

AMENDED IN ASSEMBLY MARCH 22, 2004
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 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~~

(4) *The* California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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. 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:

955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivisions (b) and (c), a transfer other than one 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.

1 (g) Standing timber.

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

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

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

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

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

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



1 (l) Transition property, as defined in Section 840 of the Public
2 Utilities Code, or recovery property, as defined in Section 848 of
3 the Public Utilities Code.

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

6 9109. (a) Except as otherwise provided in subdivisions (c)
7 and (d), this division applies to each of the following:

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

10 (2) An agricultural lien.

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

13 (4) A consignment.

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

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

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

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

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

26 (2) The rights of a transferee beneficiary or nominated person
27 under a letter of credit are independent and superior under Section
28 5114.

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

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

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

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

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

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

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

6 (7) An assignment of a single account, payment intangible, or
7 promissory note to an assignee in full or partial satisfaction of a
8 preexisting indebtedness.

9 (8) Any loan made by an insurance company pursuant to the
10 provisions of a policy or contract issued by it and upon the sole
11 security of the policy or contract.

12 (9) An assignment of a right represented by a judgment, other
13 than a judgment taken on a right to payment that was collateral.

14 (10) A right of recoupment or setoff, provided that both of the
15 following sections apply:

16 (A) Section 9340 applies with respect to the effectiveness of
17 rights of recoupment or setoff against deposit accounts.

18 (B) Section 9404 applies with respect to defenses or claims of
19 an account debtor.

20 (11) The creation or transfer of an interest in or lien on real
21 property, including a lease or rents thereunder, except to the extent
22 that provision is made for each of the following:

23 (A) Liens on real property in Sections 9203 and 9308.

24 (B) Fixtures in Section 9334.

25 (C) Fixture filings in Sections 9501, 9502, 9512, 9516, and
26 9519.

27 (D) Security agreements covering personal and real property in
28 Section 9604.

29 (12) An assignment of a claim arising in tort, other than a
30 commercial tort claim, but Sections 9315 and 9322 apply with
31 respect to proceeds and priorities in proceeds.

32 (13) An assignment of a deposit account in a consumer
33 transaction, but Sections 9315 and 9322 apply with respect to
34 proceeds and priorities in proceeds.

35 (14) Any security interest created by the assignment of the
36 benefits of any public construction contract under the
37 Improvement Act of 1911 (Division 7 (commencing with Section
38 5000) of the Streets and Highways Code).

39 (15) Transition property, as defined in Section 840 of the Public
40 Utilities Code, except to the extent that the provisions of this

1 division are referred to in Article 5.5 (commencing with Section
2 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities
3 Code, and recovery property, as defined in Section 848 of the
4 Public Utilities Code, except to the extent that the provisions of
5 this division are referred to in Article 5.6 (commencing with
6 Section 848) of Chapter 4 of Part 1 of Division 1 of the Public
7 Utilities Code.

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

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

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

16
17 Article 5.6. Financing Utility Recovery
18

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

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

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

31 (c) "Financing order" means an order of the commission
32 adopted in accordance with this article, which shall include,
33 without limitation, a procedure to require the expeditious approval
34 by the commission of periodic adjustments to fixed recovery
35 amounts and to any associated fixed recovery tax amounts
36 included in that financing order to ensure recovery of all recovery
37 costs and the costs associated with the proposed recovery,
38 financing, or refinancing thereof, including the costs of servicing
39 and retiring the recovery bonds contemplated by the financing
40 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 of recovering, financing, or refinancing those recovery costs through a plan approved by the commission in the financing order, including the costs of servicing and retiring recovery bonds.

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

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

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

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

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

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

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

4 (B) To be paid the amount that is determined in a financing
5 order to be the amount that the recovery corporation or its
6 transferee is lawfully entitled to receive pursuant to the provisions
7 of this article and the proceeds thereof, and in and to all revenues,
8 collections, claims, payments, money, or proceeds of or arising
9 from the tariff or constituting fixed recovery amounts that are the
10 subject of a financing order including those nonbypassable rates
11 and other charges referred to in subdivision (d).

