

AMENDED IN ASSEMBLY FEBRUARY 9, 2004

AMENDED IN ASSEMBLY JANUARY 29, 2004

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN SENATE APRIL 29, 2003

SENATE BILL

No. 772

Introduced by Senator Bowen
(Coauthor: Assembly Member Reyes)

February 21, 2003

An act to amend Sections 955.1 and 3440.1 of the Civil Code, to amend Section 9109 of the Commercial Code, and to amend Section 1731 of, to add ~~Section 1769 to~~ *and repeal Section 1769 of*, and to add Article 5.6 (commencing with Section 848) to Chapter 4 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 772, as amended, Bowen. Public utilities: financing utility recovery.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. The existing restructuring of the electrical services industry provides for the issuance of rate reduction bonds by the California Infrastructure and Economic Development Bank for the recovery of transition costs, as defined, by electrical corporations.

This bill would authorize the commission to issue financing orders, to support the issuance of recovery bonds, as defined, by the recovery corporation, as defined, secured by a dedicated rate component, to

finance the unamortized balance of the regulatory asset awarded Pacific Gas and Electric Company in commission Decision 03-12-035. The bill would establish procedures for judicial review of any order or decision made pursuant to these provisions. The bill would make other technical and conforming changes.

(2) The bill would declare that, due to the special circumstances applicable only to the Pacific Gas and Electric Company bankruptcy, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(3) Existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act guilty of a crime.

Because a violation of the provisions of this bill would be a violation of the act, this bill would impose a state-mandated local program by creating a new crime.

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.~~

Vote: $\frac{2}{3}$ 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. In confirming the Public Utilities Commission's
- 2 authority to approve a dedicated rate component to support the
- 3 issuance of recovery bonds, the Legislature is not ratifying or
- 4 endorsing any particular outcome of the Pacific Gas and Electric
- 5 Company's federal bankruptcy proceeding, but rather is
- 6 authorizing a means by which the commission can reduce
- 7 ratepayer costs in a plan of reorganization.
- 8 SEC. 2. Section 955.1 of the Civil Code is amended to read:
- 9 955.1. (a) Except as provided in Sections 954.5 and 955 and
- 10 subject to subdivisions (b) and (c), a transfer other than one
- 11 intended to create a security interest (paragraph (1) or (3) of

subdivision (a) of Section 9109 of the Commercial Code) of any payment intangible (Section 9102 of the Commercial Code) and any transfer of accounts, chattel paper, payment intangibles, or promissory notes excluded from the coverage of Division 9 of the Commercial Code by paragraph (4) of subdivision (d) of Section 9109 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

(b) As between bona fide assignees of the same right for value without notice, the assignee first giving notice thereof to the obligor in writing has priority.

(c) The assignment is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.

(d) This section does not apply to transfers or assignments of transition property, as defined in Section 840 of the Public Utilities Code, or to transfers or assignments of recovery property, as defined in Section 848 of the Public Utilities Code.

SEC. 3. Section 3440.1 of the Civil Code is amended to read:

3440.1. This chapter does not apply to any of the following:

(a) Things in action.

(b) Ships or cargoes if either are at sea or in a foreign port.

(c) The sale of accounts, chattel paper, payment intangibles, or promissory notes governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.

(d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.

(e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.

(f) Property exempt from enforcement of a money judgment.

(g) Standing timber.

(h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:

1 (1) Prior to the date of the intended transfer, the transferor or
2 the transferee files a financing statement, with respect to the
3 property transferred, signed by the transferor. The financing
4 statement shall be filed in the office of the Secretary of State in
5 accordance with Chapter 5 (commencing with Section 9501) of
6 Division 9 of the Commercial Code, but may use the terms
7 “transferor” in lieu of “debtor” and “transferee” in lieu of
8 “secured party.” The provisions of Chapter 5 (commencing with
9 Section 9501) of Division 9 of the Commercial Code shall apply
10 as appropriate to the financing statement.

11 (2) The transferor or the transferee publishes a notice of the
12 intended transfer one time in a newspaper of general circulation
13 published in the judicial district in which the personal property is
14 located, if there is one, and if there is none in the judicial district,
15 then in a newspaper of general circulation in the county embracing
16 the judicial district. The publication shall be completed not less
17 than 10 days before the date the transfer occurs. The notice shall
18 contain the name and address of the transferor and transferee and
19 a general statement of the character of the personal property
20 intended to be transferred, and shall indicate the place where the
21 personal property is located and a date on or after which the
22 transfer is to be made.

23 (i) Personal property not located within this state at the time of
24 the transfer or attachment of the lien if the provisions of this
25 subdivision are not used for the purpose of evading this chapter.

26 (j) A transfer of property which (1) is subject to a statute or
27 treaty of the United States or a statute of this state that provides for
28 the registration of transfers of title or issuance of certificates of title
29 and (2) is so far perfected under that statute or treaty that a bona
30 fide purchaser cannot acquire an interest in the property
31 transferred that is superior to the interest of the transferee.

