

AMENDED IN ASSEMBLY JUNE 29, 2005

AMENDED IN ASSEMBLY JUNE 21, 2005

AMENDED IN SENATE MAY 31, 2005

AMENDED IN SENATE MAY 23, 2005

AMENDED IN SENATE APRIL 27, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL**No. 1037**

Introduced by Senator Kehoe

February 22, 2005

An act to amend and repeal Section 454.5 of, and to add Sections 454.55, 454.56, 1002.3, and 9615 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, as amended, Kehoe. Energy efficiency.

(1) The Warren-Alquist State Energy Resources Conservation and Development Act establishes the State Energy Resources Conservation and Development Commission (Energy Commission) and requires it to certify sufficient sites and related facilities that are required to provide a supply of electricity sufficient to accommodate projected demand for power statewide. Under that act, the Energy Commission also administers existing law with respect to energy conservation and renewable electricity generation sources.

Existing law authorizes the Public Utilities Commission to regulate public utilities, including electrical and gas corporations. The Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation. The act prohibits any

electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require that construction. Under existing law, a person is guilty of a crime for failing to comply with provisions of the act, or with an order or decision of the commission.

This bill would require the commission, in consultation with the Energy Commission, to identify all potentially achievable cost-effective electricity efficiency ~~measures~~ *savings and to establish efficiency targets for an electrical corporation to achieve pursuant to its procurement plan*. The bill would require that an electrical corporation's procurement plan include a showing that the electrical corporation will, in order to fulfill its unmet resource needs, first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible, before acquiring supply resources.

The bill would require the commission, in consultation with the Energy Commission, to identify all potentially achievable cost-effective natural gas efficiency ~~measures~~ *savings and to establish efficiency targets for the gas corporation to achieve these targets* and to require that a gas corporation first acquire all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible, before acquiring supply resources.

The bill would require the commission, in considering an application for a certificate of public convenience and necessity for an electric transmission facility, to consider all cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including specified demand reduction resources.

The bill, by requiring the commission to impose new requirements on electrical and gas corporations, the violation of which would be a crime, would create new crimes, thereby imposing a state-mandated local program.

(2) Existing law relating to electrical restructuring imposes certain requirements on local publicly owned electric utilities.

This bill would require each local publicly owned electric utility, in procuring energy, to first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible. The bill would require each local publicly owned electric

utility to report annually to its customers and to the Energy Commission, its investment on energy efficiency and demand reduction programs. The bill, by imposing new requirements on local publicly owned electric utilities, would impose a state-mandated local program.

(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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 454.5 of the Public Utilities Code, as
2 added by Section 2 of Chapter 835 of the Statutes of 2002, is
3 repealed.
4 SEC. 2. Section 454.5 of the Public Utilities Code, as added
5 by Section 3 of Chapter 850 of the Statutes of 2002, is amended
6 to read:
7 454.5. (a) The commission shall specify the allocation of
8 electricity, including quantity, characteristics, and duration of
9 electricity delivery, that the Department of Water Resources shall
10 provide under its power purchase agreements to the customers of
11 each electrical corporation, which shall be reflected in the
12 electrical corporation's proposed procurement plan. Each
13 electrical corporation shall file a proposed procurement plan with
14 the commission not later than 60 days after the commission
15 specifies the allocation of electricity. The proposed procurement
16 plan shall specify the date that the electrical corporation intends
17 to resume procurement of electricity for its retail customers,
18 consistent with its obligation to serve. After the commission's
19 adoption of a procurement plan, the commission shall allow not

1 less than 60 days before the electrical corporation resumes
2 procurement pursuant to this section.

3 (b) An electrical corporation's proposed procurement plan
4 shall include, but not be limited to, all of the following:

5 (1) An assessment of the price risk associated with the
6 electrical corporation's portfolio, including any utility-retained
7 generation, existing power purchase and exchange contracts, and
8 proposed contracts or purchases under which an electrical
9 corporation will procure electricity, electricity demand
10 reductions, and electricity-related products and the remaining
11 open position to be served by spot market transactions.

12 (2) A definition of each electricity product, electricity-related
13 product, and procurement related financial product, including
14 support and justification for the product type and amount to be
15 procured under the plan.

16 (3) The duration of the plan.

17 (4) The duration, timing, and range of quantities of each
18 product to be procured.

19 (5) A competitive procurement process under which the
20 electrical corporation may request bids for procurement-related
21 services, including the format and criteria of that procurement
22 process.

23 (6) An incentive mechanism, if any incentive mechanism is
24 proposed, including the type of transactions to be covered by that
25 mechanism, their respective procurement benchmarks, and other
26 parameters needed to determine the sharing of risks and benefits.

27 (7) The upfront standards and criteria by which the
28 acceptability and eligibility for rate recovery of a proposed
29 procurement transaction will be known by the electrical
30 corporation prior to execution of the transaction. This shall
31 include an expedited approval process for the commission's
32 review of proposed contracts and subsequent approval or
33 rejection thereof. The electrical corporation shall propose
34 alternative procurement choices in the event a contract is
35 rejected.

