

Introduced by Senator Perata
(Coauthor: Assembly Member Levine)

February 21, 2006

An act to amend Section 454.5 of, and to add Chapter 3 (commencing with Section 8340) to Division 4.1 of, the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1368, as introduced, Perata. Electricity: emissions of greenhouse gases.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations. Existing law requires the PUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of electricity generated by eligible renewable energy resources.

Under existing law the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned

electric utility to report certain information relative to renewable energy resources to its customers.

Existing law defines an “electric service provider” as an entity that offers electrical service to customers within the service territory of an electrical corporation, excluding electrical corporations, local publicly owned electric utilities, and certain cogenerators. Provisions of the existing Public Utilities Act restructuring the electrical services industry require that electric service providers register with the PUC and require the PUC to authorize and facilitate direct transactions between electric service providers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community aggregators, to acquire service through a direct transaction, until the Department of Water Resources no longer supplies electricity under that law.

Existing law defines a “community choice aggregator” and authorizes customers to aggregate their electric loads as members of their local community with community choice aggregators.

This bill would prohibit any load serving entity, including electrical corporations, community choice aggregators, electric service providers, and local publicly owned electric utilities, from entering into, and the PUC from approving, a long-term financial commitment, as defined, for baseload generation, as defined, unless that baseload generation complies with a greenhouse gases emission performance standard established by the Energy Commission, by regulation, in consultation with the PUC and the State Air Resources Board. The bill would require that the greenhouse gases emission performance standard not exceed the per kilowatthour emissions of greenhouse gases of a combined-cycle natural gas powerplant. The bill would authorize the PUC to adopt rules to enforce these requirements for electrical corporations, electric service providers, and community choice aggregators. The bill would require that a procurement plan approved by the PUC for an electrical corporation be consistent with the greenhouse gases emission performance standard. The bill would authorize the Energy Commission to adopt regulations for the enforcement of the greenhouse gases emission performance standard with respect to a local publicly owned electric utility.

(2) Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because certain of the provisions of this bill are within the act and require action by the commission to implement its requirements, a

violation of these provisions would impose a state-mandated local program by creating a new crime.

(3) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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. The Legislature finds and declares all of the
2 following:

3 (a) Global warming will have serious adverse consequences on
4 the economy, health, and environment of California.

5 (b) The Governor, in Executive Order S-3-05, has called for
6 the reduction of California’s emission of greenhouse gases to
7 1990 levels by 2020.

8 (c) Over the past three decades, the state has taken significant
9 strides towards implementing an environmentally and
10 economically sound energy policy through reliance on energy
11 efficiency, conservation, and renewable energy resources in order
12 to promote a sustainable energy future that ensures an adequate
13 and reliable energy supply at reasonable and stable prices.

14 (d) To the extent energy efficiency and renewable resources
15 are unable to satisfy increasing energy and capacity needs, the
16 Energy Action Plan II establishes a policy that the state will rely
17 on clean and efficient fossil fuel fired generation and will
18 “encourage the development of cost-effective, highly-efficient,
19 and environmentally-sound supply resources to provide
20 reliability and consistency with the State’s energy priorities.”

21 (e) California’s investor-owned electric utilities currently have
22 long-term procurement plans that include proposals for making
23 new long-term financial commitments to electrical generating
24 resources over the next decade, which will generate electricity
25 while producing emissions of greenhouse gases for the next 30
26 years or longer.

1 (f) The Public Utilities Commission (PUC) and State Energy
2 Resources Conservation and Development Commission (Energy
3 Commission) both have concluded, and the Legislature finds,
4 that federal regulation of emissions of greenhouse gases is likely
5 during this decisionmaking timeframe.

6 (g) It is vital to ensure all electricity load serving entities
7 internalize the significant and underrecognized cost of emissions
8 recognized by the PUC with respect to the investor-owned
9 electric utilities, and to reduce California's exposure to costs
10 associated with future federal regulation of these emissions.

11 (h) The establishment of a policy to reduce emissions of
12 greenhouse gases, including an emissions performance standard
13 for all procurement of electricity by load serving entities, is a
14 logical and necessary step to meet the goals of the Energy Action
15 Plan II and the Governor's goals for reduction of emissions of
16 greenhouse gases.

17 (i) A greenhouse gases emission performance standard for new
18 long-term financial commitments to electrical generating
19 resources will reduce potential financial risk to California
20 consumers for future pollution-control costs.

21 (j) A greenhouse gases emission performance standard for new
22 long-term financial commitments to electric generating resources
23 will reduce potential exposure of California consumers to future
24 reliability problems in electricity supplies.

25 (k) In order to have any meaningful impact on climate change,
26 the Governor's goals for reducing emissions of greenhouse gases
27 must be applied to the state's electricity consumption, not just the
28 state's electricity production.

