

AMENDED IN SENATE JUNE 16, 2003

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, relating to energy resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 428, as amended, Richman. Electrical corporations: core supply portfolio: ~~core-bundled~~, *noncore, and core-elect* 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. *Existing law requires the commission to review and adopt a procurement plan for each electrical corporation. The commission is required to establish procurement balancing accounts to track the differences between recorded revenues and costs to ensure that each electrical corporation timely recovers prospective procurement costs pursuant to their procurement plan.*

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: *rules under which noncore customers, as defined, by a date certain on or before June 30, 2005, elect whether to procure electricity service (commodity service) from an electric service provider; elect to receive commodity service from the electrical corporation under a procurement plan for a minimum period of 3 years, or receive default commodity service from the electrical corporation. Beginning January 1, 2006, an electrical corporation's obligation to provide commodity service from its procurement plan would extend only to core and core-elect customers, as defined, and to provide default commodity service to noncore customers. Default commodity service would be provided at the higher of the electrical corporation's costs of spot electricity purchases, or the tariff rate for core-elect customers*



purchasing commodity service pursuant to the electrical corporation's procurement plan. The commission would be required to establish rules to ensure that the costs of providing default commodity service to noncore customers are paid solely by those noncore customers, without impacting the rates and charges of core customers. The bill would require the commission, on or before July 1, 2004, to establish tariffs for noncore customers that include all applicable transmission, distribution, public goods, and cost recovery surcharge costs otherwise paid by noncore customers for certain purposes. Noncore customers that begin taking commodity service from an electric service provider on or after January 1, 2006, would be required to pay certain costs consistent with those costs that customers of a community choice aggregator are required to pay under existing law. The bill would require the commission to establish rules or tariffs that provide an option for residential customers to receive commodity service through direct transactions from renewable resources beginning January 1, 2006, consistent with cost recovery requirements applicable to community aggregators. 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~~ *To establish a*
4 *market structure in which* electrical corporations have an
5 obligation to provide ~~bundled electric commodity procurement~~
6 ~~service only to core retail end-use customers.~~

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

1 ~~corporations for the incremental costs of procuring the~~
2 ~~commodity.~~

3 ~~(e) Require the electrical corporations to serve as a default~~
4 ~~provider of electric commodity procurement service to noncore~~
5 ~~retail end-use customers that voluntarily or involuntarily return to~~
6 ~~the electrical corporation for that service.~~

7 ~~(d) Provide a market structure for electric commodity service~~
8 ~~to core customers, and core-elect customers, from a combined~~
9 ~~portfolio of generation resources allocated on a~~
10 ~~nondiscriminatory, cost-of-service basis.~~

11 ~~(b) To affirm the electrical corporation's obligation to provide~~
12 ~~transmission, distribution, and resource adequacy services for all~~
13 ~~customers.~~

14 ~~(c) To allow noncore customers to elect, on prescribed terms,~~
15 ~~to receive commodity service from the electrical corporation or~~
16 ~~from an electric service provider without shifting costs to other~~
17 ~~customer classes.~~

18 ~~(d) To require an electrical corporation to serve as default~~
19 ~~provider of commodity service, in a manner that will not increase~~
20 ~~costs of commodity service to core and core-elect customers, and~~
21 ~~to noncore customers that voluntarily or involuntarily return to the~~
22 ~~electrical corporation for service.~~

23 ~~(e) To encourage the retention of existing and development of~~
24 ~~new, cogeneration resources to serve the state's electricity demand~~
25 ~~in a clean and efficient manner.~~

26 ~~(f) To provide for and expedite the construction of electric~~
27 ~~generation capacity to meet the needs of a growing state and~~
28 ~~replace this state's most polluting and inefficient electric~~
29 ~~generation plants by phasing in a competitive retail electric~~
30 ~~commodity market for the largest, most financially stable retail~~
31 ~~end-use customers of the electrical corporation.~~

32 ~~(e) Ensure the protection of core retail end-use customers~~
33 ~~against payment of stranded costs by requiring departing~~
34 ~~customers to pay for power and other services provided on their~~
35 ~~behalf by the state and the electrical corporations. electric~~
36 ~~generation plants by phasing in a retail market for the most~~
37 ~~efficient and financially stable customers.~~