32 (k) A transfer of personal property in connection with a
33 transaction in which the property is immediately thereafter leased
34 by the transferor from the transferee provided the transferee
35 purchased the property for value and in good faith (subdivision (c)
36 of Section 10308 of the Commercial Code).

37 (l) Transition property, as defined in Section 840 of the Public
38 Utilities Code, or recovery property, as defined in Section 848 of
39 the Public Utilities Code.



SEC. 4. Section 9109 of the Commercial Code is amended to read:

9109. (a) Except as otherwise provided in subdivisions (c) and (d), this division applies to each of the following:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract.

(2) An agricultural lien.

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes.

(4) A consignment.

(5) A security interest arising under Section 2401 or 2505, or under subdivision (3) of Section 2711, or subdivision (5) of Section 10508, as provided in Section 9110.

(6) A security interest arising under Section 4210 or 5118.

(b) The application of this division to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this division does not apply.

(c) This division does not apply to the extent that either of the following conditions is satisfied:

(1) A statute, regulation, or treaty of the United States preempts this division.

(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5114.

(d) This division does not apply to any of the following:

(1) A landlord's lien, other than an agricultural lien.

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9333 applies with respect to priority of the lien.

(3) An assignment of a claim for wages, salary, or other compensation of an employee.

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose.

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only.

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract.

- 1 (7) An assignment of a single account, payment intangible, or
2 promissory note to an assignee in full or partial satisfaction of a
3 preexisting indebtedness.
- 4 (8) Any loan made by an insurance company pursuant to the
5 provisions of a policy or contract issued by it and upon the sole
6 security of the policy or contract.
- 7 (9) An assignment of a right represented by a judgment, other
8 than a judgment taken on a right to payment that was collateral.
- 9 (10) A right of recoupment or setoff, provided that both of the
10 following sections apply:
- 11 (A) Section 9340 applies with respect to the effectiveness of
12 rights of recoupment or setoff against deposit accounts.
- 13 (B) Section 9404 applies with respect to defenses or claims of
14 an account debtor.
- 15 (11) The creation or transfer of an interest in or lien on real
16 property, including a lease or rents thereunder, except to the extent
17 that provision is made for each of the following:
- 18 (A) Liens on real property in Sections 9203 and 9308.
- 19 (B) Fixtures in Section 9334.
- 20 (C) Fixture filings in Sections 9501, 9502, 9512, 9516, and
21 9519.
- 22 (D) Security agreements covering personal and real property in
23 Section 9604.
- 24 (12) An assignment of a claim arising in tort, other than a
25 commercial tort claim, but Sections 9315 and 9322 apply with
26 respect to proceeds and priorities in proceeds.
- 27 (13) An assignment of a deposit account in a consumer
28 transaction, but Sections 9315 and 9322 apply with respect to
29 proceeds and priorities in proceeds.
- 30 (14) Any security interest created by the assignment of the
31 benefits of any public construction contract under the
32 Improvement Act of 1911 (Division 7 (commencing with Section
33 5000) of the Streets and Highways Code).
- 34 (15) Transition property, as defined in Section 840 of the Public
35 Utilities Code, except to the extent that the provisions of this
36 division are referred to in Article 5.5 (commencing with Section
37 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities
38 Code, and recovery property, as defined in Section 848 of the
39 Public Utilities Code, except to the extent that the provisions of
40 this division are referred to in Article 5.6 (commencing with



Section 848) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

(16) A claim or right of an employee or employee's dependents to receive workers' compensation under Division 1 (commencing with Section 50) or Division 4 (commencing with Section 3200) of the Labor Code.

(17) A transfer by a government or governmental unit.

SEC. 5. Article 5.6 (commencing with Section 848) is added to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 5.6. Financing Utility Recovery

848. For the purposes of this article, the following terms shall have the following meanings:

(a) "Consumer" means any individual, governmental body, trust, business entity or nonprofit organization which consumes electricity that has been transmitted or distributed by means of electric transmission or distribution facilities, whether those electric transmission or distribution facilities are owned by the consumer, the recovery corporation, or any other party.

(b) "Financing entity" means the recovery corporation or any subsidiary or affiliate of the recovery corporation that is authorized by the commission to issue recovery bonds or acquire recovery property, or both.

(c) "Financing order" means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed recovery amounts and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all recovery costs and the costs associated with the proposed recovery, financing, or refinancing thereof, including the costs of servicing and retiring the recovery bonds contemplated by the financing order.

(d) "Fixed recovery amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover (1) recovery costs specified in the financing order, and (2) the costs

1 of recovering, financing, or refinancing those recovery costs
2 through a plan approved by the commission in the financing order,
3 including the costs of servicing and retiring recovery bonds.

