

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 23, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 428

Introduced by Assembly 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, 2005, to adopt 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 electrical corporation would have no obligation to procure electric commodity for a noncore customer, as defined, except by contract for a term of no less than 1 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 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 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 do all of the
- 2 following:
- 3 (a) Establish a market structure in which the electrical
- 4 corporations have an obligation to provide bundled electric



1 commodity procurement service only to core retail end-use
2 customers.

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

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

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

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

22 SEC. 2. Section 367.6 is added to the Public Utilities Code, to
23 read:

24 367.6. (a) As used in this section, the following terms have
25 the following meanings:

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

32 (2) "Noncore customers" include all retail end-use customers
33 of an electrical corporation with a maximum peak demand of 500
34 kilowatts or greater, or a maximum peak demand as determined by
35 the commission pursuant to subdivision (b). For the purposes of
36 this section, noncore customers may aggregate their peak demand
37 from multiple meters located anywhere in an electrical
38 corporation's service territory. Customers receiving service from
39 electricity suppliers on January 1, 2006, shall be considered
40 noncore customers, except any customers exempt from any direct



1 access surcharge paid by other noncore customers, shall retain that
2 exemption until the time they return to bundled utility service.

3 (b) Commencing January 1, 2009, the commission shall reduce
4 the maximum peak demand threshold for defining noncore
5 customers in subdivision (a), by converting the bundled core
6 customers with the largest peak demand prior to reduction of the
7 threshold to noncore customers, in sufficient amounts, so that the
8 forecast load attributable to converted customers is forecast to
9 meet all growth in electricity demand forecasted by the State
10 Energy Resources Conservation and Development Commission
11 during the following five-year period and any reduction in the
12 aggregate supply of electricity provided by Department of Water
13 Resources contracts pursuant to Division 27 (commencing with
14 Section 80000) of the Water Code. The commission shall complete
15 its proceeding in this matter no later than December 31, 2007, and
16 may not lower the threshold beyond 250 kilowatts maximum peak
17 demand.

18 (c) On or before January 1, 2005, the commission shall adopt
19 regulatory criteria for the appropriate and reasonable composition
20 of a core portfolio of electricity supplies to be established by each
21 electrical corporation to meet the needs of the electrical
22 corporation's bundled core customers and noncore customers
23 electing to remain with the electrical corporation for at least one
24 year pursuant to subdivision (e) and to provide an adequate reserve
25 capacity. The commission shall include a minimum renewable
26 energy component and demand-side management programs,
27 including, but not limited to, time-of-use rates and reserve
28 requirements consistent with existing law.

29 (d) (1) The core supply portfolio shall also include the
30 following components:

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

33 (B) The total amount of Department of Water Resources
34 contract electricity purchased pursuant to Division 27
35 (commencing with Section 80000) of the Water Code and
36 allocated to the core customers of the electrical corporation.

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

39 (D) Any spot market supplies required to serve core customers.



1 (2) The commission shall adopt rules that protect the core
2 customer of an electrical corporation from cost shifting resulting
3 from direct transactions, customers who depart the electrical
4 corporation's system in order to be served by a competing publicly
5 owned utility, or undercollections of utility costs of service or costs
6 incurred by the Department of Water Resources to serve customers
7 who are no longer core customers. These rules shall ensure that a
8 retail end-use customer purchasing electricity from another
9 electric service provider or electricity supplier shall reimburse the
10 electrical corporation that previously served that customer, or had
11 the obligation to serve that customer, on a nonbypassable basis for
12 the categories of costs described in subdivisions (d), (e), (f), and
13 (g) of Section 366.1.

14 (3) The commission shall ensure that no customer moving from
15 core to noncore will have any obligation for any future costs
16 incurred by the electrical corporation or Department of Water
17 Resources associated with the core supply portfolio that are not
18 recovered from core customers, and that costs of the core supply
19 portfolio shall be recoverable only from core customers and
20 noncore customers served by electrical corporations as described
21 in subdivision (e).

22 (e) Commencing January 1, 2006, an electrical corporation has
23 no obligation to procure electric commodity for any noncore
24 customer except by contract for a term of not less than one year
25 and on terms approved by the commission that reimburse the
26 electrical corporation for all costs of providing electrical service.
27 On or before January 1, 2005, the commission shall adopt rules,
28 as it deems necessary to establish a nondiscriminatory tariff for
29 noncore customers. These rules shall include all of the following:

30 (1) A time certain, no later than July 1, 2005, by which a
31 noncore customer currently receiving electric commodity
32 procurement service from the electrical corporation shall either
33 elect to be served by an electricity supplier other than the electrical
34 corporation or agree to be served by the electrical corporation for
35 a minimum of one year. Noncore customers electing to remain
36 with the electrical corporation on or before July 1, 2005, may be
37 served from the core customer portfolio described in paragraph (1)
38 of subdivision (d).

39 (2) Notice requirements of not less than six months for noncore
40 customers to provide notice to their electrical corporation and the



1 Department of Water Resources of their intent to obtain service
2 from an electricity supplier other than the electrical corporation or
3 voluntarily contract with the electrical corporation for bundled
4 noncore electric commodity procurement service pursuant to this
5 subdivision.

