

AMENDED IN ASSEMBLY AUGUST 22, 2008

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1536

Introduced by Senator Dutton Kehoe
(Coauthor: Assembly Member Levine)

February 22, 2008

~~An act to amend Sections 216, 330, 331, 335, 339, 340, 341.2, 341.5, 359, 361, 365, 367, 373, and 376, of, to repeal Sections 338 and 367.7 of, and to repeal Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to the electricity. An act to amend Sections 327, 382, 739.1, and 747 of, and to add Sections 739.9 and 745 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1536, as amended, ~~Dutton Kehoe~~. ~~Electrical restructuring: Power Exchange. Energy: rates.~~

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. ~~The existing restructuring of the electrical services industry provides for the creation of the Power Exchange as an incorporated public benefit nonprofit corporation and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.~~

This bill would prohibit the commission from requiring or permitting an electrical corporation to employ dynamic pricing for residential customers, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service pursuant to dynamic pricing. The bill would, beginning January 1,

2016, authorize the commission to authorize an electrical corporation to employ default dynamic pricing for residential customers, if the customer has the option of receiving service pursuant to a rate schedule that is not based upon dynamic pricing and if residential customers that exercise the option to not receive service pursuant to the dynamic pricing incur no additional costs as a result of the exercise of that option.

Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer.

This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes at or below 200% of the federal poverty guideline levels, and require that the cost of the program be recovered on an equal cents per kilowatthour or per therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.

Existing law relative to electrical restructuring requires that the electrical corporations and gas corporations that participate in the CARE program administer low-income energy efficiency and rate assistance programs described in specified statutes, and undertake certain actions in administering specified energy efficiency and weatherization programs.

This bill would require that electrical corporations, in administering the specified energy efficiency and weatherization programs, to target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage and develop programs that specifically target new construction by, and new and retrofit appliances for, nonprofit affordable housing providers. The bill would require the commission to require electrical corporations to deploy enhanced Low-Income Energy Efficiency (LIEE) programs, as defined, designed to reach as many eligible customers as practicable by December 31, 2014, particularly targeting those customers occupying apartment houses or similar multiunit residential structures, and would require the commission and electrical corporations and gas corporations to expend all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain

additional federal funding to support actions undertaken pursuant to this requirement.

Existing law relative to electrical restructuring requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers.

Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers.

Existing law enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department’s acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law provides that the department is entitled to recover certain expenses resulting from its purchases and sales of electricity and authorizes the commission to enter into an agreement with the department relative to cost recovery. That law prohibits the commission from increasing the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities, until the department has recovered the costs of electricity it procured for electrical corporation retail end use customers. That law also suspends the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the prohibition that the commission not increase the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities. The bill would authorize the commission, until January 1, 2019, to increase the rates charged residential customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not

more than 5% per year. This authorization would be subject to the limitation that rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90% of the system average rate, as defined. The bill would authorize the commission to increase the rates for participants in the CARE program, subject to certain limitations. The bill would authorize the commission to allow individual retail end-use customers currently taking service from an electric service provider, or eligible to take service from an electric service provider under rules adopted by the commission in existence on January 1, 2008, to acquire service for new accounts, as defined, from an electric service provider. The bill would suspend the right of retail end-use customers to acquire service through a direct transaction until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions.

This bill would incorporate additional changes in Section 80110 of the Water Code proposed by AB 3058, that would become operative only if AB 3058 and this bill are both chaptered and become effective on or before January 1, 2009, and this bill is chaptered last.

Existing law requires the president of the commission to annually report to the appropriate policy committees of the Legislature on the costs of programs and activities conducted by an electrical corporation or gas corporation that have more than a specified number of customers in California.

This bill would require the commission to prepare and submit to the Governor and the Legislature a written report annually before February 1 of each year.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

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.