4 (e) “Fixed recovery tax amounts” means those nonbypassable
5 rates and other charges, including, but not limited to, distribution,
6 connection, disconnection, and termination rates and charges, that
7 are needed to recover federal and State of California income and
8 franchise taxes associated with fixed recovery amounts authorized
9 by the commission in the financing order and that are not financed
10 from proceeds of recovery bonds.

11 (f) “Local publicly owned electric utility” means a local
12 publicly owned electric utility as defined in Section 9604.

13 (g) “Recovery bonds” means bonds, notes, certificates of
14 participation or beneficial interest, or other evidences of
15 indebtedness or ownership, issued pursuant to an executed
16 indenture or other agreement of a financing entity, the proceeds of
17 which are used, directly or indirectly, to recover, finance, or
18 refinance recovery costs, and that are directly or indirectly secured
19 by, or payable from, recovery property.

20 (h) “Recovery corporation” means Pacific Gas and Electric
21 ~~Corporation~~ *Company*, the electrical corporation described in the
22 commission’s Decision No. 03-12-035.

23 (i) “Recovery costs” means (1) the unamortized balance of the
24 regulatory asset arising and existing pursuant to the commission’s
25 Decision No. 03-12-035, (2) federal and State of California
26 income and franchise taxes associated with recovery of the
27 unamortized balance of that regulatory asset, (3) costs of issuing
28 recovery bonds, and (4) professional fees, consultant fees,
29 redemption premiums, tender premiums and other costs incurred
30 by the recovery corporation in using proceeds of recovery bonds
31 to acquire outstanding securities of the recovery corporation.

32 (j) (1) “Recovery property” means the property right created
33 pursuant to this article, including, without limitation, the right,
34 title, and interest of the recovery corporation or its transferee:

35 (A) In and to the tariff established pursuant to a financing order,
36 as adjusted from time to time in accordance with Section 848.1 and
37 the financing order.

38 (B) To be paid the amount that is determined in a financing
39 order to be the amount that the recovery corporation or its
40 transferee is lawfully entitled to receive pursuant to the provisions

1 of this article and the proceeds thereof, and in and to all revenues,
2 collections, claims, payments, money, or proceeds of or arising
3 from the tariff or constituting fixed recovery amounts that are the
4 subject of a financing order including those nonbypassable rates
5 and other charges referred to in subdivision (d).

6 (C) In and to all rights to obtain adjustments to the tariff relating
7 to fixed recovery amounts pursuant to the terms of Section 848.1
8 and the financing order.

9 (2) “Recovery property” shall not include the right to be paid
10 fixed recovery tax amounts.

11 (3) “Recovery property” shall constitute a current property
12 right notwithstanding the fact that the value of the property right
13 will depend on consumers using electricity or, in those instances
14 where consumers are customers of the recovery corporation, the
15 recovery corporation performing certain services.

16 848.1. (a) No later than 120 days after the effective date of
17 this article, and from time to time thereafter, the recovery
18 corporation shall apply to the commission for a determination that
19 some or all of the recovery corporation’s recovery costs may be
20 recovered through fixed recovery amounts, which would be
21 recovery property under this article, and that any portion of the
22 recovery corporation’s federal and State of California income and
23 franchise taxes associated with those fixed recovery amounts and
24 not financed from proceeds of recovery bonds be recovered
25 through fixed recovery tax amounts. The recovery corporation
26 may request this determination by the commission in a separate
27 proceeding or in an existing proceeding, or both. The recovery
28 corporation shall in its application specify that consumers within
29 its service territory would benefit from reduced rates on a present
30 value basis through the issuance of recovery bonds. The
31 commission shall designate fixed recovery amounts and any
32 associated fixed recovery tax amounts as recoverable in one or
33 more financing orders if the commission determines, as part of its
34 findings in connection with the financing order, that the
35 designation of the fixed recovery amounts and any associated
36 fixed recovery tax amounts, and the issuance of recovery bonds in
37 connection with fixed recovery amounts, would reduce the rates
38 on a present value basis that consumers within the recovery
39 corporation’s service territory would pay if the financing order
40 were not adopted. Fixed recovery amounts and any associated

1 fixed recovery tax amounts shall only be imposed on existing and
2 future consumers in the service territory in which the recovery
3 corporation provided electricity delivery services as of December
4 18 19, 2003. Consumers within the recovery corporation's
5 December 18 19, 2003, service territory shall continue to pay fixed
6 recovery amounts and any associated fixed tax recovery amounts
7 until the recovery bonds are paid in full by the financing entity.
8 Once the recovery bonds have been paid in full, the payment by
9 consumers of fixed recovery amounts and fixed recovery tax
10 amounts shall terminate.

