

AMENDED IN SENATE AUGUST 23, 2000  
AMENDED IN SENATE AUGUST 18, 2000  
AMENDED IN SENATE AUGUST 7, 2000  
AMENDED IN ASSEMBLY MAY 25, 2000  
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

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An act to add Sections 454.1, ~~744.6~~, 9607, 9608, and 9609 to the Public Utilities Code, and to amend Sections 20804 and 20805 of the Water Code, relating to services.

LEGISLATIVE COUNSEL'S DIGEST

AB 2638, as amended, Calderon. Public utilities: electrical power: irrigation districts.

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. Other existing law authorizes the Public Utilities Commission to establish rates for public utilities regulated by the commission.

The bill would, with specified exceptions, authorize an electrical corporation to discount its rate to its marginal cost if a customer receives a bona fide offer for electric distribution service from an irrigation district, as specified. The bill would prohibit an irrigation district from distributing or transmitting electricity to retail customers without the approval of the commission, and would require a district to comply with certain requirements. The commission would be required to make a determination as to various matters before granting approval. The bill would provide specific exemptions from these requirements.

The bill would prohibit an irrigation district, without the agreement of an electrical corporation and with a specified exception, from exercising the right of eminent domain to take property owned by an electrical corporation if the irrigation district intends to put the property to the same or similar use.

~~The bill would provide that, notwithstanding any other provision of law, as soon as practicable after the end of the rate freeze, every electrical corporation, as described, shall consolidate the corporation's agricultural and commercial rate schedules, as prescribed.~~

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

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

1 SECTION 1. Section 454.1 is added to the Public  
2 Utilities Code, to read:  
3 454.1. (a) Except as provided in subdivision (b), if a  
4 customer with a maximum peak electrical demand in  
5 excess of 20 kilowatts located or planning to locate within  
6 the service territory of an electrical corporation receives  
7 a bona fide offer for electric distribution service from an  
8 irrigation district at rates less than the electrical  
9 corporation's tariffed rates, the electrical corporation  
10 may discount its rate to its marginal cost of serving that  
11 customer. The electrical corporation may recover any  
12 difference between its tariffed and discounted service  
13 from its remaining customers, allocated as determined by

the commission. However, the reallocation may not increase rates to its remaining customers by any greater amount than the rates would be increased if the customer had taken electric distribution service from the irrigation district and the irrigation district had paid the charge established in subdivision (e) of Section 9607, ~~and if~~. *Further*, there is a firewall preventing the reallocation of such differences resulting from discounting to residential customers or to commercial customers with maximum peak demands not in excess of 20 kilowatts.

(b) Subdivision (a) does not apply to a cumulative 75 megawatts of load served by the Merced Irrigation District, determined as follows:

(1) The load is 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 the district on that date.

(2) For purposes of this section, a megawatt of load shall be calculated in accordance with the methodology established by the California Energy Resource Conservation and Development Commission in its Docket No. 96-IRR-1890.

(c) Subdivision (a) applies to the load of customers that move to the areas described in paragraph (1) *of subdivision (b)* after December 31, 2000, and such load shall be excluded from the calculation of the 75 megawatts in subdivision (b).

~~SEC. 2. Section 744.6 is added to the Public Utilities Code, to read:~~

~~744.6. Notwithstanding any other provision of law, the commission shall, as soon as practicable after the end of the rate freeze, require every electrical corporation serving more than four million California electric customers which is also a gas corporation serving more than three million five hundred thousand California gas customers to consolidate the electrical corporation's agricultural and commercial rate schedules for all customers with electrical demands not exceeding 100 kilowatts.~~

1 ~~SEC. 3.—~~

2 SEC. 2. Section 9607 is added to the Public Utilities  
3 Code, to read:

4 9607. (a) Except as otherwise provided in this section  
5 and Section 9608, and notwithstanding any other  
6 provision of law, an irrigation district may not, without  
7 the approval of the commission, construct, lease, acquire,  
8 install, or operate facilities for the distribution or  
9 transmission of electricity to retail customers located in  
10 the service territory of an electrical corporation  
11 providing electric distribution services. The commission  
12 may approve the request of a district to provide  
13 distribution or transmission of electricity to retail  
14 customers located in the service territory of an electrical  
15 corporation providing electric distribution service if,  
16 after notice and hearing, the commission first determines  
17 all of the following:

18 (1) The district will provide ~~universal~~ service to all  
19 retail customers who request service within the area to be  
20 served, at published tariff rates and on a just, reasonable,  
21 and nondiscriminatory basis, comparable to that  
22 provided by the current retail service provider. *The area*  
23 *to be served shall include at least 10 percent residential*  
24 *and small commercial customers, based on load, and*  
25 *those customers shall be offered rates comparable to the*  
26 *district's other residential and small commercial*  
27 *customers.*

28 (2) Construction of electric facilities by the district  
29 within the service territory will not have a significant  
30 adverse impact on the environment.

31 (3) Service by the district is consistent with the  
32 policies of the state to prevent or eliminate economic  
33 waste set forth in Section 8101.

34 (4) Service by the district will not adversely affect the  
35 reliability of an existing service by the district or by the  
36 electrical corporation.

37 (5) Service by the district within the service territory  
38 will not adversely impact the ability of the electrical  
39 corporation to provide adequate service at reasonable  
40 rates within its service territory.

(6) The district has established, funded, and is carrying out public purpose and low-income programs in accordance with Section 385.

~~(7) That district's tariffed electric rates, exclusive of commodity costs, will be at least 15 percent below the tariffed electric rates, exclusive of commodity costs and nonbypassable charges under Sections 367, 368, 375, 376, and 379, of the electrical corporation for comparable services.~~

*(7) The district's tariffed electric rates are reasonable, considering the differences in taxes and the other differences resulting from the different corporate structures of the district and the electric corporation.*

(8) Service by the district is in the public interest.

(b) An irrigation district that obtains the approval of the commission under this section to serve an area shall prepare an annual report available to the public on the total load and number of accounts of residential, low-income, agricultural, commercial, and industrial customers served by the irrigation district in the approved service area.

(c) The commission shall have jurisdiction to resolve and adjudicate complaint cases brought against an irrigation district by an interested party ~~for failure to comply with this section or involving violations of commission decisions or orders involving the provisions of this section.~~ *where the complaint concerns service outside the service territory of the district.*

(d) No electric transmission or distribution facilities may be constructed or installed by an irrigation district to serve retail customers located ~~in the service territory of an electrical corporation providing electric distribution services~~ *outside the service territory of the district* without the prior approval after review under the California Environmental Quality Act, (Division 13 (commencing with Section 21000) of the Public Resources Code) by the ~~appropriate lead agency. For any project involving construction or installation of electric transmission or distribution facilities for which the irrigation district needs the approval of the commission~~

~~1 under subdivision (a), the board of supervisors of the  
2 county in which the construction or installation is to occur  
3 shall act as the lead agency. If a project involves the  
4 construction or installation of electric transmission or  
5 distribution facilities in more than one county, the board  
6 of supervisors of the county where the majority of the  
7 construction is anticipated to occur shall act as the lead  
8 agency. California Public Utilities Commission.~~

9 (e) In order to avoid increasing costs to customers of  
10 electrical corporations, if a retail customer is electrically  
11 connected to an electrical corporation, an irrigation  
12 district may not electrically connect the customer unless  
13 the irrigation district first pays the electrical corporation  
14 a charge established by the commission to reimburse the  
15 electrical corporation for the fair and reasonable costs  
16 incurred by the electrical corporation to provide electric  
17 transmission and distribution service to the retail  
18 customer. If the commission establishes an ongoing  
19 charge, the irrigation district shall agree in writing to pay  
20 the ongoing charge. If the commission has not established  
21 either a charge or a formula for calculation of a charge as  
22 of the date an irrigation district has designated to  
23 electrically connect a retail customer, the irrigation  
24 district shall agree in writing to pay the charge for that  
25 retail customer before electrically connecting the  
26 customer.

