AMENDED IN ASSEMBLY MAY 1, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL No. 2638

Introduced by Assembly Member Calderon

February 25, 2000

An act to amend ~~Section 783 of~~ *Sections 330 and 374 of, and to add Sections 454.1 and 9067 to,* the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2638, as amended, Calderon. Public utilities: ~~extension of service~~ *electrical power.*

(1) Existing law relating to electrical restructuring exempts specified entities from the obligation to pay certain uneconomic costs of that restructuring.

This bill would provide that the exemption does not apply to any irrigation district providing firm electrical service to customers representing load participating in an electrical corporation's nonfirm electrical service program as of May 1, 2000.

(2) Existing law prohibits a public utility from changing any rate or altering any classification, contract, practice, or rule so as to result in any new rate, except upon a showing before the commission and a finding by the Public Utilities Commission that the new rate is justified.

This bill would authorize an electrical corporation, if a customer participating in an electrical corporation's nonfirm electrical service program as of January 1, 2000, receives a *bona fide offer from an alternative electric distribution or transmission service provider for firm electrical service at rates less than the electrical corporation's tariffed rates, to discount its rate to its marginal cost of serving that customer and to recover any difference between its tariffed and discounted service from its remaining customers, allocated as determined by the commission.*

(3) The Irrigation District Law authorizes an irrigation district that is governed under that law to sell, dispose of, and distribute electric power for use outside its boundaries.

This bill would require the commission to approve the sale of electricity by an irrigation district in the service territory of specified entities. Prior to granting approval, the commission would be required to make findings, as prescribed. Because this bill would increase the duties of local entities by requiring them to obtain commission approval in order to sell electricity, it would impose a state-mandated local program. The bill would make a related statement of state policy and legislative intent.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~The Public Utilities Act requires the Public Utilities Commission to continue to enforce the rules governing the extension of service by gas and electrical corporations to new residential, commercial, agricultural, and industrial customers in effect on January 1, 1982, except as specified.~~

~~This bill would make technical, nonsubstantive changes in those provisions.~~

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

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

~~SECTION 1. Section 783 of the Public Utilities Code~~ *SECTION 1. Section 330 of the Public Utilities Code is amended to read:*

330. In order to provide guidance in carrying out this chapter, the Legislature finds and declares all of the following:

(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.

(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars ($23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.

(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.

(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power and customers would be allowed to have the right to choose their supplier of electric power.

(e) Competition in the electric generation market will encourage innovation, efficiency, and better service from all market participants, and will permit the reduction of costly regulatory oversight.

(f) The delivery of electricity over transmission and distribution systems is currently regulated, and will continue to be regulated to ensure system safety, reliability, environmental protection, and fair access for all market participants.

(g) Reliable electric service is of utmost importance to the safety, health, and welfare of the state's citizenry and economy. It is the intent of the Legislature that electric industry restructuring should enhance the reliability of the interconnected regional transmission systems, and provide strong coordination and enforceable protocols for all users of the power grid.

(h) It is important that sufficient supplies of electric generation will be available to maintain the reliable service to the citizens and businesses of the state.

(i) Reliable electric service depends on conscientious inspection and maintenance of transmission and distribution systems. To continue and enhance the reliability of the delivery of electricity, the Independent System Operator and the commission, respectively, should set inspection, maintenance, repair, and replacement standards.

(j) It is the intent of the Legislature that California enter into a compact with western region states. That compact should require the publicly and investor-owned utilities located in those states, that sell energy to California retail customers, to adhere to enforceable standards and protocols to protect the reliability of the interconnected regional transmission and distribution systems.

(k) In order to achieve meaningful wholesale and retail competition in the electric generation market, it is essential to do all of the following:

(1) Separate monopoly utility transmission functions from competitive generation functions, through development of independent, third-party control of transmission access and pricing.

(2) Permit all customers to choose from among competing suppliers of electric power.

(3) Provide customers and suppliers with open, nondiscriminatory, and comparable access to transmission and distribution services.

(*l*) The commission has properly concluded ~~that~~ *all of the following*:

(1) This competition will best be introduced by the creation of an Independent System Operator and an independent Power Exchange.

(2) Generation of electricity should be open to competition and utility generation should be transitioned from regulated status to unregulated status through means of commission-approved market valuation mechanisms.

(3) There is a need to ensure that no participant in these new market institutions has the ability to exercise significant market power so that operation of the new market institutions would be distorted.