38 SEC. 2. Section 367.6 is added to the Public Utilities Code, to
39 read:

1 367.6. (a) As used in this section, the following terms have
2 the following meanings:

3 ~~(1) “Bundled core customers” include all retail end-use~~
4 ~~customers of an electrical corporation with a maximum peak~~
5 ~~demand of less than 500 kilowatts, or a maximum peak demand as~~
6 ~~determined by the commission pursuant to subdivision (b), who~~
7 ~~are not being served, or who elect not to be served, through direct~~
8 ~~transactions.~~

9 ~~(2) “Noncore customers” include all retail end-use customers~~
10 ~~of an electrical corporation with a maximum peak demand of 500~~
11 ~~kilowatts or greater, or a maximum peak demand as determined by~~
12 ~~the commission pursuant to subdivision (b). For the purposes of~~
13 ~~this section, noncore customers may aggregate their peak demand~~
14 ~~from multiple meters located anywhere in an electrical~~
15 ~~corporation’s service territory. Customers receiving service from~~
16 ~~electricity suppliers on January 1, 2006, shall be considered~~
17 ~~noncore customers, except any customers exempt from any direct~~
18 ~~access surcharge paid by other noncore customers, shall retain that~~
19 ~~exemption until the time they return to bundled utility service.~~

20 ~~(b) Commencing January 1, 2009, the commission shall reduce~~
21 ~~the maximum peak demand threshold for defining noncore~~
22 ~~customers in subdivision (a), by converting the bundled core~~
23 ~~customers with the largest peak demand prior to reduction of the~~
24 ~~threshold to noncore customers, in sufficient amounts, so that the~~
25 ~~forecast load attributable to converted customers is forecast to~~
26 ~~meet all growth in electricity demand forecasted by the State~~
27 ~~Energy Resources Conservation and Development Commission~~
28 ~~during the following five-year period and any reduction in the~~
29 ~~aggregate supply of electricity provided by Department of Water~~
30 ~~Resources contracts pursuant to Division 27 (commencing with~~
31 ~~Section 80000) of the Water Code. The commission shall complete~~
32 ~~its proceeding in this matter no later than December 31, 2007, and~~
33 ~~may not lower the threshold beyond 250 kilowatts maximum peak~~
34 ~~demand.~~

35 ~~(c) On or before January 1, 2005, the commission shall adopt~~
36 ~~regulatory criteria for the appropriate and reasonable composition~~
37 ~~of a core portfolio of electricity supplies to be established by each~~
38 ~~electrical corporation to meet the needs of the electrical~~
39 ~~corporation’s bundled core customers and noncore customers~~
40 ~~electing to remain with the electrical corporation for at least one~~

~~year pursuant to subdivision (c) and to provide an adequate reserve capacity. The commission shall include a minimum renewable energy component and demand-side management programs, including, but not limited to, time-of-use rates and reserve requirements consistent with existing law.~~

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

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

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

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

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

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

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

~~(e) Commencing January 1, 2006, an electrical corporation has no obligation to procure electric commodity for any nonecore customer except by contract for a term of not less than one years~~

1 and on terms approved by the commission that reimburse the
2 electrical corporation for all costs of providing electrical service.
3 On or before January 1, 2005, the commission shall adopt rules,
4 as it deems necessary to establish a nondiscriminatory tariff for
5 nonecore customers. These rules shall include all of the following:

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

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

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

33 (f) Commencing January 1, 2006, nonecore customers may not
34 be served from the core portfolio, except as provided in paragraph
35 (1) of subdivision (e). Nonecore customers shall be served by direct
36 transactions, as described in Section 365, or by contract with an
37 electrical corporation as described in subdivision (e). In
38 coordination with the resource planning and procurement process
39 defined in Section 454.5, the commission shall annually establish
40 the appropriate mix and level of long-term, medium-term, and

~~short-term resource commitments to be made by the electrical corporation consistent with the utility procurement obligations defined in this section.~~