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

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

17 (3) “Recovery property” shall constitute a current property
18 right notwithstanding the fact that the value of the property right
19 will depend on consumers using electricity or, in those instances
20 where consumers are customers of the recovery corporation, the
21 recovery corporation performing certain services.

22 (k) “Service territory” means the geographical area that the
23 recovery corporation provided with electric distribution service as
24 of December 19, 2003.

25 848.1. (a) No later than 120 days after the effective date of
26 this article, and from time to time thereafter, the recovery
27 corporation shall apply to the commission for a determination that
28 some or all of the recovery corporation’s recovery costs may be
29 recovered through fixed recovery amounts, which would be
30 recovery property under this article, and that any portion of the
31 recovery corporation’s federal and State of California income and
32 franchise taxes associated with those fixed recovery amounts and
33 not financed from proceeds of recovery bonds be recovered
34 through fixed recovery tax amounts. The recovery corporation
35 may request this determination by the commission in a separate
36 proceeding or in an existing proceeding, or both. The recovery
37 corporation shall in its application specify that consumers within
38 its service territory would benefit from reduced rates on a present
39 value basis through the issuance of recovery bonds. The
40 commission shall designate fixed recovery amounts and any

1 associated fixed recovery tax amounts as recoverable in one or
2 more financing orders if the commission determines, as part of its
3 findings in connection with the financing order, that the
4 designation of the fixed recovery amounts and any associated
5 fixed recovery tax amounts, and the issuance of recovery bonds in
6 connection with fixed recovery amounts, would reduce the rates
7 on a present value basis that consumers within the recovery
8 corporation's service territory would pay if the financing order
9 were not adopted. Fixed recovery amounts and any associated
10 fixed recovery tax amounts shall only be imposed on existing and
11 future consumers in the service territory ~~in which the recovery~~
12 ~~corporation provided electricity delivery services as of December~~
13 ~~19, 2003. Consumers within the recovery corporation's December~~
14 ~~19, 2003, . Consumers within the service territory shall continue to~~
15 pay fixed recovery amounts and any associated fixed tax recovery
16 amounts until the recovery bonds are paid in full by the financing
17 entity. Once the recovery bonds have been paid in full, the payment
18 by consumers of fixed recovery amounts and fixed recovery tax
19 amounts shall terminate.

20 (b) The commission shall establish an effective mechanism that
21 ensures recovery of recovery costs through fixed recovery
22 amounts and any associated fixed recovery tax amounts from all
23 ~~existing and future consumers in the service territory in which the~~
24 ~~recovery corporation provided electricity delivery services as of~~
25 ~~December 19, 2003 consumers in the service territory that receive~~
26 ~~electric distribution services from the recovery corporation on or~~
27 ~~after January 1, 2000; provided that the costs shall not be~~
28 recoverable from (1) new load or incremental load of an existing
29 consumer of the recovery corporation where the load is being met
30 through a direct transaction and the transaction does not require the
31 use of transmission or distribution facilities owned by the recovery
32 corporation, (2) ~~customer-generation~~ *Customer Generation*
33 departing load that is exempt from Department of Water Resources
34 power charges pursuant to the commission's Decision No.
35 03-04-030, as modified by Decision No. 03-04-041, and as
36 clarified and affirmed by Decision No. 03-05-039, except that the
37 load shall pay the ~~fixed recovery amounts and any associated fixed~~
38 ~~recovery tax amounts~~ costs as a component of and in proportion
39 to any purchase of electricity delivered by the recovery
40 corporation under standby or other service made following its

