

AMENDED IN SENATE AUGUST 31, 2000  
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**

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**Introduced by Assembly Member ~~Calderon~~ Members  
*Cardoza and Calderon***

February 25, 2000

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An act to add Sections 454.1, 9607, 9608, ~~and 9609~~ 9610, 9611, and 9612 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~~ *Cardoza*. 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~~ *noncommodity rates* 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 *that offers electric service to retail customers as of January 1, 1999*, from distributing or transmitting electricity to retail customers without the approval of the commission, *as specified*, 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 electric transmission or distribution service by an electrical corporation to retail customers in specified areas, from January 1, 2001, to December 31, 2025, as prescribed. The bill would exempt the Modesto Irrigation District from specified provisions of the Cortese-Knox Local Government Reorganization Act of 1985.*

~~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.~~

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

1 corporation's tariffed rates, the electrical corporation  
2 ~~may discount its rate to its marginal cost of serving that~~  
3 ~~customer.~~ *may discount its noncommodity rates, but may*  
4 *not discount its noncommodity rates below its*  
5 *distribution marginal cost of serving that customer. For*  
6 *purposes of this subdivision, the costs of the electric*  
7 *commodity shall be excluded from both the irrigation*  
8 *district and electric corporation's rates. The electrical*  
9 *corporation may recover any difference between its*  
10 *tariffed and discounted service from its remaining*  
11 *customers, allocated as determined by the commission.*  
12 *However, the reallocation may not increase rates to its*  
13 *remaining customers by any greater amount than the*  
14 *rates would be increased if the customer had taken*  
15 *electric distribution service from the irrigation district*  
16 *and the irrigation district had paid the charge established*  
17 *in subdivision (e) of Section 9607. Further, there is shall*  
18 *be a firewall preventing the reallocation of such*  
19 *differences resulting from discounting to residential*  
20 *customers or to commercial customers with maximum*  
21 *peak demands not in excess of 20 kilowatts. The*  
22 *commission shall review the discounts provided under*  
23 *this section by each electrical corporation and report to*  
24 *the Legislature not later than January 15, 2003. The*  
25 *review shall include an assessment of the effectiveness of*  
26 *the discount levels and the rate impacts to customers of*  
27 *the discounts. The commission shall include in its report*  
28 *a recommendation of any changes that should be made*  
29 *to the discount levels in light of other commission*  
30 *approved discount programs.*

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

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

39 (2) For purposes of this section, a megawatt of load  
40 shall be calculated in accordance with the methodology

1 established by the California Energy Resource  
2 Conservation and Development Commission in its  
3 Docket No. 96-IRR-1890.

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

9 (d) *If an electrical corporation seeks to apply the*  
10 *discounts permitted under subdivision (a) within the*  
11 *geographic area described in subdivision (b) of Section*  
12 *9610, the electrical corporation's resulting rate for*  
13 *distribution service may not be less than 120 percent of*  
14 *the electrical corporation's marginal distribution cost of*  
15 *serving that customer.*

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

18 9607. (a) *The intent of this section is to avoid*  
19 *cost-shifting to customers of an electrical corporation*  
20 *resulting from the transfer of distribution services from*  
21 *an electrical corporation to an irrigation district.*

22 (b) Except as otherwise provided in this section and  
23 Section 9608, and notwithstanding any other provision of  
24 law, an irrigation district *that offered electric service to*  
25 *retail customers as of January 1, 1999, may not, without*  
26 ~~*the approval of the commission,*~~ construct, lease, acquire,  
27 install, or operate facilities for the distribution or  
28 transmission of electricity to retail customers located in  
29 the service territory of an electrical corporation  
30 providing electric distribution services. ~~*The commission*~~  
31 ~~*may,*~~ *unless the district has first applied for and received*  
32 *the approval of the commission and implements its*  
33 *service consistent with the commission's order. The*  
34 *commission shall find that service to be in the public*  
35 *interest and shall approve the request of a district to*  
36 *provide distribution or transmission of electricity to retail*  
37 *customers located in the service territory of an electrical*  
38 *corporation providing electric distribution service if,*  
39 *after notice and hearing, the commission first determines*  
40 *all of the following:*

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

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

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

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

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

~~(6)~~

*(2) If the area the district is proposing to serve is either of the following:*

*(A) Is within the district's boundaries but less than the entire district, the area to be served includes a percentage of residential customers and small customers, based on load, comparable to the percentage of residential and small customers in the district, based on load.*

*(B) Includes territory outside the district's boundaries, in which case the territory outside the district's boundaries must include a percentage of residential customers and small customers, based on load, comparable to the percentage of residential and small customers in the county or counties where service is to be provided, based on load.*

1 (3) Service by the district will be consistent with the  
2 intent of the state to avoid economic waste caused by  
3 duplication of facilities as set forth in Section 8101.