(4) These new market institutions should commence simultaneously with the phase-in of customer choice, and the public will be best served if these institutions and the nonbypassable transition cost recovery mechanism referred to in subdivisions (s) to (w), inclusive, are in place simultaneously and no later than January 1, 1998.

(m) It is the ~~intention~~ *intent* of the Legislature that California's publicly owned electric utilities and investor-owned electric utilities should commit control of their transmission facilities to the Independent System Operator. These utilities should jointly advocate to the Federal Energy Regulatory Commission a pricing methodology for the Independent System Operator that results in an equitable return on capital investment in transmission facilities for all Independent System Operator participants.

(n) Opportunities to acquire electric power in the competitive market must be available to California consumers as soon as practicable, but no later than January 1, 1998, so that all customers can share in the benefits of competition.

(o) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories.

(p) Consistent with federal and state policies, California electrical corporations invested in power plants and entered into contractual obligations in order to provide reliable electrical service on a nondiscriminatory basis to all consumers within their service territories who requested service.

(q) The cost of these investments and contractual obligations are currently being recovered in electricity rates charged by electrical corporations to their consumers.

(r) Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations *and local publicly owned electric utilities. It is the policy of this state, and the intent of the Legislature to reaffirm, that each electrical corporation and local publicly owned electric utility shall continue to operate electric distribution facilities only in its respective service territory as it existed on January 1, 2000, in a safe, reliable, environmentally beneficial, efficient, and cost-effective manner. In order to ensure the continued safe, reliable, environmentally beneficial, efficient, and cost-effective operation of electric distribution facilities, each electrical corporation and local publicly owned electric utility should continue to operate electric distribution facilities only in its respective service territory as it existed on January 1, 2000.*

(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.

(t) The transition to a competitive generation market should be orderly, protect electric system reliability, provide the investors in these electrical corporations with a fair opportunity to fully recover the costs associated with commission approved generation-related assets and obligations, and be completed as expeditiously as possible.

(u) The transition to expanded customer choice, competitive markets, and performance based ratemaking as described in Decision 95-12-063, as modified by Decision 96-01-009, of the Public Utilities Commission, can produce hardships for employees who have dedicated their working lives to utility employment. It is preferable that any necessary reductions in the utility work force directly caused by electrical restructuring, be accomplished through offers of voluntary severance, retraining, early retirement, outplacement, and related benefits. Whether work force reductions are voluntary or involuntary, reasonable costs associated with these sorts of benefits should be included in the competition transition charge.

(v) Charges associated with the transition should be collected over a specific period of time on a nonbypassable basis and in a manner that does not result in an increase in rates to customers of electrical corporations. In order to insulate the policy of nonbypassability against incursions, if exemptions from the competition transition charge are granted, a fire wall shall be created that segregates recovery of the cost of exemptions as follows:

(1) The cost of the competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from those customers.

(2) The cost of the competition transition charge exemptions granted to members of the combined class of customers other than residential and small commercial customers shall be recovered only from those customers. The commission shall retain existing cost allocation authority provided that the fire wall and rate freeze principles are not violated.

(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the ~~Public Utilities Commission~~ *commission* and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

SEC. 2. Section 374 of the Public Utilities Code is amended to read:

374. (a) In recognition of statutory authority and past investments existing as of December 20, 1995, and subject to the fire wall specified subdivision (e) of Section 367, the obligation to pay the uneconomic costs identified in Sections 367, 368, 375, and 376 ~~shall~~ *do* not apply to *any of* the following:

(1) One hundred ten megawatts of load served by irrigation districts, as hereafter allocated by this paragraph:

(A) The 110 megawatts of load shall be allocated among the service territories of the three largest electrical corporations in the ratio of the number of irrigation districts in the service territory of each utility to the total number of irrigation districts in the service territories of all three utilities.

(B) The total amount of load allocated to each utility service area shall be phased in over five years beginning January 1, 1997, so that one-fifth of the allocation is allocated in each of the five years. Any allocation which remains unused at the end of any year shall be carried over to the succeeding year and added to the allocation for that year.

