) The commission also shall establish an effective  
23 mechanism that ensures recovery from all existing and future  
24 consumers in the service territory in which the utility provided  
25 electricity services as of January 15, 2001 of qualified costs  
26 described in Section 399.20, subject to Section 399.25, provided  
27 that the costs may not be recoverable ~~for~~ *from* either of the  
28 following:

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

35 (B) ~~Customer load~~ *New customer load*, or incremental load of  
36 an existing customer, being met by new *or expanded* gas fired or  
37 renewable ~~electric~~ *customer* generation facilities that serve retail  
38 load ~~that are located onsite or under an over-the-fence arrangement~~  
39 ~~consistent with Section 218.~~



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

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

11 SEC. 9.8. Section 377 of the Public Utilities Code is amended  
12 to read:

13 377. (a) The commission shall continue to regulate the  
14 facilities for the generation of electricity owned by any public  
15 utility prior to January 1, 1997, that are subject to commission  
16 regulation until the owner of those facilities has applied to the  
17 commission to dispose of those facilities and has been authorized  
18 by the commission under Section 851 to undertake that disposal.  
19 Notwithstanding any other provision of law, no facility for the  
20 generation of electricity owned by a public utility may be disposed  
21 of prior to January 1, 2006. The commission shall ensure that  
22 public utility generation assets, qualifying facility contracts, and  
23 other bilateral contracts remain dedicated for the benefit of the  
24 public utility's bundled service customers, provided that nothing  
25 in this section shall be construed to compel any electrical  
26 corporation to renew or renegotiate an expiring contract; *and*  
27 *further provided, that nothing in this section may be construed to*  
28 *prevent the commission from approving an application to amend,*  
29 *buyout, or terminate a qualifying facility or other bilateral*  
30 *contract made pursuant to a voluntarily entered and mutually*  
31 *agreed upon contract amendment, buyout, or termination, if the*  
32 *commission determines that the amendment, buyout, or*  
33 *termination is in the public interest. For purposes of this section,*  
34 *utility owned generation, qualifying facility contracts and other*  
35 *bilateral contracts shall be referred to as "utility retained*  
36 *generation."* This section does not apply to the transfer or sale of  
37 generation plants that are located outside California and are owned  
38 exclusively by companies not based in California. *The definition*  
39 *of "utility retained generation" as provided in this section is*  
40 *without regard to whether shareholder bilateral contracts that are*



1 *the subject of an agreement between the Department of Water*  
2 *Resources and San Diego Gas and Electric Company in a certain*  
3 *Memorandum of Understanding are or are not “utility retained*  
4 *generation.”*

5 (b) Notwithstanding any other provision of law, the  
6 commission shall establish rates that enable ~~the~~ a public utility  
7 electrical corporation to recover on a timely basis, consistent with  
8 the electrical corporation ~~having~~ *achieving* and maintaining an  
9 investment grade credit rating, all reasonable costs of producing  
10 power and ancillary services from utility retained generation  
11 dedicated to the service of bundled service customers. Those rates  
12 shall ensure that the public utility electrical corporation is able to  
13 recover reasonable operating and capital costs, including a  
14 reasonable return of ~~an~~ *and* on the public utility electrical  
15 corporation’s investment in owned generation assets.

16 (1) Operating costs shall include all customary categories of  
17 operating costs, including, but not limited to, fuel and fuel  
18 transportation costs both fixed and variable, operations and  
19 maintenance expenses, remediation costs, costs of emissions  
20 credits, direct and indirect administrative and general costs, taxes,  
21 scheduling and dispatch costs, congestion costs, ancillary service  
22 costs, and other transmission-related costs charged to generators.  
23 Prior to January 1, 2004, operating costs for the San Onofre  
24 Nuclear Generating Station Units 2 and 3 shall be recovered  
25 pursuant to nuclear incremental cost incentive plans as authorized  
26 by the commission in commission Decision Nos. 96-01-011 and  
27 96-94-059.

28 (2) The ~~electrical corporation’s~~ *Southern California Edison*  
29 *Company’s* investment in generation assets initially shall be set at  
30 the amounts recorded on its books of account as of December 31,  
31 2000, including reasonable sites-specific general plant and capital  
32 additions made after December 31, 1995, together with their  
33 associated regulatory receivable or payable for taxes. For  
34 Southern California Edison Company, existing investments for  
35 Units 2 and 3 at the San Onofre Nuclear Generating Station and the  
36 Palo Verde Nuclear Generating Station shall be recovered over a  
37 period ending December 31, ~~2010. Incremental 2015, and~~  
38 *incremental* capital investments placed in service after December  
39 31, 2000, will be recovered from the time they are placed in  
40 service, provided that the electrical corporation shall recover an



1 allowance for funds used during construction for capital projects  
2 extending for more than one year. Notwithstanding the foregoing,  
3 prior to January 1, 2004, incremental capital investments for the  
4 San Onofre Nuclear Generating Station Units 2 and 3 shall be  
5 recovered pursuant to nuclear incremental cost incentive plans as  
6 authorized by the commission in commission Decision Nos.  
7 96-01-011 and 96-94-059. The cost of major capital additions and  
8 improvements to a *the* public utility's generation assets shall be  
9 reviewed and approved by the commission, in the manner set forth  
10 in Sections 1005 and 1005.5, in advance of the public utility being  
11 *allowed or* required to invest in such major capital additions or  
12 improvements.

13 (3) Decommissioning costs shall be recovered consistent with  
14 commission decisions.

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

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

20 (2) Establish procedures designed to ensure that any  
21 undercollection or overcollection of procurement costs ~~will~~ *shall*  
22 be reconciled in a timely manner and any undercollection will be  
23 financed on reasonable terms consistent with the credit rating of  
24 the electrical corporation as investment grade. Those procedures  
25 shall include, but are not limited to, the development of a  
26 framework and criteria for procurement practices, the submission  
27 of an annual procurement plan, and the prompt approval or  
28 disapproval of contracts *consistent with Section 399.10*. The  
29 commission may not exercise retrospective reasonableness review  
30 of power procurement ~~contracts unless the commission finds that~~  
31 ~~the contract was not reasonable under the circumstances prevailing~~  
32 ~~at the time the contract was executed.~~ *contracts entered into*  
33 *consistent with an approved procurement plan in accordance with*  
34 *Section 399.10*.

35 ~~(d) The rates described in subdivisions (b) and (c) shall be~~  
36 ~~separate from rates established for the Department of Water~~  
37 ~~Resources pursuant to Division 27 (commencing with Section~~  
38 ~~80000) of the Water Code, and shall be established based on~~  
39 ~~forecasts of costs submitted by the electrical corporation.~~  
40 ~~Differences between revenues and authorized costs shall be~~



1 ~~tracked in balancing accounts, and rates shall be adjusted not less~~  
2 ~~than annually. Prior to the commission establishing authorized~~  
3 ~~costs actual costs shall be tracked in the balancing accounts. If the~~  
4 ~~net balances in the electrical corporation's balancing accounts are~~  
5 ~~overcollected by at least five hundred million dollars~~  
6 ~~(\$500,000,000), that overcollection shall be refunded through a~~  
7 ~~remediated bill credit to customers, with each customer class of the~~  
8 ~~electrical corporation receiving a proportionate share of the~~  
9 ~~overcollection in accordance with the commission's then most~~  
10 ~~recent rate design and cost allocation decision for that electrical~~  
11 ~~corporation. If those net balances are undercollected by five~~  
12 ~~hundred million dollars (\$500,000,000) or more, rates shall be~~  
13 ~~adjusted to recover the undercollection as determined by the~~  
14 ~~commission in an expeditious manner consistent with enabling the~~  
15 ~~electrical corporation to regain and retain investment grade credit~~  
16 ~~status.~~

