

AMENDED IN SENATE AUGUST 17, 2016
AMENDED IN SENATE AUGUST 11, 2016
AMENDED IN SENATE JUNE 27, 2016
AMENDED IN SENATE JUNE 14, 2016
AMENDED IN ASSEMBLY APRIL 25, 2016
AMENDED IN ASSEMBLY APRIL 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1937

Introduced by Assembly Members Gomez and Williams
(Coauthor: Senator Pavley)

February 12, 2016

An act to amend Sections 399.13 and 454.5 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1937, as amended, Gomez. Electricity: procurement.

The Public Utilities Act requires the Public Utilities Commission to review and accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified procedures, considerations, and objectives. The act requires that electrical corporations' proposed procurement plans include certain elements, including a showing that the electrical corporations will first meet their unmet needs through all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

This bill would require electrical corporations' proposed procurement plans to also include a showing that the electrical corporations (1), in

soliciting bids for new gas-fired generating units, actively seek bids for resources that are not gas-fired generating units located in communities that suffer from cumulative pollution burdens and (2), in considering bids for, or negotiating bilateral contracts for, new gas-fired generating units, give preference to resources that are not gas-fired generating units located in those communities. The bill would require the commission, before approving a contract for any new gas-fired generating unit, to require the electrical corporation to demonstrate that it has complied with its approved procurement plan. Because this requirement would be a part of the Public Utilities Act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

Existing law requires electrical corporations, in soliciting and procuring of eligible renewable energy resources for California-based projects, to give preference to renewable energy projects that provide environmental and economic benefits to communities afflicted with poverty or high unemployment or those suffering from high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.

This bill would specify that the above requirements apply to all procurement of eligible renewable energy resources for California-based projects whether the procurement occurs through all-source requests for offers, eligible renewable energy resources only requests for offers, or other procurement mechanisms.

This bill would incorporate changes to Section 454.5 of the Public Utilities Code proposed by both this bill and AB 2454, which would become operative only if both bills are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.

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.

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 399.13 of the Public Utilities Code is
2 amended to read:

3 399.13. (a) (1) The commission shall direct each electrical
4 corporation to annually prepare a renewable energy procurement
5 plan that includes the matter in paragraph (5), to satisfy its
6 obligations under the renewables portfolio standard. To the extent
7 feasible, this procurement plan shall be proposed, reviewed, and
8 adopted by the commission as part of, and pursuant to, a general
9 procurement plan process. The commission shall require each
10 electrical corporation to review and update its renewable energy
11 procurement plan as it determines to be necessary. The commission
12 shall require all other retail sellers to prepare and submit renewable
13 energy procurement plans that address the requirements identified
14 in paragraph (5).

15 (2) Every electrical corporation that owns electrical transmission
16 facilities shall annually prepare, as part of the Federal Energy
17 Regulatory Commission Order 890 process, and submit to the
18 commission, a report identifying any electrical transmission
19 facility, upgrade, or enhancement that is reasonably necessary to
20 achieve the renewables portfolio standard procurement
21 requirements of this article. Each report shall look forward at least
22 five years and, to ensure that adequate investments are made in a
23 timely manner, shall include a preliminary schedule when an
24 application for a certificate of public convenience and necessity
25 will be made, pursuant to Chapter 5 (commencing with Section
26 1001), for any electrical transmission facility identified as being
27 reasonably necessary to achieve the renewable energy resources
28 procurement requirements of this article. Each electrical
29 corporation that owns electrical transmission facilities shall ensure
30 that project-specific interconnection studies are completed in a
31 timely manner.

32 (3) The commission shall direct each retail seller to prepare and
33 submit an annual compliance report that includes all of the
34 following:

35 (A) The current status and progress made during the prior year
36 toward procurement of eligible renewable energy resources as a
37 percentage of retail sales, including, if applicable, the status of any
38 necessary siting and permitting approvals from federal, state, and

1 local agencies for those eligible renewable energy resources
2 procured by the retail seller, and the current status of compliance
3 with the portfolio content requirements of subdivision (c) of
4 Section 399.16, including procurement of eligible renewable energy
5 resources located outside the state and within the WECC and
6 unbundled renewable energy credits.

