

AMENDED IN SENATE AUGUST 16, 2005

AMENDED IN SENATE JUNE 28, 2005

AMENDED IN ASSEMBLY MAY 2, 2005

AMENDED IN ASSEMBLY APRIL 26, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

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

(1) 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 to ensure that adequate physical generating capacity, dedicated to serving all load requirements of for load-serving entities, is available as defined, in accordance with specified objectives. The bill would require each load-serving entity to maintain physical generating capacity adequate to meet its load requirements, including, but not limited to, peak demand plus requisite and planning and operating reserves 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 each load-serving entity to meet, 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 or the Western Electricity Coordinating Council. The bill would require the commission to implement and enforce these the resource adequacy requirements established pursuant to the bill in a nondiscriminatory manner. on all 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 entities, with respect to these resource adequacy requirements and would require the commission to impose a penalty upon any 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 subject each load-serving entity to the same requirements for resource adequacy, cost-effective energy efficiency, and the renewables portfolio standard program that are applicable to electrical corporations, or otherwise required by law, or by order or decision of the commission.* The bill would require that the ~~cost~~ costs of an electrical corporation in 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 as specified, be fully recoverable from all those customers taking service from an the electrical corporation on a nonbypassable basis, at the time the commitment to incur the cost is made or thereafter, on a fully nonbypassable basis, pursuant to rates that are determined by the commission to be just and reasonable. ~~The bill would require that all load-serving entities, including electric service providers and community choice aggregators, are subject to the same requirements for resource adequacy, 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 entities to report information to the commission on anticipated load, actual load, and measures undertaken by the load-serving entity to ensure resource adequacy. The commission would be required to share information provided by 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. The bill would require the commission to determine the most efficient and equitable means for achieving prescribed objectives. The bill would exclude from the definition of a "load-serving entity" 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.

Existing

(2) *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 ISO.

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 that ~~every~~ *each* local publicly owned electric utility serving end-use customers 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~~ *each* local publicly owned electric utility 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~~ *or* 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~~ *any* 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 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

(3) *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:

- 1 *SECTION 1. Section 380 is added to the Public Utilities*
- 2 *Code, to read:*
- 3 *380. (a) The commission, in consultation with the*
- 4 *Independent System Operator, shall establish resource adequacy*
- 5 *requirements for load-serving entities.*
- 6 *(b) In establishing resource adequacy requirements, the*
- 7 *commission shall achieve all of the following objectives:*
- 8 *(1) Facilitate development of new generating capacity and*
- 9 *retention of existing generating capacity that is economic and*
- 10 *needed.*
- 11 *(2) Equitably allocate the cost of generating capacity and*
- 12 *prevent shifting of costs between customer classes.*
- 13 *(3) Minimize enforcement requirements and costs.*
- 14 *(c) Each load-serving entity shall maintain physical*
- 15 *generating capacity adequate to meet its load requirements,*
- 16 *including, but not limited to, peak demand and planning and*
- 17 *operating reserves. The generating capacity shall be deliverable*

1 to locations and at times as may be necessary to provide reliable
2 electric service at just and reasonable rates.

3 (d) Each load-serving entity shall, at a minimum, meet the
4 most recent minimum planning reserve and reliability criteria
5 approved by the Board of Trustees of the Western Systems
6 Coordinating Council or the Western Electricity Coordinating
7 Council.

8 (e) The commission shall implement and enforce the resource
9 adequacy requirements established in accordance with this
10 section in a nondiscriminatory manner. Each load-serving entity
11 shall be subject to the same requirements for resource adequacy,
12 cost-effective energy efficiency, and the renewables portfolio
13 standard program that are applicable to electrical corporations
14 pursuant to this section, or otherwise required by law, or by
15 order or decision of the commission. The commission shall
16 exercise its enforcement powers to ensure compliance by all
17 load-serving entities.

18 (f) The commission shall require sufficient information,
19 including, but not limited to, anticipated load, actual load, and
20 measures undertaken by a load-serving entity to ensure resource
21 adequacy, to be reported to enable the commission to determine
22 compliance with the resource adequacy requirements established
23 by the commission.