17 *(d) The rates described in subdivisions (b) and (c) shall be*  
18 *separate from rates established for the Department of Water*  
19 *Resources pursuant to Division 27 (commencing with Section*  
20 *80000) of the Water Code and shall be established based on*  
21 *forecasts of costs submitted by the electrical corporation.*  
22 *Differences between revenues and authorized costs shall be*  
23 *tracked in balancing accounts, and the commission shall review*  
24 *the balancing accounts not less than semiannually. Prior to the*  
25 *commission establishing authorized costs, actual costs shall be*  
26 *tracked in the balancing accounts. If the net balances in the*  
27 *electrical corporation's balancing accounts are overcollected or*  
28 *undercollected by an amount that exceeds 10 percent of the*  
29 *electrical corporations's actual recorded generation revenues for*  
30 *the prior calendar year, excluding revenues collected for the*  
31 *Department of Water Resources, the commission shall adjust rates*  
32 *either (1) to refund any net overcollection to customers, in*  
33 *proportion to the class percentage rate increases adopted in the*  
34 *commission Decision 01-05-064 to each ratepayer in a class based*  
35 *on consumption of power, through a bill credit, either on a*  
36 *one-time basis, or amortized over a reasonable period, or (2) to*  
37 *permit the electrical corporation to recover the undercollection in*  
38 *an expeditious manner consistent with enabling the electrical*  
39 *corporation to regain and retain, for the senior outstanding*  
40 *unsecured debt of the electrical corporation, a rating by one or*



1 *more nationally recognized rating agencies of at least one rating*  
2 *above the lowest investment grade rating. When one or more*  
3 *nationally recognized rating agencies have rated the senior*  
4 *outstanding unsecured debt of the electrical corporation with a*  
5 *rating of at least one rating above the lowest investment grade*  
6 *rating, and that electrical corporation has maintained that rating*  
7 *for at least five consecutive years, then the commission may*  
8 *change the amount that triggers a refund or rate adjustment*  
9 *pursuant to this subdivision, if the amount set by the commission*  
10 *is consistent with maintenance of an investment grade credit rating*  
11 *at least one rating above the lowest investment grade.*

12 SEC. 10. Section 379 of the Public Utilities Code is amended  
13 to read:

14 379. Nuclear decommissioning costs shall be recovered as a  
15 nonbypassable charge until the time as the costs are fully  
16 recovered. The commission may accelerate the recovery of  
17 decommissioning costs consistent with the public interest.

18 SEC. 10.5. Article 15.5 (commencing with Section 399.10) is  
19 added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities  
20 Code, to read:

21

22 Article 15.5 Electrical Corporation Procurement Plans

23

24 399.10. (a) No later than January 1, 2002, the commission  
25 shall determine the allocation of electricity, including quantity,  
26 characteristics and duration of electricity delivery, to be provided  
27 by the Department of Water Resources under its power purchase  
28 contracts to the customers of each electrical corporation. Each  
29 electrical corporation shall file a procurement plan with the  
30 commission 45 days after the commission specifies the allocation  
31 of electricity, including quantity, characteristics and duration of  
32 electricity delivery, to be provided by the Department of Water  
33 Resources under its power purchase contracts to the customers of  
34 the electrical corporation. The proposed procurement plan shall  
35 specify the date the electrical corporation intends to resume  
36 procurement of electricity for its retail customers, consistent with  
37 its obligation to serve, which shall be referred to for purposes of  
38 this section as the "proposed commencement date." The  
39 commission shall review and adopt a procurement plan as  
40 specified in subdivisions (b), (c), and (d) no later than 90 days



1 prior to the proposed commencement date. An electrical  
2 corporation that does not possess an investment grade credit  
3 rating by one or more nationally recognized rating agencies may  
4 file a procurement plan with the commission, but, except to the  
5 extent set forth in a binding and enforceable agreement pursuant  
6 to subdivision (b) of Section 399.21, it may not be required to  
7 commence procurement on behalf of its customers until its credit  
8 rating is restored to investment grade by one or more nationally  
9 recognized rating agencies.

10 (b) An electrical corporation's proposed procurement plan  
11 shall include, but is not limited to, the following:

12 (1) An assessment of the price risk associated with the  
13 electrical corporation's portfolio, including any utility-retained  
14 generation, existing power purchase and exchange contracts and  
15 proposed contracts, or purchases under which an electrical  
16 corporation will procure electricity and electricity-related  
17 products, and the remaining open position to be served via spot  
18 market transactions.

19 (2) A definition of each electricity product, electricity-related  
20 product, and procurement related financial product, including  
21 support and justification for the product type and amount to be  
22 procured under the plan.

23 (3) The duration of the plan.

24 (4) The duration, timing, and range of quantities of each  
25 product to be procured.

26 (5) A competitive procurement process under which the  
27 electrical corporation may request bids for procurement-related  
28 services, including the format and criteria of the procurement  
29 process.

30 (6) An incentive mechanism, if there is one proposed, including  
31 the type of transactions to be covered by the mechanism, its  
32 respective procurement benchmarks, and other parameters needed  
33 to determine the sharing of risks and benefits.

34 (7) The upfront standards and criteria by which the  
35 acceptability and eligibility for rate recovery of a proposed  
36 procurement transaction will be known by the electrical  
37 corporation prior to execution of the transaction. The upfront  
38 standards and criteria shall include an expedited approval process  
39 for the commission's review of proposed contracts and subsequent  
40 approval or rejection of the contracts. The electrical corporation



1 shall propose alternative procurement choices in the event a  
2 contract is rejected.

3 (8) Procedures for updating the procurement plan.

4 (9) A showing that the procurement plan will create or maintain  
5 a diversified procurement portfolio consisting of both short-term  
6 and long-term electricity and electricity-related products.

7 (10) The electrical corporation's risk management policy,  
8 strategy, and practices including specific measures of price  
9 stability.

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

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

15 (c) The commission shall review and accept, modify, or reject  
16 each electrical corporation's procurement plan. The commission's  
17 review shall consider each electrical corporation's individual  
18 procurement situation, and shall give strong consideration to that  
19 situation in determining which one or more of the following  
20 features shall apply to that electrical corporation. A procurement  
21 plan approved by the commission shall contain one or more of the  
22 following features, provided that the commission shall not approve  
23 a feature or mechanism for an electrical corporation if it finds that  
24 the feature or mechanism would impair the restoration of an  
25 electrical corporation's creditworthiness:

26 (1) A competitive procurement process under which the  
27 electrical corporation may request bids for procurement-related  
28 services. The commission shall specify the format of the  
29 procurement process, as well as criteria to ensure that the auction  
30 process is open and adequately subscribed. Any purchases made  
31 in compliance with the commission-authorized process shall be  
32 recovered in the generation component of rates.

33 (2) An incentive mechanism that establishes a procurement  
34 benchmark or benchmarks and authorizes the electrical  
35 corporation to procure from the market, subject to comparing the  
36 electrical corporation's performance to the  
37 commission-authorized benchmark or benchmarks. This incentive  
38 mechanism shall be clear, achievable, and contain quantifiable  
39 objectives and standards. The incentive mechanism shall contain



1 *balanced risk and reward incentives and shall limit the risk and*  
2 *reward of an electrical corporation.*

3 (3) *Upfront achievable standards and criteria by which the*  
4 *acceptability and eligibility for rate recovery of a proposed*  
5 *procurement transaction shall be known by the electrical*  
6 *corporation prior to the execution of the bilateral contract for the*  
7 *transaction. The commission shall provide for expedited review*  
8 *and either approve or reject the individual contracts submitted by*  
9 *the electrical corporation pursuant to its procurement plan. To the*  
10 *extent the commission rejects a proposed contract pursuant to this*  
11 *criteria, the commission shall designate alternative procurement*  
12 *choices contained in the procurement plan that will be recoverable*  
13 *for ratemaking purposes.*

14 (d) *A procurement plan approved by the commission shall*  
15 *accomplish each of the following objectives:*

16 (1) *Enable the electrical corporation to fulfill its obligation to*  
17 *serve its customers at just and reasonable rates.*

18 (2) *Eliminate the need for after-the-fact reasonableness*  
19 *reviews of an electrical corporation's actions in compliance with*  
20 *an approved procurement plan, including resulting electricity*  
21 *procurement contracts, practices, and related expenses. However,*  
22 *the commission may establish a regulatory process to verify and*  
23 *assure that each contract was administered in accordance with the*  
24 *terms of the contract, and that contract disputes that may arise are*  
25 *reasonably resolved.*

26 (3) *Ensure timely recovery of prospective procurement costs*  
27 *incurred pursuant to an approved procurement plan. The*  
28 *commission shall establish rates based on forecasts of*  
29 *procurement costs adopted by the commission, actual procurement*  
30 *costs incurred, or some combination thereof, as determined by the*  
31 *commission.*

32 (4) *Moderate the price risk associated with serving the*  
33 *electrical corporation's retail customers, including the price risk*  
34 *embedded in its long-term supply contracts, by authorizing an*  
35 *electrical corporation to enter into financial and other*  
36 *electricity-related product contracts.*

37 (5) *Provide for just and reasonable rates, with an appropriate*  
38 *balancing of price stability and price level in the electrical*  
39 *corporation's procurement plan.*



1 (e) The commission shall provide for periodic reviews and  
2 prospective modification of an electrical corporation's  
3 procurement plan in response to changing market conditions.