7 (B) If the retail seller is an electrical corporation, the current
8 status and progress made during the prior year toward construction
9 of, and upgrades to, transmission and distribution facilities and
10 other electrical system components it owns to interconnect eligible
11 renewable energy resources and to supply the electricity generated
12 by those resources to load, including the status of planning, siting,
13 and permitting transmission facilities by federal, state, and local
14 agencies.

15 (C) Recommendations to remove impediments to making
16 progress toward achieving the renewable energy resources
17 procurement requirements established pursuant to this article.

18 (4) The commission shall adopt, by rulemaking, all of the
19 following:

20 (A) A process that provides criteria for the rank ordering and
21 selection of least-cost and best-fit eligible renewable energy
22 resources to comply with the California Renewables Portfolio
23 Standard Program obligations on a total cost and best-fit basis.
24 This process shall take into account all of the following:

25 (i) Estimates of indirect costs associated with needed
26 transmission investments.

27 (ii) The cost impact of procuring the eligible renewable energy
28 resources on the electrical corporation's electricity portfolio.

29 (iii) The viability of the project to construct and reliably operate
30 the eligible renewable energy resource, including the developer's
31 experience, the feasibility of the technology used to generate
32 electricity, and the risk that the facility will not be built, or that
33 construction will be delayed, with the result that electricity will
34 not be supplied as required by the contract.

35 (iv) Workforce recruitment, training, and retention efforts,
36 including the employment growth associated with the construction
37 and operation of eligible renewable energy resources and goals
38 for recruitment and training of women, minorities, and disabled
39 veterans.

1 (v) (I) Estimates of electrical corporation expenses resulting
2 from integrating and operating eligible renewable energy resources,
3 including, but not limited to, any additional wholesale energy and
4 capacity costs associated with integrating each eligible renewable
5 resource.

6 (II) No later than December 31, 2015, the commission shall
7 approve a methodology for determining the integration costs
8 described in subclause (I).

9 (vi) Consideration of any statewide greenhouse gas emissions
10 limit established pursuant to the California Global Warming
11 Solutions Act of 2006 (Division 25.5 (commencing with Section
12 38500) of the Health and Safety Code).

13 (vii) Consideration of capacity and system reliability of the
14 eligible renewable energy resource to ensure grid reliability.

15 (B) Rules permitting retail sellers to accumulate, beginning
16 January 1, 2011, excess procurement in one compliance period to
17 be applied to any subsequent compliance period. The rules shall
18 apply equally to all retail sellers. In determining the quantity of
19 excess procurement for the applicable compliance period, the
20 commission shall retain the rules adopted by the commission and
21 in effect as of January 1, 2015, for the compliance period specified
22 in subparagraphs (A) to (C), inclusive, of paragraph (1) of
23 subdivision (b) of Section 399.15. For any subsequent compliance
24 period, the rules shall allow the following:

25 (i) For electricity products meeting the portfolio content
26 requirements of paragraph (1) of subdivision (b) of Section 399.16,
27 contracts of any duration may count as excess procurement.

28 (ii) Electricity products meeting the portfolio content
29 requirements of paragraph (2) or (3) of subdivision (b) of Section
30 399.16 shall not be counted as excess procurement. Contracts of
31 any duration for electricity products meeting the portfolio content
32 requirements of paragraph (2) or (3) of subdivision (b) of Section
33 399.16 that are credited towards a compliance period shall not be
34 deducted from a retail seller's procurement for purposes of
35 calculating excess procurement.

36 (iii) If a retail seller notifies the commission that it will comply
37 with the provisions of subdivision (b) for the compliance period
38 beginning January 1, 2017, the provisions of clauses (i) and (ii)
39 shall take effect for that retail seller for that compliance period.

1 (C) Standard terms and conditions to be used by all electrical
2 corporations in contracting for eligible renewable energy resources,
3 including performance requirements for renewable generators. A
4 contract for the purchase of electricity generated by an eligible
5 renewable energy resource, at a minimum, shall include the
6 renewable energy credits associated with all electricity generation
7 specified under the contract. The standard terms and conditions
8 shall include the requirement that, no later than six months after
9 the commission's approval of an electricity purchase agreement
10 entered into pursuant to this article, the following information
11 about the agreement shall be disclosed by the commission: party
12 names, resource type, project location, and project capacity.