11 (b) The commission shall establish an effective mechanism that
12 ensures recovery of recovery costs through fixed recovery
13 amounts and any associated fixed recovery tax amounts from all
14 existing and future consumers in the service territory in which the
15 recovery corporation provided electricity delivery services as of
16 December 18 19, 2003; provided that the costs shall not be
17 recoverable from (1) new load or incremental load of an existing
18 ~~customer~~ *consumer* of the recovery corporation where the load is
19 being met through a direct transaction and the transaction does not
20 require the use of transmission or distribution facilities owned by
21 the recovery corporation, ~~or~~ (2) customer generation departing
22 load that is exempt from Department of Water Resources power
23 charges pursuant to the commission's Decision No. 03-04-030, as
24 modified by Decision No. 03-04-041, *and as clarified and*
25 *affirmed by Decision No. 03-05-039*, except that the load shall pay
26 the fixed recovery amounts and any associated fixed recovery tax
27 amounts as a component of and in proportion to any purchase of
28 electricity delivered by the recovery corporation under standby or
29 other service made following its departure, *or (3) retail electric*
30 *load, continuously served by a local publicly owned electric utility*
31 *from January 1, 2000, through the effective date of the act adding*
32 *this section*. The obligation to pay fixed recovery amounts and any
33 associated fixed recovery tax amounts cannot be avoided by the
34 formation of a local publicly owned electric utility on or after
35 December 18, 2003, ~~or by annexation of any portion of the~~
36 ~~recovery corporation's service territory by an existing local~~
37 ~~publicly owned electric utility.~~ 19, 2003, *or by load located or*
38 *locating within the recovery corporation's service territory, as that*
39 *territory existed on December 19, 2003, that thereafter takes*
40 *service from a local publicly owned electric utility, except that*

1 *recovery amounts and associated fixed recovery tax amounts are*
2 *not recoverable from load that thereafter comes to take electric*
3 *service from a city where all the following conditions are met:*

4 (1) *The new loads are at locations that never received electric*
5 *service from the recovery corporation.*

6 (2) *The city owns and operates the local publicly owned*
7 *electric utility.*

8 (3) *The local publicly owned electric utility was serving more*
9 *than 95 percent of the customers receiving electric service that*
10 *were residing within the city limits prior to December 19, 2003.*

11 (4) *The city, on or after December 19, 2003, annexed the*
12 *territory in which the load is located.*

13 (5) *Following annexation, the city provides all municipal*
14 *services to the annexed territory, including electric service, that*
15 *the city provides to other territory within the city limits.*

16 (6) *The total load exempt from paying recovery amounts and*
17 *associated fixed recovery tax amounts pursuant to paragraphs (1),*
18 *(2), (3), and (4) does not exceed 50 megawatts, as determined by*
19 *the commission, and any load above the 50 megawatts exemption*
20 *amount, shall be responsible for paying recovery amounts and*
21 *associated fixed recovery tax amounts.*

22 (c) *Recovery bonds authorized by the commission's financing*
23 *orders may be issued in one or more series on or before December*
24 *31, 2006.*

25 (d) *The commission may issue financing orders in accordance*
26 *with this article to facilitate the recovery, financing, or refinancing*
27 *of recovery costs. A financing order may be adopted only upon the*
28 *application of the recovery corporation and shall become effective*
29 *in accordance with its terms only after the recovery corporation*
30 *files with the commission the recovery corporation's written*
31 *consent to all terms and conditions of the financing order. A*
32 *financing order may specify how amounts collected from a*
33 *consumer shall be allocated between fixed recovery amounts, any*
34 *associated fixed recovery tax amounts, and other charges.*

35 (e) *Notwithstanding Section 455.5 or 1708, or any other*
36 *provision of law, except as otherwise provided in this subdivision*
37 *with respect to recovery property that has been made the basis for*
38 *the issuance of recovery bonds and with respect to any associated*
39 *fixed recovery tax amounts, the financing order, the fixed recovery*
40 *amounts and any associated fixed recovery tax amounts shall be*

1 irrevocable, and the commission shall not have authority either by
2 rescinding, altering, or amending the financing order or otherwise,
3 to revalue or revise for ratemaking purposes, the recovery costs or
4 the costs of recovering, financing, or refinancing the recovery
5 costs, determine that the fixed recovery amounts, any associated
6 fixed recovery tax amounts or rates are unjust or unreasonable, or
7 in any way reduce or impair the value of recovery property or of
8 the right to receive any associated fixed recovery tax amounts
9 either directly or indirectly by taking fixed recovery amounts or
10 any associated fixed recovery tax amounts into account when
11 setting other rates for the recovery corporation or when setting
12 charges for the Department of Water Resources; nor shall the
13 amount of revenues arising with respect thereto be subject to
14 reduction, impairment, postponement, or termination. Except as
15 otherwise provided in this subdivision, the State of California does
16 hereby pledge and agree with the recovery corporation, owners of
17 recovery property, and holders of recovery bonds that the state
18 shall neither limit nor alter the fixed recovery amounts, any
19 associated fixed recovery tax amounts, recovery property,
20 financing orders, or any rights thereunder until the recovery bonds,
21 together with the interest thereon, are fully paid and discharged,
22 and any associated fixed recovery tax amounts have been satisfied
23 or, in the alternative, have been refinanced through an additional
24 issue of recovery bonds; provided nothing contained in this section
25 shall preclude the limitation or alteration if and when adequate
26 provision shall be made by law for the protection of the recovery
27 corporation, owners, and holders. The financing entity is
28 authorized to include this pledge and undertaking for the state in
29 these recovery bonds. Notwithstanding any other provision of this
30 section, the commission shall approve adjustments to the fixed
31 recovery amounts and any associated fixed recovery tax amounts
32 as may be necessary to ensure timely recovery of all recovery costs
33 that are the subject of the pertinent financing order, and the costs
34 of capital associated with the recovery, financing, or refinancing
35 thereof, including servicing and retiring the recovery bonds
36 contemplated by the financing order. When setting other rates for
37 the recovery corporation, nothing in this subdivision shall prevent
38 the commission from taking into account (1) any collection of
39 fixed recovery amounts in excess of amounts actually required to
40 pay recovery costs financed or refinanced by recovery bonds, or