27 ~~(f) The provisions of this section do not apply to a  
28 cumulative 90 megawatts of load served by the Merced  
29 Irrigation District, determined as follows:~~

30 ~~(1) The load is located within the boundaries of  
31 Merced Irrigation District, as those boundaries existed on  
32 December 20, 1995, together with the territory of Castle  
33 Air Force Base which was located outside the district on  
34 that date.~~ customer. As soon as practicable, the  
35 commission shall establish the charge or formula for the  
36 calculation of the charge described in this subdivision. In  
37 establishing the charge or formula, the commission shall  
38 do so in a way that provides interested parties with  
39 predictability as to the level of the charge.

(f) An irrigation district may not offer service to customers outside of its service territory before offering service to all customers within its service territory.

(g) The provisions of this section shall not apply to (1) a cumulative 90 megawatts of load served by the Merced Irrigation District that is 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 the District on that date, or (2) electric load served by the District which was not previously served by an electric corporation that is 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 the District on that date.

~~(2)~~

(h) For purposes of this section, a megawatt of load shall be calculated in accordance with the methodology established by the California Energy Resource Conservation and Development Commission in its Docket No. 96-IRR-1890, but the 90 megawatts shall not include electrical usage by customers that move to the areas described in paragraph (1) after December 31, 2000.

(i) Subdivision (a) of this section shall not apply to the construction, modification, lease, acquisition, installation, or operation of facilities for the distribution or transmission of electricity to customers electrically connected to a district as of December 31, 2000, or to other customers who subsequently locate at the same premises.

~~SEC. 4.~~

SEC. 3. Section 9608 is added to the Public Utilities Code, to read:

9608. The provisions of Sections 454.1 and 9607 do not apply to an irrigation district with respect to an area to be served by the irrigation district, if all of the following occur:

(a) The irrigation district acquires substantially all the electric distribution facilities and related subtransmission

1 facilities of any electrical corporation that has an  
2 obligation to provide electric distribution service within  
3 the area to be served by the irrigation district.

4 (b) The commission approves a service area  
5 agreement between the irrigation district and the  
6 electrical corporation pursuant to Sections 8101 to 8108,  
7 inclusive, which service area agreement provides that the  
8 electrical corporation may not provide electric  
9 distribution service in the area to be served by the  
10 irrigation district and that the irrigation district may not  
11 provide electric distribution service in the remainder of  
12 the electrical corporation's service territory.

13 (c) The commission relieves the electrical corporation  
14 of its obligation to serve within the area to be served by  
15 the irrigation district.

16 ~~SEC. 5.—~~

17 *SEC. 4.* Section 9609 is added to the Public Utilities  
18 Code, to read:

19 9609. Notwithstanding any other provision of law, an  
20 irrigation district may not, without the electrical  
21 corporation's agreement, exercise the right of eminent  
22 domain to take electric facilities or real property  
23 necessary to the operation of those facilities owned by an  
24 electrical corporation if the irrigation district intends to  
25 put the facilities or real property to the same or similar  
26 use. This section shall not apply to condemnation of  
27 easements required by an irrigation district reasonably  
28 necessary to cross an electrical corporation's distribution  
29 or transmission system and which would not interfere  
30 with the operation and maintenance of the electrical  
31 corporation's system.

32 ~~SEC. 6.—~~

33 *SEC. 5.* Section 20804 of the Water Code is amended  
34 to read:

35 20804. At the hearing the board of supervisors shall  
36 determine by resolution whether or not the petition and  
37 notice comply with Chapter 1 of this part.  
38 Notwithstanding Section 22116 or any other provision of  
39 law, the board shall also determine whether the petition  
40 has been presented and the district is proposed to be



1 formed for the primary purpose of providing irrigation  
2 services.

3 ~~SEC. 7.~~

4 *SEC. 6.* Section 20805 of the Water Code is amended  
5 to read:

6 20805. (a) If the board of supervisors determines that  
7 any of the requirements for the formation petition or  
8 notice were not complied with, the petition shall be  
9 dismissed without prejudice to the right of the proper  
10 number of persons to present a new petition covering the  
11 same matter or to present the same petition with  
12 additional signatures if additional signatures are  
13 necessary to comply with the requirements of Chapter 1  
14 of this part.

15 (b) If the board of supervisors determines that the  
16 district is being formed for a primary purpose other than  
17 providing irrigation services, the petition shall be  
18 dismissed without prejudice to the right of the proper  
19 number of persons to present a new petition for the  
20 primary purpose of providing irrigation services.