~~(g) (1) On or before January 1, 2006, the commission shall 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 the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall also adopt rules to address the return of those residential bundled core customers being served by direct transactions to bundled service that ensure that the returning 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.~~

~~(2) On or before January 1, 2012, the commission shall adopt rules to allow nonresidential 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 the categories of costs described in subdivisions (d), (e), (f), and (g) of Section 366.1. The commission shall also adopt rules to address the return of those nonresidential bundled core customers being served by direct transactions to bundled service that ensure that the returning customers are charged the full costs incurred by the electrical corporation to provide them with electric commodity procurement service, including a minimum one year obligation to take bundled electric service from the electrical corporation, unless the customer leaves the electrical corporation's service territory.~~

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

1 (1) “Commodity service” means electricity used by the
2 customer or a supply of electricity available for use by the
3 customer; and does not include services associated with the
4 transmission and distribution of electricity.

5 (2) “Core customers” means small retail end-use customers of
6 an electrical corporation that are unable as a result of economies
7 of scale, to efficiently enter into direct transactions, including
8 customers with a maximum peak demand of less than 500
9 kilowatts.

10 (3) “Noncore customers” means larger retail end users of
11 electricity that as a result of economies of scale, can efficiently
12 enter into direct transactions, including end users with a maximum
13 peak demand of 500 kilowatts, or as reduced by the commission.
14 On or before January 1, 2009, the commission may reduce the
15 noncore customer maximum peak demand threshold to
16 accommodate load growth and reduction of procurement
17 obligations under Department of Water Resources power
18 contracts being managed by the electrical corporations. When
19 considering a reduction in the noncore threshold, the commission
20 shall not strand generation costs in the electrical corporation’s
21 procurement plan portfolio, shift costs between core and noncore
22 customers, or lower the threshold below 200 kilowatt maximum
23 peak demand. On or before January 1, 2009, the Commission may
24 additionally establish rules allowing customers to aggregate
25 demand to meet the noncore threshold.

26 (4) “Core-elect customer” means a noncore customer that
27 makes an election, to be served pursuant to the electrical
28 corporation’s procurement plan.

29 (b) Beginning January 1, 2006, an electrical corporation’s
30 obligation to provide commodity service from the electrical
31 corporation’s procurement plan portfolio, shall extend only to core
32 and core-elect customers. The electric corporation’s obligation to
33 provide commodity service to noncore customers shall be limited
34 to the provision of default service pursuant to subdivision (d). The
35 electrical corporation’s obligation to provide transmission,
36 distribution and resource adequacy services shall extend to all
37 customers.

38 (c) Beginning January 1, 2006, an electrical corporation shall
39 have no obligation to procure electricity for noncore customers
40 pursuant to a procurement plan, but shall have an obligation to

1 *procure electricity for core-elect customers that elect to receive*
2 *commodity service for a minimum term of three years pursuant to*
3 *the electrical corporation's procurement plan.*

4 *(d) The electrical corporation shall serve as a default provider*
5 *of commodity service for all noncore customers. The electrical*
6 *corporation shall provide default commodity service to noncore*
7 *customers that, on or after January 1, 2006, voluntarily or*
8 *involuntarily return to the electrical corporation for commodity*
9 *service and have not elected to take commodity service as*
10 *described in subdivisions (c) and (e). Default commodity service*
11 *shall be provided at the higher of the electrical corporation's cost*
12 *of spot electricity purchases, or the tariff rate for core-elect*
13 *customers purchasing commodity service pursuant to the*
14 *electrical corporation's procurement plan. The commission shall*
15 *establish rules to ensure that the costs of providing default*
16 *commodity service to noncore customers are paid solely by those*
17 *noncore customers, without impacting the rates and charges of*
18 *core customers.*

19 *(e) On or before January 1, 2005, the commission shall adopt*
20 *rules, to implement this section. These rules shall include:*

21 *(1) A date certain, on or before June 30, 2005, by which*
22 *noncore customers must make an election to be served by the*
23 *electrical corporation for a minimum of three years as a core-elect*
24 *customer, or to receive service from an electric service provider.*
25 *Noncore customers failing to make an affirmative election shall*
26 *receive default commodity service.*

