

AMENDED IN SENATE JUNE 28, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 380

Introduced by Assembly Member Nunez

February 11, 2005

An act to add Sections 380 and 9620 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 380, as amended, Nunez. Electricity: electrical restructuring: resource adequacy.

The California Constitution establishes the Public Utilities Commission, and provides it with jurisdiction over all public utilities. The Constitution grants the commission certain general powers over all public utilities, subject to control by the Legislature, and authorizes the Legislature, unlimited by the other provisions of the Constitution, to confer additional authority and jurisdiction upon the commission, that is cognate and germane to the regulation of public utilities.

The existing Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. Existing law relative to electrical restructuring, authorizes electrical service to be provided, in certain circumstances,

by electric service providers, as defined, and community choice aggregators, as defined.

The existing Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to undertake a continuing assessment of trends in the consumption of electricity and other forms of energy and to analyze the social, economic, and environmental consequences of those trends and to collect from electric utilities, gas utilities, and fuel producers and wholesalers and other sources, forecasts of future supplies and consumption of all forms of energy. Existing law requires the Energy Commission, beginning November 1, 2003, and every 2 years thereafter, to adopt an integrated energy policy report which includes an assessment and forecast of system reliability and the need for resource additions, efficiency, and conservation.

This bill would require the commission, in consultation with the Independent System Operator (ISO), to establish resource adequacy requirements to ensure that adequate physical generating capacity, dedicated to serving all load requirements *of load-serving entities*, is available to meet peak demand plus requisite planning and operating reserves, ~~and at or deliverable to locations and at times as may be necessary to provide reliable electric service at just and reasonable rates. The bill would require that, at a minimum, the resource adequacy requirements meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council until minimum planning reserve and reliability criteria are adopted by the Western Electricity Coordinating Council. The bill would require the commission to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load-serving entities, with certain exceptions.~~ *load-serving entities. For these purposes, a “load-serving entity” would not include a local publicly owned electric utility, as defined, the State Water Resources Development System commonly known as the State Water Project, or certain customer generation.* The bill would make specified enforcement provisions within the Public Utilities Act, applicable to all ~~load-serving~~ *load-serving* entities, with respect to these resource adequacy requirements and would require the commission to impose a penalty upon any ~~load serving~~ *load-serving* entity that fails to procure adequate generational resources in violation of an order or decision of the commission, in an

amount sufficient to deter violations. The bill would require that the cost of meeting resource adequacy requirements, including the costs associated with system reliability and local area reliability found reasonable by the commission, *or otherwise recoverable under an electrical corporation's approved procurement plan*, be fully recoverable from all customers taking service from an electrical corporation on a nonbypassable basis at the time the commitment to incur the cost is made or thereafter. ~~The bill would prohibit an electrical corporation from recovering from ratepayers, any cost that would have been avoided if the electrical corporation had procured adequate generational resources as required by an order or decision of the commission.~~ The bill would require that all ~~load-serving~~ *load-serving* entities, including electric service providers and community choice aggregators, are subject to the same requirements for resource adequacy, ~~resource diversity~~, cost-effective energy efficiency, and the renewables portfolio standard, as are applicable to electrical corporations. The bill would require the commission, in consultation with the ISO, to require all ~~electrical-load-serving~~ *load-serving* entities to report information to the commission on anticipated load, actual load, and measures undertaken by the ~~load-serving~~ *load-serving* entity to ensure resource adequacy. The commission would be required to share information provided by ~~load-serving~~ *load-serving* entities with the Energy Commission. The Energy Commission would be required to utilize the information supplied by the commission in its biennial integrated energy policy reports.

Existing law relative to electrical restructuring states the intent of the Legislature that the state's local publicly owned electric utilities, as defined, and electrical corporations should commit control of their transmission facilities to the ~~Independent System Operator~~ *ISO*.

