

AMENDED IN ASSEMBLY MAY 15, 2000

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~~ *Section* 374 of, and to add Sections 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 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:~~

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

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

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

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

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

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

37 ~~(f) The delivery of electricity over transmission and~~
38 ~~distribution systems is currently regulated, and will~~
39 ~~continue to be regulated to ensure system safety;~~

1 reliability, environmental protection, and fair access for
2 all market participants.

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

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

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

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

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

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

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

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

~~(l) The commission has properly concluded 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 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 May 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 May 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~~

1 costs are necessary to maintain those facilities through
2 December 31, 2001. In determining the costs to be
3 recovered, it is appropriate to net the negative value of
4 above market assets against the positive value of below
5 market assets.

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

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

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

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

39 (2) The cost of the competition transition charge
40 exemptions granted to members of the combined class of

~~1 customers other than residential and small commercial
2 customers shall be recovered only from those customers.
3 The commission shall retain existing cost allocation
4 authority provided that the fire wall and rate freeze
5 principles are not violated.~~

~~6 (w) It is the intent of the Legislature to require and
7 enable electrical corporations to monetize a portion of
8 the competition transition charge for residential and
9 small commercial consumers so that these customers will
10 receive rate reductions of no less than 10 percent for 1998
11 continuing through 2002. Electrical corporations shall, by
12 June 1, 1997, or earlier, secure the means to finance the
13 competition transition charge by applying concurrently
14 for financing orders from the commission and for rate
15 reduction bonds from the California Infrastructure and
16 Economic Development Bank.~~

~~17 (x) California's public utility electrical corporations
18 provide substantial benefits to all Californians, including
19 employment and support of the state's economy.
20 Restructuring the electric services industry pursuant to
21 the act that added this chapter will continue these
22 benefits, and will also offer meaningful and immediate
23 rate reductions for residential and small commercial
24 customers, and facilitate competition in the supply of
25 electric power.~~

~~26 SEC. 2.—Section 374 of the Public Utilities Code is
27 amended to read:~~

~~28 374. (a) In recognition of statutory authority and past
29 investments existing as of December 20, 1995, and subject
30 to the fire wall specified subdivision (e) of Section 367,
31 the obligation to pay the uneconomic costs identified in
32 Sections 367, 368, 375, and 376 do not apply to any of the
33 following:~~

~~34 (1) One hundred ten megawatts of load served by
35 irrigation districts, as hereafter allocated by this
36 paragraph:~~

~~37 (A) The 110 megawatts of load shall be allocated
38 among the service territories of the three largest
39 electrical corporations in the ratio of the number of
40 irrigation districts in the service territory of each utility~~

1 to the total number of irrigation districts in the service
2 territories of all three utilities.

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

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

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

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

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

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

17 (A) The total allocation provided by this paragraph
18 shall be phased in over five years beginning January 1,
19 1997, so that one-fifth of the allocation is received in each
20 of the five years. Any allocation which remains unused at
21 the end of any year shall be carried over to the succeeding
22 year and added to the allocation for that year.

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

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

32 (D) The total allocation provided by this paragraph
33 shall be phased in over five years beginning January 1,
34 1997, with the exception of load already being served by
35 the district as of June 1, 1996, which shall be deducted
36 from the total allocation and shall not be subject to the
37 costs provided in Sections 367, 368, 375, and 376.

38 (3) To loads served by irrigation districts, water
39 districts, water storage districts, municipal utility
40 districts, and other water agencies which, on December

1 20, 1995, were members of the Southern San Joaquin
2 Valley Power Authority, or the Eastside Power Authority;
3 provided, however, that this paragraph shall be
4 applicable only to that portion of each district or agency's
5 load that is used to power pumps which are owned by that
6 district or agency as of December 20, 1995, or
7 replacements thereof, and is being used to pump water
8 for district purposes. The rates applicable to these
9 districts and agencies shall be adjusted as of January 1,
10 1997.

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

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

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

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

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

28 (b) To give the full effect to the legislative intent in
29 enacting Section 701.8, the costs provided in Sections 367,
30 368, 375, and 376 shall not apply to the load served by
31 preference power purchased from a federal power
32 marketing agency, or its successor, pursuant to Section
33 701.8 as it existed on January 1, 1996, provided the power
34 is used solely for the customer's own systems load and not
35 for sale. The costs of this provision shall be borne by all
36 ratepayers in the affected service territory,
37 notwithstanding the fire wall established in subdivision
38 (e) of Section 367.

39 (c) To give effect to an existing relationship, the
40 obligation to pay the uneconomic costs specified in

1 Sections 367, 368, 375, and 376 shall not apply to that
2 portion of the load of the University of California campus
3 situated in Yolo County that was being served as of May
4 31, 1996, by preference power purchased from a federal
5 marketing agency, or its successor, provided the power is
6 used solely for the facility load of that campus and not,
7 directly or indirectly, for sale.

8 SEC. 3. Section 454.5 is added to the Public Utilities
9 Code, to read:

10 454.5. (a) In order to avoid cost shifting and to ensure
11 that each retail customer of an electrical corporation or
12 local publicly owned utility pays their proportionate
13 share of costs incurred by the electrical corporation or
14 local publicly owned utility to provide electric
15 distribution service to each retail customer, these costs
16 shall continue to be recoverable from existing and future
17 retail customers within the service territory of the
18 electrical corporation or local publicly owned utility as of
19 May 1, 2000, who take electric distribution service from
20 an irrigation district at the same location after May 1,
21 2000.

22 (b) Recovery of the costs by an electrical corporation
23 shall be in a nonbypassable charge or any other manner
24 determined by the commission. Recovery of the costs by
25 a local publicly owned utility shall be in a nonbypassable
26 charge or any other manner approved by its governing
27 body consistent with this section, existing contracts, and
28 relevant state law.

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

31 9607. (a) ~~Notwithstanding Section 9604, for~~ *For*
32 purposes of this section, “district” means an irrigation
33 district furnishing electric services formed pursuant to
34 the Irrigation District Law as set forth in Division 11
35 (commencing with Section 20500) of the Water Code.

36 (b) Notwithstanding any other provision of law, a
37 district may not, without the approval of the commission,
38 construct, lease, acquire, or operate facilities for the
39 distribution or transmission of electricity to retail
40 customers located in the service territory of an electrical

1 corporation providing electric distribution services as
2 that territory existed on May 1, 2000, or in the service
3 territory of a local publicly owned electric utility
4 providing electric distribution services as of May 1, 2000.

5 (c) The commission may not approve the request of a
6 district to provide distribution or transmission of
7 electricity to retail customers located in the service
8 territory of an entity as set forth in subdivision (a) unless
9 the commission determines all of the following:

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

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

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

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

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

27 SEC. 5. Notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains costs mandated by the
30 state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.