

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 428

**Introduced by Assembly ~~Member Richman~~ *Members Richman
and Canciamilla***

February 14, 2003

An act to add Section 367.6 to the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 428, as amended, Richman. Electrical corporations: core supply portfolio: core bundled customers.

(1) Under existing law, the Public Utilities Commission regulates electrical corporations. The Public Utilities Act requires the commission to authorize direct transactions between electricity suppliers and end use customers. However, other existing law suspends the right of retail end use customers to acquire direct access service from certain electricity suppliers after a period of time to be determined by the commission until the Department of Water Resources no longer supplies electricity under a certain provision of law.

This bill would delete that suspension.

The bill would require the commission, on or before January 1, ~~2006~~ 2005, to adopt ~~guidelines~~ *regulatory criteria* for the appropriate *and reasonable* composition of a core portfolio of electricity supplies to be established by each electrical corporation to meet the needs of the electrical corporation's bundled core customers, as defined, *noncore customers electing to remain with the electrical corporation for at least one year*, and to provide an adequate reserve capacity. Under the bill,

commencing January 1, 2006, an ~~electric~~ *electrical* corporation would have no obligation to ~~serve~~ *procure electric commodity for* a noncore customer, as defined, except by contract for a term of no less than ~~3 1~~ *years year* and on terms approved by the commission that reimburse the electrical corporation for all costs of providing electrical service. Commencing on that date, noncore customers ~~would~~ *could not* be served *from the core portfolio, except as specified, and would be served* either by direct transactions or by contract with an electrical corporation. The bill would require the commission, on or before January 1, 2006, to adopt rules to allow residential bundled core customers to elect to be served by direct transactions in a manner that fully ~~accounts for their cost of service by the electrical corporation and payments for a proportionate share of system costs, bond payments, and public benefits charges~~ *compensates the electrical corporation and the Department of Water Resources for the customers' proportionate share of specified categories of costs. The bill would also require the commission to adopt rules to ensure that the returning residential bundled core customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year contractual obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory.* The bill would require the commission to adopt corresponding rules for nonresidential bundled core customers on or before January 1, 2012. Because a violation of a rule or order of the commission is a crime, this bill would create a new crime, thereby imposing a state-mandated local program.

(2) 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. It is the intent of the Legislature to ~~provide~~ *do*
 2 *all of the following:*



1 (a) Establish a market structure in which the electrical
2 corporations have an obligation to provide bundled electric
3 commodity procurement service only to core retail end-use
4 customers.

5 (b) Allow noncore retail end-use customers to elect to have
6 their electricity commodity procured by the electrical corporations
7 for a fixed term at rates that fully compensate the electrical
8 corporations for the incremental costs of procuring the
9 commodity.

10 (c) Require the electrical corporations to serve as a default
11 provider of electric commodity procurement service to noncore
12 retail end-use customers that voluntarily or involuntarily return to
13 the electrical corporation for that service.

14 (d) Provide a market structure for the construction of electric
15 generation capacity to meet the needs of a growing state and
16 replace this state's most polluting and inefficient ~~generation plants~~
17 ~~by phasing in a retail electric generation plants by phasing in a~~
18 ~~competitive retail electric commodity market for the largest, most~~
19 ~~financially stable customers~~ retail end-use customers of the
20 electrical corporation.

21 (e) Ensure the protection of core retail end-use customers
22 against payment of stranded costs by requiring departing
23 customers to pay for power and other services provided on their
24 behalf by the state and the electrical corporations.

25 SEC. 2. Section 367.6 is added to the Public Utilities Code, to
26 read:

27 367.6. (a) As used in this section, the following terms have
28 the following meanings:

29 (1) "Bundled core customers" include all ~~customers~~ retail
30 end-use customers of an electrical corporation with a maximum
31 peak demand of less than 500 kilowatts, or a maximum peak
32 demand as determined by the commission pursuant to subdivision
33 (b), who are not being served, or who elect not to be served,
34 through direct transactions.