~~This bill would repeal the provisions creating the Power Exchange and repeal certain provisions pertaining to the prescribed functions of the Power Exchange. The bill would make conforming changes to existing law by deleting certain references to the Power Exchange. The bill would state that it does not preclude a reorganized Power Exchange from winding up its operations pursuant to a plan in bankruptcy and pursuant to orders of the Federal Energy Regulatory Commission.~~

~~The existing definition of a “public utility” within the Public Utilities Act provides that ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission (FERC) as an exempt wholesale generator pursuant to a specified section of the Public Utility Holding Company Act of 1935 does not make a corporation or person a public utility solely due to the ownership or operation of the facility. The existing definition of an “exempt wholesale generator” defined the term by incorporating the definition from the Public Utility Holding Company Act of 1935. The federal Energy Policy Act of 2005 repealed the Public Utility Holding Company Act of 1935 and adopted the Public Utility Holding Company Act of 2005, which includes a definition for “exempt wholesale generator.” The definition of a “public utility” provides that ownership, control, operation, or management of an electric plant used for sales into the Power Exchange does not make a corporation or person a public utility solely because of that ownership, participation, or sale.~~

~~This bill would delete references to facilities certified by the FERC as “exempt wholesale generators” pursuant to the Public Utility Holding Company Act of 1935, and would instead reference the definition of that term in the Public Utility Holding Company Act of 2005. The bill would replace the provision in the definition of a “public utility” that provides that ownership, control, operation, or management of an electric plant used for sales into the Power Exchange does not make a corporation or person a public utility with a provision that ownership, control, operation, or management of an electric plant used for sales into a market established and operated by the Independent System Operator or any other wholesale electricity market does not make a corporation or person a public utility solely due to the ownership, participation, or sale.~~

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

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

1 SECTION 1. Section 327 of the Public Utilities Code is
2 amended to read:

3 327. (a) ~~The electric electrical corporations~~ and gas
4 corporations that participate in the California ~~Alternative~~ Alternate
5 Rates for Energy program, as established pursuant to Section 739.1,
6 shall administer low-income energy efficiency and rate assistance
7 programs described in Sections 382, 739.1, 739.2, and 2790,
8 subject to commission oversight. In administering the programs
9 described in Section 2790, ~~the electric electrical corporations~~ and
10 gas corporations, to the extent practical, shall do all of the
11 following:

12 (1) Continue to leverage funds collected to fund the program
13 described in subdivision (a) with funds available from state and
14 federal sources.

15 (2) Work with state and local agencies, community-based
16 organizations, and other entities to ensure efficient and effective
17 delivery of programs.

18 (3) Encourage local employment and job skill development.

19 (4) Maximize the participation of eligible participants.

20 (5) Work to reduce consumers electric and gas consumption,
21 and bills.

22 (6) *For electrical corporations only, target energy efficiency*
23 *and solar programs to upper-tier and multifamily customers in a*
24 *manner that will result in long-term permanent reductions in*
25 *electricity usage, and develop programs that specifically target*
26 *new construction by, and new and retrofit appliances for, nonprofit*
27 *affordable housing providers.*

28 (b) If the commission requires low-income energy efficiency
29 programs to be subject to competitive bidding, the electric and gas
30 corporation described in subdivision (a), as part of their bid
31 evaluation criteria, shall consider both cost-of-service criteria and
32 quality-of-service criteria. The bidding criteria, at a minimum,
33 shall recognize all of the following factors:

34 (1) The bidder's experience in delivering programs and services,
35 including, but not limited to, weatherization, appliance repair and
36 maintenance, energy education, outreach and enrollment services,
37 and bill payment assistance programs to targeted communities.

38 (2) The bidder's knowledge of the targeted communities.

- 1 (3) The bidder’s ability to reach targeted communities.
- 2 (4) The bidder’s ability to utilize and employ people from the
- 3 local area.
- 4 (5) The bidder’s general contractor’s license and evidence of
- 5 good standing with the Contractors’ State License Board.
- 6 (6) The bidder’s performance quality as verified by the funding
- 7 source.
- 8 (7) The bidder’s financial stability.
- 9 (8) The bidder’s ability to provide local job training.
- 10 (9) Other attributes that benefit local communities.