13 (D) An appropriate minimum margin of procurement above the
14 minimum procurement level necessary to comply with the
15 renewables portfolio standard to mitigate the risk that renewable
16 projects planned or under contract are delayed or canceled. This
17 paragraph does not preclude an electrical corporation from
18 voluntarily proposing a margin of procurement above the
19 appropriate minimum margin established by the commission.

20 (5) Consistent with the goal of increasing California's reliance
21 on eligible renewable energy resources, the renewable energy
22 procurement plan shall include all of the following:

23 (A) An assessment of annual or multiyear portfolio supplies
24 and demand to determine the optimal mix of eligible renewable
25 energy resources with deliverability characteristics that may include
26 peaking, dispatchable, baseload, firm, and as-available capacity.

27 (B) Potential compliance delays related to the conditions
28 described in paragraph (5) of subdivision (b) of Section 399.15.

29 (C) A bid solicitation setting forth the need for eligible
30 renewable energy resources of each deliverability characteristic,
31 required online dates, and locational preferences, if any.

32 (D) A status update on the development schedule of all eligible
33 renewable energy resources currently under contract.

34 (E) Consideration of mechanisms for price adjustments
35 associated with the costs of key components for eligible renewable
36 energy resource projects with online dates more than 24 months
37 after the date of contract execution.

38 (F) An assessment of the risk that an eligible renewable energy
39 resource will not be built, or that construction will be delayed,

1 with the result that electricity will not be delivered as required by
2 the contract.

3 (6) In soliciting and procuring eligible renewable energy
4 resources, each electrical corporation shall offer contracts of no
5 less than 10 years duration, unless the commission approves of a
6 contract of shorter duration.

7 (7) (A) In soliciting and procuring eligible renewable energy
8 resources for California-based projects, each electrical corporation
9 shall give preference to renewable energy projects that provide
10 environmental and economic benefits to communities afflicted
11 with poverty or high unemployment, or that suffer from high
12 emission levels of toxic air contaminants, criteria air pollutants,
13 and greenhouse gases.

14 (B) Subparagraph (A) applies to all procurement of eligible
15 renewable energy resources for California-based projects, whether
16 the procurement occur through all-source requests for offers,
17 eligible renewable resources only requests for offers, or other
18 procurement mechanisms. This subparagraph is declaratory of
19 existing law.

20 (8) In soliciting and procuring eligible renewable energy
21 resources, each retail seller shall consider the best-fit attributes of
22 resource types that ensure a balanced resource mix to maintain the
23 reliability of the electrical grid.

24 (b) A retail seller may enter into a combination of long- and
25 short-term contracts for electricity and associated renewable energy
26 credits. Beginning January 1, 2021, at least 65 percent of the
27 procurement a retail seller counts toward the renewables portfolio
28 standard requirement of each compliance period shall be from its
29 contracts of 10 years or more in duration or in its ownership or
30 ownership agreements for eligible renewable energy resources.

31 (c) The commission shall review and accept, modify, or reject
32 each electrical corporation's renewable energy resource
33 procurement plan prior to the commencement of renewable energy
34 procurement pursuant to this article by an electrical corporation.
35 The commission shall assess adherence to the approved renewable
36 energy resource procurement plans in determining compliance
37 with the obligations of this article.

38 (d) Unless previously preapproved by the commission, an
39 electrical corporation shall submit a contract for the generation of
40 an eligible renewable energy resource to the commission for review

1 and approval consistent with an approved renewable energy
2 resource procurement plan. If the commission determines that the
3 bid prices are elevated due to a lack of effective competition among
4 the bidders, the commission shall direct the electrical corporation
5 to renegotiate the contracts or conduct a new solicitation.

6 (e) If an electrical corporation fails to comply with a commission
7 order adopting a renewable energy resource procurement plan, the
8 commission shall exercise its authority to require compliance.

9 (f) (1) The commission may authorize a procurement entity to
10 enter into contracts on behalf of customers of a retail seller for
11 electricity products from eligible renewable energy resources to
12 satisfy the retail seller’s renewables portfolio standard procurement
13 requirements. The commission shall not require any person or
14 corporation to act as a procurement entity or require any party to
15 purchase eligible renewable energy resources from a procurement
16 entity.

17 (2) Subject to review and approval by the commission, the
18 procurement entity shall be permitted to recover reasonable
19 administrative and procurement costs through the retail rates of
20 end-use customers that are served by the procurement entity and
21 are directly benefiting from the procurement of eligible renewable
22 energy resources.

