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AMENDED IN SENATE DECEMBER 17, 2009
AMENDED IN SENATE OCTOBER 14, 2009
AMENDED IN SENATE SEPTEMBER 10, 2009
AMENDED IN SENATE SEPTEMBER 8, 2009
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AMENDED IN ASSEMBLY MAY 6, 2009
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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1536

Introduced by Assembly Member Blakeslee

February 27, 2009

~~An act to add Section 565 to the Public Utilities Code, relating to energy, and declaring the urgency thereof, to take effect immediately. An act to add Chapter 6 (commencing with Section 8400) to Division 4.1 of the Public Utilities Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1536, as amended, Blakeslee. Electricity: ~~Pacific Gas and Electric Company; seismic fault.~~ *resource adequacy distributed generation program.*

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical

corporations, as defined. Existing law requires the commission, in consultation with the Independent System Operator (ISO), to establish resource adequacy requirements for all load-serving entities, as defined, in accordance with specified objectives. This definition of a “load-serving entity” excludes a local publicly owned electric utility. However, other provisions of existing law require that 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.

This bill would authorize an eligible customer-generator, as defined, to participate in resource adequacy distributed generation, as specified. The bill would require each responsible load-serving entity, as defined, to develop a standard offer contract for the purchase of electricity generated by an eligible facility, as defined, of an eligible customer-generator participating in resource adequacy distributed generation, and would require that the standard offer contract provide for payment for every kilowatthour delivered to the electrical grid by the eligible facility at the generation rate of the responsible load-serving entity. The bill would require that the commission approve, or approve as modified, the standard offer contract of a responsible load-serving entity that is an electrical corporation, electric service provider, or community choice aggregator, and would similarly require that the governing board approve, or approve as modified, the standard offer contract of a responsible load-serving entity that is a local publicly owned electric utility. The bill would authorize an electrical corporation or local publicly owned electric utility to offer resource adequacy distributed generation pursuant to a tariff, and would authorize the tariff to be offered in lieu of, or in addition to, the standard offer contract. The bill would require every responsible load-serving entity, upon approval of its standard offer contract or tariff, to make the standard offer contract or tariff available to eligible customer-generators within its service territory, or for an electric service provider, to any eligible customer-generator with which it has entered into a direct transaction. The bill would impose additional requirements upon responsible load-serving entities, the commission, and the governing board of a local publicly owned electric utility for implementation of the resource adequacy distributed generation program. The bill would provide that the physical generating capacity of the eligible facility available to the responsible load-serving entity

pursuant to the program shall count toward the resource adequacy requirements of those entities.

(2) Under existing law, a violation of the Public Utilities Act or of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would require action by the commission to implement, a violation of these provisions would impose a state-mandated local program by creating a new crime.

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

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.

~~(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities including electrical corporations, as defined.~~

~~Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to conduct various assessments and forecasts on energy industry supply, production, transportation, delivery and distribution, demand, and prices.~~

~~This bill would require Pacific Gas and Electric Company, in furtherance of the recommendations made by the Energy Commission, to conduct seismic fault studies or surveys in areas at or near the Diablo Canyon Nuclear Power Plant in order to maintain reliable operation of the electrical grid and mitigate impacts to customer rates that could result from a seismic event. Because a violation of this requirement would be a crime, this bill would impose a state-mandated local program. The bill would require the commission, in consultation with the California Geological Survey and the Seismic Safety Commission, to conduct or facilitate a peer review of any fault studies or surveys conducted pursuant to that requirement within 120 days of receipt of a final study or survey. The bill would require the Pacific Gas and Electric Company to fund all costs associated with a peer review of any studies or surveys and would require the commission to authorize the utility to fully recover, in its generation procurement rates, all reasonable costs~~

~~associated with any studies, surveys, or peer review required pursuant to the bill.~~

~~(2) 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.~~

~~(3) This bill would make legislative findings and declarations as to the necessity of a special statute for legislation.~~

~~(4) This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -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. Chapter 6 (commencing with Section 8400) is
2 added to Division 4.1 of the Public Utilities Code, to read:

3
4 CHAPTER 6. RESOURCE ADEQUACY DISTRIBUTED GENERATION
5 PROGRAM

6
7 8400. For purposes of this chapter, the following terms have
8 the following meanings:

9 (a) "Eligible customer-generator" means a retail end-use
10 customer of a responsible load-serving entity that uses an eligible
11 facility that is intended to offset part or all of the customer's own
12 electrical requirements and provide generation capacity to the
13 responsible load-serving entity for the purposes of meeting
14 resource adequacy requirements pursuant to Section 380 or 9620.

15 (b) "Eligible facility" means a distributed generation facility
16 that meets all of the following requirements:

17 (1) Has a generating capacity of at least 200 kilowatts and no
18 more than 20 megawatts.