1 ~~departure, or (3) retail electric load, continuously served by a local~~
2 ~~publicly owned electric utility from January 1, 2000, through the~~
3 ~~effective date of the act adding this section. The obligation the~~
4 ~~Department of Water Resources, with respect to the pumping,~~
5 ~~generation, and transmission facilities and operations of the State~~
6 ~~Water Resources Development System, except to the extent that~~
7 ~~system facilities receive electric service from the recovery~~
8 ~~corporation on or after December 19, 2003, under a commission~~
9 ~~approved tariff. The obligation of a consumer that has received~~
10 ~~electric service from the recovery corporation on or after January~~
11 ~~1, 2000, to pay fixed recovery amounts and any associated fixed~~
12 ~~recovery tax amounts cannot be avoided by the formation of a local~~
13 ~~publicly owned electric utility on or after December 19, 2003, or~~
14 ~~by load located or locating within the recovery corporation's~~
15 ~~service territory, as that territory existed on December 19, 2003,~~
16 ~~that thereafter takes service from a local publicly owned electric~~
17 ~~utility, except that recovery amounts and associated fixed recovery~~
18 ~~tax amounts are not recoverable from load that thereafter comes~~
19 ~~to take electric service from a city where all the following~~
20 ~~conditions are met:~~

21 ~~(1) The new loads are at locations that never received electric~~
22 ~~service from the recovery corporation.~~

23 ~~(2) The city owns and operates the local publicly owned~~
24 ~~electric utility.~~

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

28 ~~(4) The city, on or after December 19, 2003, annexed the~~
29 ~~territory in which the load is located.~~

30 ~~(5) Following annexation, the city provides all municipal~~
31 ~~services to the annexed territory, including electric service, that the~~
32 ~~city provides to other territory within the city limits.~~

33 ~~(6) The total load exempt from paying recovery amounts and~~
34 ~~associated fixed recovery tax amounts pursuant to paragraphs (1),~~
35 ~~(2), (3), and (4) does not exceed 50 megawatts, as determined by~~
36 ~~the commission, and any load above the 50 megawatts exemption~~
37 ~~amount, shall be responsible for paying recovery amounts and~~
38 ~~associated fixed recovery tax amounts. annexation of any portion~~
39 ~~of the service territory of the recovery corporation by an existing~~
40 ~~local publicly owned electric utility.~~

1 (c) Recovery bonds authorized by the commission's financing
2 orders may be issued in one or more series on or before December
3 31, 2006.

4 (d) The commission may issue financing orders in accordance
5 with this article to facilitate the recovery, financing, or refinancing
6 of recovery costs. A financing order may be adopted only upon the
7 application of the recovery corporation and shall become effective
8 in accordance with its terms only after the recovery corporation
9 files with the commission the recovery corporation's written
10 consent to all terms and conditions of the financing order. A
11 financing order may specify how amounts collected from a
12 consumer shall be allocated between fixed recovery amounts, any
13 associated fixed recovery tax amounts, and other charges.

14 (e) Notwithstanding Section 455.5 or 1708, or any other
15 provision of law, except as otherwise provided in this subdivision
16 with respect to recovery property that has been made the basis for
17 the issuance of recovery bonds and with respect to any associated
18 fixed recovery tax amounts, the financing order, the fixed recovery
19 amounts and any associated fixed recovery tax amounts shall be
20 irrevocable, and the commission shall not have authority either by
21 rescinding, altering, or amending the financing order or otherwise,
22 to revalue or revise for ratemaking purposes, the recovery costs or
23 the costs of recovering, financing, or refinancing the recovery
24 costs, determine that the fixed recovery amounts, any associated
25 fixed recovery tax amounts or rates are unjust or unreasonable, or
26 in any way reduce or impair the value of recovery property or of
27 the right to receive any associated fixed recovery tax amounts
28 either directly or indirectly by taking fixed recovery amounts or
29 any associated fixed recovery tax amounts into account when
30 setting other rates for the recovery corporation or when setting
31 charges for the Department of Water Resources; nor shall the
32 amount of revenues arising with respect thereto be subject to
33 reduction, impairment, postponement, or termination. Except as
34 otherwise provided in this subdivision, the State of California does
35 hereby pledge and agree with the recovery corporation, owners of
36 recovery property, and holders of recovery bonds that the state
37 shall neither limit nor alter the fixed recovery amounts, any
38 associated fixed recovery tax amounts, recovery property,
39 financing orders, or any rights thereunder until the recovery bonds,
40 together with the interest thereon, are fully paid and discharged,