(2) any collection of fixed recovery tax amounts in excess of amounts actually required to pay federal and State of California income and franchise taxes associated with fixed recovery amounts; provided that this would not result in a recharacterization of the tax, accounting, and other intended characteristics of the financing, including, but not limited to, either of the following:

(A) Treating the recovery bonds as debt of the recovery corporation or its affiliates for federal income tax purposes.

(B) Treating the transfer of the recovery property by the recovery corporation as a true sale for bankruptcy purposes.

(f) (1) Financing orders issued under this article do not constitute a debt or liability of the state or of any political subdivision thereof, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, but are payable solely from the funds provided therefor under this article and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this article. All recovery bonds shall contain on the face thereof a statement to the following effect: “Neither the full faith and credit nor the taxing power of the State of California is pledged to the payment of the principal of, or interest on, this bond.”

(2) The issuance of recovery bonds under this article shall not directly, indirectly, or contingently obligate the state or any political subdivision thereof to levy or to pledge any form of taxation therefor or to make any appropriation for their payment.

(g) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval thereof within 120 days of the recovery corporation making application therefor. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed recovery amounts and any associated fixed recovery tax amounts that are the subject of the pertinent financing order, as required by subdivision (e). The procedure shall require the commission to determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the adjustments, if required, to be approved within 90 days of each anniversary of the issuance of

1 the financing order, or of each additional interval provided for in
2 the financing order.

3 (h) Fixed recovery amounts are recovery property when, and to
4 the extent that, a financing order authorizing the fixed recovery
5 amounts has become effective in accordance with this article, and
6 the recovery property shall thereafter continuously exist as
7 property for all purposes with all of the rights and privileges of this
8 article for the period and to the extent provided in the financing
9 order, but in any event until the recovery bonds are paid in full,
10 including all principal, interest, premium, costs, and arrearages
11 thereon.

12 848.2. (a) The financing entity may issue recovery bonds
13 upon approval by the commission in the pertinent financing
14 orders. Recovery bonds shall be nonrecourse to the credit or any
15 assets of the recovery corporation, other than the recovery
16 property as specified in the pertinent financing order.

17 (b) The recovery corporation may sell and assign all or portions
18 of its interest in recovery property to one or more financing entities
19 that make that recovery property the basis for issuance of recovery
20 bonds, to the extent approved in the financing order. The recovery
21 corporation or financing entity may pledge recovery property as
22 collateral, directly or indirectly, for recovery bonds to the extent
23 approved in the pertinent financing orders providing for a security
24 interest in the recovery property, in the manner set forth in Section
25 848.3. In addition recovery property may be sold or assigned by
26 (1) the financing entity or a trustee for the holders of recovery
27 bonds in connection with the exercise of remedies upon a default,
28 or (2) any person acquiring the recovery property after a sale or
29 assignment pursuant to this subdivision.

30 (c) To the extent that any interest in recovery property is so sold
31 or assigned, or is so pledged as collateral, the commission shall
32 authorize the recovery corporation to contract with the financing
33 entity that it will continue to operate its system to provide service
34 to consumers within its service territory, will collect amounts in
35 respect of the fixed recovery amounts for the benefit and account
36 of the financing entity, and will account for and remit these
37 amounts to or for the account of the financing entity. Contracting
38 with the financing entity in accordance with that authorization
39 shall not impair or negate the characterization of the sale,

assignment, or pledge as an absolute transfer, a true sale, or security interest, as applicable.

(d) Notwithstanding Section 1708 or any other provision of law, any requirement under this article or a financing order that the commission take action with respect to the subject matter of a financing order shall be binding upon the commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the commission, and the commission shall have no authority to rescind, alter, or amend that requirement in a financing order. The approval by the commission in a financing order of the issuance by the recovery corporation or a financing entity of recovery bonds shall include the approvals, if any, as may be required by Article 5 (commencing with Section 816) and Section 701.5. Nothing in Section 701.5 shall be construed to prohibit the issuance of recovery bonds upon the terms and conditions as may be approved by the commission in a financing order. Section 851 is not applicable to the transfer or pledge of recovery property, the issuance of recovery bonds, or related transactions approved in a financing order.