35 (2) "Noncore customers" include all ~~customers~~ retail end-use
36 customers of an electrical corporation with a maximum peak
37 demand of 500 kilowatts or greater, or a maximum peak demand
38 as determined by the commission pursuant to subdivision (b). For
39 the purposes of this section, noncore customers may aggregate
40 their peak demand from multiple meters located anywhere in an



1 *electrical corporation's service territory. Customers receiving*
2 *service from electricity suppliers on January 1, 2006, shall be*
3 *considered noncore customers, except any customers exempt from*
4 *any direct access surcharge paid by other noncore customers, shall*
5 *retain that exemption until the time they return to bundled utility*
6 *service.*

7 (b) Commencing January 1, ~~2008, and every two years~~
8 ~~thereafter, 2009~~, the commission shall reduce the maximum peak
9 demand threshold ~~by an amount sufficient to convert for defining~~
10 *noncore customers in subdivision (a), by converting the bundled*
11 *core customers with the largest peak demand prior to reduction of*
12 *the threshold to noncore customers, who shall contract for*
13 ~~electricity service from third parties or an electric corporation to~~
14 *in sufficient amounts, so that the forecast load attributable to*
15 *converted customers is forecast to meet all growth in electricity*
16 *demand forecasted by the State Energy Resources Conservation*
17 *and Development Commission during the following five-year*
18 *period and any reduction in the aggregate supply of electricity*
19 *provided by Department of Water Resources contracts pursuant to*
20 *Division 27 (commencing with Section 80000) of the Water Code.*
21 *The commission shall complete its proceeding in this matter no*
22 *later than December 31, 2007, and may not lower the threshold*
23 *beyond 400 250 kilowatts maximum peak demand.*

24 (c) On or before January 1, ~~2006~~ 2005, the commission shall
25 adopt ~~guidelines for the appropriate~~ *regulatory criteria for the*
26 *appropriate and reasonable* composition of a core portfolio of
27 electricity supplies to be established by each electrical corporation
28 to meet the needs of the electrical corporation's bundled core
29 customers ~~and~~ *and noncore customers electing to remain with the*
30 *electrical corporation for at least one year pursuant to subdivision*
31 *(e) and to provide an adequate reserve capacity. The commission*
32 *shall include a minimum renewable energy component and*
33 *demand-side management programs, including, but not limited to,*
34 *time-of-use rates and reserve requirements established by the State*
35 ~~Energy Resources Conservation and Development Commission.~~
36 *consistent with existing law.*

37 (d) (1) The core supply portfolio shall also include the
38 following components:

39 (A) Output of the generation assets retained by the electrical
40 corporation under commission regulation.



1 (B) The total amount of Department of Water Resources
2 contract electricity purchased ~~to supply bundled customers~~
3 *pursuant to Division 27 (commencing with Section 80000) of the*
4 *Water Code and allocated to the core customers of the electrical*
5 *corporation.*

6 (C) Other supplies purchased by the electrical corporation
7 under contracts to serve the needs of its core customers.

8 (D) Any spot market supplies required to ~~provide for core~~
9 ~~demand~~ *serve core customers.*

10 ~~(2) The commission shall ensure that noncore customers are~~
11 ~~responsible for an appropriate amount of the costs of the~~
12 ~~Department of Water Resources contracts to the extent those costs~~
13 ~~exceed the average cost of the remaining supply components of the~~
14 ~~core supply portfolio.~~

15 (2) *The commission shall adopt rules that protect the core*
16 *customer of an electrical corporation from cost shifting resulting*
17 *from direct transactions, customers who depart the electrical*
18 *corporation's system in order to be served by a competing publicly*
19 *owned utility, or undercollections of utility costs of service or costs*
20 *incurred by the Department of Water Resources to serve customers*
21 *who are no longer core customers. These rules shall ensure that a*
22 *retail end-use customer purchasing electricity from another*
23 *electric service provider or electricity supplier shall reimburse the*
24 *electrical corporation that previously served that customer, or had*
25 *the obligation to serve that customer, on a nonbypassable basis for*
26 *the categories of costs described in subdivisions (d), (e), (f), and*
27 *(g) of Section 366.1.*