29 (l) The 2005 Integrated Energy Policy Report adopted by the
30 Energy Commission recommends that any greenhouse gases
31 emission performance standard for utility procurement be set no
32 lower than levels achieved by a new combined-cycle natural gas
33 turbine.

34 (m) As the largest electricity consumer in the region,
35 California has an obligation to provide clear guidance on
36 performance standards for procurement of electricity by load
37 serving entities.

38 SEC. 2. Section 454.5 of the Public Utilities Code is amended
39 to read:

1 454.5. (a) The commission shall specify the allocation of
2 electricity, including quantity, characteristics, and duration of
3 electricity delivery, that the Department of Water Resources shall
4 provide under its power purchase agreements to the customers of
5 each electrical corporation, which shall be reflected in the
6 electrical corporation's proposed procurement plan. Each
7 electrical corporation shall file a proposed procurement plan with
8 the commission not later than 60 days after the commission
9 specifies the allocation of electricity. The proposed procurement
10 plan shall specify the date that the electrical corporation intends
11 to resume procurement of electricity for its retail customers,
12 consistent with its obligation to serve. After the commission's
13 adoption of a procurement plan, the commission shall allow not
14 less than 60 days before the electrical corporation resumes
15 procurement pursuant to this section.

16 (b) An electrical corporation's proposed procurement plan
17 shall include, but not be limited to, all of the following:

18 (1) An assessment of the price risk associated with the
19 electrical corporation's portfolio, including any utility-retained
20 generation, existing power purchase and exchange contracts, and
21 proposed contracts or purchases under which an electrical
22 corporation will procure electricity, electricity demand
23 reductions, and electricity-related products and the remaining
24 open position to be served by spot market transactions.

25 (2) A definition of each electricity product, electricity-related
26 product, and procurement related financial product, including
27 support and justification for the product type and amount to be
28 procured under the plan.

29 (3) The duration of the plan.

30 (4) The duration, timing, and range of quantities of each
31 product to be procured.

32 (5) A competitive procurement process under which the
33 electrical corporation may request bids for procurement-related
34 services, including the format and criteria of that procurement
35 process.

36 (6) An incentive mechanism, if any incentive mechanism is
37 proposed, including the type of transactions to be covered by that
38 mechanism, their respective procurement benchmarks, and other
39 parameters needed to determine the sharing of risks and benefits.

1 (7) The upfront standards and criteria by which the
2 acceptability and eligibility for rate recovery of a proposed
3 procurement transaction will be known by the electrical
4 corporation prior to execution of the transaction. This shall
5 include an expedited approval process for the commission's
6 review of proposed contracts and subsequent approval or
7 rejection thereof. The electrical corporation shall propose
8 alternative procurement choices in the event a contract is
9 rejected.

10 (8) Procedures for updating the procurement plan.

11 (9) A showing that the procurement plan will achieve the
12 following:

13 (A) The electrical corporation will, in order to fulfill its unmet
14 resource needs and in furtherance of Section 701.3, until a 20
15 percent renewable resources portfolio is achieved, procure
16 renewable energy resources with the goal of ensuring that at least
17 an additional 1 percent per year of the electricity sold by the
18 electrical corporation is generated from renewable energy
19 resources, provided sufficient funds are made available pursuant
20 to Section 399.6, to cover the above-market costs for new
21 renewable energy resources.

22 (B) The electrical corporation will create or maintain a
23 diversified procurement portfolio consisting of both short-term
24 and long-term electricity and electricity-related and demand
25 reductions products.

26 (C) The electrical corporation will first meet its unmet
27 resource needs through all available energy efficiency and
28 demand reduction resources that are cost effective, reliable, and
29 feasible.

30 (10) The electrical corporation's risk management policy,
31 strategy, and practices, including specific measures of price
32 stability.

33 (11) A plan to achieve appropriate increases in diversity of
34 ownership and diversity of fuel supply of nonutility electrical
35 generation.

36 (12) A mechanism for recovery of reasonable administrative
37 costs related to procurement in the generation component of
38 rates.

39 (c) The commission shall review and accept, modify, or reject
40 each electrical corporation's procurement plan. The

1 commission's review shall consider each electrical corporation's
2 individual procurement situation, and shall give strong
3 consideration to that situation in determining which one or more
4 of the features set forth in this subdivision shall apply to that
5 electrical corporation. A procurement plan approved by the
6 commission shall contain one or more of the following features,
7 provided that the commission may not approve a feature or
8 mechanism for an electrical corporation if it finds that the feature
9 or mechanism would impair the restoration of an electrical
10 corporation's creditworthiness or would lead to a deterioration of
11 an electrical corporation's creditworthiness:

12 (1) A competitive procurement process under which the
13 electrical corporation may request bids for procurement-related
14 services. The commission shall specify the format of that
15 procurement process, as well as criteria to ensure that the auction
16 process is open and adequately subscribed. Any purchases made
17 in compliance with the commission-authorized process shall be
18 recovered in the generation component of rates.