27 *(2) Terms and condition under which noncore customers may*
28 *take default service, including the time period after which a*
29 *customer must select core-elect service or return to non-utility*
30 *service.*

31 *(3) Provisions to ensure prompt recovery of reasonable costs an*
32 *electrical corporation incurs to serve customers pursuant to this*
33 *section, and in meeting its obligation to serve, and provisions to*
34 *ensure there is no cost shifting between customer classes.*

35 *(4) A method for determining the rates and charges for core and*
36 *core-elect customers, and the default commodity service price,*
37 *including estimated prices to be in effect as of January 1, 2006.*

38 *(5) Rules for the aggregation of customer load at multiple*
39 *meters for purposes of determining the core or noncore status of*
40 *a customer, including the use of appropriate meters.*

1 (6) *Provisions to ensure that no cost-shifting occurs between*
2 *core and core-elect customers.*

3 (7) *A six-month notice requirement to begin receiving or to*
4 *cancel core-elect service upon completion of the three year*
5 *commitment.*

6 (f) *On or before July 1, 2004, the commission shall establish*
7 *tariffs for a noncore customer that include all applicable*
8 *transmission, distribution, public goods, and cost recovery*
9 *surcharge costs otherwise paid by noncore customers for the*
10 *following purposes:*

11 (1) *To transmit over nondedicated electrical corporation*
12 *facilities, electricity generated by a corporation or person at one*
13 *location for consumption by the same corporation or person, or an*
14 *affiliated corporation, or person at a separate location.*

15 (2) *To procure electricity from new or expanded generation*
16 *facilities.*

17 (3) *To procure electricity from a cogeneration facility that sold*
18 *power to the electrical corporation on or after June 1, 2003.*

19 (g) *In coordination with the resource planning and*
20 *procurement process established in Section 454.5, the commission*
21 *shall annually establish the appropriate mix and level of*
22 *long-term, medium-term, and short-term commitments to be made*
23 *by an electrical corporation, consistent with the electrical*
24 *corporation procurement obligations established in this section,*
25 *and ensure the flexibility needed to minimize stranded*
26 *procurement costs.*

27 (h) *Noncore customers that begin taking commodity service*
28 *from an electric service provider on or after January 1, 2006, shall*
29 *be required to pay the costs described in subdivisions (d), (e), (f),*
30 *and (g) of Section 366.1, to the extent such costs continue to be*
31 *incurred by the electrical corporations, as determined by the*
32 *commission. Any customer receiving service under a direct*
33 *transaction prior to September 20, 2001, shall not incur any*
34 *additional obligations under this requirement unless they become*
35 *core-elect customers.*

36 (i) *In consultation with the State Energy Resources*
37 *Conservation and Development Commission and the Independent*
38 *System Operator, the commission shall establish resource*
39 *adequacy requirements that ensure the availability of planning*
40 *reserves sufficient to serve all customers of the electrical*

1 corporation, including noncore and community choice
2 aggregation customers. The resource adequacy requirements shall
3 ensure cost recovery by the electrical corporation for acquired
4 reserves through a nonbypassable component of the electrical
5 corporation's transmission and distribution charges.

6 (j) The commission shall ensure that noncore customers
7 moving from core-elect to noncore commodity service at the end
8 of a three-year term, shall not have an obligation for any future
9 costs incurred by the electrical corporation or Department of
10 Water Resources associated with the electrical corporation's
11 procurement plan, and that costs of the electrical corporation's
12 procurement plan shall be recoverable only from core and
13 core-elect customers served by the electrical corporation pursuant
14 to subdivision (c).

15 (k) The commission shall ensure that all electric service
16 providers and community choice aggregators meet the renewable
17 portfolio standard and support demand side management
18 programs, either directly or through in-lieu arrangements
19 approved by the commission.

20 (l) The commission shall establish rules or tariffs that provide
21 an option for residential customers to receive commodity service
22 through direct transactions from renewable resources beginning
23 January 1, 2006, that fully compensates the electrical corporation
24 and the Department of Water Resources for the customer's
25 proportionate share of costs consistent with subdivisions (d), (e),
26 (f), and (g) of Section 366.1.

27 SEC. 3. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.

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