19 (2) Meets the conditions to be an advanced electrical distributed
20 generation technology, as defined in subdivision (a) of Section
21 379.8, or meets the conditions to be an eligible renewable energy
22 resource for purposes of the California Renewables Portfolio
23 Standard Program (Article 16 (commencing with Section 399.11)
24 of Chapter 2.3 of Part 1 of Division 1).

1 (3) *Is interconnected and operates in parallel with the electrical*
2 *transmission and distribution grid.*

3 (4) *Is strategically located and interconnected to the electrical*
4 *transmission and distribution grid in a manner that optimizes the*
5 *deliverability of electricity generated at the facility to load centers.*

6 (c) *“Responsible load-serving entity” means an electrical*
7 *corporation, local publicly owned electric utility, electric service*
8 *provider, or community choice aggregator that provides electric*
9 *service to an eligible customer-generator and that is subject to*
10 *resource adequacy requirements adopted pursuant to Section 380*
11 *or 9620.*

12 8402. (a) *An eligible customer-generator may participate in*
13 *resource adequacy distributed generation pursuant to this chapter.*
14 *Resource adequacy distributed generation shall be accomplished*
15 *by an eligible customer-generator employing an eligible facility*
16 *to serve on-site electrical load if at least 60 percent of the facility’s*
17 *generating capacity is available to the responsible load-serving*
18 *entity. Notwithstanding Sections 216 and 218, participation in*
19 *resource adequacy distributed generation pursuant to this chapter*
20 *does not make the eligible customer-generator a public utility or*
21 *an electrical corporation, or subject the eligible*
22 *customer-generator to the jurisdiction of the commission pursuant*
23 *to Part 1 (commencing with Section 201) of Division 1.*

24 (b) (1) *Each responsible load-serving entity shall develop a*
25 *standard offer contract for the purchase of electricity generated*
26 *by an eligible facility of an eligible customer-generator*
27 *participating in resource adequacy distributed generation. The*
28 *standard offer contract shall provide for payment for every*
29 *kilowatthour delivered to the electrical grid by the eligible facility*
30 *at the generation rate of the responsible load-serving entity.*

31 (2) *Each responsible load-serving entity that is subject to*
32 *resource adequacy requirements established by the commission*
33 *pursuant to Section 380 shall file the standard offer contract with*
34 *the commission. The commission shall approve the standard offer*
35 *contract or order modifications to the contract and approve the*
36 *contract as modified. An electrical corporation may offer resource*
37 *adequacy distributed generation pursuant to a tariff to be approved*
38 *by the commission, and the tariff may be offered in lieu of, or in*
39 *addition to, the standard offer contract. The commission shall*
40 *ensure that nonparticipating ratepayers are held indifferent to the*

1 existence of the standard offer contract or tariff. The commission,
2 in consultation with the Independent System Operator, may
3 establish a limitation on the total rated generating capacity
4 participating in the resource adequacy distributed generation
5 program for those responsible load-serving entities for which the
6 commission has established resource adequacy requirements, and
7 shall establish rules that facilitate the implementation of this
8 chapter and the reliable operation of the grid. The commission
9 shall implement and enforce this chapter in a nondiscriminatory
10 manner, but may modify or adjust the requirements adopted by
11 the commission for functional reasons as individual circumstances
12 merit for a responsible load-serving entity with less than 100,000
13 service connections in California.

14 (3) Each responsible load-serving entity that is subject to
15 resource adequacy requirements established pursuant to Section
16 9620 shall file the standard offer contract with its governing board.
17 The governing board shall approve the standard offer contract or
18 order modifications to the contract and approve the contract as
19 modified. The responsible load-serving entity may offer resource
20 adequacy distributed generation pursuant to a tariff to be approved
21 by its governing board, and the tariff may be offered in lieu of, or
22 in addition to, the standard offer contract. The governing board
23 shall ensure that nonparticipating ratepayers are held indifferent
24 to the existence of the standard offer contract or tariff. The
25 governing board may establish a limitation on the total rated
26 generating capacity participating in the resource adequacy
27 distributed generation program for the responsible load-serving
28 entity and shall establish rules or other requirements that facilitate
29 the implementation of this chapter and the reliable operation of
30 the grid.

31 (c) Every responsible load-serving entity, upon approval of its
32 standard offer contract or tariff pursuant to subdivision (b), shall
33 make the standard offer contract or tariff available to eligible
34 customer-generators within its service territory, or for an electric
35 service provider, to any eligible customer-generator with which
36 it has entered into a direct transaction. Every responsible
37 load-serving entity that maintains an Internet Web site shall make
38 all necessary forms and contracts for participation in resource
39 adequacy distributed generation pursuant to this chapter available
40 on its Internet Web site.