This bill would require that every local publicly owned electric utility serving end-use customers ~~ensure that adequate physical generating capacity dedicated to serving all of its load requirements is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary to ensure local area reliability and system reliability, at just and reasonable rates prudently plan for and procure resources that are adequate to meet its planning reserve margin and peak demand and operating reserves, sufficient to provide reliable electric service to its customers.~~ The bill would require that every local publicly owned electric utility ~~report to~~

~~the State Energy Resources Conservation and Development Commission that information required by the commission relative to the utility's resource plan and status in meeting its resource plan, thereby imposing a state-mandated local program serving end-use customers, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council until minimum planning reserve and reliability criteria are adopted by the Western Electricity Coordinating Council. The bill would require a local publicly owned electric utility serving end-use customers, upon request, to provide the Energy Commission with that information the Energy Commission determines is necessary to evaluate the progress made by the utility in meeting these requirements, and would require the Energy Commission to report the progress made by each utility to the Legislature.~~

Because this bill would establish various requirements to be met by local publicly owned utilities, this bill would impose a state-mandated local program.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the commission would be required to implement certain of the provisions. Because a violation of those provisions or an order or other action of the commission implementing those provisions would be a crime, and because the bill would make certain violations by a ~~load-serving~~ *load-serving* entity a crime, this bill would thereby impose a state-mandated local program by creating new crimes and by expanding the definition of existing crimes.

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 specified reasons.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

SECTION 1. Section 380 is added to the Public Utilities Code, to read:

380. (a) The commission, in consultation with the Independent System Operator, shall establish a resource adequacy requirements mechanism to ensure that adequate physical generating capacity dedicated to serving all load requirements *of load-serving entities* is available to meet peak demand and planning and operating reserves, at or deliverable to locations and at times as may be necessary ~~to ensure local area reliability and system reliability~~, *provide reliable electric service* at just and reasonable rates. *These resource adequacy requirements shall, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council until minimum planning reserve and reliability criteria are adopted by the Western Electricity Coordinating Council. The resource adequacy requirements mechanism shall ensure that investment is made in new generating capacity, that existing generating capacity that is economic is retained, and that the cost of generating capacity is allocated equitably.*

(b) All ~~electrical-load-serving~~ *load-serving* entities, including nonutility electric service providers and community choice aggregators, shall be subject to the same requirements for resource adequacy, ~~resource diversity~~, cost-effective energy efficiency, and the renewables portfolio standard program, that are applicable to electrical corporations pursuant to this section, or otherwise as required by law, or by order or decision of the commission. The resource adequacy requirements mechanism shall be designed to minimize enforcement requirements and costs, to prevent shifting of costs, and to ensure that adequate generating capacity exists or is brought online to timely meet identified resource adequacy needs. The commission, in consultation with the Independent System Operator, shall require all ~~electrical-load-serving~~ *load-serving* entities to report information to the commission on anticipated load, actual load, and measures undertaken by the ~~load-serving~~ *load-serving* entity to ensure resource adequacy. The commission shall require sufficient information to be reported to enable the commission to

1 determine compliance with the resource adequacy requirements
2 adopted by the commission. The commission may require a
3 scheduling coordinator approved by the Independent System
4 Operator to provide information when necessary or useful to
5 determine compliance by ~~load-serving~~ *load-serving* entities with
6 the resource adequacy requirements adopted by the commission.
7 The commission shall share information provided by the ~~load~~
8 ~~serving~~ *load-serving* entities with the State Energy Resources
9 Conservation and Development Commission. The State Energy
10 Resources Conservation and Development Commission shall
11 utilize the information supplied by the commission in the
12 biennial integrated energy policy reports prepared pursuant to
13 Section 25302 of the Public Resources Code *in a manner that*
14 *ensures the confidentiality of market sensitive information as*
15 *required by subdivision (g) of Section 454.5.*