23 (g) Procurement and administrative costs associated with
24 contracts entered into by an electrical corporation for eligible
25 renewable energy resources pursuant to this article and approved
26 by the commission are reasonable and prudent and shall be
27 recoverable in rates.

28 (h) Construction, alteration, demolition, installation, and repair
29 work on an eligible renewable energy resource that receives
30 production incentives pursuant to Section 25742 of the Public
31 Resources Code, including work performed to qualify, receive, or
32 maintain production incentives, are “public works” for the purposes
33 of Chapter 1 (commencing with Section 1720) of Part 7 of Division
34 2 of the Labor Code.

35 SEC. 2. Section 454.5 of the Public Utilities Code is amended
36 to read:

37 454.5. (a) The commission shall specify the allocation of
38 electricity, including quantity, characteristics, and duration of
39 electricity delivery, that the Department of Water Resources shall
40 provide under its power purchase agreements to the customers of

1 each electrical corporation, which shall be reflected in the electrical
2 corporation's proposed procurement plan. Each electrical
3 corporation shall file a proposed procurement plan with the
4 commission not later than 60 days after the commission specifies
5 the allocation of electricity. The proposed procurement plan shall
6 specify the date that the electrical corporation intends to resume
7 procurement of electricity for its retail customers, consistent with
8 its obligation to serve. After the commission's adoption of a
9 procurement plan, the commission shall allow not less than 60
10 days before the electrical corporation resumes procurement
11 pursuant to this section.

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

14 (1) An assessment of the price risk associated with the electrical
15 corporation's portfolio, including any utility-retained generation,
16 existing power purchase and exchange contracts, and proposed
17 contracts or purchases under which an electrical corporation will
18 procure electricity, electricity demand reductions, and
19 electricity-related products and the remaining open position to be
20 served by spot market transactions.

21 (2) A definition of each electricity product, electricity-related
22 product, and procurement related financial product, including
23 support and justification for the product type and amount to be
24 procured under the plan.

25 (3) The duration of the plan.

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

28 (5) A competitive procurement process under which the
29 electrical corporation may request bids for procurement-related
30 services, including the format and criteria of that procurement
31 process.

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

36 (7) The upfront standards and criteria by which the acceptability
37 and eligibility for rate recovery of a proposed procurement
38 transaction will be known by the electrical corporation prior to
39 execution of the transaction. This shall include an expedited
40 approval process for the commission's review of proposed contracts

1 and subsequent approval or rejection thereof. The electrical
2 corporation shall propose alternative procurement choices in the
3 event a contract is rejected.

4 (8) Procedures for updating the procurement plan.

5 (9) A showing that the procurement plan will achieve the
6 following:

7 (A) The electrical corporation, in order to fulfill its unmet
8 resource needs, shall procure resources from eligible renewable
9 energy resources in an amount sufficient to meet its procurement
10 requirements pursuant to the California Renewables Portfolio
11 Standard Program (Article 16 (commencing with Section 399.11)
12 of Chapter 2.3).

13 (B) The electrical corporation shall create or maintain a
14 diversified procurement portfolio consisting of both short-term
15 and long-term electricity and electricity-related and demand
16 reduction products.

17 (C) The electrical corporation shall first meet its unmet resource
18 needs through all available energy efficiency and demand reduction
19 resources that are cost effective, reliable, and feasible.

20 (D) (i) The electrical corporation, in soliciting bids for new
21 gas-fired generating units, shall actively seek bids for resources
22 that are not gas-fired generating units located in communities that
23 suffer from cumulative pollution burdens, including, but not limited
24 to, high emission levels of toxic air contaminants, criteria air
25 pollutants, and greenhouse gases.

26 (ii) In considering bids for, or negotiating contracts for, new
27 gas-fired generating units, the electrical corporation shall provide
28 greater preference to resources that are not gas-fired generating
29 units located in communities that suffer from cumulative pollution
30 burdens, including, but not limited to, high emission levels of toxic
31 air contaminants, criteria air pollutants, and greenhouse gases.

32 (iii) This subparagraph does not apply to contracts signed by
33 an electrical corporation and approved by the commission prior
34 to January 1, 2017.