4 (f) The commission is authorized to engage an independent  
5 consultant or advisory service to evaluate risk management and  
6 strategy. The reasonable costs of a consultant or advisory service  
7 is a reimbursable expense and eligible for funding pursuant to  
8 Section 631.

9 (g) The commission shall adopt appropriate procedures to  
10 ensure the confidentiality of any market sensitive information  
11 submitted in an electrical corporation's proposed procurement  
12 plan or resulting from or related to its approved procurement plan,  
13 including, but not limited to, proposed or executed power purchase  
14 contracts, data request responses, or consultant reports, provided  
15 that the Office of Ratepayer Advocates and other consumer groups  
16 that are nonmarket participants shall be provided access to the  
17 information under confidentiality procedures authorized by the  
18 commission.

19 (h) Nothing in this article alters, modifies, or amends the  
20 commission's oversight of affiliate transactions under its rules and  
21 decisions or the commission's existing authority to investigate and  
22 penalize an electrical corporation's alleged fraudulent activities,  
23 or to disallow costs incurred as a result of gross incompetence,  
24 fraud, abuse, or similar grounds.

25 (i) An electrical corporation that serves less than 500,000  
26 electric retail customers within the state may file with the  
27 commission a request for exemption from the provisions of this  
28 article, which the commission shall grant upon a showing of good  
29 cause.

30 (j) Prior to its approval pursuant to Section 851 of any  
31 divestiture of generation assets owned by an electrical corporation  
32 on September 1, 2001, the commission shall determine the impact  
33 of the proposed divestiture on the electrical corporation's  
34 procurement rates and may only approve the divestiture if the  
35 commission determines that the divestiture will result in net  
36 ratepayer benefits.

37 399.11. Nothing in this article is intended to suggest that  
38 procurement of electricity from third parties is the preferred  
39 method of fulfilling an electrical corporation's obligation to serve  
40 its customers at just and reasonable rates.



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

4  
5 Article 16. Electricity Market Stabilization  
6

7 399.20. For the purposes of this article, the following terms  
8 shall have the following meanings:

9 (a) (1) “Electrical corporation debt repayment set-aside”  
10 means a nonbypassable rate and other charges, including, but not  
11 limited to, distribution, connection, disconnection, and  
12 termination rates and charges, that are authorized by the  
13 commission in a financing order to allow the electrical corporation  
14 to recover all or any portion of both (A) qualified costs, and (B)  
15 the costs of providing, recovering, financing, or refinancing the  
16 qualified costs through a plan approved by the commission in the  
17 financing order, including, but not limited to, the costs of issuing,  
18 servicing, and retiring electricity market stabilization bonds. For  
19 the purposes of this article, an electrical corporation debt  
20 repayment set-aside shall be imposed on a nonbypassable basis at  
21 a uniform rate per kilowatthour of electricity consumed pursuant  
22 to Section 399.25.

23 (2) If requested by the electrical corporation in its application  
24 for a financing order, an electrical corporation debt repayment  
25 set-aside ~~shall~~ *may* include nonbypassable rates and other charges  
26 to recover federal and state taxes whose recovery period is  
27 modified by the transactions approved in the financing order.

28 (b) “Electricity market stabilization bonds” means bonds,  
29 notes, certificates of participation or beneficial interest, or other  
30 evidences of indebtedness or ownership, issued pursuant to an  
31 executed indenture or other agreement of a financing entity, the  
32 proceeds of which are used, directly or indirectly, to provide,  
33 recover, finance, or refinance qualified costs, and that are directly  
34 or indirectly secured by, or payable from, stabilization property.

35 (c) “Financing entity” means an electrical corporation or any  
36 entity designated by the electrical corporation to issue electricity  
37 market stabilization bonds or acquire stabilization property, or  
38 both, pursuant to this article.

39 (d) “Financing order” means an order of the commission  
40 adopted in accordance with this article approving an electrical



1 corporation debt repayment set-aside. A financing order shall  
2 include, without limitation, a procedure for the expeditious  
3 approval by the commission of periodic adjustments to the  
4 electrical corporation debt repayment set-aside included therein to  
5 ensure timely recovery of the qualified costs and the costs of  
6 issuing, servicing, refinancing, and retiring the electricity market  
7 stabilization bonds approved by the financing order.

8 (e) “Net undercollected costs” means the difference between  
9 the cost of the energy and ancillary services provided by the  
10 electrical corporation and the energy and ancillary services related  
11 revenues received by the electrical corporation from retail  
12 customers for the period from May 1, 2000, to January 18, 2001,  
13 inclusive.

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

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

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

20 (g) Notwithstanding any other provision of law an electrical  
21 corporation may not recover from the proceeds of electric market  
22 stabilization bonds more than two billion five hundred million  
23 dollars (\$2,500,000,000) of net undercollected costs, plus interest  
24 determined under paragraph (2) of subdivision (f), in an amount  
25 of not more than four hundred million dollars (\$400,000,000).

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

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

33 (B) To be paid the amount that is determined in a financing  
34 order to be the amount that the electrical corporation or its  
35 transferee is lawfully entitled to receive pursuant to the provisions  
36 of this article, and the proceeds thereof.

37 (C) In and to all revenues, collections, claims, payments,  
38 ~~moneys, or proceeds of or arising from the tariffs constituting an~~  
39 *moneys or proceeds of or arising from the tariffs or constituting an*



1 electrical corporation debt repayment set-aside that are the subject  
2 of a financing order.

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

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

7 (2) “Stabilization property” shall constitute a current property  
8 right notwithstanding the fact that the value of the property right  
9 will depend on consumers using electricity or, in those instances  
10 where consumers are customers of a particular electrical  
11 corporation, the electrical corporation performing certain  
12 services.

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

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

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

33 (2) Apply the proceeds of the electricity market stabilization  
34 bonds, after payment of issuance costs, in accordance with the  
35 intent of subdivision (c).

36 (3) Provide the Department of Water Resources or its designee  
37 with the entire output from the Sunrise generating facility for a  
38 term of not less than 10 years at cost-of-service based rates  
39 pursuant to a contract previously executed between an affiliate of



1 the holding company and the Department of Water Resources or  
2 its designee.

3 ~~(4) Convey electrical corporation-owned land to a trust~~  
4 ~~pursuant to Article 17 (commencing with Section 399.30). Section~~  
5 ~~851, and Section 21080 of the Public Resources Code, are not~~  
6 ~~applicable to the conveyance required under this paragraph.~~

7 ~~(5)~~

8 (4) Dismiss, with prejudice, any and all legal claims the  
9 electrical corporation and its holding company may have or  
10 relinquish any legal claim the electrical corporation and its holding  
11 company could have had against the State of California or any  
12 agency, department or subdivision thereof, the federal  
13 Government, or the commission for a taking or a violation of the  
14 filed rate doctrine arising from or related to the facts asserted in the  
15 litigation; and any claims challenging actions taken by the  
16 commission prior to the date of the dismissal or release, or actions  
17 that the commission failed to take prior to the dismissal or release,  
18 to implement Assembly Bill 1 of the 2001–02 First Extraordinary  
19 Session (Ch. 4, Stats. 2001–02 1st Ex. Sess.) and Assembly Bill  
20 6 of the 2001–02 First Extraordinary Session (Ch. 2, Stats.  
21 2001–02 1st Ex. Sess.).

22 ~~(6)~~

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

28 ~~(7)~~

29 (6) Relinquish all claims against the state for commandeering  
30 the electrical corporation's block forward market contracts  
31 purchased through the California Power Exchange.

