

AMENDED IN ASSEMBLY MAY 8, 2000

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 Sections 330 and 374 of, and to add Sections ~~454.1 and 9067~~ 454.5 and 9607 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2638, as amended, Calderon. Public utilities: 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 or a local publicly owned utility to continue to recover the cost incurred to provide electric distribution service to each retail customer from existing and future retail customers, within the service territory of the utility as of a specified date when the customers take electric distribution service from an irrigation district at the same location after a specified date.~~

(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.



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

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

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

15 (b) The people, businesses, and institutions of
16 California spend nearly twenty-three billion dollars
17 (\$23,000,000,000) annually on electricity, so that
18 reductions in the price of electricity would significantly
19 benefit the economy of the state and its residents.

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

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

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

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

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

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

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

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

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

38 (1) Separate monopoly utility transmission functions
39 from competitive generation functions, through

1 development of independent, third-party control of
2 transmission access and pricing.

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

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

8 (l) The commission has properly concluded all of the
9 following:

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

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

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

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

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

38 (n) Opportunities to acquire electric power in the
39 competitive market must be available to California
40 consumers as soon as practicable, but no later than

1 January 1, 1998, so that all customers can share in the
2 benefits of competition.

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

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

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

17 (r) Transmission and distribution of electric power
18 remain essential services imbued with the public interest
19 that are provided over facilities owned and maintained
20 by the state's electrical corporations and local publicly
21 owned electric utilities. It is the policy of this state, and
22 the intent of the Legislature to reaffirm, that each
23 electrical corporation and local publicly owned electric
24 utility shall continue to operate electric distribution
25 facilities only in its respective service territory as it
26 existed on ~~January~~ *May* 1, 2000, in a safe, reliable,
27 environmentally beneficial, efficient, and cost-effective
28 manner. In order to ensure the continued safe, reliable,
29 environmentally beneficial, efficient, and cost-effective
30 operation of electric distribution facilities, each electrical
31 corporation and local publicly owned electric utility
32 should continue to operate electric distribution facilities
33 only in its respective service territory as it existed on
34 ~~January~~ *May* 1, 2000.

35 (s) It is proper to allow electrical corporations an
36 opportunity to continue to recover, over a reasonable
37 transition period, those costs and categories of costs for
38 generation-related assets and obligations, including costs
39 associated with any subsequent renegotiation or buyout
40 of existing generation-related contracts, that the

1 commission, prior to December 20, 1995, had authorized
2 for collection in rates and that may not be recoverable in
3 market prices in a competitive generation market, and
4 appropriate additions incurred after December 20, 1995,
5 for capital additions to generating facilities existing as of
6 December 20, 1995, that the commission determines are
7 reasonable and should be recovered, provided that the
8 costs are necessary to maintain those facilities through
9 December 31, 2001. In determining the costs to be
10 recovered, it is appropriate to net the negative value of
11 above market assets against the positive value of below
12 market assets.

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

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

33 (v) Charges associated with the transition should be
34 collected over a specific period of time on a
35 nonbypassable basis and in a manner that does not result
36 in an increase in rates to customers of electrical
37 corporations. In order to insulate the policy of
38 nonbypassability against incursions, if exemptions from
39 the competition transition charge are granted, a fire wall

1 shall be created that segregates recovery of the cost of
2 exemptions as follows:

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

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

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

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

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

36 374. (a) In recognition of statutory authority and past
37 investments existing as of December 20, 1995, and subject
38 to the fire wall specified subdivision (e) of Section 367,
39 the obligation to pay the uneconomic costs identified in

1 Sections 367, 368, 375, and 376 do not apply to any of the
2 following:

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

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

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

19 (C) The load allocated to each utility service territory
20 pursuant to subparagraph (A) shall be further allocated
21 among the respective irrigation districts within that
22 service territory by the California Energy Resources
23 Conservation and Development Commission. An
24 individual irrigation district requesting such an allocation
25 shall submit to the commission by January 31, 1997,
26 detailed plans that show the load that it serves or will
27 serve and for which it intends to utilize the allocation
28 within the timeframe requested. These plans shall
29 include specific information on the irrigation districts'
30 organization for electric distribution, contracts, financing
31 and engineering plans for capital facilities, as well as
32 detailed information about the loads to be served, and
33 shall not be less than eight megawatts or more than 40
34 megawatts. Provided, however, any portion of the 110
35 megawatts that remains unallocated may be reallocated
36 to projects without regard to the 40 megawatts limitation.
37 In making such an allocation among irrigation districts,
38 the Energy Resources Conservation and Development
39 Commission shall assess the viability of each submission
40 and whether it can be accomplished in the timeframe

1 proposed. The Energy Resources Conservation and
2 Development Commission shall have the discretion to
3 allocate the load covered by this section in a manner that
4 best ensures its usage within the allocation period.

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

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

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

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

24 (A) The total allocation provided by this paragraph
25 shall be phased in over five years beginning January 1,
26 1997, so that one-fifth of the allocation is received in each
27 of the five years. Any allocation which remains unused at
28 the end of any year shall be carried over to the succeeding
29 year and added to the allocation for that year.