36 (8) Procedures for updating the procurement plan.

37 (9) A showing that the procurement plan will achieve the
38 following:

39 (A) The electrical corporation will, in order to fulfill its unmet
40 resource needs and in furtherance of Section 701.3, until a 20

1 percent renewable resources portfolio is achieved, procure
2 renewable energy resources with the goal of ensuring that at least
3 an additional 1 percent per year of the electricity sold by the
4 electrical corporation is generated from renewable energy
5 resources, provided sufficient funds are made available pursuant
6 to Section 399.6, to cover the above-market costs for new
7 renewable energy resources.

8 (B) The electrical corporation will create or maintain a
9 diversified procurement portfolio consisting of both short-term
10 and long-term electricity and electricity-related and demand
11 reductions products.

12 (C) The electrical corporation will, in order to fulfill its unmet
13 resource needs, first acquire all available energy efficiency and
14 demand reduction resources that are cost effective, reliable, and
15 feasible, before acquiring supply resources.

16 (10) The electrical corporation's risk management policy,
17 strategy, and practices, including specific measures of price
18 stability.

19 (11) A plan to achieve appropriate increases in diversity of
20 ownership and diversity of fuel supply of nonutility electrical
21 generation.

22 (12) A mechanism for recovery of reasonable administrative
23 costs related to procurement in the generation component of
24 rates.

25 (c) The commission shall review and accept, modify, or reject
26 each electrical corporation's procurement plan. The
27 commission's review shall consider each electrical corporation's
28 individual procurement situation, and shall give strong
29 consideration to that situation in determining which one or more
30 of the features set forth in this subdivision shall apply to that
31 electrical corporation. A procurement plan approved by the
32 commission shall contain one or more of the following features,
33 provided that the commission may not approve a feature or
34 mechanism for an electrical corporation if it finds that the feature
35 or mechanism would impair the restoration of an electrical
36 corporation's creditworthiness or would lead to a deterioration of
37 an electrical corporation's creditworthiness:

38 (1) A competitive procurement process under which the
39 electrical corporation may request bids for procurement-related
40 services. The commission shall specify the format of that

1 procurement process, as well as criteria to ensure that the auction
2 process is open and adequately subscribed. Any purchases made
3 in compliance with the commission-authorized process shall be
4 recovered in the generation component of rates.

5 (2) An incentive mechanism that establishes a procurement
6 benchmark or benchmarks and authorizes the electrical
7 corporation to procure from the market, subject to comparing the
8 electrical corporation's performance to the
9 commission-authorized benchmark or benchmarks. The incentive
10 mechanism shall be clear, achievable, and contain quantifiable
11 objectives and standards. The incentive mechanism shall contain
12 balanced risk and reward incentives that limit the risk and reward
13 of an electrical corporation.

14 (3) Upfront achievable standards and criteria by which the
15 acceptability and eligibility for rate recovery of a proposed
16 procurement transaction will be known by the electrical
17 corporation prior to the execution of the bilateral contract for the
18 transaction. The commission shall provide for expedited review
19 and either approve or reject the individual contracts submitted by
20 the electrical corporation to ensure compliance with its
21 procurement plan. To the extent the commission rejects a
22 proposed contract pursuant to this criteria, the commission shall
23 designate alternative procurement choices obtained in the
24 procurement plan that will be recoverable for ratemaking
25 purposes.

26 (d) A procurement plan approved by the commission shall
27 accomplish each of the following objectives:

28 (1) Enable the electrical corporation to fulfill its obligation to
29 serve its customers at just and reasonable rates.

30 (2) Eliminate the need for after-the-fact reasonableness
31 reviews of an electrical corporation's actions in compliance with
32 an approved procurement plan, including resulting electricity
33 procurement contracts, practices, and related expenses. However,
34 the commission may establish a regulatory process to verify and
35 assure that each contract was administered in accordance with the
36 terms of the contract, and contract disputes which may arise are
37 reasonably resolved.

38 (3) Ensure timely recovery of prospective procurement costs
39 incurred pursuant to an approved procurement plan. The
40 commission shall establish rates based on forecasts of

1 procurement costs adopted by the commission, actual
2 procurement costs incurred, or combination thereof, as
3 determined by the commission. The commission shall establish
4 power procurement balancing accounts to track the differences
5 between recorded revenues and costs incurred pursuant to an
6 approved procurement plan. The commission shall review the
7 power procurement balancing accounts, not less than
8 semiannually, and shall adjust rates or order refunds, as
9 necessary, to promptly amortize a balancing account, according
10 to a schedule determined by the commission. Until January 1,
11 2006, the commission shall ensure that any overcollection or
12 undercollection in the power procurement balancing account
13 does not exceed 5 percent of the electrical corporation's actual
14 recorded generation revenues for the prior calendar year
15 excluding revenues collected for the Department of Water
16 Resources. The commission shall determine the schedule for
17 amortizing the overcollection or undercollection in the balancing
18 account to ensure that the 5 percent threshold is not exceeded.
19 After January 1, 2006, this adjustment shall occur when deemed
20 appropriate by the commission consistent with the objectives of
21 this section.