32 ~~(8)~~

33 (7) Agree to administer the power procurement contracts that  
34 the Department of Water Resources may request the electrical  
35 corporation to administer.

36 ~~(9)~~

37 (8) (A) Provide the state with an irrevocable option for a  
38 period of not less than five years to purchase the transmission  
39 facilities owned by the electrical corporation ~~at the net book value~~  
40 ~~of those facilities.~~



1 (B) *The option shall include all of the following:*  
2 (i) *The purchase price shall be two times net book value.*  
3 (ii) *The state shall purchase any entitlements to use the*  
4 *transmission facilities from any local publicly owned electric*  
5 *utility that owns those entitlements and that is a participating*  
6 *transmission owner in the Transmission Control Agreement*  
7 *among the Independent System Operator and transmission*  
8 *owners.*  
9 (iii) *Prior to acquiring any transmission facilities, the state*  
10 *shall contract with the electrical corporation for the electrical*  
11 *corporation to perform all operation and maintenance of the*  
12 *transmission facilities. The contract shall be for a term of 20 years.*  
13 *The contract shall provide that the electrical corporation recover*  
14 *its costs of providing operation and management services along*  
15 *with a reasonable profit. The contract shall survive the sale,*  
16 *transfer, exchange, or assignment of all or any portion of the*  
17 *transmission facilities. The contract shall, consistent with the*  
18 *provisions of this section, be designed to satisfy the requirements*  
19 *of the United States Internal Revenue Service Revenue Procedure*  
20 *97-13, Section 5.03(3).*  
21 (iv) *Prior to end of the 20-year period of the operation and*  
22 *maintenance contract and for each 20-year period thereafter, the*  
23 *Department of Water Resources shall enter into a new contract to*  
24 *provide operation and maintenance services. When selecting the*  
25 *entity to provide those services, the Department of Water*  
26 *Resources shall base its selection on all of the following factors:*  
27 (I) *Operational efficiencies available from using the same*  
28 *entity that provides operation and maintenance services for an*  
29 *interconnected distributing utility.*  
30 (II) *Prior experience providing operation and maintenance*  
31 *services for transmission facilities in the topographic and*  
32 *climatological conditions found in the state.*  
33 (III) *Availability of a workforce with the existing skill and*  
34 *experience to maintain a high degree of transmission system*  
35 *reliability.*  
36 (C) *For purposes of subparagraph (B), “operation and*  
37 *maintenance” of transmission facilities means operation,*  
38 *maintenance, repair, replacement, reconstruction, improvement,*  
39 *enlargement, expansion, or extension of the transmission*  
40 *facilities.*



1 (D) The state may exercise the option provided under this  
2 paragraph only upon approval of that action by a subsequently  
3 enacted statute.

4 (9) *Confirm that the electrical corporation shall make*  
5 *payments of all amounts owed by the electrical corporation for*  
6 *energy and capacity delivered by any qualifying facility prior to*  
7 *March 27, 2001, together with accrued and unpaid interest*  
8 *thereon in accordance with agreements regarding energy pricing*  
9 *and payment issues entered into by and between the electrical*  
10 *corporation and the qualifying facilities.*

11 ~~(e) It is the intent of the Legislature in authorizing the issuance~~  
12 ~~of a financing order pursuant to this article that any revenues~~  
13 ~~derived from the issuance of electricity market stabilization bonds~~  
14 ~~for the amount authorized pursuant to this article may not be~~  
15 ~~expended for unpaid debt or charges imposed on the electrical~~  
16 ~~corporation by the California Power Exchange, the California~~  
17 ~~Independent System Operator, or by any suppliers of wholesale~~  
18 ~~electricity for energy purchased on or before January 18, 2001,~~  
19 ~~provided that this provision shall not restrict payments to any~~  
20 ~~qualifying facility or bilateral contract counterparty or payments~~  
21 ~~with respect to California Power Exchange customer credits as~~  
22 ~~defined in D. 97-08-056 of August 1, 1997, and as modified by D.~~  
23 ~~99-06-058 of June 10, 1999.~~

24 (10) *Agree that any revenues derived from the issuance of*  
25 *electricity market stabilization bonds for the amount authorized*  
26 *pursuant to this section shall be used solely to pay*  
27 *procurement-related debt and may not be expended for unpaid*  
28 *debt or charges imposed on the electrical corporation by the*  
29 *Power Exchange, the Independent System Operator, or by any*  
30 *suppliers of wholesale electricity purchased on or before January*  
31 *18, 2001, provided that this provision shall not restrict payments*  
32 *to any qualifying facility or bilateral contract counterparty. For*  
33 *purposes of this paragraph “procurement-related debt” shall*  
34 *include, without limitation, the electrical corporation’s*  
35 *obligations and liabilities for the payment of Power Exchange*  
36 *customer credits. For purposes of this paragraph “Power*  
37 *Exchange customer credits” means all outstanding customer*  
38 *credits, as defined in commission Decision 97-08-056 of August 1,*  
39 *1997, and as modified by commission Decision 99-06-058 of June*  
40 *10, 1999.*



1 (11) Agree that for any year during which the electrical  
2 corporation's authorized return on equity may not be reduced  
3 pursuant to Section 454.11, the electrical corporation may not be  
4 permitted to pay a distribution to shareholders of cash, liquid  
5 assets, or property without consideration of substantially equal  
6 value, whether by way of dividends or otherwise, unless all of the  
7 following conditions are met:

8 (A) The electrical corporation is permitted to make this  
9 payment in compliance with applicable law.

10 (B) The outstanding senior unsecured debt of the electrical  
11 corporation is rated with a rating at least one rating above the  
12 lowest investment grade rating by one or more nationally  
13 recognized rating agencies.

14 (C) One or more nationally recognized rating agencies have  
15 confirmed, after reviewing the dividends proposed to be paid for  
16 the fiscal year in question, that the outstanding senior unsecured  
17 debt of the electrical corporation will continue to be rated at least  
18 one rating above the lowest investment grade rating after the  
19 payment of the dividends.

20 (c) The agreement entered into pursuant to subdivision (b) may  
21 not limit the electrical corporation's ability to do either of the  
22 following:

23 (1) Pay dividends to holders of its preferred stock that is issued  
24 and outstanding as of August 1, 2001.

25 (2) Make payments that implement its stand-alone tax  
26 treatment, consistent with subdivision (d).

27 (d) It is the intent of the Legislature in authorizing the issuance  
28 of a financing order pursuant to this article to continue the current  
29 stand-alone tax treatment of the electrical corporation, ~~and~~.  
30 Accordingly, the electrical corporation shall agree, in a binding  
31 and enforceable agreement pursuant to subdivision (b), to have the  
32 electrical corporation apply the approximately four hundred  
33 million dollars (\$400,000,000) in payments due to the electrical  
34 corporation from such stand-alone tax treatment for the 2000  
35 taxable year, consisting of the tax refund of the estimated quarterly  
36 tax payments made by the electrical corporation for the 2000  
37 taxable year and an additional amount equal to the federal loss  
38 carryback the electrical corporation would have had if it were not  
39 part of the holding company's consolidated group of taxpayers, to  
40 the reduction or elimination of the past debt of the electrical



1 corporation in order to restore the creditworthiness of the electrical  
2 corporation by the earliest feasible date.

3 (e) The binding and enforceable agreement in subdivision (b)  
4 shall be enforceable against the electrical corporation by the  
5 commission in proceedings.

6 399.22. This section shall apply to all electrical corporations  
7 subject to Section 399.21.

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

22 (b) (1) Notwithstanding any other provision of law, the  
23 commission shall establish, ~~within 60 days~~ *not later than 60 days*  
24 *from the date* of the filing of an application of an electrical  
25 corporation, an electrical corporation debt repayment set-aside  
26 designed to enable the electrical corporation to recover the  
27 qualified costs described in the application over an amortization  
28 period to be determined consistent with this article.

29 (2) The electrical corporation debt ~~reduction~~ *repayment*  
30 set-aside shall be established by the adoption of a financing order  
31 as set forth in this section. The commission shall establish an  
32 electrical corporation debt ~~reduction~~ *repayment* set-aside  
33 sufficient to enable the electrical corporation to recover the full  
34 amount of its qualified costs set forth in the financing order.