848.3. (a) A security interest in recovery property is valid, is enforceable against the pledgor and third parties, subject to the rights of any third parties holding security interests in the recovery property perfected in the manner described in this section, and attaches when all of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed recovery amounts included in the recovery property.

(2) Value has been given by the pledgees of the recovery property.

(3) The pledgor has signed a security agreement covering the recovery property.

(b) A valid and enforceable security interest in recovery property is perfected when it has attached and when a financing statement has been filed in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the pledgor of the recovery property as “debtor” and identifying the recovery property. Any description of the recovery property shall be sufficient if it refers to the financing order creating the recovery property. A copy of the financing statement shall be filed with the commission by the recovery corporation that is the pledgor or transferor of the recovery property, and the

1 commission may require the recovery corporation to make other
2 filings with respect to the security interest in accordance with
3 procedures it may establish, provided that the filings shall not
4 affect the perfection of the security interest.

5 (c) A perfected security interest in recovery property is a
6 continuously perfected security interest in all revenues and
7 proceeds arising with respect thereto, whether or not the revenues
8 or proceeds have accrued. Conflicting security interests shall rank
9 according to priority in time of perfection. Recovery property shall
10 constitute property for all purposes, including for contracts
11 securing recovery bonds, whether or not the revenues and
12 proceeds arising with respect thereto have accrued.

13 (d) Subject to the terms of the security agreement covering the
14 recovery property and the rights of any third parties holding
15 security interests in the recovery property perfected in the manner
16 described in this section, the validity and relative priority of a
17 security interest created under this section is not defeated or
18 adversely affected by the commingling of revenues arising with
19 respect to the recovery property with other funds of the recovery
20 corporation that is the pledgor or transferor of the recovery
21 property, or by any security interest in a deposit account of that
22 recovery corporation perfected under Division 9 (commencing
23 with Section 9101) of the Commercial Code into which the
24 revenues are deposited. Subject to the terms of the security
25 agreement, upon compliance with the requirements of paragraph
26 (1) of subdivision (b) of Section 9312 of the Commercial Code, the
27 pledgees of the recovery property shall have a perfected security
28 interest in all cash and deposit accounts of the recovery
29 corporation in which revenues arising with respect to the recovery
30 property have been commingled with other funds, but the
31 perfected security interest shall be limited to an amount not greater
32 than the amount of the revenues with respect to the recovery
33 property received by the recovery corporation within 12 months
34 before (1) any default under the security agreement or (2) the
35 institution of insolvency proceedings by or against the recovery
36 corporation, less payments from the revenues to the pledgees
37 during that 12-month period.

38 (e) If an event of default occurs under the security agreement
39 covering the recovery property, the pledgees of the recovery
40 property, subject to the terms of the security agreement, shall have



1 all rights and remedies of a secured party upon default under
2 Division 9 (commencing with Section 9101) of the Commercial
3 Code, and are entitled to foreclose or otherwise enforce their
4 security interest in the recovery property, subject to the rights of
5 any third parties holding prior security interests in the recovery
6 property perfected in the manner provided in this section. In
7 addition, the commission may require in the financing order
8 creating the recovery property that, in the event of default by the
9 recovery corporation in payment of revenues arising with respect
10 to the recovery property, the commission and any successor
11 thereto, upon the application by the pledgees or transferees,
12 including transferees under Section 848.4, of the recovery
13 property, and without limiting any other remedies available to the
14 pledgees or transferees by reason of the default, shall order the
15 sequestration and payment to the pledgees or transferees of
16 revenues arising with respect to the recovery property. Any order
17 shall remain in full force and effect notwithstanding any
18 bankruptcy, reorganization, or other insolvency proceedings with
19 respect to the debtor. Any surplus in excess of amounts necessary
20 to pay principal, premium, if any, interest, costs, and arrearages on
21 the recovery bonds, and other costs arising under the security
22 agreement, shall be remitted to the debtor.

23 (f) Sections 9204 and 9205 of the Commercial Code apply to
24 a pledge of recovery property by the recovery corporation, an
25 affiliate of the recovery corporation, or a financing entity.