(C) The load allocated to each utility service territory pursuant to subparagraph (A) shall be further allocated among the respective irrigation districts within that service territory by the California Energy Resources Conservation and Development Commission. An individual irrigation district requesting such an allocation shall submit to the commission by January 31, 1997, detailed plans that show the load that it serves or will serve and for which it intends to utilize the allocation within the time frame requested. These plans shall include specific information on the irrigation districts' organization for electric distribution, contracts, financing and engineering plans for capital facilities, as well as detailed information about the loads to be served, and shall not be less than eight megawatts or more than 40 megawatts. Provided, however, any portion of the 110 megawatts that remains unallocated may be reallocated to projects without regard to the 40 megawatts limitation. In making such an allocation among irrigation districts, the Energy Resources Conservation and Development Commission shall assess the viability of each submission and whether it can be accomplished in the timeframe proposed. The Energy Resources Conservation and Development Commission shall have the discretion to allocate the load covered by this section in a manner that best ensures its usage within the allocation period.

(D) At least 50 percent of each year's allocation to a district shall be applied to that portion of load that is used to power pumps for agricultural purposes.

(E) Any load pursuant to this subdivision shall be served by distribution facilities owned by, or leased to, the district in question.

(F) Any load allocated pursuant to paragraph (1) shall be located within the boundaries of the affected irrigation district, or within the boundaries specified in an applicable service territory boundary agreement between an electrical corporation and the affected irrigation district; additionally, the provisions of subparagraph (C) of paragraph (1) shall be applicable to any load within the Counties of Stanislaus or San Joaquin, or both, served by any irrigation district that is currently serving or will be serving retail customers.

(2) Seventy-five megawatts of load served by the Merced Irrigation District hereafter prescribed in this paragraph:

(A) The total allocation provided by this paragraph shall be phased in over five years beginning January 1, 1997, so that one-fifth of the allocation is received in each of the five years. Any allocation which remains unused at the end of any year shall be carried over to the succeeding year and added to the allocation for that year.

(B) Any load to which the provision of this paragraph is applicable shall be served by distribution facilities owned by, or leased to, Merced Irrigation District.

(C) A load to which the provisions of this paragraph are applicable shall be located within the boundaries of Merced Irrigation District as those boundaries existed on December 20, 1995, together with the territory of Castle Air Force Base which was located outside of the district on that date.

(D) The total allocation provided by this paragraph shall be phased in over five years beginning January 1, 1997, with the exception of load already being served by the district as of June 1, 1996, which shall be deducted from the total allocation and shall not be subject to the costs provided in Sections 367, 368, 375, and 376.

(3) To loads served by irrigation districts, water districts, water storage districts, municipal utility districts, and other water agencies which, on December 20, 1995, were members of the Southern San Joaquin Valley Power Authority, or the Eastside Power Authority; provided, however, that this paragraph shall be applicable only to that portion of each district or agency's load that is used to power pumps which are owned by that district or agency as of December 20, 1995, or replacements thereof, and is being used to pump water for district purposes. The rates applicable to these districts and agencies shall be adjusted as of January 1, 1997.

(4) The provisions of this subdivision shall no longer be operative after March 31, 2002.

(5) The provisions of paragraph (1) shall not be applicable to any irrigation district, water district or water agency described in paragraph (2) or (3).

(6) Transmission services provided to any irrigation district described in paragraph (1) or (2) shall be provided pursuant to otherwise applicable tariffs.

(7) Nothing in this chapter shall be deemed to grant the commission any jurisdiction over irrigation districts not already granted to the commission by existing law.

(8) Notwithstanding any other provision of law, this subdivision does not apply to any irrigation district providing firm electrical service to customers representing load participating in an electrical corporation's nonfirm electrical service program as of May 1, 2000.

(b) To give the full effect to the legislative intent in enacting Section 701.8, the costs provided in Sections 367, 368, 375, and 376 shall not apply to the load served by preference power purchased from a federal power marketing agency, or its successor, pursuant to Section 701.8 as it existed on January 1, 1996, provided the power is used solely for the customer's own systems load and not for sale. The costs of this provision shall be borne by all ratepayers in the affected service territory, notwithstanding the fire wall established in subdivision (e) of Section 367.

(c) To give effect to an existing relationship, the obligation to pay the uneconomic costs specified in Sections 367, 368, 375, and 376 shall not apply to that portion of the load of the University of California campus situated in Yolo County that was being served as of May 31, 1996, by preference power purchased from a federal marketing agency, or its successor, provided the power is used solely for the facility load of that campus and not, directly or indirectly, for sale.

SEC. 3. Section 454.1 is added to the Public Utilities Code, to read:

454.1. If a customer participating in an electrical corporation's nonfirm electrical service program as of January 1, 2000, receives a bona fide offer from an alternative electric distribution or transmission service provider for firm electrical service at rates less than the electrical corporation's tariffed rates, the electrical corporation may discount its rate to its marginal cost of serving that customer. The electrical corporation may recover any difference between its tariffed and discounted service from its remaining customers, allocated as determined by the commission.