6 (3) Provisions for ensuring prompt and full recovery of costs
7 that the electrical corporation and Department of Water Resources
8 have incurred to serve customers pursuant to paragraph (2) of
9 subdivision (d) and in meeting the obligation to serve. Rates and
10 tariffs that require noncore customers who choose to return to
11 bundled utility electric commodity procurement service to pay the
12 actual costs incurred by the electrical corporation to procure
13 electric commodity for that returning customer on a basis
14 separately tariffed from the costs of the noncore portfolio of the
15 electrical corporation for a period of not less than one year or the
16 tariffed rate under this section, whichever is higher.

17 (f) Commencing January 1, 2006, noncore customers may not
18 be served from the core portfolio, except as provided in paragraph
19 (1) of subdivision (e). Noncore customers shall be served by direct
20 transactions, as described in Section 365, or by contract with an
21 electrical corporation as described in subdivision (e). In
22 coordination with the resource planning and procurement process
23 defined in Section 454.5, the commission shall annually establish
24 the appropriate mix and level of long-term, medium-term, and
25 short-term resource commitments to be made by the electrical
26 corporation consistent with the utility procurement obligations
27 defined in this section.

28 (g) (1) On or before January 1, 2006, the commission shall
29 adopt rules to allow residential bundled core customers to elect to
30 be served by direct transactions in a manner that fully compensates
31 the electrical corporation and the Department of Water Resources
32 for the customers' proportionate share of the categories of costs
33 described in subdivisions (d), (e), (f), and (g) of Section 366.1. The
34 commission shall also adopt rules to address the return of those
35 residential bundled core customers being served by direct
36 transactions to bundled service that ensure that the returning
37 customers are charged the full costs incurred by the electrical
38 corporation to provide them with electric commodity procurement
39 service, including a minimum one year contractual obligation to
40 take bundled electric service from the electrical corporation,



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

3 (2) On or before January 1, 2012, the commission shall adopt
4 rules to allow nonresidential bundled core customers to elect to be
5 served by direct transactions in a manner that fully compensates
6 the electrical corporation and the Department of Water Resources
7 for the customers' proportionate share of the categories of costs
8 described in subdivisions (d), (e), (f), and (g) of Section 366.1. The
9 commission shall also adopt rules to address the return of those
10 nonresidential bundled core customers being served by direct
11 transactions to bundled service that ensure that the returning
12 customers are charged the full costs incurred by the electrical
13 corporation to provide them with electric commodity procurement
14 service, including a minimum one year obligation to take bundled
15 electric service from the electrical corporation, unless the
16 customer leaves the electrical corporation's service territory.

17 (h) A noncore customer shall not be responsible for any new
18 transition costs or procurement-related obligations incurred on
19 behalf of the core portfolio during the period when the customer
20 is served by direct transactions, except to the extent that the costs
21 were incurred during the period when the noncore customer had
22 elected to receive core portfolio service pursuant to paragraph (1)
23 of subdivision (e) and the costs cover the actual cost of electricity
24 used by the customer.

25 ~~SEC. 3.—Section 80110 of the Water Code is amended to read:~~
26 ~~80110.—The department shall retain title to all power sold by~~
27 ~~it to the retail end-use customers. The department shall be entitled~~
28 ~~to recover, as a revenue requirement, amounts and at the times~~
29 ~~necessary to enable it to comply with Section 80134, and shall~~
30 ~~advise the commission as the department determines to be~~
31 ~~appropriate. Those revenue requirements may also include any~~
32 ~~advances made to the department hereunder or hereafter for~~
33 ~~purposes of this division, or from the Department of Water~~
34 ~~Resources Electric Power Fund, and General Fund moneys~~
35 ~~expended by the department pursuant to the Governor's~~
36 ~~Emergency Proclamation dated January 17, 2001. For purposes of~~
37 ~~this division and except as otherwise provided in this section, the~~
38 ~~commission's authority as set forth in Section 451 of the Public~~
39 ~~Utilities Code shall apply, except any just and reasonable review~~
40 ~~under Section 451 shall be conducted and determined by the~~



1 department. The commission may enter into an agreement with the
 2 department with respect to charges under Section 451 for purposes
 3 of this division, and that agreement shall have the force and effect
 4 of a financing order adopted in accordance with Article 5.5
 5 (commencing with Section 840) of Chapter 4 of Part 1 of Division
 6 1 of the Public Utilities Code, as determined by the commission.
 7 In no case shall the commission increase the electricity charges in
 8 effect on February 1, 2001 for residential customers for existing
 9 baseline quantities or usage by those customers of up to 130
 10 percent of existing baseline quantities, until such time as the
 11 department has recovered the costs of power it has procured for the
 12 electrical corporation's retail end-use customers as provided in
 13 this division. The department shall have the same rights with
 14 respect to the payment by retail end-use customers for power sold
 15 by the department as do providers of power to those customers.

16 ~~SEC. 4.—~~

17 *SEC. 3.* No reimbursement is required by this act pursuant to
 18 Section 6 of Article XIII B of the California Constitution because
 19 the only costs that may be incurred by a local agency or school
 20 district will be incurred because this act creates a new crime or
 21 infraction, eliminates a crime or infraction, or changes the penalty
 22 for a crime or infraction, within the meaning of Section 17556 of
 23 the Government Code, or changes the definition of a crime within
 24 the meaning of Section 6 of Article XIII B of the California
 25 Constitution.