35 (10) The electrical corporation's risk management policy,
36 strategy, and practices, including specific measures of price
37 stability.

38 (11) A plan to achieve appropriate increases in diversity of
39 ownership and diversity of fuel supply of nonutility electrical
40 generation.

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

3 (c) The commission shall review and accept, modify, or reject
4 each electrical corporation's procurement plan and any amendments
5 or updates to the plan. The commission shall ensure that the plan
6 contains the elements required pursuant to this section, including
7 the showings described in subparagraph (D) of paragraph (9) of
8 subdivision (b). The commission's review shall consider each
9 electrical corporation's individual procurement situation, and shall
10 give strong consideration to that situation in determining which
11 one or more of the features set forth in this subdivision shall apply
12 to that electrical corporation. A procurement plan approved by the
13 commission shall contain one or more of the following features,
14 provided that the commission may not approve a feature or
15 mechanism for an electrical corporation if it finds that the feature
16 or mechanism would impair the restoration of an electrical
17 corporation's creditworthiness or would lead to a deterioration of
18 an electrical corporation's creditworthiness:

19 (1) A competitive procurement process under which the
20 electrical corporation may request bids for procurement-related
21 services. The commission shall specify the format of that
22 procurement process, as well as criteria to ensure that the auction
23 process is open and adequately subscribed. Any purchases made
24 in compliance with the commission-authorized process shall be
25 recovered in the generation component of rates.

26 (2) An incentive mechanism that establishes a procurement
27 benchmark or benchmarks and authorizes the electrical corporation
28 to procure from the market, subject to comparing the electrical
29 corporation's performance to the commission-authorized
30 benchmark or benchmarks. The incentive mechanism shall be
31 clear, achievable, and contain quantifiable objectives and standards.
32 The incentive mechanism shall contain balanced risk and reward
33 incentives that limit the risk and reward of an electrical corporation.

34 (3) Upfront achievable standards and criteria by which the
35 acceptability and eligibility for rate recovery of a proposed
36 procurement transaction will be known by the electrical corporation
37 prior to the execution of the bilateral contract for the transaction.
38 The commission shall provide for expedited review and either
39 approve or reject the individual contracts submitted by the electrical
40 corporation to ensure compliance with its procurement plan. To

1 the extent the commission rejects a proposed contract pursuant to
2 this criteria, the commission shall designate alternative procurement
3 choices obtained in the procurement plan that will be recoverable
4 for ratemaking purposes.

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

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

9 (2) Eliminate the need for after-the-fact reasonableness reviews
10 of an electrical corporation's actions in compliance with an
11 approved procurement plan, including resulting electricity
12 procurement contracts, practices, and related expenses. However,
13 the commission may establish a regulatory process to verify and
14 ensure that each contract was administered in accordance with the
15 terms of the contract, and contract disputes that may arise are
16 reasonably resolved.

17 (3) Ensure timely recovery of prospective procurement costs
18 incurred pursuant to an approved procurement plan. The
19 commission shall establish rates based on forecasts of procurement
20 costs adopted by the commission, actual procurement costs
21 incurred, or combination thereof, as determined by the commission.
22 The commission shall establish power procurement balancing
23 accounts to track the differences between recorded revenues and
24 costs incurred pursuant to an approved procurement plan. The
25 commission shall review the power procurement balancing
26 accounts, not less than semiannually, and shall adjust rates or order
27 refunds, as necessary, to promptly amortize a balancing account,
28 according to a schedule determined by the commission. Until
29 January 1, 2006, the commission shall ensure that any
30 overcollection or undercollection in the power procurement
31 balancing account does not exceed 5 percent of the electrical
32 corporation's actual recorded generation revenues for the prior
33 calendar year excluding revenues collected for the Department of
34 Water Resources. The commission shall determine the schedule
35 for amortizing the overcollection or undercollection in the
36 balancing account to ensure that the 5-percent threshold is not
37 exceeded. After January 1, 2006, this adjustment shall occur when
38 deemed appropriate by the commission consistent with the
39 objectives of this section.

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

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

8 (e) The commission shall provide for the periodic review and
9 prospective modification of an electrical corporation's procurement
10 plan.

11 (f) The commission may engage an independent consultant or
12 advisory service to evaluate risk management and strategy. The
13 reasonable costs of any consultant or advisory service is a
14 reimbursable expense and eligible for funding pursuant to Section
15 631.