1 and any associated fixed recovery tax amounts have been satisfied
2 or, in the alternative, have been refinanced through an additional
3 issue of recovery bonds; provided nothing contained in this section
4 shall preclude the limitation or alteration if and when adequate
5 provision shall be made by law for the protection of the recovery
6 corporation, owners, and holders. The financing entity is
7 authorized to include this pledge and undertaking for the state in
8 these recovery bonds. Notwithstanding any other provision of this
9 section, the commission shall approve adjustments to the fixed
10 recovery amounts and any associated fixed recovery tax amounts
11 as may be necessary to ensure timely recovery of all recovery costs
12 that are the subject of the pertinent financing order, and the costs
13 of capital associated with the recovery, financing, or refinancing
14 thereof, including servicing and retiring the recovery bonds
15 contemplated by the financing order. When setting other rates for
16 the recovery corporation, nothing in this subdivision shall prevent
17 the commission from taking into account (1) any collection of
18 fixed recovery amounts in excess of amounts actually required to
19 pay recovery costs financed or refinanced by recovery bonds, or
20 (2) any collection of fixed recovery tax amounts in excess of
21 amounts actually required to pay federal and State of California
22 income and franchise taxes associated with fixed recovery
23 amounts; provided that this would not result in a recharacterization
24 of the tax, accounting, and other intended characteristics of the
25 financing, including, but not limited to, either of the following:
26 (A) Treating the recovery bonds as debt of the recovery
27 corporation or its affiliates for federal income tax purposes.
28 (B) Treating the transfer of the recovery property by the
29 recovery corporation as a true sale for bankruptcy purposes.
30 (f) (1) Financing orders issued under this article do not
31 constitute a debt or liability of the state or of any political
32 subdivision thereof, and do not constitute a pledge of the full faith
33 and credit of the state or any of its political subdivisions, but are
34 payable solely from the funds provided therefor under this article
35 and shall be consistent with Sections 1 and 18 of Article XVI of
36 the California Constitution. This subdivision shall in no way
37 preclude bond guarantees or enhancements pursuant to this article.
38 All recovery bonds shall contain on the face thereof a statement to
39 the following effect: “Neither the full faith and credit nor the



1 taxing power of the State of California is pledged to the payment
2 of the principal of, or interest on, this bond.”

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

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

23 (h) Fixed recovery amounts are recovery property when, and to
24 the extent that, a financing order authorizing the fixed recovery
25 amounts has become effective in accordance with this article, and
26 the recovery property shall thereafter continuously exist as
27 property for all purposes with all of the rights and privileges of this
28 article for the period and to the extent provided in the financing
29 order, but in any event until the recovery bonds are paid in full,
30 including all principal, interest, premium, costs, and arrearages
31 thereon.

32 (i) *This article and any financing order made pursuant to this*
33 *article do not amend, reduce, modify, or otherwise affect the right*
34 *of the Department of Water Resources to recover its revenue*
35 *requirements and to receive the charges that it is to recover and*
36 *receive pursuant to Division 27 (commencing with Section 80000)*
37 *of the Water Code, or pursuant to any agreement entered into by*
38 *the commission and the Department of Water Resources pursuant*
39 *to that division.*



1 848.2. (a) The financing entity may issue recovery bonds
2 upon approval by the commission in the pertinent financing
3 orders. Recovery bonds shall be nonrecourse to the credit or any
4 assets of the recovery corporation, other than the recovery
5 property as specified in the pertinent financing order.

6 (b) The recovery corporation may sell and assign all or portions
7 of its interest in recovery property to one or more financing entities
8 that make that recovery property the basis for issuance of recovery
9 bonds, to the extent approved in the financing order. The recovery
10 corporation or financing entity may pledge recovery property as
11 collateral, directly or indirectly, for recovery bonds to the extent
12 approved in the pertinent financing orders providing for a security
13 interest in the recovery property, in the manner set forth in Section
14 848.3. In addition, recovery property may be sold or assigned by
15 (1) the financing entity or a trustee for the holders of recovery
16 bonds in connection with the exercise of remedies upon a default,
17 or (2) any person acquiring the recovery property after a sale or
18 assignment pursuant to this subdivision.