4 (4) Service by the district will include reasonable  
5 mitigation of any adverse effects on the reliability of an  
6 existing service by the electrical corporation.

7 (5) The district has established, funded, and is carrying  
8 out public purpose and low-income programs in  
9 accordance with Section 385, comparable to those  
10 provided by the current electric retail service provider.

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

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

21 ~~(8)~~

22 (7) Service by the district is in the public interest.

23 (b)

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

31 ~~(e)~~

32 (d) The commission shall have jurisdiction to resolve  
33 and adjudicate complaint cases brought against an  
34 irrigation district that offered electric service to retail  
35 customers as of January 1, 1999, by an interested party  
36 where the complaint concerns service outside the service  
37 territory of the district. where the complaint concerns  
38 retail electric service outside the boundaries of the  
39 district and within the service territory of an electrical  
40 corporation. Nothing in this section grants the

1 *commission jurisdiction to adjudicate complaint cases*  
2 *involving retail electric service by an irrigation district*  
3 *inside its boundaries or inside an irrigation district's*  
4 *exclusive service territory.*

5 ~~(d) No~~

6 *(e) Any project involving electric transmission or*  
7 *distribution facilities may be to be constructed or*  
8 *installed by an irrigation district to serve retail customers*  
9 *located outside the service territory of the district*  
10 *without the prior approval after review under the*  
11 *California Environmental Quality Act, (Division 13*  
12 *(commencing with Section 21000) of the Public*  
13 *Resources Code) by the California Public Utilities*  
14 *Commission.*

15 ~~(e) In order to avoid increasing costs to customers of~~  
16 ~~electrical corporations, if a retail customer is electrically~~  
17 ~~connected to an electrical corporation, an irrigation~~  
18 ~~district may not electrically connect the customer unless~~  
19 ~~the irrigation district first pays the electrical corporation~~  
20 ~~a charge established by the commission to reimburse the~~  
21 ~~electrical corporation for the fair and reasonable costs~~  
22 ~~incurred by the electrical corporation to provide electric~~  
23 ~~transmission and distribution service to the retail~~  
24 ~~customer. If the commission establishes an ongoing~~  
25 ~~charge, the irrigation district shall agree in writing to pay~~  
26 ~~the ongoing charge. If the commission has not established~~  
27 ~~either a charge or a formula for calculation of a charge as~~  
28 ~~of the date an irrigation district has designated to~~  
29 ~~electrically connect a retail customer, the irrigation~~  
30 ~~district shall agree in writing to pay the charge for that~~  
31 ~~retail customer before electrically connecting the~~  
32 ~~customer. As soon as practicable, the commission shall~~  
33 ~~establish the charge or formula for the calculation of the~~  
34 ~~charge described in this subdivision. In establishing the~~  
35 ~~charge or formula, the commission shall do so in a way~~  
36 ~~that provides interested parties with predictability as to~~  
37 ~~the level of the charge. in the service territory of an~~  
38 ~~electrical corporation providing electric distribution~~  
39 ~~services shall comply with the California Environmental~~  
40 ~~Quality Act, (Division 13 (commencing with Section~~



1 21000)) of the Public Resources Code. The county in  
2 which the construction or installation is to occur shall act  
3 as the lead agency. If a project involves the construction  
4 or installation of electric transmission or distribution  
5 facilities in more than one county, the county where the  
6 majority of the construction is anticipated to occur shall  
7 act as the lead agency.

8 (f) An irrigation district may not offer service to  
9 customers outside of its ~~service—territory~~ district  
10 boundaries before offering service to all customers within  
11 its ~~service territory~~ district boundaries.

12 (g) This section does not apply to electric distribution  
13 service provided by Modesto Irrigation District to those  
14 customers or within those areas described in subdivisions  
15 (a), (b), and (c) of Section 9610.