16 (g) The commission shall adopt appropriate procedures to ensure
17 the confidentiality of any market sensitive information submitted
18 in an electrical corporation's proposed procurement plan or
19 resulting from or related to its approved procurement plan,
20 including, but not limited to, proposed or executed power purchase
21 agreements, data request responses, or consultant reports, or any
22 combination of these, provided that the Office of Ratepayer
23 Advocates and other consumer groups that are nonmarket
24 participants shall be provided access to this information under
25 confidentiality procedures authorized by the commission.

26 (h) Nothing in this section alters, modifies, or amends the
27 commission's oversight of affiliate transactions under its rules and
28 decisions or the commission's existing authority to investigate and
29 penalize an electrical corporation's alleged fraudulent activities,
30 or to disallow costs incurred as a result of gross incompetence,
31 fraud, abuse, or similar grounds. Nothing in this section expands,
32 modifies, or limits the Energy Commission's existing authority
33 and responsibilities as set forth in Sections 25216, 25216.5, and
34 25323 of the Public Resources Code.

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

39 (j) (1) Prior to its approval pursuant to Section 851 of any
40 divestiture of generation assets owned by an electrical corporation

1 on or after the date of enactment of the act adding this section, the
2 commission shall determine the impact of the proposed divestiture
3 on the electrical corporation's procurement rates and shall approve
4 a divestiture only to the extent it finds, taking into account the
5 effect of the divestiture on procurement rates, that the divestiture
6 is in the public interest and will result in net ratepayer benefits.

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

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

16 (k) The commission shall direct electrical corporations to include
17 in their proposed procurement plans the integration costs described
18 and determined pursuant to clause (v) of subparagraph (A) of
19 paragraph (4) of subdivision (a) of Section 399.13.

20 (l) Prior to approving a contract for any new gas-fired generating
21 unit, the commission shall require the electrical corporation to
22 demonstrate it has complied with its approved procurement plan.

23 *SEC. 2.5. Section 454.5 of the Public Utilities Code is amended*
24 *to read:*

25 454.5. (a) The commission shall specify the allocation of
26 electricity, including quantity, characteristics, and duration of
27 electricity delivery, that the Department of Water Resources shall
28 provide under its power purchase agreements to the customers of
29 each electrical corporation, which shall be reflected in the electrical
30 corporation's proposed procurement plan. Each electrical
31 corporation shall file a proposed procurement plan with the
32 commission not later than 60 days after the commission specifies
33 the allocation of electricity. The proposed procurement plan shall
34 specify the date that the electrical corporation intends to resume
35 procurement of electricity for its retail customers, consistent with
36 its obligation to serve. After the commission's adoption of a
37 procurement plan, the commission shall allow not less than 60
38 days before the electrical corporation resumes procurement
39 pursuant to this section.

1 (b) An electrical corporation’s proposed procurement plan shall
2 include, but not be limited to, all of the following:

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

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

14 (3) The duration of the plan.

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

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

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

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

33 (8) Procedures for updating the procurement plan.

34 (9) A showing that the procurement plan will achieve the
35 following:

36 (A) The electrical corporation, in order to fulfill its unmet
37 resource needs, shall procure resources from eligible renewable
38 energy resources in an amount sufficient to meet its procurement
39 requirements pursuant to the California Renewables Portfolio

1 Standard Program (Article 16 (commencing with Section 399.11)
2 of Chapter 2.3).

3 (B) The electrical corporation shall create or maintain a
4 diversified procurement portfolio consisting of both short-term
5 and long-term electricity and electricity-related and demand
6 reduction products.

7 (C) (i) The electrical corporation shall first meet its unmet
8 resource needs through all available energy efficiency and demand
9 reduction resources that are cost effective, reliable, and feasible.