11 (c) Notwithstanding subdivision (b), the commission may
12 modify the bid criteria based upon public input from a variety of
13 sources, including representatives from low-income communities
14 and the program administrators identified in subdivision (b), in
15 order to ensure the effective and efficient delivery of high quality
16 low-income energy efficiency programs.

17 *SEC. 2. Section 382 of the Public Utilities Code is amended*
18 *to read:*

19 382. (a) Programs provided to low-income electricity
20 customers, including, but not limited to, targeted energy-efficiency
21 services and the California Alternate Rates for Energy program
22 shall be funded at not less than 1996 authorized levels based on
23 an assessment of customer need.

24 (b) In order to meet legitimate needs of electric and gas
25 customers who are unable to pay their electric and gas bills and
26 who satisfy eligibility criteria for assistance, recognizing that
27 electricity is a basic necessity, and that all residents of the state
28 should be able to afford essential electricity and gas supplies, the
29 commission shall ensure that low-income ratepayers are not
30 jeopardized or overburdened by monthly energy expenditures.
31 Energy expenditure may be reduced through the establishment of
32 different rates for low-income ratepayers, different levels of rate
33 assistance, and energy efficiency programs.

34 (c) Nothing in this section shall be construed to prohibit electric
35 and gas providers from offering any special rate or program for
36 low-income ratepayers that is not specifically required in this
37 section.

38 (d) The commission shall allocate funds necessary to meet the
39 low-income objectives in this section.

1 (e) Beginning in 2002, an assessment of the needs of low-income
2 electricity and gas ratepayers shall be conducted periodically by
3 the commission with the assistance of the Low-Income Oversight
4 Board. The assessment shall evaluate low-income program
5 implementation and the effectiveness of weatherization services
6 and energy efficiency measures in low-income households. The
7 assessment shall consider whether existing programs adequately
8 address low-income electricity and gas customers' energy
9 expenditures, hardship, language needs, and economic burdens.

10 (f) *The commission shall require electrical corporations to*
11 *deploy enhanced Low-Income Energy Efficiency (LIEE) programs*
12 *designed to reach as many eligible customers as practicable by*
13 *December 31, 2014, particularly targeting those customers*
14 *occupying apartment houses or similar multiunit residential*
15 *structures. The commission and electrical corporations and gas*
16 *corporations shall make all reasonable efforts to coordinate*
17 *ratepayer-funded programs with other energy conservation and*
18 *efficiency programs and to obtain additional federal funding to*
19 *support actions undertaken pursuant to this subdivision. For*
20 *purposes of this subdivision "enhanced programs" are programs*
21 *that provide long-term reductions in energy consumption at the*
22 *dwelling unit based on an audit or assessment of the dwelling unit,*
23 *and may include improved insulation, energy efficient appliances,*
24 *measures that utilize solar energy, and other cost-effective*
25 *improvements to the physical structure.*

26 *SEC. 3. Section 739.1 of the Public Utilities Code is amended*
27 *to read:*

28 739.1. (a) The commission shall establish a program of
29 assistance to low-income electric and gas customers *with annual*
30 *household incomes at or below 200 percent of the federal poverty*
31 *guideline levels, the cost of which shall not be borne solely by any*
32 ~~*single class of customer*~~ *be recovered on an equal cents per*
33 *kilowatthour or per therm basis from all classes of customers that*
34 *were subject to the surcharge that funded the program on January*
35 *1, 2008. The program shall be referred to as the California Alternate*
36 *Rates for Energy or CARE program. The commission shall ensure*
37 *that the level of discount for low-income electric and gas customers*
38 *correctly reflects the level of need.*

39 (b) The commission shall work with the public utility electrical
40 and gas corporations to establish penetration goals. The

1 commission shall authorize recovery of all administrative costs
2 associated with the implementation of the CARE program that the
3 commission determines to be reasonable, through a balancing
4 account mechanism. Administrative costs shall include, but are
5 not limited to, outreach, marketing, regulatory compliance,
6 certification and verification, billing, measurement and evaluation,
7 and capital improvements and upgrades to communications and
8 processing equipment.