16 (h) The provisions of this section shall not apply to (1)  
17 a cumulative 90 megawatts of load served by the Merced  
18 Irrigation District that is located within the boundaries of  
19 Merced Irrigation District, as those boundaries existed on  
20 December 20, 1995, together with the territory of Castle  
21 Air Force Base which was located outside the District on  
22 that date, or (2) electric load served by the District which  
23 was not previously served by an electric corporation that  
24 is located within the boundaries of Merced Irrigation  
25 District, as those boundaries existed on December 20,  
26 1995, together with the territory of Castle Air Force Base  
27 which was located outside the District on that date.

28 ~~(h)~~

29 (i) For purposes of this section, a megawatt of load  
30 shall be calculated in accordance with the methodology  
31 established by the California Energy Resource  
32 Conservation and Development Commission in its  
33 Docket No. 96-IRR-1890, but the 90 megawatts shall not  
34 include electrical usage by customers that move to the  
35 areas described in paragraph (1) after December 31,  
36 2000.

37 ~~(i)~~

38 (j) Subdivision (a) of this section shall not apply to the  
39 construction, modification, lease, acquisition, installation,  
40 or operation of facilities for the distribution or



1 transmission of electricity to customers electrically  
2 connected to a district as of December 31, 2000, or to  
3 other customers who subsequently locate at the same  
4 premises.

5 *(k) In recognition of contractual arrangements and*  
6 *settlements existing as of June 1, 2000, this section does not*  
7 *apply to the acquisition or operation of the electric*  
8 *distribution facilities that are the subject of the*  
9 *Settlement Agreement dated May 1, 2000, between*  
10 *Pacific Gas and Electric Company and the San Joaquin*  
11 *Irrigation District.*

12 *(l) For purposes of this section, retail customers do not*  
13 *include an irrigation district's own electric load being*  
14 *served of retail by an electrical corporation.*

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

17 9608. The provisions of Sections 454.1 and 9607 of this  
18 code and Section 56133 of the Government Code do not  
19 apply to an irrigation district with respect to an area to be  
20 served by the irrigation district, if all of the following  
21 occur:

22 (a) The irrigation district acquires substantially all the  
23 electric distribution facilities and related subtransmission  
24 facilities of any electrical corporation that has an  
25 obligation to provide electric distribution service within  
26 the area to be served by the irrigation district.

27 (b) The commission approves a service area  
28 agreement between the irrigation district and the  
29 electrical corporation pursuant to Sections 8101 to 8108,  
30 inclusive, which service area agreement provides that the  
31 electrical corporation may not provide electric  
32 distribution service in the area to be served by the  
33 irrigation district and that the irrigation district may not  
34 provide electric distribution service in the remainder of  
35 the electrical corporation's service territory.

36 (c) The commission relieves the electrical corporation  
37 of its obligation to serve within the area to be served by  
38 the irrigation district.

39 ~~SEC. 4. Section 9609 is added to the Public Utilities~~  
40 ~~Code, to read:~~

1     ~~9609. Notwithstanding any other provision of law, an~~  
2     ~~irrigation district may not, without the electrical~~  
3     ~~corporation's agreement, exercise the right of eminent~~  
4     ~~domain to take electric facilities or real property~~  
5     ~~necessary to the operation of those facilities owned by an~~  
6     ~~electrical corporation if the irrigation district intends to~~  
7     ~~put the facilities or real property to the same or similar~~  
8     ~~use. This section shall not apply to condemnation of~~  
9     ~~easements required by an irrigation district reasonably~~  
10    ~~necessary to cross an electrical corporation's distribution~~  
11    ~~or transmission system and which would not interfere~~  
12    ~~with the operation and maintenance of the electrical~~  
13    ~~corporation's system.~~

14    ~~SEC. 5.—~~

15    ~~SEC. 4. Section 9610 is added to the Public Utilities~~  
16    ~~Code, to read:~~

17    ~~9610. Commencing on January 1, 2001, and~~  
18    ~~continuing through December 31, 2025, all of the~~  
19    ~~following shall apply:~~

20    ~~(a) No electrical corporation shall provide electric~~  
21    ~~transmission or distribution service to retail customers in~~  
22    ~~either of the following areas:~~