1 (d) *The physical generating capacity of the eligible facility*
2 *available to the responsible load-serving entity shall count toward*
3 *the resource adequacy requirements of those entities for purposes*
4 *of Sections 380 and 9620.*

5 (e) *Eligible customer-generators participating in the resource*
6 *adequacy distributed generation program shall not be subject to*
7 *any standby charges or departing load charges as a result of their*
8 *participation. Eligible customer-generators participating in the*
9 *resource adequacy distributed generation program may be subject*
10 *to contractually established liquidated damages or penalties for*
11 *failure to provide the contractual generation capacity to the*
12 *responsible load-serving entity when dispatched. This subdivision*
13 *does not exempt any eligible customer-generator from the*
14 *enforcement authority of the Independent System Operator.*

15 (f) (1) *Every responsible load-serving entity shall ensure that*
16 *requests for the establishment of resource adequacy distributed*
17 *generation services are processed in a time period not exceeding*
18 *that for similarly situated customers requesting new electric*
19 *service, but not to exceed 30 working days from the date it receives*
20 *a completed application form for resource adequacy distributed*
21 *generation, including a signed interconnection agreement from*
22 *an eligible customer-generator and the electrical inspection*
23 *clearance from the governmental authority having jurisdiction.*

24 (2) *Every responsible load-serving entity shall ensure that*
25 *requests for an interconnection agreement from an eligible*
26 *customer-generator are processed in a time period not to exceed*
27 *30 working days from the date it receives a completed application*
28 *form from the eligible customer-generator for an interconnection*
29 *agreement.*

30 (3) *If a responsible load-serving entity is unable to process a*
31 *request within the allowable timeframe pursuant to paragraph (1)*
32 *or (2), it shall notify the eligible customer-generator and the*
33 *commission, for those entities subject to paragraph (2) of*
34 *subdivision (b), or its governing board, for those entities subject*
35 *to paragraph (3) of subdivision (b), of the reason for its inability*
36 *to process the request and the expected completion date.*

37 8406. (a) *If the eligible facility meets the definition of an*
38 *eligible renewable energy resource, as defined in the California*
39 *Renewables Portfolio Standard Program (Article 16 (commencing*

1 with Section 399.11) of Chapter 2.3 of Part 1 of Division 1, then
 2 all of the following shall apply:

3 (1) The responsible load-serving entity shall receive the
 4 renewable energy credits created by the electricity assigned to the
 5 entity.

6 (2) The eligible customer-generator shall receive the renewable
 7 energy credits created by the electricity used by the customer to
 8 serve on-site load.

9 (b) Notwithstanding subdivision (d) of Section 2835.2, the
 10 physical generating capacity of the electricity assigned to the
 11 responsible load-serving entity shall count toward the resource
 12 adequacy requirements of those entities for the purposes of Section
 13 380 or 9620 consistent with the effective load carrying capacity
 14 values established by the commission, for those entities subject to
 15 paragraph (2) of subdivision (b), or its governing board, for those
 16 entities subject to paragraph (3) of subdivision (b).

17 SEC. 2. No reimbursement is required by this act pursuant to
 18 Section 6 of Article XIII B of the California Constitution because
 19 a local agency or school district has the authority to levy service
 20 charges, fees, or assessments sufficient to pay for the program or
 21 level of service mandated by this act, or because costs that may
 22 be incurred by a local agency or school district will be incurred
 23 because this act creates a new crime or infraction, eliminates a
 24 crime or infraction, or changes the penalty for a crime or
 25 infraction, within the meaning of Section 17556 of the Government
 26 Code, or changes the definition of a crime within the meaning of
 27 Section 6 of Article XIII B of the California Constitution.

28 SECTION 1. ~~The Legislature finds and declares all of the~~
 29 ~~following:~~

30 ~~(a) In issuing Decision 07-03-044, the Public Utilities~~
 31 ~~Commission authorized an expenditure of sixteen million eight~~
 32 ~~hundred thousand dollars (\$16,800,000) of ratepayer funds to~~
 33 ~~explore the feasibility of relicensing the Diablo Canyon Nuclear~~
 34 ~~Power Plant.~~

35 ~~(b) The Public Utilities Commission, regarding the expenditure~~
 36 ~~of those funds, said that Pacific Gas and Electric Company should~~
 37 ~~defer, to the extent feasible, its work, its own study, and associated~~
 38 ~~spending, until after the State Energy Resources Conservation and~~
 39 ~~Development Commission (Energy Commission) issues its findings~~
 40 ~~and conclusions pursuant to Section 25303 of the Public Resources~~

1 Code, and that Pacific Gas and Electric Company should
2 incorporate the findings and recommendations of that Energy
3 Commission assessment in its own work.

