AMENDED IN ASSEMBLY APRIL 13, 2004

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

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*, and declaring the urgency thereof, to take effect immediately.*

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.

(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.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ *2/3*. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. In confirming the Public Utilities Commission’s authority to approve a dedicated rate component to support the issuance of recovery bonds, the Legislature is not ratifying or endorsing any particular outcome of the Pacific Gas and Electric Company’s federal bankruptcy proceeding, but rather is authorizing a means by which the commission can reduce ratepayer costs in a plan of reorganization.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Fixtures in Section 9334.

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

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

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

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

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

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

division are referred to in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, and recovery property, as defined in Section 848 of the Public Utilities Code, except to the extent that the provisions of 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 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:

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

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

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

(2) ‘‘Recovery property’’ shall not include the right to be paid fixed recovery tax amounts.

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

(k) ‘‘Service territory’’ means the geographical area that the recovery corporation provided with electric distribution service as of December 19, 2003.

848.1. (a) No later than 120 days after the effective date of this article, and from time to time thereafter, the recovery corporation shall apply to the commission for a determination that some or all of the recovery corporation’s recovery costs may be recovered through fixed recovery amounts, which would be recovery property under this article, and that any portion of the recovery corporation’s federal and State of California income and franchise taxes associated with those fixed recovery amounts and not financed from proceeds of recovery bonds be recovered through fixed recovery tax amounts. The recovery corporation may request this determination by the commission in a separate proceeding or in an existing proceeding, or both. The recovery corporation shall in its application specify that consumers within its service territory would benefit from reduced rates on a present value basis through the issuance of recovery bonds. The commission shall designate fixed recovery amounts and any associated fixed recovery tax amounts as recoverable in one or more financing orders if the commission determines, as part of its findings in connection with the financing order, that the designation of the fixed recovery amounts and any associated fixed recovery tax amounts, and the issuance of recovery bonds in connection with fixed recovery amounts, would reduce the rates on a present value basis that consumers within the recovery corporation's service territory would pay if the financing order were not adopted. Fixed recovery amounts and any associated fixed recovery tax amounts shall only be imposed on existing and future consumers in the service territory. Consumers within the service territory shall continue to pay fixed recovery amounts and any associated fixed tax recovery amounts until the recovery bonds are paid in full by the financing entity. Once the recovery bonds have been paid in full, the payment by consumers of fixed recovery amounts and fixed recovery tax amounts shall terminate.

(b) The commission shall establish an effective mechanism that ensures recovery of recovery costs through fixed recovery amounts and any associated fixed recovery tax amounts from ~~all~~ *exiting and future* consumers in the service territory ~~that receive electric distribution services from the recovery corporation on or after January 1, 2000;~~, provided that the costs shall not be recoverable from ~~(1) new~~ *any of the following:*

(1) New load or incremental load of an existing consumer of the recovery corporation where the load is being met through a direct transaction and the transaction does not require the use of transmission or distribution facilities owned by the recovery ~~corporation, (2)~~ *corporation.*

(2) Customer Generation departing load that is exempt from Department of Water Resources power charges pursuant to the commission's Decision No. 03-04-030, as modified by Decision No. 03-04-041, and as clarified and affirmed by Decision No. 03-05-039, except that the load shall pay the costs as a component of and in proportion to any purchase of electricity delivered by the recovery corporation under standby or other service made following its~~ departure, or (3) the~~ *departure.*

(3) The Department of Water Resources, with respect to the pumping, generation, and transmission facilities and operations of the State Water Resources Development System, except to the extent that system facilities receive electric service from the

recovery corporation on or after December 19, 2003, under a commission approved tariff. ~~The obligation of a consumer that has received electric service from the recovery corporation on or after January 1, 2000, to pay fixed recovery amounts and any associated fixed recovery tax amounts cannot be avoided by the formation of a local publicly owned electric utility on or after December 19, 2003, or by annexation of any portion of the service territory of the recovery corporation by an existing local publicly owned electric utility.~~

~~(c)~~

(4) Retail electric load, continuously served by a local publicly owned electric utility from January 1, 2000, through the effective date of the act adding this section.