9 (c) The commission shall examine methods to improve CARE
10 enrollment and participation. This examination shall include, but
11 need not be limited to, comparing information from CARE and
12 the Universal Lifeline Telephone Service (ULTS) to determine
13 the most effective means of utilizing that information to increase
14 CARE enrollment, automatic enrollment of ULTS customers who
15 are eligible for the CARE program, customer privacy issues, and
16 alternative mechanisms for outreach to potential enrollees. The
17 commission shall ensure that a customer consents prior to
18 enrollment. The commission shall consult with interested parties,
19 including ULTS providers, to develop the best methods of
20 informing ULTS customers about other available low-income
21 programs, as well as the best mechanism for telephone providers
22 to recover reasonable costs incurred pursuant to this section.

23 (d) (1) The commission shall improve the CARE application
24 process by cooperating with other entities and representatives of
25 California government, including the California Health and Human
26 Services Agency and the Secretary of California Health and Human
27 Services, to ensure that all gas and electric customers eligible for
28 public assistance programs in California that reside within the
29 service territory of an electrical corporation or gas corporation,
30 are enrolled in the CARE program. To the extent practicable, the
31 commission shall develop a CARE application process using the
32 existing ULTS application process as a model. The commission
33 shall work with public utility electrical and gas corporations and
34 the Low-Income Oversight Board established in Section 382.1 to
35 meet the low-income objectives in this section.

36 (2) The commission shall ensure that an electrical corporation
37 or gas corporation with a commission-approved program to provide
38 discounts based upon economic need in addition to the CARE
39 program, including a Family Electric Rate Assistance program,
40 utilize a single application form, to enable an applicant to

1 alternatively apply for any assistance program for which the
2 applicant may be eligible. It is the intent of the Legislature to allow
3 applicants under one program, that may not be eligible under that
4 program, but that may be eligible under an alternative assistance
5 program based upon economic need, to complete a single
6 application for any commission-approved assistance program
7 offered by the public utility.

8 (e) The commission's program of assistance to low-income
9 electric and gas customers shall, as soon as practicable, include
10 nonprofit group living facilities specified by the commission, if
11 the commission finds that the residents in these facilities
12 substantially meet the commission's low-income eligibility
13 requirements and there is a feasible process for certifying that the
14 assistance shall be used for the direct benefit, such as improved
15 quality of care or improved food service, of the low-income
16 residents in the facilities. The commission shall authorize utilities
17 to offer discounts to eligible facilities licensed or permitted by
18 appropriate state or local agencies, and to facilities, including
19 women's shelters, hospices, and homeless shelters, that may not
20 have a license or permit but provide other proof satisfactory to the
21 utility that they are eligible to participate in the program.

22 (f) It is the intent of the Legislature that the commission ensure
23 CARE program participants are afforded the lowest possible
24 electric and gas rates and, to the extent possible, are exempt from
25 additional surcharges attributable to the energy crisis of 2000–01.

26 (g) (1) *As used in this subdivision, the following terms have the*
27 *following meanings:*

28 (A) *“Baseline quantity” has the same meaning as defined in*
29 *Section 739.*

30 (B) *“California Solar Initiative” means the program providing*
31 *ratepayer funded incentives for eligible solar energy systems*
32 *adopted by the commission in Decision 05-12-044 and Decision*
33 *06-01-024, as modified by Article 1 (commencing with Section*
34 *2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with*
35 *Section 25780) of Division 15 of the Public Resources Code.*

36 (C) *“CalWORKs program” means the program established*
37 *pursuant to the California Work Opportunity and Responsibility*
38 *to Kids Act (Chapter 2 (commencing with Section 11200) of Part*
39 *3 of Division 9 the Welfare and Institutions Code).*

1 (D) “Public good charge” means the nonbypassable separate
2 rate component imposed pursuant to Article 7 (commencing with
3 Section 381) or Chapter 2.3 and the nonbypassable system benefits
4 charge imposed pursuant to the Reliable Electric Service
5 Investments Act (Article 15 (commencing with Section 399) of
6 Chapter 2.3).