26 (g) This section sets forth the terms by which a consensual
27 security interest can be created and perfected in the recovery
28 property. Unless otherwise ordered by the commission with
29 respect to any series of recovery bonds on or prior to the issuance
30 of the series, there shall exist a statutory lien as provided in this
31 subdivision. Upon the effective date of the financing order, there
32 shall exist a first priority lien on all recovery property then existing
33 or thereafter arising pursuant to the terms of the financing order.
34 This lien shall arise by operation of this section automatically
35 without any action on the part of the recovery corporation, any
36 affiliate thereof, the financing entity, or any other person. This lien
37 shall secure all obligations, then existing or subsequently arising,
38 to the holders of the recovery bonds issued pursuant to the
39 financing order, the trustee or representative for the holders, and
40 any other entity specified in the financing order. The persons for



1 whose benefit this lien is established shall, upon the occurrence of
2 any defaults specified in the financing order, have all rights and
3 remedies of a secured party upon default under Division 9
4 (commencing with Section 9101) of the Commercial Code, and
5 are entitled to foreclose or otherwise enforce this statutory lien in
6 the recovery property. This lien attaches to the recovery property
7 regardless of who owns, or is subsequently determined to own, the
8 recovery property, including the recovery corporation, any
9 affiliate thereof, the financing entity, or any other person. This lien
10 shall be valid, perfected, and enforceable against the owner of the
11 recovery property and all third parties upon the effectiveness of the
12 financing order without any further public notice; provided,
13 however, that any person may, but is not required, to file a
14 financing statement in accordance with subdivision (b). Financing
15 statements so filed may be “protective filings” and are not
16 evidence of the ownership of the recovery property.

17 A perfected statutory lien in recovery property is a continuously
18 perfected lien in all revenues and proceeds arising with respect
19 thereto, whether or not the revenues or proceeds have accrued.
20 Conflicting liens shall rank according to priority in time of
21 perfection. Recovery property shall constitute property for all
22 purposes, including for contracts securing recovery bonds,
23 whether or not the revenues and proceeds arising with respect
24 thereto have accrued.

25 In addition, the commission may require, in the financing order
26 creating the recovery property, that, in the event of default by the
27 recovery corporation in the payment of revenues arising with
28 respect to recovery property, the commission and any successor
29 thereto, upon the application by the beneficiaries of the statutory
30 lien, and without limiting any other remedies available to the
31 beneficiaries by reason of the default, shall order the sequestration
32 and payment to the beneficiaries of revenues arising with respect
33 to the recovery property. Any order shall remain in full force and
34 effect notwithstanding any bankruptcy, reorganization, or other
35 insolvency proceedings with respect to the debtor. Any surplus in
36 excess of amounts necessary to pay principal, premium, if any,
37 interest, costs, and arrearages on the recovery bonds, and other
38 costs arising in connection with the documents governing the
39 recovery bonds, shall be remitted to the debtor.



848.4. (a) A transfer of recovery property by the recovery corporation to an affiliate or to a financing entity, or by an affiliate of the recovery corporation or a financing entity to another financing entity, which the parties in the governing documentation have expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest (as in a true sale), and not as a pledge or other financing, of the recovery property, other than for federal and state income and franchise tax purposes. The grant to holders of recovery bonds of a preferred right to revenues of the recovery corporation, or the provision by the company of other credit enhancement with respect to recovery bonds, shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(b) A transfer of recovery property shall be deemed perfected as against third persons when both of the following have taken place:

(1) The commission has issued the financing order authorizing the fixed recovery amounts included in the recovery property.

(2) An assignment of the recovery property in writing has been executed and delivered to the transferee.

(c) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement in accordance with Chapter 5 (commencing with Section 9501) of Division 9 of the Commercial Code naming the assignor of the recovery property as debtor and identifying the recovery property has priority. Any description of the recovery property is sufficient if it refers to the financing order creating the recovery property. A copy of the financing statement shall be filed by the assignee with the commission, and the commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures it may establish, but these filings shall not affect the perfection of the transfer.

848.5. Any successor to the recovery corporation, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the recovery corporation pursuant to this article in the same manner and to the same extent as the recovery

1 corporation, including, but not limited to, collecting and paying to
2 the holders of recovery bonds, or their representatives, or the
3 applicable financing entity revenues arising with respect to the
4 recovery property sold to the applicable financing entity or
5 pledged to secure recovery bonds. Any successor to the recovery
6 corporation is entitled to receive any fixed recovery tax amounts
7 otherwise payable to the recovery corporation.

8 848.6. The authority of the commission to issue financing
9 orders pursuant to Section 848.1 shall expire on December 31,
10 2006. The expiration of the authority shall have no effect upon
11 financing orders adopted by the commission pursuant to this
12 article or any recovery property arising therefrom, or upon the
13 charges authorized to be levied thereunder, or the rights, interests,
14 and obligations of the recovery corporation or a financing entity
15 or holders of recovery bonds pursuant to the financing order, or the
16 authority of the commission to monitor, supervise, or take further
17 action with respect to the order in accordance with the terms of this
18 article and of the order.

19 848.7. Notwithstanding subdivision (e) of Section 848.1, the
20 commission shall credit ratepayers, in a manner to be determined
21 by the commission, with the net after tax amount of any payments,
22 offsets, or other credits the recovery corporation actually receives
23 from generators of electricity or other energy suppliers that would
24 have reduced the unamortized balance of the recovery
25 corporation's regulatory asset created under the commission's
26 Decision No. 03-12-035 but for the prior issuance of recovery
27 bonds.