19 (2) An incentive mechanism that establishes a procurement
20 benchmark or benchmarks and authorizes the electrical
21 corporation to procure from the market, subject to comparing the
22 electrical corporation's performance to the
23 commission-authorized benchmark or benchmarks. The incentive
24 mechanism shall be clear, achievable, and contain quantifiable
25 objectives and standards. The incentive mechanism shall contain
26 balanced risk and reward incentives that limit the risk and reward
27 of an electrical corporation.

28 (3) Upfront achievable standards and criteria by which the
29 acceptability and eligibility for rate recovery of a proposed
30 procurement transaction will be known by the electrical
31 corporation prior to the execution of the bilateral contract for the
32 transaction. The commission shall provide for expedited review
33 and either approve or reject the individual contracts submitted by
34 the electrical corporation to ensure compliance with its
35 procurement plan. To the extent the commission rejects a
36 proposed contract pursuant to this criteria, the commission shall
37 designate alternative procurement choices obtained in the
38 procurement plan that will be recoverable for ratemaking
39 purposes.

1 (d) A procurement plan approved by the commission shall
2 accomplish each of the following objectives:

3 (1) Enable the electrical corporation to fulfill its obligation to
4 serve its customers at just and reasonable rates.

5 (2) Eliminate the need for after-the-fact reasonableness
6 reviews of an electrical corporation's actions in compliance with
7 an approved procurement plan, including resulting electricity
8 procurement contracts, practices, and related expenses. However,
9 the commission may establish a regulatory process to verify and
10 assure that each contract was administered in accordance with the
11 terms of the contract, and contract disputes which may arise are
12 reasonably resolved.

13 (3) Ensure timely recovery of prospective procurement costs
14 incurred pursuant to an approved procurement plan. The
15 commission shall establish rates based on forecasts of
16 procurement costs adopted by the commission, actual
17 procurement costs incurred, or combination thereof, as
18 determined by the commission. The commission shall establish
19 power procurement balancing accounts to track the differences
20 between recorded revenues and costs incurred pursuant to an
21 approved procurement plan. The commission shall review the
22 power procurement balancing accounts, not less than
23 semiannually, and shall adjust rates or order refunds, as
24 necessary, to promptly amortize a balancing account, according
25 to a schedule determined by the commission. Until January 1,
26 2006, the commission shall ensure that any overcollection or
27 undercollection in the power procurement balancing account
28 does not exceed 5 percent of the electrical corporation's actual
29 recorded generation revenues for the prior calendar year
30 excluding revenues collected for the Department of Water
31 Resources. The commission shall determine the schedule for
32 amortizing the overcollection or undercollection in the balancing
33 account to ensure that the 5 percent threshold is not exceeded.
34 After January 1, 2006, this adjustment shall occur when deemed
35 appropriate by the commission consistent with the objectives of
36 this section.

37 (4) Moderate the price risk associated with serving its retail
38 customers, including the price risk embedded in its long-term
39 supply contracts, by authorizing an electrical corporation to enter
40 into financial and other electricity-related product contracts.

1 (5) Provide for just and reasonable rates, with an appropriate
2 balancing of price stability and price level in the electrical
3 corporation's procurement plan.

4 (6) *Be consistent with the requirements of Chapter 3*
5 *(commencing with Section 8340) of Division 4.1.*

6 (e) The commission shall provide for the periodic review and
7 prospective modification of an electrical corporation's
8 procurement plan.

9 (f) The commission may engage an independent consultant or
10 advisory service to evaluate risk management and strategy. The
11 reasonable costs of any consultant or advisory service is a
12 reimbursable expense and eligible for funding pursuant to
13 Section 631.

14 (g) The commission shall adopt appropriate procedures to
15 ensure the confidentiality of any market sensitive information
16 submitted in an electrical corporation's proposed procurement
17 plan or resulting from or related to its approved procurement
18 plan, including, but not limited to, proposed or executed power
19 purchase agreements, data request responses, or consultant
20 reports, or any combination, provided that the Office of
21 Ratepayer Advocates and other consumer groups that are
22 nonmarket participants shall be provided access to this
23 information under confidentiality procedures authorized by the
24 commission.

25 (h) Nothing in this section alters, modifies, or amends the
26 commission's oversight of affiliate transactions under its rules
27 and decisions or the commission's existing authority to
28 investigate and penalize an electrical corporation's alleged
29 fraudulent activities, or to disallow costs incurred as a result of
30 gross incompetence, fraud, abuse, or similar grounds. Nothing in
31 this section expands, modifies, or limits the State Energy
32 Resources Conservation and Development Commission's
33 existing authority and responsibilities as set forth in Sections
34 25216, 25216.5, and 25323 of the Public Resources Code.