7 (2) The commission may, subject to the limitation in paragraph
8 (4), increase the rates in effect for CARE program participants
9 for electricity usage up to 130 percent of baseline quantities by
10 the annual percentage increase in benefits under the CalWORKs
11 program as authorized by the Legislature for the fiscal year in
12 which the rate increase would take effect, but not to exceed 3
13 percent per year. The CARE rate for usage above 130 percent of
14 baseline quantities may be adjusted annually by up to 3 percent,
15 but not to exceed the annual percentage increase in benefits under
16 the CalWORKs program. This paragraph shall become inoperative
17 on January 1, 2019, unless a later enacted statute deletes or
18 extends that date.

19 (3) Beginning January 1, 2019, the commission may, subject to
20 the limitation in paragraph (4), establish rates for CARE program
21 participants pursuant to Sections 739, 739.1, and 739.9, subject
22 to the requirements of subdivision (b) of Section 382 that the
23 commission ensure that low-income ratepayers are not jeopardized
24 or overburdened by monthly energy expenditures.

25 (4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80
26 percent of the corresponding rates charged residential customers
27 not participating in the CARE program, excluding any Department
28 of Water Resources bond charge imposed pursuant to Division 27
29 (commencing with Section 80000) of the Water Code, the CARE
30 surcharge portion of the public goods charge, any charge imposed
31 pursuant to the California Solar Initiative, and any charge imposed
32 to fund any other program that exempts CARE participants from
33 paying the charge.

34 (5) Rates charged CARE program participants shall not have
35 more than three tiers. An electrical corporation that does not have
36 a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order
37 to moderate the impact on program participants whose usage
38 exceeds 130 percent of baseline quantities, shall be phased in to
39 80 percent of the corresponding rates charged residential
40 customers not participating in the CARE program, excluding any

1 Department of Water Resources bond charge imposed pursuant
2 to Division 27 (commencing with Section 80000) of the Water
3 Code, the CARE surcharge portion of the public goods charge,
4 any charge imposed pursuant to the California Solar Initiative,
5 and any other charge imposed to fund a program that exempts
6 CARE participants from paying the charge. Any additional
7 revenues collected by an electrical corporation resulting from the
8 adoption of a tier 3 CARE rate shall, until the utility's next periodic
9 general rate case review of cost allocation and rate design, be
10 tracked and credited to reduce rates of residential ratepayers not
11 participating in the CARE program with usage above 130 percent
12 of baseline quantities.

13 SEC. 4. Section 739.9 is added to the Public Utilities Code, to
14 read:

15 739.9. (a) The commission may, subject to the limitation in
16 subdivision (b), increase the rates charged residential customers
17 for electricity usage up to 130 percent of the baseline quantities,
18 as defined in Section 739, by the annual percentage change in the
19 Consumer Price Index from the prior year plus 1 percent, but not
20 less than 3 percent and not more than 5 percent per year. For
21 purposes of this subdivision, the annual percentage change in the
22 Consumer Price Index shall be calculated using the same formula
23 that was used to determine the annual Social Security Cost of
24 Living Adjustment on January 1, 2008. This subdivision shall
25 become inoperative on January 1, 2019, unless a later enacted
26 statute deletes or extends that date.

27 (b) The rates charged residential customers for electricity usage
28 up to the baseline quantities, including any customer charge
29 revenues, shall not exceed 90 percent of the system average rate
30 prior to January 1, 2019, and may not exceed 92.5 percent after
31 that date. For purposes of this subdivision, the system average
32 rate shall be determined by dividing the electrical corporation's
33 total revenue requirements for bundled service customers by the
34 adopted forecast of total bundled service sales.

35 (c) This section does not require the commission to raise any
36 residential rate or restrict, or otherwise limit, the authority of the
37 commission to reduce any residential rate in effect immediately
38 preceding January 1, 2009.