22 (4) Moderate the price risk associated with serving its retail
23 customers, including the price risk embedded in its long-term
24 supply contracts, by authorizing an electrical corporation to enter
25 into financial and other electricity-related product contracts.

26 (5) Provide for just and reasonable rates, with an appropriate
27 balancing of price stability and price level in the electrical
28 corporation's procurement plan.

29 (e) The commission shall provide for the periodic review and
30 prospective modification of an electrical corporation's
31 procurement plan.

32 (f) The commission may engage an independent consultant or
33 advisory service to evaluate risk management and strategy. The
34 reasonable costs of any consultant or advisory service is a
35 reimbursable expense and eligible for funding pursuant to
36 Section 631.

37 (g) The commission shall adopt appropriate procedures to
38 ensure the confidentiality of any market sensitive information
39 submitted in an electrical corporation's proposed procurement
40 plan or resulting from or related to its approved procurement

1 plan, including, but not limited to, proposed or executed power
2 purchase agreements, data request responses, or consultant
3 reports, or any combination, provided that the Office of
4 Ratepayer Advocates and other consumer groups that are
5 nonmarket participants shall be provided access to this
6 information under confidentiality procedures authorized by the
7 commission.

8 (h) Nothing in this section alters, modifies, or amends the
9 commission's oversight of affiliate transactions under its rules
10 and decisions or the commission's existing authority to
11 investigate and penalize an electrical corporation's alleged
12 fraudulent activities, or to disallow costs incurred as a result of
13 gross incompetence, fraud, abuse, or similar grounds. Nothing in
14 this section expands, modifies, or limits the State Energy
15 Resources Conservation and Development Commission's
16 existing authority and responsibilities as set forth in Sections
17 25216, 25216.5, and 25323 of the Public Resources Code.

18 (i) An electrical corporation that serves less than 500,000
19 electric retail customers within the state may file with the
20 commission a request for exemption from this section, which the
21 commission shall grant upon a showing of good cause.

22 (j) (1) Prior to its approval pursuant to Section 851 of any
23 divestiture of generation assets owned by an electrical
24 corporation on or after the date of enactment of the act adding
25 this section, the commission shall determine the impact of the
26 proposed divestiture on the electrical corporation's procurement
27 rates and shall approve a divestiture only to the extent it finds,
28 taking into account the effect of the divestiture on procurement
29 rates, that the divestiture is in the public interest and will result in
30 net ratepayer benefits.

31 (2) Any electrical corporation's procurement necessitated as a
32 result of the divestiture of generation assets on or after the
33 effective date of the act adding this subdivision shall be subject
34 to the mechanisms and procedures set forth in this section only if
35 its actual cost is less than the recent historical cost of the divested
36 generation assets.

37 (3) Notwithstanding paragraph (2), the commission may deem
38 proposed procurement eligible to use the procedures in this
39 section upon its approval of asset divestiture pursuant to Section
40 851.

SEC. 3. Section 454.55 is added to the Public Utilities Code, immediately following Section 454.5, to read:

454.55. The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall identify all potentially achievable cost-effective electricity efficiency ~~measures~~ *savings and establish efficiency targets for an electrical corporation to achieve pursuant to Section 454.5.*

SEC. 4. Section 454.56 is added to the Public Utilities Code, to read:

454.56. (a) The commission, in consultation with the State Energy Resources Conservation and Development Commission, shall identify all potentially achievable cost-effective natural gas efficiency ~~measures~~ *savings and establish efficiency targets for the gas corporation to achieve.*

(b) A gas corporation shall, in order to fulfill its unmet resource needs, first acquire all available natural gas efficiency and demand reduction resources that are cost effective, reliable, and feasible, before acquiring supply resources.

SEC. 5. Section 1002.3 is added to the Public Utilities Code, to read:

1002.3. In considering an application for a certificate for an electric transmission facility pursuant to Section 1001, the commission shall consider all cost-effective alternatives to transmission facilities that meet the need for an efficient, reliable, and affordable supply of electricity, including, but not limited to, demand-side alternatives such as targeted energy efficiency, ultraclean distributed generation, as defined in Section 353.2, and other demand reduction resources.

SEC. 6. Section 9615 is added to the Public Utilities Code, to read:

9615. (a) Each local publicly owned electric utility, in procuring energy, shall first acquire all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

(b) Each local publicly owned electric utility shall report annually to its customers and to the State Energy Resources Conservation and Development Commission, its investment in energy efficiency and demand reduction programs. A report shall contain a description of programs, expenditures, and expected and actual energy savings results.

1 SEC. 7. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for
3 certain costs that may be incurred by a local agency or school
4 district because, in that regard, this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the
6 penalty for a crime or infraction, within the meaning of Section
7 17556 of the Government Code, or changes the definition of a
8 crime within the meaning of Section 6 of Article XIII B of the
9 California Constitution.

10 However, if the Commission on State Mandates determines
11 that this act contains other costs mandated by the state,
12 reimbursement to local agencies and school districts for those
13 costs shall be made pursuant to Part 7 (commencing with Section
14 17500) of Division 4 of Title 2 of the Government Code.