35 (3) Customers, as specified in Section 399.25, shall continue to  
36 pay the electrical corporation debt ~~reduction~~ *repayment* set-aside  
37 in accordance with the financing order until the electrical  
38 corporation has recovered the qualified costs set forth in the  
39 financing order and, if electricity market stabilization bonds have  
40 been issued in connection therewith, until those bonds are paid in



1 full by the financing entity. Notwithstanding any other provision  
2 of law, rates, and charges included within the electrical corporation  
3 debt ~~reduction~~ repayment set-aside shall constitute disconnectible  
4 charges, the nonpayment of which by a customer, in whole or in  
5 part, entitles the electrical corporation to disconnect electric  
6 service under procedures set forth in commission tariffs.

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

21 (d) Notwithstanding Section 455.5, Section 1708, or any other  
22 provision of law, except as otherwise provided in this subdivision,  
23 the financing orders and the electrical corporation debt repayment  
24 set-aside shall, upon the effectiveness of the financing orders, be  
25 irrevocable and the commission may not have authority either by  
26 rescinding, altering, or amending the financing order or otherwise,  
27 to revalue or revise for ratemaking purposes the qualified costs, or  
28 the costs of providing, recovering, financing, or refinancing the  
29 qualified costs, determine that the electrical corporation debt  
30 repayment set-aside is unjust or unreasonable, or in any way  
31 reduce or impair the value of stabilization property either directly  
32 or indirectly by taking the electrical corporation debt repayment  
33 set-aside into account when setting other rates for the electrical  
34 corporation; nor shall the amount of revenues arising with respect  
35 thereto be subject to reduction, impairment, postponement, or  
36 termination. Except as otherwise provided in this paragraph, the  
37 state does hereby pledge and agree with the electrical corporation,  
38 the owners of stabilization property, and holders of electricity  
39 market stabilization bonds that the state shall neither limit nor alter  
40 the electrical corporation debt repayment set-aside, stabilization



1 property, financing orders, and all rights thereunder until the  
2 electrical corporation has recovered all qualified costs, and if  
3 electricity market stabilization bonds have been issued in  
4 connection therewith, obligations under those bonds, together  
5 with the interest thereon, are fully met and discharged, provided  
6 that nothing contained in this section shall preclude the limitation  
7 or alteration of these matters if adequate provision is made by law  
8 for the protection of the owners and holders. That pledge shall be  
9 deemed to be part of a financing order upon adoption thereof by  
10 the commission. Notwithstanding any other provision of this  
11 section, the commission shall approve the adjustments to the  
12 electrical corporation debt repayment set-aside as it determines to  
13 be necessary to ensure timely recovery of all qualified costs that  
14 are the subject of the pertinent financing order, and the cost of  
15 capital associated with the provision, recovery, financing, or  
16 refinancing thereof, including the cost of issuing, servicing, and  
17 retiring any electricity market stabilization bonds issued to finance  
18 qualified costs contemplated by the financing order.

19 (e) The commission shall establish procedures for the  
20 expeditious processing of applications for financing orders,  
21 including the approval or disapproval thereof ~~within 60 days~~ *not*  
22 *later than 60 days from the date of the electrical corporation's*  
23 ~~making application therefor~~ *submittal of an application*. The  
24 commission shall provide in any financing order for a procedure  
25 for the expeditious approval by the commission of periodic  
26 adjustments to the electric corporation debt repayment set-aside  
27 that is the subject of the pertinent financing order, as required by  
28 subdivision (d). The procedure shall require the commission to  
29 determine whether the adjustments are required on each  
30 anniversary of the issuance of the financing order, and at the  
31 additional intervals as may be provided for in the financing order,  
32 and for the adjustments, if required, to be approved within 90 days  
33 of each anniversary of the issuance of the financing order, or of  
34 each additional interval provided for in the financing order.

35 (f) The electrical corporation debt repayment set-aside shall  
36 constitute stabilization property when, and to the extent that, a  
37 financing order authorizing the electrical corporation debt  
38 repayment set-aside has become effective in accordance with this  
39 article, and the stabilization property shall thereafter continuously  
40 exist as property for all purposes with all of the rights and



1 privileges of this article for the period and to the extent provided  
2 in the financing order, but in any event until (1) the electrical  
3 corporation has recovered the qualified costs and (2) the electricity  
4 market stabilization bonds are paid in full, including all principal,  
5 interest, premium, costs, and arrearages thereon.

6 (g) Sections ~~842~~, 843, 844, and 845 shall apply with respect to  
7 this article, as if those provisions were set forth in this article,  
8 subject to the following:

9 (1) References in Sections ~~842~~, 843, 844, and 845 to a  
10 “financing entity” shall mean a financing entity as defined in this  
11 article.

12 (2) References in Sections ~~842~~, 843, 844, and 845 to a  
13 “financing order” shall mean a financing order as defined in this  
14 article.

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

18 (4) References in Sections ~~842~~, 843, 844, and 845 to “rate  
19 reduction bonds” shall mean electricity market stabilization bonds  
20 as defined in this article.

21 (5) References in Sections ~~842~~, 843, 844, and 845 to  
22 “transition costs” shall mean qualified costs as defined in this  
23 article.

24 (6) References in Sections ~~842~~, 843, 844, and 845 to  
25 “transition property” shall mean stabilization property as defined  
26 in this article.

27 399.23. With respect to an electrical corporation debt  
28 repayment set-aside relating to financing orders providing for  
29 recovery of qualified costs, the obligation of the electrical  
30 corporation to collect and remit the electrical corporation debt  
31 repayment set-aside consistent with a financing order shall  
32 continue irrespective of whether that electrical corporation is  
33 providing electric power or other services to the retail customers  
34 obligated to pay the electrical corporation repayment set-aside.

35 399.24. The authority of the commission to issue financing  
36 orders providing for recovery of qualified costs shall expire on  
37 December 15, 2006. The expiration of the authority shall have no  
38 effect upon financing orders adopted by the commission pursuant  
39 to this article or any stabilization property arising therefrom, or  
40 upon the charges authorized to be levied thereunder, or the rights,



1 interests, and obligations of the electrical corporation or a  
2 financing entity or holders of electricity market stabilization bonds  
3 pursuant to the financing order, or the authority of the commission  
4 to monitor, supervise, or take further action with respect to the  
5 order in accordance with the terms of this article and of the order.

6 399.25. The electrical corporation debt repayment set-aside  
7 established by order of the commission pursuant to this article  
8 shall be paid exclusively by customers in the electrical  
9 corporation's service territory with a maximum peak demand *on*  
10 *the electrical corporation's system* exceeding 20 kilowatts, based  
11 on the usage of the prior year. *For customer load served by*  
12 *customer generation on or before January 17, 2001, the*  
13 *customer's maximum peak demand for purposes of this section*  
14 *shall not be based on demand under the electrical corporation's*  
15 *tariff governing standby service or any successor tariff.*

16 399.26. The commission may not establish an electrical  
17 corporation debt repayment set-aside for the purpose of providing  
18 for the recovery of qualified costs or issue a financing order with  
19 regard to an electrical corporation, unless both of the following  
20 conditions have been met:

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

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

34 399.27. (a) Except as provided in a binding and enforceable  
35 agreement under subdivision (b) of Section 399.21, financing  
36 entities may issue electricity market stabilization bonds upon  
37 approval by the commission in the pertinent financing orders. The  
38 terms and conditions of those bonds shall be approved by the  
39 Director of Finance in accordance with the agreement. That  
40 approval shall be conclusive and binding and is not subject to



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

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

30 (c) To the extent that any interest in stabilization property is so  
31 sold or assigned, or is so pledged as collateral or a security interest  
32 granted therein, the commission shall authorize the electrical  
33 corporation to contract with the financing entity that it will  
34 continue to operate its system to provide service to its customers,  
35 will collect amounts in respect of the ~~fixed stabilization amounts~~  
36 *corporation debt repayment set-aside* for the benefit and account  
37 of the financing entity, and will account for and remit these  
38 amounts to or for the account of the financing entity. Contracting  
39 with the financing entity in accordance with that authorization  
40 shall not impair or negate the characterization of the sale,



1 assignment, or pledge, or grant of security interests as an absolute  
2 transfer, a true sale, or security interest, as applicable. With respect  
3 to ~~fixed stabilization amounts corporation debt repayment~~  
4 ~~set-aside~~ relating to financing orders providing for recovery of  
5 qualified costs, the obligation of the electrical corporation to  
6 collect and remit the ~~fixed stabilization amounts corporation debt~~  
7 ~~repayment set-aside~~ 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 corporation~~  
11 ~~debt repayment set-aside~~.