10 (ii) *In determining the availability of cost-effective, reliable,
11 and feasible demand reduction resources, the commission shall
12 consider the findings regarding technically and economically
13 achievable demand reduction in the Demand Response Potential
14 Study required pursuant to Commission Order D.14-12-024, to
15 the extent those findings are not superseded by other demand
16 reduction studies conducted by academic institutions or
17 government agencies, and to the extent that any demand reduction
18 is consistent with commission policy.*

19 (D) (i) *The electrical corporation, in soliciting bids for new
20 gas-fired generating units, shall actively seek bids for resources
21 that are not gas-fired generating units located in communities that
22 suffer from cumulative pollution burdens, including, but not limited
23 to, high emission levels of toxic air contaminants, criteria air
24 pollutants, and greenhouse gases.*

25 (ii) *In considering bids for, or negotiating contracts for, new
26 gas-fired generating units, the electrical corporation shall provide
27 greater preference to resources that are not gas-fired generating
28 units located in communities that suffer from cumulative pollution
29 burdens, including, but not limited to, high emission levels of toxic
30 air contaminants, criteria air pollutants, and greenhouse gases.*

31 (iii) *This subparagraph does not apply to contracts signed by
32 an electrical corporation and approved by the commission prior
33 to January 1, 2017.*

34 (10) The electrical corporation’s risk management policy,
35 strategy, and practices, including specific measures of price
36 stability.

37 (11) A plan to achieve appropriate increases in diversity of
38 ownership and diversity of fuel supply of nonutility electrical
39 generation.

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

3 (c) The commission shall review and accept, modify, or reject
4 each electrical corporation's procurement ~~plan~~. *plan and any*
5 *amendments or updates to the plan. The commission shall ensure*
6 *that the plan contains the elements required by this section,*
7 *including the elements described in subparagraphs (C) and (D)*
8 *of paragraph (9) of subdivision (b).* The commission's review shall
9 consider each electrical corporation's individual procurement
10 situation, and shall give strong consideration to that situation in
11 determining which one or more of the features set forth in this
12 subdivision shall apply to that electrical corporation. A
13 procurement plan approved by the commission shall contain one
14 or more of the following features, provided that the commission
15 may not approve a feature or mechanism for an electrical
16 corporation if it finds that the feature or mechanism would impair
17 the restoration of an electrical corporation's creditworthiness or
18 would lead to a deterioration of an electrical corporation's
19 creditworthiness:

20 (1) A competitive procurement process under which the
21 electrical corporation may request bids for procurement-related
22 services. The commission shall specify the format of that
23 procurement process, as well as criteria to ensure that the auction
24 process is open and adequately subscribed. Any purchases made
25 in compliance with the commission-authorized process shall be
26 recovered in the generation component of rates.

27 (2) An incentive mechanism that establishes a procurement
28 benchmark or benchmarks and authorizes the electrical corporation
29 to procure from the market, subject to comparing the electrical
30 corporation's performance to the commission-authorized
31 benchmark or benchmarks. The incentive mechanism shall be
32 clear, achievable, and contain quantifiable objectives and standards.
33 The incentive mechanism shall contain balanced risk and reward
34 incentives that limit the risk and reward of an electrical corporation.

35 (3) Upfront achievable standards and criteria by which the
36 acceptability and eligibility for rate recovery of a proposed
37 procurement transaction will be known by the electrical corporation
38 prior to the execution of the bilateral contract for the transaction.
39 The commission shall provide for expedited review and either
40 approve or reject the individual contracts submitted by the electrical

1 corporation to ensure compliance with its procurement plan. To
2 the extent the commission rejects a proposed contract pursuant to
3 this criteria, the commission shall designate alternative procurement
4 choices obtained in the procurement plan that will be recoverable
5 for ratemaking purposes.

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

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

10 (2) Eliminate the need for after-the-fact reasonableness reviews
11 of an electrical corporation's actions in compliance with an
12 approved procurement plan, including resulting electricity
13 procurement contracts, practices, and related expenses. However,
14 the commission may establish a regulatory process to verify and
15 ensure that each contract was administered in accordance with the
16 terms of the contract, and contract disputes that may arise are
17 reasonably resolved.