23    ~~(1) The Modesto Irrigation District electric service~~  
24    ~~area as defined in the August 15, 1940, Purchase of~~  
25    ~~Properties agreement between Modesto Irrigation~~  
26    ~~District and Pacific Gas and Electric Company.~~

27    ~~(2) The Mountain House Community Services District~~  
28    ~~as defined in the master specific plan adopted by the~~  
29    ~~board of supervisors of the County of San Joaquin on~~  
30    ~~November 10, 1994.~~

31    ~~(b) (1) Within the purchase zone as described in~~  
32    ~~Exhibit "B" of The Asset Sale Agreement By and~~  
33    ~~Between Pacific Gas and Electric Company and Modesto~~  
34    ~~Irrigation District Dated July 23, 1997, contained in Public~~  
35    ~~Utilities Commission Application Number 97-07-030,~~  
36    ~~Pacific Gas and Electric Company and Modesto Irrigation~~  
37    ~~District may each provide electric transmission and~~  
38    ~~distribution service to retail customers. The area~~  
39    ~~described in this subdivision shall be considered to be~~

1 within both Pacific Gas and Electric Company's and  
2 Modesto Irrigation District's electric service area.

3 (2) The Legislature recognizes that electrical  
4 corporations and irrigation districts may each construct  
5 infrastructure, and that the infrastructure may, in some  
6 cases, be duplicative. In those cases, the Legislature  
7 encourages irrigation districts and electrical corporations  
8 to enter into agreements pursuant to Sections 8101 to  
9 8108, inclusive, where those agreements further the  
10 interests of the state as set forth in Section 8101.

11 (c) Modesto Irrigation District may provide up to 8  
12 megawatts of peak sales to Contra Costa Water District  
13 for delivery to its Old River Intake Facility and Rock  
14 Slough Pumping Plant.

15 (d) Except as provided in subdivisions (a), (b), and  
16 (c), Modesto Irrigation District may not provide electric  
17 transmission or distribution service to retail customers in  
18 the territory of Pacific Gas and Electric Company.

19 SEC. 5. Section 9611 is added to the Public Utilities  
20 Code, to read:

21 9611. Chapter 3 (commencing with Section 56100) of  
22 Part 1 of Division 3 of the Government Code does not  
23 apply to electric service provided by the Modesto  
24 Irrigation District within the geographic areas described  
25 in subdivisions (a) and (b) of Section 9610.

26 SEC. 6. Section 9612 is added to the Public Utilities  
27 Code, to read:

28 9612. The Legislature finds and declares that the  
29 policies stated in Section 8101 to 8108, inclusive, would be  
30 furthered and that it would be in the best interests of the  
31 state, and not incompatible with the public interest, if an  
32 agreement embodying the provisions of Section 9610  
33 were to be approved by the commission. The Legislature  
34 hereby encourages the Pacific Gas and Electric Company  
35 and Modesto Irrigation District to agree on the terms of  
36 an agreement embodying the provisions of Section 9610,  
37 and encourages the commission to approve that  
38 agreement to the extent that the agreement is consistent  
39 with the policies of this state.

1     *SEC. 7.* Section 20804 of the Water Code is amended  
2 to read:

3     20804. At the hearing the board of supervisors shall  
4 determine by resolution whether or not the petition and  
5 notice comply with Chapter 1 of this part.  
6 Notwithstanding Section 22116 or any other provision of  
7 law, the board shall also determine whether the petition  
8 has been presented and the district is proposed to be  
9 formed for the primary purpose of providing irrigation  
10 services.

11     ~~*SEC. 6.*~~

12     *SEC. 8.* Section 20805 of the Water Code is amended  
13 to read:

14     20805. (a) If the board of supervisors determines that  
15 any of the requirements for the formation petition or  
16 notice were not complied with, the petition shall be  
17 dismissed without prejudice to the right of the proper  
18 number of persons to present a new petition covering the  
19 same matter or to present the same petition with  
20 additional signatures if additional signatures are  
21 necessary to comply with the requirements of Chapter 1  
22 of this part.

23     (b) If the board of supervisors determines that the  
24 district is being formed for a primary purpose other than  
25 providing irrigation services, the petition shall be  
26 dismissed without prejudice to the right of the proper  
27 number of persons to present a new petition for the  
28 primary purpose of providing irrigation services.