12 (d) Notwithstanding Section 1708 or any other provision of  
13 law, any requirement under this article or a financing order that the  
14 commission take action with respect to the subject matter of a  
15 financing order shall be binding upon the commission, as it may  
16 be constituted from time to time, and any successor agency  
17 exercising functions similar to the commission and the  
18 commission shall have no authority to rescind, alter, or amend that  
19 requirement in a financing order. The approval by the commission  
20 in a financing order of the issuance by an electrical corporation or  
21 a financing entity of the bonds shall include the approvals, if any,  
22 as may be required by Article 5 (commencing with Section 816)  
23 of Chapter 4, and Section 701.5. Nothing in Section 701.5 shall be  
24 construed to prohibit the issuance of the bonds upon the terms and  
25 conditions as may be approved by the commission in a financing  
26 order. Section 851 shall not be applicable to the transfer or pledge  
27 of, or grant of a security interest in, stabilization property, the  
28 issuance of the bonds, or related transactions approved in a  
29 financing order.

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

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



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

~~(b) The state, acting through the Secretary of the Resources Agency, shall establish a trust to hold the interests in land conveyed by the electrical corporation. The state shall seek the assistance of qualified nonprofit organizations referenced in~~



1 ~~Section 815.3 of the Civil Code to establish and operate the trust.~~  
2 ~~The trust shall hold the interests in land conveyed pursuant to~~  
3 ~~subdivision (a) by the electrical corporation.~~

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

24 ~~(d) The management plan developed by the state for lands~~  
25 ~~transferred pursuant to this section shall be consistent with any~~  
26 ~~county general plans, zoning, or such other land use management,~~  
27 ~~regulatory, or permitting requirements and procedures.~~

28 ~~(e) The purpose of the public review process is to ensure the~~  
29 ~~permanent conservation of these lands for their public interest~~  
30 ~~value, including fish, wildlife, and habitat; compatible human~~  
31 ~~recreation; protection of open space and aesthetic values;~~  
32 ~~preservation of historic and cultural resources; and protection of~~  
33 ~~water quality and watershed functions. An additional objective is~~  
34 ~~to increase management efficiency by consolidating mixed public~~  
35 ~~and electrical corporation lands under public ownership.~~

36 ~~(f) Notwithstanding subdivision (d), nonutility uses of the~~  
37 ~~property existing as of the time the easement or other real property~~  
38 ~~interest is conveyed shall be permitted to continue subject to~~  
39 ~~certification by the Secretary of the Resources Agency that public~~  
40 ~~trust values will obtain a net benefit. If otherwise consistent with~~



1 existing law, utility uses, including the maintenance, repair,  
2 replacement, and installation of public utility infrastructure,  
3 including, but not limited to, water and sewer pipelines, and  
4 electric and telecommunication lines, existing as of the time the  
5 easement or other real property interest is conveyed, shall be  
6 permitted to continue. If otherwise consistent with existing law,  
7 expansion of hydroelectric utility facilities located on the property  
8 as of the time of conveyance to the state shall be permitted, subject  
9 to the approval of the state and federal agencies having jurisdiction  
10 over any expansion, and subject to certification by the secretary  
11 that public trust values will obtain a net benefit by that expansion.

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

24 (h) The maintenance, repair, replacement, and installation of  
25 public utility infrastructure, including, but not limited to, water  
26 and sewer pipelines, and electric and telecommunications lines for  
27 nonutility and other uses shall be allowed, subject to the extent  
28 those activities are permitted by the terms of the management and  
29 disposition plans approved by the state.

30 (i) Income derived from the conveyed lands from activities  
31 exclusive of hydropower generation that were authorized by the  
32 electrical corporation prior to the effective date of the act that  
33 added this section shall remain assets of the electrical corporation  
34 or its designees. Income derived from these lands subsequent to  
35 that effective date exclusive of hydropower generation shall  
36 remain the property of the state and shall be used to defray  
37 expenses associated with these property transfers.

38 (j) The Secretary of the Resources Agency shall certify that  
39 lands found to possess significant public values shall be managed  
40 in perpetuity by the state to maintain or enhance those values. The



1 public review process shall not recommend actions that are  
2 inconsistent with these objectives. The state shall have the right to  
3 impose conditions to protect these conservation, open-space,  
4 watershed, and public trust resources for all lands that are  
5 eventually transferred or otherwise disposed of by the state  
6 following the public review process.

7 (k) The state may transfer its title or possessory interests that  
8 ensure management in perpetuity for conservation of those public  
9 trust values in those lands to the electrical corporation, a local  
10 conservancy, state, federal, or local governmental agencies,  
11 special districts, Indian tribes or tribal entities, or nonprofit  
12 organizations qualified under Section 170(h) of the Internal  
13 Revenue Code and Section 815.3 of the Civil Code, that are  
14 competent and appropriate to own or manage the lands as required  
15 by this section, along with sale of remaining possessory interest to  
16 a compatible third party.

17 (l) New or modified economic uses of lands found to possess  
18 significant public values may occur if compatible with the primary  
19 purpose of protection or enhancement of existing environmental  
20 and recreational uses.

21 (m) Lands not found to possess significant public values may  
22 be used for land exchanges to protect other lands that possess  
23 significant public values or may be disposed of to generate income  
24 to acquire those other lands.

25 (n) On January 1, 2003, the advisory committee will make  
26 recommendations to the Legislature and the Secretary of the  
27 Resources Agency about the final management or disposition  
28 recommendations concerning the lands identified in subdivision  
29 (a). Pursuant to directives of the secretary, and with the same  
30 public process established in this section, periodic reviews of the  
31 management of these lands or interests in these lands that are  
32 transferred to the state by an electrical corporation, are authorized  
33 in order to assess the stewardship of public trust resources.

34 (o) Existing public access on these lands shall be maintained  
35 during the public review process unless a different arrangement is  
36 agreed upon that is separately negotiated by and between the  
37 electric corporation and the state.

38 (p) Notwithstanding any other provision of law, the electrical  
39 corporation shall retain legal responsibility for all liabilities  
40 arising by operation of law based on its prior ownership and



1 ~~interest in the lands conveyed to the state. The electrical~~  
2 ~~corporation shall indemnify and hold harmless the state or the trust~~  
3 ~~or the state's successors and assigns against liability arising out of~~  
4 ~~the electrical corporation's use or ownership prior to the transfer,~~  
5 ~~whether that liability is based on ownership in fee or another lesser~~  
6 ~~interest in the conveyed lands.~~

7 ~~(q) The Secretary of the Resources Agency alone shall have the~~  
8 ~~authority to transfer, encumber, or dispose of lands or interests in~~  
9 ~~lands conveyed to the state by the electrical corporation, except~~  
10 ~~that the secretary may designate a state agency or department with~~  
11 ~~expertise in land ownership and conveyance transactions to be his~~  
12 ~~or her designee.~~

13 ~~(r) With respect to any lands transferred to a trust pursuant to~~  
14 ~~this article, the state shall enter into a long-term operations and~~  
15 ~~maintenance contract with the electrical corporation for purposes~~  
16 ~~of managing those properties upon which leases, licenses, or other~~  
17 ~~developments have occurred or which have been permitted by the~~  
18 ~~county or the electrical corporation as of the effective date of the~~  
19 ~~act adding this section. The operations and maintenance contract~~  
20 ~~shall set forth the terms and conditions by which the lands shall be~~  
21 ~~managed pursuant to the conservation easements and management~~  
22 ~~plans developed by the state. Management responsibilities shall~~  
23 ~~include, but not be limited to, all of the following:~~

24 ~~(1) Operating and maintaining campgrounds, concessions, and~~  
25 ~~other existing developments that the electrical corporation~~  
26 ~~operated and maintained as of the effective date of the transfer.~~

27 ~~(2) Managing existing structures and developments on the~~  
28 ~~lands, consistent with the terms and conditions of the leases or~~  
29 ~~other agreements applicable to the lands, at the time of transfer to~~  
30 ~~the state.~~

31 ~~(3) Finalizing a recordation process as described in subdivision~~  
32 ~~(t).~~

33 ~~(s) With respect to any lands transferred to a trust pursuant to~~  
34 ~~this article, the operations and maintenance contract between the~~  
35 ~~state and the electrical corporation shall provide that the electrical~~  
36 ~~corporation shall make payments to the county in lieu of property~~  
37 ~~taxes as though the electrical corporation continued to own all of~~  
38 ~~the lands in fee simple. The State Board of Equalization shall~~  
39 ~~continue to assess the lands and determine the amount of the~~  
40 ~~payment owed to the county as though the electrical corporation~~



1 continued to own the lands in fee simple. The electrical  
 2 corporation shall be authorized to recover any payments made to  
 3 the county from the ratepayers.