28 (3) *The commission shall ensure that no customer moving from*
29 *core to noncore will have any obligation for any future costs*
30 *incurred by the electrical corporation or Department of Water*
31 *Resources associated with the core supply portfolio that are not*
32 *recovered from core customers, and that costs of the core supply*
33 *portfolio shall be recoverable only from core customers and*
34 *noncore customers served by electrical corporations as described*
35 *in subdivision (e).*

36 (e) Commencing January 1, 2006, an ~~electric~~ *electrical*
37 *corporation has no obligation to serve procure electric commodity*
38 *for any noncore customer except by contract for a term of not less*
39 *than three one years and on terms approved by the commission that*
40 *reimburse the electrical corporation for all costs of providing*



1 electrical service. *On or before January 1, 2005, the commission*
2 *shall adopt rules, as it deems necessary to establish a*
3 *nondiscriminatory tariff for noncore customers. These rules shall*
4 *include all of the following:*

5 (1) *A time certain, no later than July 1, 2005, by which a*
6 *noncore customer currently receiving electric commodity*
7 *procurement service from the electrical corporation shall either*
8 *elect to be served by an electricity supplier other than the electrical*
9 *corporation or agree to be served by the electrical corporation for*
10 *a minimum of one year. Noncore customers electing to remain with*
11 *the electrical corporation on or before July 1, 2005, may be served*
12 *from the core customer portfolio described in paragraph (1) of*
13 *subdivision (d).*

14 (2) *Notice requirements of not less than six months for noncore*
15 *customers to provide notice to their electrical corporation and the*
16 *Department of Water Resources of their intent to obtain service*
17 *from an electricity supplier other than the electrical corporation*
18 *or voluntarily contract with the electrical corporation for bundled*
19 *noncore electric commodity procurement service pursuant to this*
20 *subdivision.*

21 (3) *Provisions for ensuring prompt and full recovery of costs*
22 *that the electrical corporation and Department of Water Resources*
23 *have incurred to serve customers pursuant to paragraph (2) of*
24 *subdivision (d) and in meeting the obligation to serve. Rates and*
25 *tariffs that require noncore customers who choose to return to*
26 *bundled utility electric commodity procurement service to pay the*
27 *actual costs incurred by the electrical corporation to procure*
28 *electric commodity for that returning customer on a basis*
29 *separately tariffed from the costs of the noncore portfolio of the*
30 *electrical corporation for a period of not less than one year or the*
31 *tariffed rate under this section, whichever is higher.*

32 (f) *Commencing January 1, 2006, noncore customers may not*
33 *be served from the core portfolio, except as provided in paragraph*
34 *(1) of subdivision (e). Noncore customers shall be served by direct*
35 *transactions, as described in Section 365, or by contract with an*
36 *electrical corporation as described in subdivision (e). Customers*
37 *may aggregate their load at multiple locations in order to be*
38 *classified as noncore customers. Any noncore customer who elects*
39 *to remain with, or return to, service from its electrical corporation*
40 *rather than engage in direct transactions shall provide the electrical*



1 ~~corporation at least 18 months' advance written notice of that~~
2 ~~election.~~ (e). *In coordination with the resource planning and*
3 *procurement process defined in Section 454.5, the commission*
4 *shall annually establish the appropriate mix and level of*
5 *long-term, medium-term, and short-term resource commitments to*
6 *be made by the electrical corporation consistent with the utility*
7 *procurement obligations defined in this section.*

