

**Senate Bill No. 1976**

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Passed the Senate August 29, 2002

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*Secretary of the Senate*

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Passed the Assembly August 19, 2002

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day of \_\_\_\_\_, 2002, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to add Section 454.5 to the Public Utilities Code, relating to electricity, and declaring the urgency thereof, to take effect immediately.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1976, Torlakson. State Energy Resources Conservation and Development Commission: report: real-time pricing: electrical corporation: procurement plans.

(1) Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to conduct an ongoing assessment of the opportunities and constraints presented by all forms of energy.

Under existing law, the Public Utilities Commission is required to conduct a pilot study of real-time metering for nonresidential customers, to determine the effectiveness of real-time metering in reducing energy demand and overall energy consumption, to examine customer response, to determine how real time metering should be implemented, and to determine whether more widespread use of real-time metering is in the public interest. Real-time metering is a system for measuring a customer's usage of electricity on at least an hourly basis, variably pricing that electricity based on the cost of acquisition or production, and regularly providing and updating that usage and pricing information to the customer.

This bill would require the commission, in consultation with the Public Utilities Energy Commission, to report to the Legislature and the Governor, by March 31, 2003, regarding the feasibility of implementing real-time, critical peak, and other dynamic pricing tariffs for electricity in California, as strategies which can either reduce peak demand or shift peak demand load to off-peak periods.

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

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



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

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

(3) Existing law makes a violation of the provisions of the act a crime.

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

(4) 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.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Californians can significantly increase the reliability of the electricity system and reduce the level of wholesale electricity prices by reducing electricity usage at peak times through a variety of measures designed to reduce electricity consumption during those periods.

(b) Dynamic pricing, including real-time pricing, provides incentives to reduce electricity consumption in precisely those



hours when supplies are tight and provides lower prices when wholesale prices are low.

(c) The State of California, through Assembly Bill 29 of the 2001–02 First Extraordinary Session, has already invested thirty-five million dollars (\$35,000,000) in real-time metering systems for customers who consume greater than 200 kilowatts.

(d) Real-time pricing integrates information technology into the energy business, and creates new markets for communications, microelectronic controls, and information.

(e) Electricity consumption for air conditioning purposes during peak demand periods significantly contributes to California's electricity shortage vulnerability during summer periods.

(f) It is the intent of the Legislature to promote energy conservation and demand reduction in the State of California.

SEC. 2. (a) On or before March 31, 2003, the State Energy Resources Conservation and Development Commission, in consultation with the Public Utilities Commission, shall report to the Legislature and the Governor regarding the feasibility of implementing real-time pricing, critical peak pricing, and other dynamic pricing tariffs for electricity in California, as strategies which can either reduce peak demand or shift peak demand load to off-peak periods.

(b) The report shall consider all of the following:

(1) How wholesale real-time prices would be calculated and made available to customers.

(2) Options for day-ahead and hour-ahead retail prices.

(3) Options for facilitating customer response to real-time and critical peak prices and managing total customer costs, including, but not limited to, interval metering and communication systems, consumer-side of the meter notification, and automatic response equipment.

(4) An assessment of the options for a variety of customer classes, including, but not limited to, industrial, commercial, residential, and tenants of a mobilehome park, apartment building, or similar residential complex, that receive electricity from a master-meter customer through a submetered system.

(5) Estimates of potential peak load reductions, including the shifting of peak load demand to off-peak periods.



(6) Options for incorporating demand responsiveness into the wholesale competitive market and operations of the California Independent System Operator.

(7) Options for ensuring customer protection under a real-time, critical peak, and other dynamic pricing scenarios, including identifying potentially disadvantaged groups who may be disproportionately vulnerable to the impact of volatile prices and suggestions for effective safeguards for those customers.

SEC. 3. Section 454.5 is added to the Public Utilities Code, to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

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

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

(3) The duration of the plan.



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

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

(6) An incentive mechanism, if any incentive mechanism is proposed, including the type of transactions to be covered by that mechanism, their respective procurement benchmarks, and other parameters needed to determine the sharing of risks and benefits.

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection thereof. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

(9) A showing that the procurement plan will achieve the following:

(A) The electrical corporation will, in order to fulfill its unmet resource needs and in furtherance of Section 701.3, until a 20 percent renewable resources portfolio is achieved, procure renewable energy resources with the goal of ensuring that at least an additional 1 percent per year of the electricity sold by the electrical corporation is generated from renewable energy resources, provided sufficient funds are made available pursuant to Section 399.6, to cover the above-market costs for new renewable energy resources.

(B) The electrical corporation will create or maintain a diversified procurement portfolio consisting of both short-term and long-term electricity and electricity-related and demand reductions products.

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

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



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

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

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

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

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation prior to the execution of the bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate



alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

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

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

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

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

(4) Moderate the price risk associated with serving its retail customers, including the price risk embedded in its long-term



supply contracts, by authorizing an electrical corporation to enter into financial and other electricity-related product contracts.

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

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

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

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

(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

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

(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the



commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.

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

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to determine the feasibility of dynamic pricing as soon as possible, and in order that the Public Utilities Commission may undertake the review and approval of each electric corporation's procurement plan at the earliest possible time in a manner consistent with this act, it is necessary that this act take effect immediately.



Approved \_\_\_\_\_, 2002

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*Governor*