19 (c) To the extent that any interest in recovery property is so sold
20 or assigned, or is so pledged as collateral, the commission shall
21 authorize the recovery corporation to contract with the financing
22 entity that it will continue to operate its system to provide service
23 to consumers within its service territory, will collect amounts in
24 respect of the fixed recovery amounts for the benefit and account
25 of the financing entity, and will account for and remit these
26 amounts to or for the account of the financing entity. Contracting
27 with the financing entity in accordance with that authorization
28 shall not impair or negate the characterization of the sale,
29 assignment, or pledge as an absolute transfer, a true sale, or
30 security interest, as applicable.

31 (d) Notwithstanding Section 1708 or any other provision of
32 law, any requirement under this article or a financing order that the
33 commission take action with respect to the subject matter of a
34 financing order shall be binding upon the commission, as it may
35 be constituted from time to time, and any successor agency
36 exercising functions similar to the commission, and the
37 commission shall have no authority to rescind, alter, or amend that
38 requirement in a financing order. The approval by the commission
39 in a financing order of the issuance by the recovery corporation or
40 a financing entity of recovery bonds shall include the approvals,

1 if any, as may be required by Article 5 (commencing with Section
2 816) and Section 701.5. Nothing in Section 701.5 shall be
3 construed to prohibit the issuance of recovery bonds upon the
4 terms and conditions as may be approved by the commission in a
5 financing order. Section 851 is not applicable to the transfer or
6 pledge of recovery property, the issuance of recovery bonds, or
7 related transactions approved in a financing order.

8 848.3. (a) A security interest in recovery property is valid, is
9 enforceable against the pledgor and third parties, subject to the
10 rights of any third parties holding security interests in the recovery
11 property perfected in the manner described in this section, and
12 attaches when all of the following have taken place:

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

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

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

19 (b) A valid and enforceable security interest in recovery
20 property is perfected when it has attached and when a financing
21 statement has been filed in accordance with Chapter 5
22 (commencing with Section 9501) of Division 9 of the Commercial
23 Code naming the pledgor of the recovery property as “debtor” and
24 identifying the recovery property. Any description of the recovery
25 property shall be sufficient if it refers to the financing order
26 creating the recovery property. A copy of the financing statement
27 shall be filed with the commission by the recovery corporation that
28 is the pledgor or transferor of the recovery property, and the
29 commission may require the recovery corporation to make other
30 filings with respect to the security interest in accordance with
31 procedures it may establish, provided that the filings shall not
32 affect the perfection of the security interest.

33 (c) A perfected security interest in recovery property is a
34 continuously perfected security interest in all revenues and
35 proceeds arising with respect thereto, whether or not the revenues
36 or proceeds have accrued. Conflicting security interests shall rank
37 according to priority in time of perfection. Recovery property shall
38 constitute property for all purposes, including for contracts
39 securing recovery bonds, whether or not the revenues and
40 proceeds arising with respect thereto have accrued.

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

(e) If an event of default occurs under the security agreement covering the recovery property, the pledgees of the recovery property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and are entitled to foreclose or otherwise enforce their security interest in the recovery property, subject to the rights of any third parties holding prior security interests in the recovery property perfected in the manner provided in this section. In addition, the commission may require in the financing order creating the recovery property that, in the event of default by the recovery corporation in payment of revenues arising with respect to the recovery property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 848.4, of the recovery



1 property, and without limiting any other remedies available to the
2 pledgees or transferees by reason of the default, shall order the
3 sequestration and payment to the pledgees or transferees of
4 revenues arising with respect to the recovery property. Any order
5 shall remain in full force and effect notwithstanding any
6 bankruptcy, reorganization, or other insolvency proceedings with
7 respect to the debtor. Any surplus in excess of amounts necessary
8 to pay principal, premium, if any, interest, costs, and arrearages on
9 the recovery bonds, and other costs arising under the security
10 agreement, shall be remitted to the debtor.