35 (i) An electrical corporation that serves less than 500,000
36 electric retail customers within the state may file with the
37 commission a request for exemption from this section, which the
38 commission shall grant upon a showing of good cause.

39 (j) (1) Prior to its approval pursuant to Section 851 of any
40 divestiture of generation assets owned by an electrical

1 corporation on or after the date of enactment of the act adding
2 this section, the commission shall determine the impact of the
3 proposed divestiture on the electrical corporation’s procurement
4 rates and shall approve a divestiture only to the extent it finds,
5 taking into account the effect of the divestiture on procurement
6 rates, that the divestiture is in the public interest and will result in
7 net ratepayer benefits.

8 (2) Any electrical corporation’s procurement necessitated as a
9 result of the divestiture of generation assets on or after the
10 effective date of the act adding this subdivision shall be subject
11 to the mechanisms and procedures set forth in this section only if
12 its actual cost is less than the recent historical cost of the divested
13 generation assets.

14 (3) Notwithstanding paragraph (2), the commission may deem
15 proposed procurement eligible to use the procedures in this
16 section upon its approval of asset divestiture pursuant to Section
17 851.

18 SEC. 3. Chapter 3 (commencing with Section 8340) is added
19 to Division 4.1 of the Public Utilities Code, to read:

20

21 CHAPTER 3. GREENHOUSE GASES EMISSION PERFORMANCE
22 STANDARD FOR BASELOAD ELECTRICAL GENERATING RESOURCES

23

24 8340. For purposes of this chapter, the following terms have
25 the following meanings:

26 (a) “Baseload generation” means electricity generation from a
27 powerplant that is designed to provide electricity for least 60
28 percent of the hours in a year.

29 (b) “Community choice aggregator” means a “community
30 choice aggregator” as defined in Section 331.1.

31 (c) “Electrical corporation” means an “electrical corporation”
32 as defined in Section 218.

33 (d) “Electric service provider” means an “electric service
34 provider” as defined in Section 218.3.

35 (e) “Energy Commission” means the State Energy Resources
36 Conservation and Development Commission.

37 (f) “Greenhouse gases” means those gases listed in subdivision
38 (h) of Section 42801.1 of the Health and Safety Code.

39 (g) “Load serving entity” includes every electrical corporation,
40 community choice aggregator, electric service provider, and local

1 publicly owned electric utility serving end-use customers in
2 California.

3 (h) “Local publicly owned electric utility” means a “local
4 publicly owned electric utility as defined in Section 9604.

5 (i) “Long-term financial commitment” means either an
6 ownership investment in a powerplant or a contract for
7 procurement of baseload electricity with a term of three or more
8 years.

9 8341. (a) No load serving entity may enter into a long-term
10 financial commitment for baseload generation unless that
11 baseload generation complies with the greenhouse gases
12 emission performance standard established by the Energy
13 Commission, as required in subdivision (d).

14 (b) (1) The commission may not approve a long-term
15 financial commitment for baseload generation for an electrical
16 corporation unless that baseload generation complies with the
17 greenhouse gases performance standard established by the
18 Energy Commission, as required in subdivision (d).

19 (2) The commission may adopt rules to enforce the
20 requirements of this section, for electrical corporations, electric
21 service providers, and community choice aggregators.

22 (3) The commission may, in order to enforce the requirements
23 of this section, review any long-term financial commitment
24 proposed to be entered into by an electric service provider or a
25 community choice aggregator.

26 (c) The Energy Commission may adopt regulations for the
27 enforcement of this chapter with respect to a local publicly
28 owned electric utility.

29 (d) (1) The Energy Commission, in consultation with the
30 commission and the State Air Resources Board, shall establish a
31 greenhouse gases emission performance standard for baseload
32 generation. The greenhouse gases emission performance standard
33 shall be adopted by regulation pursuant to the Administrative
34 Procedure Act (Chapter 3.5 (commencing with Section 11340) of
35 Part 1 of Division 3 of Title 2 of the Government Code).

36 (2) The Energy Commission shall base the greenhouse gases
37 emission performance standard on the anticipated life-cycle
38 emissions of greenhouse gases from the baseload generation. In
39 adopting the greenhouse gases emission performance standard,

1 the Energy Commission shall consider the effects of the standard
2 on system reliability and overall costs to electricity customers.

3 (3) The greenhouse gases emission performance standard shall
4 not exceed the per kilowatt-hour emissions of greenhouse gases of
5 a combined-cycle natural gas powerplant.

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district because, in that regard, this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the
11 penalty for a crime or infraction, within the meaning of Section
12 17556 of the Government Code, or changes the definition of a
13 crime within the meaning of Section 6 of Article XIII B of the
14 California Constitution.

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