4 (e) The assessment made pursuant to Section 25303 of the Public
5 Resources Code included several findings and recommendations;
6 in particular, the Energy Commission found that Pacific Gas and
7 Electric Company should use three-dimensional geophysical
8 seismic reflection mapping and other advanced techniques to
9 explore fault zones near Diablo Canyon.

10 (d) The July 2007 magnitude 6.8 Japan Sea earthquake located
11 16 kilometers from Tokyo Electric Power Company's
12 Kashiwazaki-Kariwa Nuclear Power Plant shut down the facility
13 at a cost of some hundreds of millions of dollars per month.

14 (e) In November 2008, the United States Geological Survey
15 identified a previously unidentified offshore fault approximately
16 one kilometer west of Diablo Canyon Nuclear Power Plant with
17 an estimated ability to generate a magnitude 6.5 earthquake.

18 SEC. 2. Section 565 is added to the Public Utilities Code, to
19 read:

20 565. (a) (1) Pacific Gas and Electric Company shall, in
21 furtherance of the recommendations made by the Energy
22 Commission pursuant to paragraph (8) of subdivision (a) of Section
23 25303 of the Public Resources Code, conduct seismic fault studies
24 or surveys, including, but not limited to, three-dimensional
25 geophysical seismic reflection mapping, in areas at or near the
26 Diablo Canyon Nuclear Power Plant, in order to maintain reliable
27 operation of the electrical grid and mitigate impacts to customer
28 rates that could result from a seismic event.

29 (2) The Energy Commission, in consultation with the California
30 Geological Survey and the Seismic Safety Commission, may
31 participate in the development of study or survey designs.

32 (b) (1) The Energy Commission, in consultation with the
33 California Geological Survey and the Seismic Safety Commission,
34 shall conduct or facilitate a peer review of any studies or surveys
35 conducted pursuant to subdivision (a) within 120 days of receipt
36 of a final study or survey.

37 (2) The Energy Commission may enter into agreements with
38 qualified scientists with expertise in fault imaging and character
39 and behavior studies to conduct an external scientific peer review
40 of the scientific basis for any fault study or survey.

1 ~~(3) The Energy Commission shall include the findings and~~
2 ~~recommendations of any studies or surveys conducted pursuant to~~
3 ~~subdivision (a) in the integrated energy policy report as updates~~
4 ~~pursuant to subparagraph (D) of paragraph (8) of subdivision (a)~~
5 ~~of Section 25303 of the Public Resources Code.~~

6 ~~(4) Pacific Gas and Electric Company shall be responsible for~~
7 ~~funding all costs associated with a peer review of any studies or~~
8 ~~surveys conducted pursuant to subdivision (a).~~

9 ~~(e) The commission shall allow Pacific Gas and Electric~~
10 ~~Company to fully recover, in its generation procurement rates, all~~
11 ~~reasonable costs associated with any studies or surveys required~~
12 ~~pursuant to subdivision (a) and the peer review required pursuant~~
13 ~~to subdivision (b). The commission shall expedite issuance of its~~
14 ~~decision approving the recovery of costs as specified in this section,~~
15 ~~so that the decision is made within 120 days of filing the~~
16 ~~application.~~

17 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
18 ~~Section 6 of Article XIII B of the California Constitution because~~
19 ~~the only costs that may be incurred by a local agency or school~~
20 ~~district will be incurred because this act creates a new crime or~~
21 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
22 ~~for a crime or infraction, within the meaning of Section 17556 of~~
23 ~~the Government Code, or changes the definition of a crime within~~
24 ~~the meaning of Section 6 of Article XIII B of the California~~
25 ~~Constitution.~~

26 ~~SEC. 4. The Legislature finds and declares that a special law~~
27 ~~is necessary and that a general law cannot be made applicable~~
28 ~~within the meaning of Section 16 of Article IV of the California~~
29 ~~Constitution because of unique circumstances pertaining to Pacific~~
30 ~~Gas and Electric Company.~~

31 ~~SEC. 5. This act is an urgency statute necessary for the~~
32 ~~immediate preservation of the public peace, health, or safety within~~
33 ~~the meaning of Article IV of the Constitution and shall go into~~
34 ~~immediate effect. The facts constituting the necessity are:~~

35 ~~Pacific Gas and Electric Company has recently announced that~~
36 ~~it will seek federal approval for a license renewal to extend~~
37 ~~operation of the Diablo Canyon Nuclear Power Plant. To ensure~~
38 ~~the ongoing safe operation of the Diablo Canyon Nuclear Power~~
39 ~~Plant, it is critical that Pacific Gas and Electric Company conduct~~

- 1 ~~the studies and surveys required by this act as soon as possible~~
- 2 ~~before obtaining federal relicensure for the power plant.~~

O