18 (3) Ensure timely recovery of prospective procurement costs
19 incurred pursuant to an approved procurement plan. The
20 commission shall establish rates based on forecasts of procurement
21 costs adopted by the commission, actual procurement costs
22 incurred, or combination thereof, as determined by the commission.
23 The commission shall establish power procurement balancing
24 accounts to track the differences between recorded revenues and
25 costs incurred pursuant to an approved procurement plan. The
26 commission shall review the power procurement balancing
27 accounts, not less than semiannually, and shall adjust rates or order
28 refunds, as necessary, to promptly amortize a balancing account,
29 according to a schedule determined by the commission. Until
30 January 1, 2006, the commission shall ensure that any
31 overcollection or undercollection in the power procurement
32 balancing account does not exceed 5 percent of the electrical
33 corporation's actual recorded generation revenues for the prior
34 calendar year excluding revenues collected for the Department of
35 Water Resources. The commission shall determine the schedule
36 for amortizing the overcollection or undercollection in the
37 balancing account to ensure that the ~~5 percent~~ *5-percent* threshold
38 is not exceeded. After January 1, 2006, this adjustment shall occur
39 when deemed appropriate by the commission consistent with the
40 objectives of this section.

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

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

8 (e) The commission shall provide for the periodic review and
9 prospective modification of an electrical corporation's procurement
10 plan.

11 (f) The commission may engage an independent consultant or
12 advisory service to evaluate risk management and strategy. The
13 reasonable costs of any consultant or advisory service is a
14 reimbursable expense and eligible for funding pursuant to Section
15 631.

16 (g) The commission shall adopt appropriate procedures to ensure
17 the confidentiality of any market sensitive information submitted
18 in an electrical corporation's proposed procurement plan or
19 resulting from or related to its approved procurement plan,
20 including, but not limited to, proposed or executed power purchase
21 agreements, data request responses, or consultant reports, or any
22 ~~combination~~, *combination of these*, provided that the Office of
23 Ratepayer Advocates and other consumer groups that are
24 nonmarket participants shall be provided access to this information
25 under confidentiality procedures authorized by the commission.

26 (h) Nothing in this section alters, modifies, or amends the
27 commission's oversight of affiliate transactions under its rules and
28 decisions or the commission's existing authority to investigate and
29 penalize an electrical corporation's alleged fraudulent activities,
30 or to disallow costs incurred as a result of gross incompetence,
31 fraud, abuse, or similar grounds. Nothing in this section expands,
32 modifies, or limits the ~~State Energy Resources Conservation and~~
33 ~~Development~~ *Energy* Commission's existing authority and
34 responsibilities as set forth in Sections 25216, 25216.5, and 25323
35 of the Public Resources Code.

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

1 (j) (1) Prior to its approval pursuant to Section 851 of any
 2 divestiture of generation assets owned by an electrical corporation
 3 on or after the date of enactment of the act adding this section, the
 4 commission shall determine the impact of the proposed divestiture
 5 on the electrical corporation’s procurement rates and shall approve
 6 a divestiture only to the extent it finds, taking into account the
 7 effect of the divestiture on procurement rates, that the divestiture
 8 is in the public interest and will result in net ratepayer benefits.

9 (2) Any electrical corporation’s procurement necessitated as a
 10 result of the divestiture of generation assets on or after the effective
 11 date of the act adding this subdivision shall be subject to the
 12 mechanisms and procedures set forth in this section only if its
 13 actual cost is less than the recent historical cost of the divested
 14 generation assets.

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

18 (k) The commission shall direct electrical corporations to include
 19 in their proposed procurement plans the integration costs described
 20 and determined pursuant to clause (v) of subparagraph (A) of
 21 paragraph (4) of subdivision (a) of Section 399.13.

22 (l) *Prior to approving an electrical corporation’s contract for*
 23 *any new gas-fired generating unit, the commission shall require*
 24 *the electrical corporation to demonstrate compliance with its*
 25 *approved procurement plan.*

26 *SEC. 3. Section 2.5 of this bill incorporates amendments to*
 27 *Section 454.5 of the Public Utilities Code proposed by both this*
 28 *bill and Assembly Bill 2454. It shall only become operative if (1)*
 29 *both bills are enacted and become effective on or before January*
 30 *1, 2017, (2) each bill amends Section 454.5 of the Public Utilities*
 31 *Code, and (3) this bill is enacted after Assembly Bill 2454, in which*
 32 *case Section 2 of this bill shall not become operative.*

33 ~~SEC. 3.~~

34 *SEC. 4.* No reimbursement is required by this act pursuant to
 35 Section 6 of Article XIII B of the California Constitution because
 36 the only costs that may be incurred by a local agency or school
 37 district will be incurred because this act creates a new crime or
 38 infraction, eliminates a crime or infraction, or changes the penalty
 39 for a crime or infraction, within the meaning of Section 17556 of
 40 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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