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

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

39 (D) The total allocation provided by this paragraph
40 shall be phased in over five years beginning January 1,

1 1997, with the exception of load already being served by
2 the district as of June 1, 1996, which shall be deducted
3 from the total allocation and shall not be subject to the
4 costs provided in Sections 367, 368, 375, and 376.

5 (3) To loads served by irrigation districts, water
6 districts, water storage districts, municipal utility
7 districts, and other water agencies which, on December
8 20, 1995, were members of the Southern San Joaquin
9 Valley Power Authority, or the Eastside Power Authority;
10 provided, however, that this paragraph shall be
11 applicable only to that portion of each district or agency's
12 load that is used to power pumps which are owned by that
13 district or agency as of December 20, 1995, or
14 replacements thereof, and is being used to pump water
15 for district purposes. The rates applicable to these
16 districts and agencies shall be adjusted as of January 1,
17 1997.

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

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

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

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

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

35 (b) To give the full effect to the legislative intent in
36 enacting Section 701.8, the costs provided in Sections 367,
37 368, 375, and 376 shall not apply to the load served by
38 preference power purchased from a federal power
39 marketing agency, or its successor, pursuant to Section
40 701.8 as it existed on January 1, 1996, provided the power

1 is used solely for the customer's own systems load and not
2 for sale. The costs of this provision shall be borne by all
3 ratepayers in the affected service territory,
4 notwithstanding the fire wall established in subdivision
5 (e) of Section 367.

6 (c) To give effect to an existing relationship, the
7 obligation to pay the uneconomic costs specified in
8 Sections 367, 368, 375, and 376 shall not apply to that
9 portion of the load of the University of California campus
10 situated in Yolo County that was being served as of May
11 31, 1996, by preference power purchased from a federal
12 marketing agency, or its successor, provided the power is
13 used solely for the facility load of that campus and not,
14 directly or indirectly, for sale.

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

17 ~~454.1. If a customer participating in an electrical~~
18 ~~corporation's nonfirm electrical service program as of~~
19 ~~January 1, 2000, receives a bona fide offer from an~~
20 ~~alternative electric distribution or transmission service~~
21 ~~provider for firm electrical service at rates less than the~~
22 ~~electrical corporation's tariffed rates, the electrical~~
23 ~~corporation may discount its rate to its marginal cost of~~
24 ~~serving that customer. The electrical corporation may~~
25 ~~recover any difference between its tariffed and~~
26 ~~discounted service from its remaining customers,~~
27 ~~allocated as determined by the commission.~~

28 *SEC. 3. Section 454.5 is added to the Public Utilities*
29 *Code, to read:*

30 *454.5. (a) In order to avoid cost shifting and to ensure*
31 *that each retail customer of an electrical corporation or*
32 *local publicly owned utility pays their proportionate*
33 *share of costs incurred by the electrical corporation or*
34 *local publicly owned utility to provide electric*
35 *distribution service to each retail customer, these costs*
36 *shall continue to be recoverable from existing and future*
37 *retail customers within the service territory of the*
38 *electrical corporation or local publicly owned utility as of*
39 *May 1, 2000, who take electric distribution service from*

1 *an irrigation district at the same location after May 1,*
2 *2000.*

3 *(b) Recovery of the costs by an electrical corporation*
4 *shall be in a nonbypassable charge or any other manner*
5 *determined by the commission. Recovery of the costs by*
6 *a local publicly owned utility shall be in a nonbypassable*
7 *charge or any other manner approved by its governing*
8 *body consistent with this section, existing contracts, and*
9 *relevant state law.*

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

12 9607. (a) Notwithstanding Section 9604, for purposes
13 of this section, “district” means an irrigation district
14 furnishing electric services formed pursuant to the
15 Irrigation District Law as set forth in Division 11
16 (commencing with Section 20500) of the Water Code.

17 (b) Notwithstanding any other provision of law, a
18 district may not, without the approval of the commission,
19 construct, lease, acquire, or operate facilities for the
20 ~~distribution of electricity~~ *or transmission of electricity to*
21 *retail customers located* in the service territory of an
22 electrical corporation providing electric distribution
23 services as that territory existed on ~~January~~ May 1, 2000,
24 or in the service territory of a local publicly owned
25 electric utility providing electric distribution services as
26 of ~~January~~ May 1, 2000.

27 (c) The commission may not approve the request of a
28 district to provide ~~distribution of electricity~~ *or*
29 *transmission of electricity to retail customers located* in
30 the service territory of an entity as set forth in subdivision
31 (a) unless the commission determines all of the following:

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

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

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

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

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

10 SEC. 5. Notwithstanding Section 17610 of the
11 Government Code, if the Commission on State Mandates
12 determines that this act contains costs mandated by the
13 state, reimbursement to local agencies and school
14 districts for those costs shall be made pursuant to Part 7
15 (commencing with Section 17500) of Division 4 of Title
16 2 of the Government Code. If the statewide cost of the
17 claim for reimbursement does not exceed one million
18 dollars (\$1,000,000), reimbursement shall be made from
19 the State Mandates Claims Fund.