4 (t) ~~In coordination with the electrical corporation and the local~~  
 5 ~~county recorder, the state shall offer to all lease holders or other~~  
 6 ~~holders of land use rights, an opportunity to file with the state any~~  
 7 ~~leases, authorization, approvals, licenses, or other documented~~  
 8 ~~rights to use specific lands not yet used as of the effective date of~~  
 9 ~~the transfer of the electrical corporation's lands to the state or a~~  
 10 ~~trust pursuant to this article. Those rights shall be continued by the~~  
 11 ~~state for the term of the rights as set forth in any documentation.~~  
 12 ~~The state shall continue the timeframe for the filings for a period~~  
 13 ~~of one year after notification by the state.~~

14 ~~SEC. 13.~~

15 *SEC. 12.* Section 454.10 is added to the Public Utilities Code,  
 16 to read:

17 ~~454.10. (a) Upon receiving an application from an electrical~~  
 18 ~~corporation for this purpose, the commission may require or~~  
 19 ~~authorize the corporation to make direct investments in electric~~

20 *454.10. (a) In order to assure that the service provided by*  
 21 *electrical corporations is adequate, the commission may require*  
 22 *each electrical corporation that provides distribution service to*  
 23 *make direct investments in electric generation facilities whose*  
 24 *output is dedicated to serve the customers connected to its*  
 25 *distribution grid.*

26 (b) After a hearing, the commission shall approve rates  
 27 sufficient to enable the electrical corporation to recover its  
 28 reasonable costs of operation, its reasonable investment in the  
 29 electric generation facilities and a reasonable return on its  
 30 investment, in accordance with Section 451.

31 (c) An ~~electric~~ *electrical* corporation may meet the obligation  
 32 described in this section by entering into projects for electric  
 33 generation facilities jointly with the California Consumer Power  
 34 and Conservation Financing Authority.

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

38 (e) This section is declaratory of existing law.

39 ~~SEC. 14.~~



1     *SEC. 13.* Section 454.11 is added to the Public Utilities Code,  
2 to read:

3     454.11. In the case of an electrical corporation serving more  
4 than 4,000,000 customers, which is also a gas corporation serving  
5 fewer than 5,000 ~~customers and which~~ *customers, and that* has  
6 entered into a binding and enforceable agreement pursuant to  
7 subdivision (b) of Section 399.21, the commission may not  
8 reduce, prior to January 1, 2006, the authorized rate of return on  
9 equity of the electrical corporation below the return authorized in  
10 the most recent decision or decisions of the commission prior to  
11 the effective date of the act adding this section to the Public  
12 Utilities Code, or modify the capital structure upon which that rate  
13 of return is established. Electricity Market Stabilization Bonds, as  
14 defined under Section 399.20, may not be considered indebtedness  
15 for the purposes of determining an electrical corporation's  
16 authorized capital structure. *Neither the electrical corporation's*  
17 *compliance with the requirements of any provision of the act that*  
18 *added this section in the 2001–02 Second Extraordinary Session*  
19 *nor the binding and enforceable agreement entered into by the*  
20 *electrical corporation pursuant to subdivision (b) of Section*  
21 *399.21, shall be found to constitute noncompliance with the*  
22 *electrical corporation's authorized capital structure.*

23     ~~SEC. 15.~~

24     *SEC. 14.* Section 1731 of the Public Utilities Code is amended  
25 to read:

26     1731. (a) The commission shall set an effective date when  
27 issuing an order or decision. The commission may set the effective  
28 date of an order or decision prior to the date of issuance of the order  
29 or decision.

30     (b) After any order or decision has been made by the  
31 commission, any party to the action or proceeding, or any  
32 stockholder or bondholder or other party pecuniarily interested in  
33 the public utility affected, may apply for a rehearing in respect to  
34 any matters determined in the action or proceeding and specified  
35 in the application for rehearing. The commission may grant and  
36 hold a rehearing on those matters, if in its judgment sufficient  
37 reason is made to appear. No cause of action arising out of any  
38 order or decision of the commission shall accrue in any court to any  
39 corporation or person unless the corporation or person has filed an  
40 application to the commission for a rehearing within 10 days after



1 the date of issuance or within 10 days after the date of issuance in  
2 the case of an order issued pursuant to either Article 5  
3 (commencing with Section 816) or Article 6 (commencing with  
4 Section 851) of Chapter 4 relating to security transactions and the  
5 transfer or encumbrance of utility property, or a financing order  
6 issued in connection with qualified costs pursuant to Article 16  
7 (commencing with Section 399.20) of Chapter 2.3. For purposes  
8 of this article, “date of issuance” means the date when the  
9 commission mails the order or decision to the parties to the action  
10 or proceeding.

11 *(c) No cause of action arising out of any order or decision of the*  
12 *commission construing, applying, or implementing the provisions*  
13 *of Chapter 4 of the Statutes of the 2001-02 First Extraordinary*  
14 *Session shall accrue in any court to any corporation or person*  
15 *unless the corporation or person has filed an application to the*  
16 *commission for a rehearing within in 10 days after the date of*  
17 *issuance of the order or decision. The commission shall issue its*  
18 *decision and order an rehearing within 20 days after the filing of*  
19 *that application.*

20 ~~SEC. 16.~~

21 *SEC. 15.* Section 9601 of the Public Utilities Code is amended  
22 to read:

23 9601. (a) Except with respect to supply options of the nature  
24 specified in Section 218, with the exception of paragraph (3) of  
25 subdivision (b) of that section, as it existed on December 20, 1995,  
26 no person, corporation, electrical corporation, or local publicly  
27 owned electric utility or other governmental entity other than a  
28 retail customer’s existing electric service provider as of December  
29 20, 1995, shall provide partial or full electric service to a retail  
30 customer of a local publicly owned electric utility unless the  
31 customer first confirms in writing an obligation to pay, through  
32 tariff or otherwise, to the utility currently providing electric  
33 service, a nonbypassable generation-related severance fee or  
34 transition charge established by the regulatory body for that utility.  
35 The severance fee or transition charge shall be paid directly to the  
36 local publicly owned utility providing electricity service in the  
37 service area in which the consumer is located.

38 (b) Except as provided in subdivision (a) of Section 374, no  
39 local publicly owned electric utility or other governmental entity  
40 shall provide partial or full electric service to a retail customer of



1 an electrical corporation unless the customer of that electrical  
2 corporation first confirms in writing an obligation to pay, through  
3 tariff or otherwise, to the electrical corporation currently  
4 providing electric service, a nonbypassable generation-related  
5 transition charge established by the regulatory body for that  
6 electrical corporation, and any electrical corporation debt  
7 repayment set-aside established for that electrical corporation for  
8 recovery of qualified costs pursuant to Article 16 (commencing  
9 with Section 399.20) of Chapter 2.3 of Part 1 of Division 1. The  
10 charge shall be paid directly to the electrical corporation providing  
11 electricity in the service area in which the consumer is located.

12 (c) No local publicly owned electric utility or electrical  
13 corporation shall sell electric power to the retail customers of  
14 another local publicly owned electric utility or electrical  
15 corporation unless the first utility has agreed to let the second  
16 utility make sales of electric power to the retail customers of the  
17 first utility.