24 (g) An electrical corporation's costs of meeting resource
25 adequacy requirements, including, but not limited to, the costs
26 associated with system reliability and local area reliability, that
27 are determined to be reasonable by the commission, or are
28 otherwise recoverable under a procurement plan approved by
29 the commission pursuant to Section 454.5, shall be fully
30 recoverable from those customers taking service from the
31 electrical corporation, at the time the commitment to incur the
32 cost is made or thereafter, on a fully nonbypassable basis
33 pursuant to rates that are just and reasonable, as determined by
34 the commission.

35 (h) The commission shall determine the most efficient and
36 equitable means for achieving all of the following:

37 (1) Meeting the objectives of this section.

38 (2) Ensuring that investment is made in new generating
39 capacity.

1 (3) Ensuring that existing generating capacity that is
2 economic is retained.

3 (4) Ensuring that the cost of generating capacity is allocated
4 equitably.

5 (i) For purposes of this section, “load-serving entity” means
6 an electrical corporation, electric service provider, or
7 community choice aggregator. “Load-serving entity” does not
8 include any of the following:

9 (1) A local publicly owned electric utility as defined in Section
10 9604.

11 (2) The State Water Resources Development System commonly
12 known as the State Water Project.

13 (3) Customer-owned generation, if the customer-owned
14 generation meets one of the following criteria:

15 (A) It takes standby service from the electrical corporation on
16 a commission-approved rate schedule that requires the
17 customer’s load-serving entity to provide for adequate backup
18 planning and operating reserves for that customer generation.

19 (B) It is not physically interconnected to the transmission grid,
20 so that if the customer generation fails, backup power is not
21 supplied from the electricity grid.

22 SEC. 2. Section 9620 is added to the Public Utilities Code, to
23 read:

24 9620. (a) Each local publicly owned electric utility serving
25 end-use customers, shall prudently plan for and procure
26 resources that are adequate to meet its planning reserve margin
27 and peak demand and operating reserves, sufficient to provide
28 reliable electric service to its customers.

29 (b) Each local publicly owned electric utility serving end-use
30 customers shall, at a minimum, meet the most recent minimum
31 planning reserve and reliability criteria approved by the Board
32 of Trustees of the Western Systems Coordinating Council or the
33 Western Electricity Coordinating Council.

34 (c) A local publicly owned electric utility serving end-use
35 customers shall, upon request, provide the State Energy
36 Resources Conservation and Development Commission with any
37 information the State Energy Resources Conservation and
38 Development Commission determines is necessary to evaluate
39 the progress made by the local publicly owned electric utility in
40 meeting the requirements of this section.

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

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

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

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

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

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

1 reasonable, as determined by the commission. The commission
2 shall develop mechanisms that ensure cost recovery by electrical
3 corporations for costs incurred in providing resource adequacy,
4 that avoid shifting of costs, and that avoid stranded costs.

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

16 (e) The commission shall determine if a centralized resource
17 adequacy mechanism, or some other appropriate mechanism, is
18 the most efficient and equitable means of meeting the objectives
19 of this section and of ensuring that investment is made in new
20 generating capacity, that existing generating capacity that is
21 economic is retained, and that the cost of generating capacity is
22 allocated equitably.

23 SEC. 2. Section 9620 is added to the Public Utilities Code, to
24 read:

25 9620. (a) Every local publicly owned electric utility serving
26 end-use customers, shall prudently plan for and procure resources
27 that are adequate to meet its planning reserve margin and peak
28 demand and operating reserves, sufficient to provide reliable
29 electric service to its customers. Every local publicly owned
30 electric utility serving end-use customers shall, at a minimum,
31 meet the most recent minimum planning reserve and reliability
32 criteria approved by the Board of Trustees of the Western
33 Systems Coordinating Council until minimum planning reserve
34 and reliability criteria are adopted by the Western Electricity
35 Coordinating Council.

36 (b) A local publicly owned electric utility serving end-use
37 customers shall, upon request, provide the State Energy
38 Resources Conservation and Development Commission with that
39 information the commission determines is necessary to evaluate

1 the progress made by the utility in meeting the requirements of
2 this section.

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

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 certain costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the
13 penalty for a crime or infraction, within the meaning of Section
14 17556 of the Government Code, or changes the definition of a
15 crime within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

17 As to certain other costs, no reimbursement is required by this
18 act pursuant to Section 6 of Article XIII B of the California
19 Constitution because a local agency or school district has the
20 authority to levy service charges, fees, or assessments sufficient
21 to pay for the program or level of service mandated by this act,
22 within the meaning of Section 17556 of the Government Code.