16 (c) The commission, in consultation with the Independent
17 System Operator, shall implement and enforce these resource
18 adequacy requirements in a nondiscriminatory manner as to all
19 ~~load-serving~~ *load-serving* entities. For purposes of enforcing the
20 resource adequacy requirements established pursuant to this
21 section, all electrical ~~load-serving~~ *load-serving* entities, including
22 those entities that are not electrical corporations, are subject to
23 Sections 2101, 2102, 2103, 2104, 2104.5, 2105, 2106, 2107,
24 2107.5, 2108, 2109, 2110, 2111, 2112, 2113, and 2114. In
25 addition to any remedy or enforcement power that the
26 commission may exercise pursuant to Chapter 11 (commencing
27 with Section 2100), the commission shall impose a penalty upon
28 any ~~load-serving~~ *load-serving* entity that fails to procure adequate
29 generational resources in violation of an order or decision of the
30 commission made pursuant to this section, in an amount
31 sufficient to deter violations. The electrical corporation's costs of
32 meeting those resource adequacy requirements, including the
33 costs associated with system reliability and local area reliability,
34 that are found reasonable by the commission, *or are otherwise*
35 *recoverable under a procurement plan approved by the*
36 *commission pursuant to Section 454.5*, shall be fully recoverable
37 from those customers taking service from the electrical
38 corporation, at the time the commitment to incur the cost is made
39 or thereafter, on a fully nonbypassable basis pursuant to rates that
40 are just and reasonable, as determined by the commission. The

1 commission shall develop mechanisms that ensure cost recovery
2 by electrical corporations for costs incurred in providing resource
3 adequacy, that avoid shifting of costs, *and* that avoid stranded
4 costs, ~~and that avoid cost responsibility surcharges. In addition to~~
5 ~~any remedy or enforcement power that the commission may~~
6 ~~exercise pursuant to Chapter 11 (commencing with Section~~
7 ~~2100), an electrical corporation shall not recover from ratepayers,~~
8 ~~any cost that would have been avoided if the electrical~~
9 ~~corporation had procured adequate generational resources as~~
10 ~~required by an order or decision of the commission made~~
11 ~~pursuant to this section.~~

12 (d) For purposes of this section, ~~“load-serving~~ “load-serving
13 entity” does not include a local publicly owned electric utility as
14 defined in Section 9604, the State Water Resources Development
15 System commonly known as the State Water Project, or customer
16 generation, if the customer generation (1) takes standby service
17 from the electrical corporation on a commission-approved rate
18 schedule that requires the customer’s ~~load-serving~~ load-serving
19 entity to provide for adequate backup planning and operating
20 reserves for that customer generation or (2) is not physically
21 interconnected to the transmission grid, so that if the customer
22 generation fails, backup power is not supplied from the
23 electricity grid.

24 (e) *The commission shall determine if a centralized resource*
25 *adequacy mechanism, or some other appropriate mechanism, is*
26 *the most efficient and equitable means of meeting the objectives*
27 *of this section and of ensuring that investment is made in new*
28 *generating capacity, that existing generating capacity that is*
29 *economic is retained, and that the cost of generating capacity is*
30 *allocated equitably.*

31 SEC. 2. Section 9620 is added to the Public Utilities Code, to
32 read:

33 9620. (a) Every local publicly owned electric utility serving
34 end-use customers, shall ~~ensure that adequate physical generating~~
35 ~~capacity dedicated to serving all of its load requirements is~~
36 ~~available to meet peak demand and planning and operating~~
37 ~~reserves, at or deliverable to locations and at times as may be~~
38 ~~necessary to ensure local area reliability and system reliability, at~~
39 ~~just and reasonable rates.~~

~~(b) Every local publicly owned electric utility shall report to the State Energy Resources Conservation and Development Commission, that information required by the commission relative to the utility's resource plan and status in meeting its resource plan. prudently plan for and procure resources that are adequate to meet its planning reserve margin and peak demand and operating reserves, sufficient to provide reliable electric service to its customers. Every local publicly owned electric utility serving end-use customers shall, at a minimum, meet the most recent minimum planning reserve and reliability criteria approved by the Board of Trustees of the Western Systems Coordinating Council until minimum planning reserve and reliability criteria are adopted by the Western Electricity Coordinating Council.~~

(b) A local publicly owned electric utility serving end-use customers shall, upon request, provide the State Energy Resources Conservation and Development Commission with that information the commission determines is necessary to evaluate the progress made by the utility in meeting the requirements of this section.

(c) The State Energy Resources Conservation and Development Commission shall report to the Legislature regarding the progress made by each local publicly owned electric utility serving end-use customers in meeting the requirements of this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because certain 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.

As to certain other costs, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient

- 1 to pay for the program or level of service mandated by this act,
- 2 within the meaning of Section 17556 of the Government Code.

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