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

14 (g) This section sets forth the terms by which a consensual
15 security interest can be created and perfected in the recovery
16 property. Unless otherwise ordered by the commission with
17 respect to any series of recovery bonds on or prior to the issuance
18 of the series, there shall exist a statutory lien as provided in this
19 subdivision. Upon the effective date of the financing order, there
20 shall exist a first priority lien on all recovery property then existing
21 or thereafter arising pursuant to the terms of the financing order.
22 This lien shall arise by operation of this section automatically
23 without any action on the part of the recovery corporation, any
24 affiliate thereof, the financing entity, or any other person. This lien
25 shall secure all obligations, then existing or subsequently arising,
26 to the holders of the recovery bonds issued pursuant to the
27 financing order, the trustee or representative for the holders, and
28 any other entity specified in the financing order. The persons for
29 whose benefit this lien is established shall, upon the occurrence of
30 any defaults specified in the financing order, have all rights and
31 remedies of a secured party upon default under Division 9
32 (commencing with Section 9101) of the Commercial Code, and
33 are entitled to foreclose or otherwise enforce this statutory lien in
34 the recovery property. This lien attaches to the recovery property
35 regardless of who owns, or is subsequently determined to own, the
36 recovery property, including the recovery corporation, any
37 affiliate thereof, the financing entity, or any other person. This lien
38 shall be valid, perfected, and enforceable against the owner of the
39 recovery property and all third parties upon the effectiveness of the
40 financing order without any further public notice; provided,

1 however, that any person may, but is not ~~required, to~~ *required to*,
 2 file a financing statement in accordance with subdivision (b).
 3 Financing statements so filed may be “protective filings” and are
 4 not evidence of the ownership of the recovery property.

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

13 In addition, the commission may require, in the financing order
 14 creating the recovery property, that, in the event of default by the
 15 recovery corporation in the payment of revenues arising with
 16 respect to recovery property, the commission and any successor
 17 thereto, upon the application by the beneficiaries of the statutory
 18 lien, and without limiting any other remedies available to the
 19 beneficiaries by reason of the default, shall order the sequestration
 20 and payment to the beneficiaries of revenues arising with respect
 21 to the recovery property. Any order shall remain in full force and
 22 effect notwithstanding any bankruptcy, reorganization, or other
 23 insolvency proceedings with respect to the debtor. Any surplus in
 24 excess of amounts necessary to pay principal, premium, if any,
 25 interest, costs, and arrearages on the recovery bonds, and other
 26 costs arising in connection with the documents governing the
 27 recovery bonds, shall be remitted to the debtor.

28 848.4. (a) A transfer of recovery property by the recovery
 29 corporation to an affiliate or to a financing entity, or by an affiliate
 30 of the recovery corporation or a financing entity to another
 31 financing entity, which the parties in the governing documentation
 32 have expressly stated to be a sale or other absolute transfer, in a
 33 transaction approved in a financing order, shall be treated as an
 34 absolute transfer of all of the transferor’s right, title, and interest
 35 (as in a true sale), and not as a pledge or other financing, of the
 36 recovery property, other than for federal and state income and
 37 franchise tax purposes. The grant to holders of recovery bonds of
 38 a preferred right to revenues of the recovery corporation, or the
 39 provision by the company of other credit enhancement with
 40 respect to recovery bonds, shall not impair or negate the

1 characterization of any transfer as a true sale, other than for federal
2 and state income and franchise tax purposes.

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

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

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

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

22 848.5. Any successor to the recovery corporation, whether
23 pursuant to any bankruptcy, reorganization, or other insolvency
24 proceeding, or pursuant to any merger, sale, or transfer, by
25 operation of law, or otherwise, shall perform and satisfy all
26 obligations of the recovery corporation pursuant to this article in
27 the same manner and to the same extent as the recovery
28 corporation, including, but not limited to, collecting and paying to
29 the holders of recovery bonds, or their representatives, or the
30 applicable financing entity revenues arising with respect to the
31 recovery property sold to the applicable financing entity or
32 pledged to secure recovery bonds. Any successor to the recovery
33 corporation is entitled to receive any fixed recovery tax amounts
34 otherwise payable to the recovery corporation.