28 848.8. Notwithstanding any other law, regulations adopted to
29 implement this article are not subject to the rulemaking provisions
30 of the Administrative Procedure Act (Chapter 3.5 (commencing
31 with Section 11340) of Part 1 of Division 3 of Title 2 of the
32 Government Code).

33 SEC. 6. Section 1731 of the Public Utilities Code is amended
34 to read:

35 1731. (a) The commission shall set an effective date when
36 issuing an order or decision. The commission may set the effective
37 date of an order or decision prior to the date of issuance of the order
38 or decision.

39 (b) After any order or decision has been made by the
40 commission, any party to the action or proceeding, or any

1 stockholder or bondholder or other party pecuniarily interested in
2 the public utility affected, may apply for a rehearing in respect to
3 any matters determined in the action or proceeding and specified
4 in the application for rehearing. The commission may grant and
5 hold a rehearing on those matters, if in its judgment sufficient
6 reason is made to appear. No cause of action arising out of any
7 order or decision of the commission shall accrue in any court to any
8 corporation or person unless the corporation or person has filed an
9 application to the commission for a rehearing within 30 days after
10 the date of issuance or within 10 days after the date of issuance in
11 the case of an order issued pursuant to either Article 5
12 (commencing with Section 816) or Article 6 (commencing with
13 Section 851) of Chapter 4 relating to security transactions and the
14 transfer or encumbrance of utility property. For purposes of this
15 article, “date of issuance” means the date when the commission
16 mails the order or decision to the parties to the action or
17 proceeding.

18 (c) No cause of action arising out of any order or decision of the
19 commission construing, applying, or implementing the provisions
20 of Chapter 4 of the Statutes of *the* 2001–02 First Extraordinary
21 Session shall accrue in any court to any corporation or person
22 unless the corporation or person has filed an application to the
23 commission for a rehearing within 10 days after the date of
24 issuance of the order or decision. The commission shall issue its
25 decision and order on rehearing within 20 days after the filing of
26 that application.

27 (d) No cause of action arising out of any order or decision of the
28 commission construing, applying, or implementing the provisions
29 of Article 5.6 (commencing with Section 848) of Chapter 4 shall
30 accrue in any court to any corporation or person unless the
31 corporation or person has filed an application to the commission
32 for a rehearing within 10 days after the date of issuance of the order
33 or decision. The commission shall issue its decision and order on
34 rehearing within 20 days after the filing of that application.

35 SEC. 7. Section 1769 is added to the Public Utilities Code, to
36 read:

37 1769. The following procedures shall apply to judicial review
38 of an order or decision of the commission interpreting,
39 implementing, or applying ~~he~~ *the* provisions of Article 5.6
40 (commencing with Section 848) of Chapter 4:

(a) Within 10 days after the commission issues its order or decision denying the application for a rehearing, or, if the application is granted, then within 10 days after the commission issues its decision on rehearing, any aggrieved party may petition for a writ of review in the California Supreme Court for the purpose of determining the lawfulness of the original order or decision or of the order or decision on rehearing. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified. No order of the commission interpreting, implementing, or applying the provisions of Article 5.6 (commencing with Section 848) of Chapter 4 shall be subject to review in the courts of appeal.

(b) The petition for review shall be served upon the executive director of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date when the commission mails the decision or grant to the parties to the action or proceeding.

~~(d) All actions and proceedings under this section and all actions or proceedings to which the commission or the people of the State of California are parties in which any question arises under this section, or under or concerning any order or decision of the commission under this section, shall be preferred over, and shall be heard and determined in preference to, all other civil business except election causes, irrespective of position on the calendar.~~

(d) The Legislature hereby declares that if a writ issues in an action under this section, delay in the determination of the writ will delay implementation of a securitized financing, thereby diminishing approximately \$1 billion of total savings to Pacific Gas and Electric Company's ratepayers that might be achieved if a securitized financing were implemented immediately. Therefore, to maximize ratepayer benefits, review under this section should be expedited.

(e) The provisions of this article apply to actions under this section to the extent that those provisions are not in conflict with this section.

1 (f) *This section shall remain in effect only until January 1,*
2 *2008, and as of that date is repealed, unless a later enacted statute,*
3 *that is enacted before January 1, 2008, deletes or extends that date.*

4 SEC. 8. The provisions of this act are severable. If any
5 provision of this act or its application is held invalid, that invalidity
6 shall not affect other provisions or applications that can be given
7 effect without the invalid provision or application.

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

17 SEC. 10. The Legislature finds and declares that, because of
18 the unique circumstances applicable only to the Pacific Gas and
19 Electric Company bankruptcy, a statute of general applicability
20 cannot be enacted within the meaning of subdivision (b) of Section
21 16 of Article IV of the California Constitution. Therefore, this
22 special statute is necessary.