SEC. 4. Section 9607 is added to the Public Utilities Code, to read:

9607. (a) Notwithstanding Section 9604, for purposes of this section, 'district' means an irrigation district furnishing electric services formed pursuant to the Irrigation District Law as set forth in Division 11 (commencing with Section 20500) of the Water Code.

(b) Notwithstanding any other provision of law, a district may not, without the approval of the commission, construct, lease, acquire, or operate facilities for the distribution of electricity in the service territory of an electrical corporation providing electric distribution services as that territory existed on January 1, 2000, or in the service territory of a local publicly owned electric

utility providing electric distribution services as of January 1, 2000.

(c) The commission may not approve the request of a district to provide distribution of electricity in the service territory of an entity as set forth in subdivision (a) unless the commission determines all of the following:

(1) Construction of duplicative facilities by the district within the service territory will not have an unnecessary adverse impact on the environment or property values.

(2) Service by the district within the service territory is in the public interest.

(3) Service by the district within the service territory is consistent with the policies of the state to prevent or eliminate economic waste as set forth in Section 8101.

(4) Service by the district within the service territory does not adversely impact the ability of the electrical corporation or local publicly owned electric utility to provide adequate service at reasonable rates within the remainder of its service territory.

(5) Service by the district within the service territory does not reduce in value or render useless any facilities previously constructed by the electrical corporation or local publicly owned electric utility.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

~~is amended to read:~~

~~783. (a) The commission shall continue to enforce the rules governing the extension of service by gas and electrical corporations to new residential, commercial, agricultural, and industrial customers in effect on January 1, 1982, except that the commission shall amend the existing rules to permit applicants for service to install~~

~~extensions in accordance with subdivision (f). Except for periodic review provisions of existing rules, and amendments to permit installations by an applicant's contractor, the commission may not investigate amending these rules or issue any orders or decisions that amend these rules, unless the investigation or proceeding for the issuance of the order or decision is conducted pursuant to subdivision (b).~~

~~(b) Whenever the commission institutes an investigation into the terms and conditions for the extension of services provided by gas and electrical corporations to new or existing customers, or considers issuing an order or decision amending those terms or conditions, the commission shall make written findings on all of the following issues:~~

~~(1) The economic effect of the line and service extension terms and conditions upon agriculture, residential housing, mobilehome parks, rural customers, urban customers, employment, and commercial and industrial building and development.~~

~~(2) The effect of requiring new or existing customers applying for an extension to an electrical or gas corporation to provide transmission or distribution facilities for other customers who will apply to receive line and service extensions in the future.~~

~~(3) The effect of requiring a new or existing customer applying for an extension to an electrical or gas corporation to be responsible for the distribution of, reinforcements of, relocations of, or additions to that gas or electrical corporation.~~

~~(4) The economic effect of the terms and conditions upon projects, including redevelopment projects, funded or sponsored by cities, counties, or districts.~~

~~(5) The effect of the line and service extension regulations, and any modifications to them, on existing ratepayers.~~

~~(6) The effect of the line and service extension regulations, and any modifications to them, on the consumption and conservation of energy.~~

~~(7) The extent to which there is cost-justification for a special line and service extension allowance for agriculture.~~

~~(c) The commission shall request the assistance of appropriate state agencies and departments in conducting any investigation or proceeding pursuant to subdivision (b), including, but not limited to, the Business, Transportation and Housing Agency, the Department of Food and Agriculture, the Department of Consumer Affairs, the Department of Real Estate, the Department of Housing and Community Development, and the Department of Economic and Business Development.~~

~~(d) Any new order or decision issued pursuant to an investigation or proceeding conducted pursuant to subdivision (b) shall become effective on July 1 of the year following the year when the new order or decision is adopted by the commission, so as to ensure that the public has at least six months to consider the new order or decision.~~

~~(e) The commission shall conduct any investigation or proceeding pursuant to subdivision (b) within the commission's existing budget, and any state agency or department that is requested by the commission to provide assistance pursuant to subdivision (c) shall also provide the assistance within the agency's or department's existing budget.~~

~~(f) An electrical or gas corporation shall permit any new or existing customer who applies for an extension of service from that corporation to install a gas or electric extension in accordance with the regulations of the commission and any applicable specifications of that electrical or gas corporation.~~

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