(5) Load that thereafter comes to take electric service from a city where all the following conditions are met:

(A) The new load is from locations that never received electric service from the recovery corporation.

(B) The city owns and operates the local publicly owned electric utility.

(C) The local publicly owned electric utility served more than 95 percent of the customers receiving electric service residing within the city limits prior to December 19, 2003.

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

(E) Following annexation, the city provides all municipal services to the annexed territory that the city provides to other territory within the city limits, including electric service.

(F) The total load exempt from paying fixed recovery amounts and associated fixed recovery tax amounts pursuant to subparagraphs (A) through (D), inclusive, does not exceed 50 megawatts, as determined by the commission, and any load above the 50 megawatt exemption amount shall be responsible for paying recovery amounts and associated fixed recovery tax amounts, except as provided in subdivision (c).

(c) Except as provided in paragraphs (4) and (5) of subdivision (b), the commission shall determine the extent to which fixed recovery amounts and any associated fixed recovery tax amounts are recoverable from new municipal load, consistent with the commission's determination in the limited rehearing granted in Decision 03-08-076. The determination of the commission shall be

made on the earlier of the date it adopts a financing order or December 31, 2004.

(d) Except as provided in paragraphs (4) and (5) of subdivision (b) and in subdivision (c), the obligation to pay fixed recovery amounts and any associated fixed recovery tax amounts cannot be avoided by the formation of a local publicly owned electric utility on or after December 19, 2003, or by annexation of any portion of the service territory of the recovery corporation by an existing local publicly owned electric utility.

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

~~(d)~~

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

~~(e)~~

(g) Notwithstanding Section 455.5 or 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to recovery property that has been made the basis for the issuance of recovery bonds and with respect to any associated fixed recovery tax amounts, the financing order, the fixed recovery amounts and any associated fixed recovery tax amounts shall be irrevocable, and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes, the recovery costs or the costs of recovering, financing, or refinancing the recovery costs, determine that the fixed recovery amounts, any associated fixed recovery tax amounts or rates are unjust or unreasonable, or in any way reduce or impair the value of recovery property or of the right to receive any associated fixed recovery tax amounts either directly or indirectly by taking fixed recovery amounts or any associated fixed recovery tax amounts into account when

setting other rates for the recovery corporation or when setting charges for the Department of Water Resources; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except as otherwise provided in this subdivision, the State of California does hereby pledge and agree with the recovery corporation, owners of recovery property, and holders of recovery bonds that the state shall neither limit nor alter the fixed recovery amounts, any associated fixed recovery tax amounts, recovery property, financing orders, or any rights thereunder until the recovery bonds, together with the interest thereon, are fully paid and discharged, and any associated fixed recovery tax amounts have been satisfied or, in the alternative, have been refinanced through an additional issue of recovery bonds; provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the protection of the recovery corporation, owners, and holders. The financing entity is authorized to include this pledge and undertaking for the state in these recovery bonds. Notwithstanding any other provision of this section, the commission shall approve adjustments to the fixed recovery amounts and any associated fixed recovery tax amounts as may be necessary to ensure timely recovery of all recovery costs that are the subject of the pertinent financing order, and the costs of capital associated with the recovery, financing, or refinancing thereof, including servicing and retiring the recovery bonds contemplated by the financing order. When setting other rates for the recovery corporation, nothing in this subdivision shall prevent the commission from taking into account ~~(1) any~~ *either of the following:*

(1) Any collection of fixed recovery amounts in excess of amounts actually required to pay recovery costs financed or refinanced by recovery bonds~~, or (2) any~~.

(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)~~

(h) (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)~~

(i) 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 the financing order, or of each additional interval provided for in the financing order.

~~(h)~~

(j) Fixed recovery amounts are recovery property when, and to the extent that, a financing order authorizing the fixed recovery amounts has become effective in accordance with this article, and

the recovery property shall thereafter continuously exist as property for all purposes with all of the rights and privileges of this article for the period and to the extent provided in the financing order, but in any event until the recovery bonds are paid in full, including all principal, interest, premium, costs, and arrearages thereon.