39 SEC. 5. Section 745 is added to the Public Utilities Code, to
40 read:

1 745. (a) *The commission shall not require or permit an*
2 *electrical corporation to employ mandatory dynamic pricing for*
3 *residential customers.*

4 (b) *The commission may authorize an electrical corporation to*
5 *offer residential customers the option of receiving service pursuant*
6 *to dynamic pricing.*

7 (c) *The commission may, beginning January 1, 2016, authorize*
8 *an electrical corporation to employ default dynamic pricing for*
9 *residential customers, if the customer has the option of receiving*
10 *service pursuant to a rate schedule that is not based upon dynamic*
11 *pricing. The commission shall only approve an electrical*
12 *corporation's default use of dynamic pricing if residential*
13 *customers that exercise the option to not receive service pursuant*
14 *to dynamic pricing incur no additional costs as a result of the*
15 *exercise of that option.*

16 SEC. 6. *Section 747 of the Public Utilities Code is amended*
17 *to read:*

18 747. (a) *It is the intent of the Legislature that the commission*
19 *reduce rates for electricity and natural gas to the lowest amount*
20 *possible.*

21 (b) ~~The president of the commission shall annually appear before~~
22 ~~the appropriate policy committees of the Senate and Assembly to~~
23 ~~report~~ *prepare a written report on the costs of programs and*
24 *activities conducted by each electrical corporation and gas*
25 *corporation that is subject to this section, including activities*
26 *conducted to comply with their duty to serve. The report shall be*
27 *completed on an annual basis before February 1 of each year, and*
28 *shall identify, clearly and concisely, all of the following:*

29 (1) *Each program mandated by statute and its annual cost to*
30 *ratepayers.*

31 (2) *Each program mandated by the commission and its annual*
32 *cost to ratepayers.*

33 (3) *Energy purchase contract costs and bond-related costs*
34 *incurred pursuant to Division 27 (commencing with Section 80000)*
35 *of the Water Code.*

36 (4) *All other aggregated categories of costs currently recovered*
37 *in retail rates as determined by the commission.*

38 (c) *As used in this section, the reporting requirements apply to*
39 *electrical corporations with at least 1,000,000 retail customers in*

1 California and gas corporations with at least 500,000 retail
2 customers in California.

3 *(d) The report required by subdivision (b) shall be submitted*
4 *to the Governor and the Legislature no later than February 1 of*
5 *each year.*

6 *(e) The commission shall post the report required by subdivision*
7 *(b) in a conspicuous area of its Internet Web site.*

8 *SEC. 7. Section 80110 of the Water Code is amended to read:*

9 80110. The department shall retain title to all power sold by it
10 to the retail end use customers. The department shall be entitled
11 to recover, as a revenue requirement, amounts and at the times
12 necessary to enable it to comply with Section 80134, and shall
13 advise the commission as the department determines to be
14 appropriate. Such revenue requirements may also include any
15 advances made to the department hereunder or hereafter for
16 purposes of this division, or from the Department of Water
17 Resources Electric Power Fund, and General Fund moneys
18 expended by the department pursuant to the Governor's Emergency
19 Proclamation dated January 17, 2001. For purposes of this division
20 and except as otherwise provided in this section, the Public Utility
21 Commission's authority as set forth in Section 451 of the Public
22 Utilities Code shall apply, except any just and reasonable review
23 under Section 451 shall be conducted and determined by the
24 department. The commission may enter into an agreement with
25 the department with respect to charges under Section 451 for
26 purposes of this division, and that agreement shall have the force
27 and effect of a financing order adopted in accordance with Article
28 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of
29 Division 1 of the Public Utilities Code, as determined by the
30 commission. ~~In no case shall the commission increase the~~
31 ~~electricity charges in effect on the date that the act that adds this~~
32 ~~section becomes effective for residential customers for existing~~
33 ~~baseline quantities or usage by those customers of up to 130 percent~~
34 ~~of existing baseline quantities, until such time as the department~~
35 ~~has recovered the costs of power it has procured for the electrical~~
36 ~~corporation's retail end use customers as provided in this division.~~
37 ~~After the passage of such period of time after the effective date of~~
38 ~~this section as shall be determined by the commission, the~~ *The*
39 ~~right of retail end use~~ *end-use* customers pursuant to Article 6
40 (commencing with Section 360) of Chapter 2.3 of Part 1 of

