

Assembly Bill No. 2638

CHAPTER 1042

An act to add Sections 454.1, 9607, 9608, 9610, 9611, and 9612 to the Public Utilities Code, and to amend Sections 20804 and 20805 of the Water Code, relating to services.

[Approved by Governor September 30, 2000. Filed
with Secretary of State September 30, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2638, 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 noncommodity rates if a customer receives a bona fide offer for electric 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 people of the State of California do enact as follows:

SECTION 1. Section 454.1 is added to the Public Utilities Code, to read:

454.1. (a) Except as provided in subdivision (b), if a customer with a maximum peak electrical demand in excess of 20 kilowatts located or planning to locate within the service territory of an electrical corporation receives a bona fide offer for electric service from an irrigation district at rates less than the electrical

corporation's tariffed rates, the electrical corporation may discount its noncommodity rates, but may not discount its noncommodity rates below its distribution marginal cost of serving that customer. For purposes of this subdivision, the costs of the electric commodity shall be excluded from both the irrigation district and electric corporation's rates. The electrical corporation may recover any difference between its tariffed and discounted service 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. Further, there shall be 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. The commission shall review the discounts provided under this section by each electrical corporation and report to the Legislature not later than January 15, 2003. The review shall include an assessment of the effectiveness of the discount levels and the rate impacts to customers of the discounts. The commission shall include in its report a recommendation of any changes that should be made to the discount levels in light of other commission approved discount programs.

(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).

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

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

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

(b) Except as otherwise provided in this section and Section 9608, and notwithstanding any other provision of law, an irrigation district that offered electric service to retail customers as of January 1, 1999, may not construct, lease, acquire, install, or operate facilities for the distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution services, unless the district has first applied for and received the approval of the commission and implements its service consistent with the commission's order. The commission shall find that service to be in the public interest and shall approve the request of a district to provide distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution service if, after notice and hearing, the commission determines 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.

(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.

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

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

(5) The district has established, funded, and is carrying out public purpose and low-income programs comparable to those provided by the current electric retail service provider.

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

(c) 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.

(d) The commission shall have jurisdiction to resolve and adjudicate complaint cases brought against an irrigation district that offered electric service to retail customers as of January 1, 1999, by an interested party where the complaint concerns retail electric service outside the boundaries of the district and within the service territory of an electrical corporation. Nothing in this section grants the commission jurisdiction to adjudicate complaint cases involving retail electric service by an irrigation district inside its boundaries or inside an irrigation district's exclusive service territory.

(e) Any project involving electric transmission or distribution facilities to 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 shall comply with the California Environmental Quality Act, (Division 13 (commencing with Section 21000)) of the Public Resources Code. The county in which the construction or installation is to occur shall act as the lead agency. If a project involves the construction or installation of electric transmission or distribution facilities in more than one county, the county where the majority of the construction is anticipated to occur shall act as the lead agency.

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

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

(h) 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.

(i) 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.

(j) 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.

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

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

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

9608. The provisions of Sections 454.1 and 9607 of this code and Section 56133 of the Government Code 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 facilities of any electrical corporation that has an obligation to provide electric distribution service within the area to be served by the irrigation district.

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

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

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

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

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

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

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

(b) (1) Within the purchase zone as described in Exhibit “B” of The Asset Sale Agreement By and Between Pacific Gas and Electric Company and Modesto Irrigation District Dated July 23, 1997, contained in Public Utilities Commission Application Number 97-07-030, Pacific Gas and Electric Company and Modesto Irrigation District may each provide electric transmission and distribution service to retail customers. The area described in this subdivision shall be considered to be within both Pacific Gas and Electric Company’s and Modesto Irrigation District’s electric service area.

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

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

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

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

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

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

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

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

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

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

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

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