~~(i)~~

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

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

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

(c) To the extent that any interest in recovery property is so sold or assigned, or is so pledged as collateral, the commission shall authorize the recovery corporation to contract with the financing entity that it will continue to operate its system to provide service to consumers within its service territory, will collect amounts in respect of the fixed recovery amounts for the benefit and account of the financing entity, and will account for and remit these amounts to or for the account of the financing entity. Contracting with the financing entity in accordance with that authorization 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 commission may require the recovery corporation to make other filings with respect to the security interest in accordance with procedures it may establish, provided that the filings shall not affect the perfection of the security interest.

(c) A perfected security interest in recovery property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Recovery property shall constitute property for all purposes, including for contracts securing recovery bonds, whether or not the revenues and 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 property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the recovery bonds, and other costs arising under the security agreement, shall be remitted to the debtor.

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

(g) This section sets forth the terms by which a consensual security interest can be created and perfected in the recovery property. Unless otherwise ordered by the commission with respect to any series of recovery bonds on or prior to the issuance of the series, there shall exist a statutory lien as provided in this subdivision. Upon the effective date of the financing order, there shall exist a first priority lien on all recovery property then existing or thereafter arising pursuant to the terms of the financing order. This lien shall arise by operation of this section automatically without any action on the part of the recovery corporation, any affiliate thereof, the financing entity, or any other person. This lien shall secure all obligations, then existing or subsequently arising, to the holders of the recovery bonds issued pursuant to the financing order, the trustee or representative for the holders, and any other entity specified in the financing order. The persons for whose benefit this lien is established shall, upon the occurrence of any defaults specified in the financing order, 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 this statutory lien in the recovery property. This lien attaches to the recovery property regardless of who owns, or is subsequently determined to own, the recovery property, including the recovery corporation, any affiliate thereof, the financing entity, or any other person. This lien shall be valid, perfected, and enforceable against the owner of the recovery property and all third parties upon the effectiveness of the financing order without any further public notice; provided, however, that any person may, but is not required to, file a financing statement in accordance with subdivision (b). Financing statements so filed may be ‘‘protective filings’’ and are not evidence of the ownership of the recovery property.

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

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 the payment of revenues arising with respect to recovery property, the commission and any successor thereto, upon the application by the beneficiaries of the statutory lien, and without limiting any other remedies available to the beneficiaries by reason of the default, shall order the sequestration and payment to the beneficiaries of revenues arising with respect to the recovery property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the recovery bonds, and other costs arising in connection with the documents governing the 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 corporation, including, but not limited to, collecting and paying to the holders of recovery bonds, or their representatives, or the applicable financing entity revenues arising with respect to the recovery property sold to the applicable financing entity or pledged to secure recovery bonds. Any successor to the recovery corporation is entitled to receive any fixed recovery tax amounts otherwise payable to the recovery corporation.

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

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

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

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

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

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

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

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

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

1769. The following procedures shall apply to judicial review of an order or decision of the commission interpreting, implementing, or applying the provisions of Article 5.6 (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) 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.

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

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

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

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

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

(a) In Decision 03-12-035, dated December 18, 2003, the California Public Utilities Commission approved a modified settlement agreement with Pacific Gas and Electric Company (PG&E) and PG&E Corporation allowing PG&E to emerge from bankruptcy promptly.

(b) The modified settlement agreement authorizes PG&E to recover a new regulatory asset and specified taxes from ratepayers.

(c) PG&E has agreed that, after emerging from bankruptcy, it will seek to implement, as expeditiously as practical, a securitized financing using a dedicated rate component to refinance the unamortized amount of the regulatory asset and associated taxes, provided several conditions are met.

(d) One of the conditions is that satisfactory authorizing legislation is enacted.

(e) The California Public Utilities Commission estimates that approximately $1 billion of total ratepayer savings might be achieved if a securitized financing were implemented immediately for this purpose.

(f) The amount of ratepayer savings will be reduced if the securitized financing is delayed.

(g) To maximize ratepayer benefits within the service area of PG&E, it is necessary for this act to take effect immediately.

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