1 Division 1 of the Public Utilities Code to acquire service from
2 other providers shall be suspended until the department no longer
3 supplies power hereunder the Legislature, by statute, lifts the
4 suspension or otherwise authorizes direct transactions.
5 Notwithstanding that suspension, the commission may allow
6 individual retail end-use customers currently taking service from
7 an electric service provider, or eligible to take service from an
8 electric service provider under rules adopted by the commission
9 in existence on January 1, 2008, to acquire service for new
10 accounts from an electric service provider. For purposes of this
11 section, a “new account” means (A) an account belonging to an
12 individual retail end-use customer currently taking service from
13 an electric service provider that exists on January 1, 2009, that
14 receives bundled utility service from an electrical corporation, or
15 (B) an additional meter or request for service of an individual
16 retail end-use customer eligible to acquire service for a new
17 account from an electric service provider, added after January 1,
18 2009. The department shall have the same rights with respect to
19 the payment by retail-end-use end-use customers for power sold
20 by the department as do providers of power to such the customers.

21 SEC. 7.5. Section 80110 of the Water Code is amended to read:

22 80110. (a) The department shall retain title to all power sold
23 by it to the retail end use customers. The department shall be
24 entitled to recover, as a revenue requirement, amounts and at the
25 times necessary to enable it to comply with Section 80134, and
26 shall advise the commission as the department determines to be
27 appropriate. Such

28 (b) The revenue requirements may also include any advances
29 made to the department hereunder or hereafter for purposes of this
30 division, or from the Department of Water Resources Electric
31 Power Fund, and General Fund moneys expended by the
32 department pursuant to the Governor’s Emergency Proclamation
33 dated January 17, 2001. For

34 (c) (1) For the purposes of this division and except as otherwise
35 provided in this section, the Public Utility Commission’s authority
36 as set forth in Section 451 of the Public Utilities Code shall apply,
37 except any just and reasonable review under Section 451 shall be
38 conducted and determined by the department. Prior to the execution
39 of any modification of any contract for the purchase of power by
40 the department pursuant to this division, on or after the effective

1 *date of this section, the department or the commission, as*
2 *applicable, shall do the following:*

3 *(A) The department shall notify the public of its intent to modify*
4 *a contract and the opportunity to comment on the proposed*
5 *modification.*

6 *(B) At least 21 days after providing public notice, the department*
7 *shall make a determination as to whether the proposed*
8 *modifications are just and reasonable. The determination shall*
9 *include responses to any public comments.*

10 *(C) No later than 70 days before the date of execution of the*
11 *contract modification, the department shall provide a written*
12 *report to the commission setting forth the justification for the*
13 *determination that the proposed modification is just and*
14 *reasonable, including documents, analysis, response to public*
15 *comments, and other information relating to the determination.*

16 *(D) Within 60 days of the date of receipt of the department's*
17 *written report, the commission shall review the report and make*
18 *public its comments. If the commission in its comments recommends*
19 *against the proposed modification, the department shall not execute*
20 *the proposed contract modification.*

21 *(2) This subdivision does not apply to the modification of a*
22 *contract modified to settle litigation to which the commission is a*
23 *party.*

24 *(3) This subdivision does not apply to the modification of a*
25 *contract for the purchase of electricity that is generated from a*
26 *facility owned by a public agency if the contract requires the public*
27 *agency to sell electricity to the department at or below the public*
28 *agency's cost of that power.*

29 *(4) This subdivision does not apply to the modification of a*
30 *contract to address issues relating to billing, scheduling, delivery*
31 *of electricity, and related contract matters arising out of the*
32 *implementation by the Independent System Operator of its market*
33 *redesign and technology upgrade program.*

34 *(5) (A) For purposes of this subdivision, the department*
35 *proposes to "modify" a contract if there is any material change*
36 *proposed in the terms of the contract.*