8 (g) (1) On or before January 1, 2006, the commission shall
9 adopt rules to allow residential bundled core customers to elect to
10 be served by direct transactions in a manner that fully ~~accounts for~~
11 ~~their cost of service by the electrical corporation and payments for~~
12 ~~a proportionate share of system costs, bond payments, and public~~
13 ~~benefits charges.~~ *compensates the electrical corporation and the*
14 *Department of Water Resources for the customers' proportionate*
15 *share of the categories of costs described in subdivisions (d), (e),*
16 *(f), and (g) of Section 366.1. The commission shall also adopt rules*
17 *to address the return of those residential bundled core customers*
18 *being served by direct transactions to bundled service that ensure*
19 *that the returning customers are charged the full costs incurred by*
20 *the electrical corporation to provide them with electric commodity*
21 *procurement service, including a minimum one year contractual*
22 *obligation to take bundled electric service from the electrical*
23 *corporation, unless the customer leaves the electrical*
24 *corporation's service territory.*

25 (2) On or before January 1, 2012, the commission shall adopt
26 rules to allow nonresidential bundled core customers to elect to be
27 served by direct transactions in a manner that fully ~~accounts for~~
28 ~~their cost of service by the electrical corporation and payments for~~
29 ~~a proportionate share of system costs, bond payments, and public~~
30 ~~benefits charges.~~ *compensates the electrical corporation and the*
31 *Department of Water Resources for the customers' proportionate*
32 *share of the categories of costs described in subdivisions (d), (e),*
33 *(f), and (g) of Section 366.1. The commission shall also adopt rules*
34 *to address the return of those nonresidential bundled core*
35 *customers being served by direct transactions to bundled service*
36 *that ensure that the returning customers are charged the full costs*
37 *incurred by the electrical corporation to provide them with electric*
38 *commodity procurement service, including a minimum one year*
39 *obligation to take bundled electric service from the electrical*



1 corporation, unless the customer leaves the electrical
2 corporation's service territory.

3 (h) A noncore customer shall not be responsible for any new
4 transition costs or procurement-related obligations incurred on
5 behalf of the core portfolio during the period when the customer
6 is served by direct transactions, except to the extent that the costs
7 were incurred during the period when the noncore customer had
8 elected to receive core portfolio service pursuant to paragraph (1)
9 of subdivision (e) and the costs cover the actual cost of electricity
10 used by the customer.

11 SEC. 3. Section 80110 of the Water Code is amended to read:
12 80110. The department shall retain title to all power sold by
13 it to the retail end use customers. The department shall be entitled
14 to recover, as a revenue requirement, amounts and at the times
15 necessary to enable it to comply with Section 80134, and shall
16 advise the commission as the department determines to be
17 appropriate. ~~Such~~ Those revenue requirements may also include
18 any advances made to the department hereunder or hereafter for
19 purposes of this division, or from the Department of Water
20 Resources Electric Power Fund, and General Fund moneys
21 expended by the department pursuant to the Governor's
22 Emergency Proclamation dated January 17, 2001. For purposes of
23 this division and except as otherwise provided in this section, the
24 commission's authority as set forth in Section 451 of the Public
25 Utilities Code shall apply, except any just and reasonable review
26 under Section 451 shall be conducted and determined by the
27 department. The commission may enter into an agreement with the
28 department with respect to charges under Section 451 for purposes
29 of this division, and that agreement shall have the force and effect
30 of a financing order adopted in accordance with Article 5.5
31 (commencing with Section 840) of Chapter 4 of Part 1 of Division
32 1 of the Public Utilities Code, as determined by the commission.
33 In no case shall the commission increase the electricity charges in
34 effect on February 1, 2001 for residential customers for existing
35 baseline quantities or usage by those customers of up to 130
36 percent of existing baseline quantities, until such time as the
37 department has recovered the costs of power it has procured for the
38 electrical corporation's retail end use customers as provided in this
39 division. The department shall have the same rights with respect



1 to the payment by retail end use customers for power sold by the
2 department as do providers of power to ~~such~~ *those* customers.

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

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