35 848.6. The authority of the commission to issue financing
36 orders pursuant to Section 848.1 shall expire on December 31,
37 2006. The expiration of the authority shall have no effect upon
38 financing orders adopted by the commission pursuant to this
39 article or any recovery property arising therefrom, or upon the
40 charges authorized to be levied thereunder, or the rights, interests,

1 and obligations of the recovery corporation or a financing entity
2 or holders of recovery bonds pursuant to the financing order, or the
3 authority of the commission to monitor, supervise, or take further
4 action with respect to the order in accordance with the terms of this
5 article and of the order.

6 848.7. Notwithstanding subdivision (e) of Section 848.1, the
7 commission shall credit ratepayers, in a manner to be determined
8 by the commission, with the net after tax amount of any payments,
9 offsets, or other credits the recovery corporation actually receives
10 from generators of electricity or other energy suppliers that would
11 have reduced the unamortized balance of the recovery
12 corporation's regulatory asset created under the commission's
13 Decision No. 03-12-035 but for the prior issuance of recovery
14 bonds.

15 848.8. Notwithstanding any other law, regulations adopted to
16 implement this article are not subject to the rulemaking provisions
17 of the Administrative Procedure Act (Chapter 3.5 (commencing
18 with Section 11340) of Part 1 of Division 3 of Title 2 of the
19 Government Code).

20 SEC. 6. Section 1731 of the Public Utilities Code is amended
21 to read:

22 1731. (a) The commission shall set an effective date when
23 issuing an order or decision. The commission may set the effective
24 date of an order or decision prior to the date of issuance of the order
25 or decision.

26 (b) After any order or decision has been made by the
27 commission, any party to the action or proceeding, or any
28 stockholder or bondholder or other party pecuniarily interested in
29 the public utility affected, may apply for a rehearing in respect to
30 any matters determined in the action or proceeding and specified
31 in the application for rehearing. The commission may grant and
32 hold a rehearing on those matters, if in its judgment sufficient
33 reason is made to appear. No cause of action arising out of any
34 order or decision of the commission shall accrue in any court to any
35 corporation or person unless the corporation or person has filed an
36 application to the commission for a rehearing within 30 days after
37 the date of issuance or within 10 days after the date of issuance in
38 the case of an order issued pursuant to either Article 5
39 (commencing with Section 816) or Article 6 (commencing with
40 Section 851) of Chapter 4 relating to security transactions and the

1 transfer or encumbrance of utility property. For purposes of this
2 article, “date of issuance” means the date when the commission
3 mails the order or decision to the parties to the action or
4 proceeding.

5 (c) No cause of action arising out of any order or decision of the
6 commission construing, applying, or implementing the provisions
7 of Chapter 4 of the Statutes of the 2001–02 First Extraordinary
8 Session shall accrue in any court to any corporation or person
9 unless the corporation or person has filed an application to the
10 commission for a rehearing within 10 days after the date of
11 issuance of the order or decision. The commission shall issue its
12 decision and order on rehearing within 20 days after the filing of
13 that application.

14 (d) No cause of action arising out of any order or decision of the
15 commission construing, applying, or implementing the provisions
16 of Article 5.6 (commencing with Section 848) of Chapter 4 shall
17 accrue in any court to any corporation or person unless the
18 corporation or person has filed an application to the commission
19 for a rehearing within 10 days after the date of issuance of the order
20 or decision. The commission shall issue its decision and order on
21 rehearing within 20 days after the filing of that application.

22 SEC. 7. Section 1769 is added to the Public Utilities Code, to
23 read:

24 1769. The following procedures shall apply to judicial review
25 of an order or decision of the commission interpreting,
26 implementing, or applying the provisions of Article 5.6
27 (commencing with Section 848) of Chapter 4:

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



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

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

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

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

19 (f) This section shall remain in effect only until January 1,
20 2008, and as of that date is repealed, unless a later enacted statute,
21 that is enacted before January 1, 2008, deletes or extends that date.

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

26 SEC. 9. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 SEC. 10. The Legislature finds and declares that, because of
36 the unique circumstances applicable only to the Pacific Gas and
37 Electric Company bankruptcy, a statute of general applicability
38 cannot be enacted within the meaning of subdivision (b) of Section

- 1 16 of Article IV of the California Constitution. Therefore, this
- 2 special statute is necessary.

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