18 ~~SEC. 17.~~

19 *SEC. 16.* Section 80002 of the Water Code is amended to read:

20 80002. Nothing in this division may be construed to reduce or  
21 modify any electrical corporation's obligation to serve, except to  
22 the extent set forth in a definitive agreement implementing the  
23 procurement obligations of the department as contemplated by a  
24 binding and enforceable agreement, as defined in subdivision (b)  
25 of Section 399.21 of the Public Utilities Code. The department  
26 may enter into those agreements with an electrical corporation and  
27 other parties in furtherance of the foregoing, as it determines to be  
28 appropriate. Nothing in this section may be construed to obligate  
29 the department for any procurement cost obligations of any  
30 electrical corporation that may have existed as of February 1,  
31 2001.

32 *SEC. 17.* Section 80010 of the Water Code is amended to read:

33 80010. As used in this division, unless the context otherwise  
34 requires, the following terms have the following meanings:

35 (a) "Bonds" means bonds, notes, or other evidences of  
36 indebtedness issued solely for the purposes of paying the cost of  
37 electric power and transmission, scheduling, and other related  
38 expenses incurred by the department on and after the effective date  
39 of this division, or to reimburse expenditures from the fund for  
40 those purposes; repaying to the General Fund any advances made



1 to the department from appropriations made to the fund pursuant  
 2 hereto or hereafter for purposes of this division, any advances  
 3 made to the department from the Water Resources Electric Power  
 4 Fund, and General Fund moneys expended by the department  
 5 pursuant to the Governor’s Emergency Proclamation dated  
 6 January 17, 2001; establishing or maintaining reserves in  
 7 connection with the bonds; costs of issuance of bonds or incidental  
 8 to their payment or security; capitalized interest; or to renew or  
 9 refund any bonds.

10 (b) “Commission” means the Public Utilities Commission.

11 (c) *“Department of Water Resources costs” means all costs*  
 12 *incurred by the Department of Water Resources, including, but not*  
 13 *limited to, debt service or other costs associated with bonds or*  
 14 *notes issued to finance those costs and ongoing costs incurred in*  
 15 *the procurement of power under contracts executed by the*  
 16 *Department of Water Resources.*

17 (d) *“Department of Water Resources financing costs” means*  
 18 *all costs, including principal and interest, associated with the*  
 19 *issuance and repayment of all bonds and notes issued pursuant to*  
 20 *this division.*

21 (e) “Electrical corporation” has the same meaning as that term  
 22 is defined in Section 218 of the Public Utilities Code.

23 ~~(d)~~

24 (f) “Fund” means the Department of Water Resources Electric  
 25 Power Fund established by Section 80200.

26 ~~(e)~~

27 (g) “Local publicly owned electric utility” includes the entities  
 28 defined in subdivision (d) of Section 9604 of the Public Utilities  
 29 Code and publicly owned utilities that provide electricity.

30 ~~(f)~~

31 (h) “Power” means electric power and energy, including, but  
 32 not limited to, capacity and output, or any of them.

33 ~~(g)~~

34 (i) “Public utility” has the same meaning as that term is  
 35 defined in Section 216 of the Public Utilities Code.

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

37 80110. (a) The department shall retain title to all power sold  
 38 by it to the retail end use customers. The department shall be  
 39 entitled to recover, as a revenue requirement, amounts and at the  
 40 times necessary to enable it to comply with Section 80134, and



1 shall advise the commission as the department determines to be  
2 appropriate. Such revenue requirements may also include any  
3 advances made to the department hereunder or hereafter for  
4 purposes of this division, or from the Department of Water  
5 Resources Electric Power Fund, and General Fund moneys  
6 expended by the department pursuant to the Governor's  
7 Emergency Proclamation dated January 17, 2001. For purposes of  
8 this division and except as otherwise provided in this section, the  
9 Public Utility Commission's authority as set forth in Section 451  
10 of the Public Utilities Code shall apply, except any just and  
11 reasonable review under Section 451 shall be conducted and  
12 determined by the department. The commission may enter into an  
13 agreement with the department with respect to charges under  
14 Section 451 for purposes of this division, and that agreement shall  
15 have the force and effect of a financing order adopted in  
16 accordance with Article 16 (commencing with Section 399.20) of  
17 Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, as  
18 determined by the commission. In no case shall the commission  
19 increase the electricity charges in effect on the date that the act that  
20 adds this section becomes effective for residential customers for  
21 existing baseline quantities or usage by those customers of up to  
22 130 percent of existing baseline quantities, until such time as the  
23 department has recovered the costs of power it has procured for the  
24 electrical corporation's retail end use customers as provided in this  
25 division. The department shall have the same rights with respect  
26 to the payment by retail end use customers for power sold by the  
27 department as do providers of power to such customers.

28 *(b) Notwithstanding any provision of law, all rates, charges,*  
29 *and fees established by the Public Utilities Commission to recover*  
30 *Department of Water Resources costs pursuant to this section or*  
31 *Section 365.2 of the Public Utilities Code shall be nonbypassable,*  
32 *except to the extent permitted by Sections 365.2 and 365.3 of the*  
33 *Public Utilities Code. The rates, charges, and fees shall be*  
34 *disconnectible to the same extent as rates, charges, and fees*  
35 *payable to an electrical corporation. Notwithstanding any other*  
36 *provision of law, in allocating Department of Water Resources*  
37 *financing costs to customer rates for department power purchased*  
38 *pursuant to this division the commission shall allocate the*  
39 *Department of Water Resources financing costs at a uniform rate*  
40 *per kilowatthour of department-procured electricity consumed to*



1 *all bundled service customers of an electrical corporation,*  
2 *including all customers that were receiving bundled service from*  
3 *the electrical corporation on or after January 17, 2001. Nothing*  
4 *in this section shall be deemed to affect the continuing validity of*  
5 *any rates, charges, or fees established by the commission and*  
6 *applicable prior to the effective date of the amendment to this*  
7 *section that added this subdivision.*

8 SEC. 19. Notwithstanding any provision of law, the Director  
9 of the Department of Water Resources, acting on behalf of the  
10 state, may execute and deliver an agreement consistent with  
11 Section 399.21 of the Public Utilities Code with any electrical  
12 corporation.

13 SEC. 20. If any part of the provisions of this act, or the  
14 application thereof to any person or circumstance, is held invalid,  
15 the remainder of this act, including the application of such part or  
16 provision to other persons or circumstances, shall not be affected  
17 thereby, and this act shall otherwise continue in full force and  
18 effect and shall otherwise be fully operative. To this end, the  
19 provisions of this act, and each of them, are hereby declared to be  
20 severable.

21 SEC. 21. *It is the intent of the Legislature to accomplish all of*  
22 *the following:*

23 (a) *Hold harmless local agencies that would receive revenues*  
24 *prior to its acquisition by the state from local property taxation,*  
25 *pursuant to Sections 100 and 100.01 of the Revenue and Taxation*  
26 *Code, of a transmission facility that constitutes real property and*  
27 *that is acquired by the state department or agency from an*  
28 *electrical corporation.*

29 (b) *Decrease the revenue transfer pursuant to Section 97.3 of*  
30 *the Revenue and Taxation Code in amounts equal to the property*  
31 *taxes those local agencies would have received pursuant to*  
32 *Sections 100 and Sections 100.01 of the Revenue and Taxation*  
33 *Code absent the transfer of ownership to the state.*

34 (c) *Make reductions for the local agency, as defined by*  
35 *subdivision (a) of Section 95 of the Revenue and Taxation Code,*  
36 *in which the transmission facility is located in amounts not greater*  
37 *than the property tax revenues that would have been received by*  
38 *the local agency if the property had continued to be owned by the*  
39 *electrical corporation.*



1     *SEC. 22.* No reimbursement is required by this act pursuant  
2 to Section 6 of Article XIII B of the California Constitution  
3 because the only costs that may be incurred by a local agency or  
4 school district will be incurred because this act creates a new crime  
5 or infraction, eliminates a crime or infraction, or changes the  
6 penalty for a crime or infraction, within the meaning of Section  
7 17556 of the Government Code, or changes the definition of a  
8 crime within the meaning of Section 6 of Article XIII B of the  
9 California Constitution.

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