37 *(B) A change to a contract is not material if it is only*
38 *administrative in nature or the change in ratepayer value results*
39 *in ratepayer savings, not to exceed twenty-five million dollars*
40 *(\$25,000,000) per year. For the purpose of making a determination*

1 *that a change is only administrative in nature or results in*
2 *ratepayer savings of twenty-five million dollars (\$25,000,000) or*
3 *less per year, the executive director of the commission shall concur*
4 *in writing with each of those determinations by the department.*

5 *The*

6 *(d) The commission may enter into an agreement with the*
7 *department with respect to charges under Section 451 for purposes*
8 *of this division, and that agreement shall have the force and effect*
9 *of a financing order adopted in accordance with Article 5.5*
10 *(commencing with Section 840) of Chapter 4 of Part 1 of Division*
11 *1 of the Public Utilities Code, as determined by the commission.*
12 ~~*In no case shall the commission increase the electricity charges in*~~
13 ~~*effect on the date that the act that adds this section becomes*~~
14 ~~*effective for residential customers for existing baseline quantities*~~
15 ~~*or usage by those customers of up to 130 percent of existing*~~
16 ~~*baseline quantities, until such time as the department has recovered*~~
17 ~~*the costs of power it has procured for the electrical corporation's*~~
18 ~~*retail end-use customers as provided in this division. After the*~~
19 ~~*passage of such period of time after the effective date of this section*~~
20 ~~*as shall be determined by the commission, the*~~

21 *(e) The right of retail-end-use end-use customers pursuant to*
22 *Article 6 (commencing with Section 360) of Chapter 2.3 of Part*
23 *1 of Division 1 of the Public Utilities Code to acquire service from*
24 *other providers shall be suspended until the department no longer*
25 ~~*supplies power hereunder the Legislature, by statute, lifts the*~~
26 ~~*suspension or otherwise authorizes direct transactions.*~~

27 *(f) Notwithstanding subdivision (e), the commission may allow*
28 *individual retail end-use customers currently taking service from*
29 *an electric service provider, or eligible to take service from an*
30 *electric service provider under rules adopted by the commission*
31 *in existence on January 1, 2008, to acquire service for new*
32 *accounts from an electric service provider.*

33 *(g) For purposes of this section, a "new account" means:*

34 *(A) An account belonging to an individual retail end-use*
35 *customer as described in subdivision (f) that exists on January 1,*
36 *2009, that receives bundled utility service from an electrical*
37 *corporation.*

38 *(B) An additional meter or request for service of an individual*
39 *retail end-use customer as described in subdivision (f), added after*
40 *January 1, 2009.*

1 The
 2 (h) The department shall have the same rights with respect to
 3 the payment by retail-~~end-use~~ *end-use* customers for power sold
 4 by the department as do providers of power to ~~such~~ *the* customers.

5 SEC. 8. Section 7.5 of this bill incorporates amendments to
 6 Section 80110 of the Water Code proposed by this bill and AB
 7 3058. It shall only become operative if (1) both bills are enacted
 8 and become effective on or before January 1, 2009, (2) each bill
 9 amends Section 80110 of the Water Code, and (3) this bill is
 10 enacted after AB 3058, in which case Section 80110 of the Water
 11 Code, as amended by AB 3058, shall remain operative only until
 12 the operative date of this bill, at which time Section 7.5 of this bill
 13 shall become operative, and Section 7 of this bill shall not become
 14 operative.

15 SEC. 9. No reimbursement is required by this act pursuant to
 16 Section 6 of Article XIII B of the California Constitution because
 17 the only costs that may be incurred by a local agency or school
 18 district will be incurred because this act creates a new crime or
 19 infraction, eliminates a crime or infraction, or changes the penalty
 20 for a crime or infraction, within the meaning of Section 17556 of
 21 the Government Code, or changes the definition of a crime within
 22 the meaning of Section 6 of Article XIII B of the California
 23 Constitution.

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**All matter omitted in this version of the bill
 appears in the bill as amended in Senate,
 March 24, 2008 (JR11)**