

AMENDED IN SENATE APRIL 29, 2009

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 695

Introduced by Senator Kehoe
(Coauthor: Senator Wright)

February 27, 2009

An act to amend Sections 327, 382, and 739.1 of, and to add Sections 365.1, 739.9, and 745 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 695, as amended, Kehoe. Electricity: rates.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical 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 mandatory or default time-variant pricing for residential customers prior to January 1, 2016, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing and to participate in other demand response programs. The bill would require the commission to only approve an electrical corporation's use of time-variant pricing for residential customers if those residential customers have the option to not receive service pursuant to time-variant pricing and incur no additional costs as a result of the exercise of that option.

(2) 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, with respect to electrical corporations, be recovered on an equal cent-per-kilowatt-hour basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008. *For a public utility that is both an electrical corporation and a gas corporation, the bill would require that the cost of the program be recovered on an equal cent-per-kilowatt-hour or per-therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.*

(3) 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.

(4) 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 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 require the commission to authorize direct transactions subject to a phase-in schedule of not less than 3 years and not more than 5 years, and subject to total and yearly direct transaction limits established, as specified, for each electrical corporation. The bill would continue the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.

(5) 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.

(6) 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.

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: 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 electrical corporations and gas corporations that
4 participate in the California Alternate Rates for Energy program,
5 as established pursuant to Section 739.1, shall administer
6 low-income energy efficiency and rate assistance programs
7 described in Sections 382, 739.1, 739.2, and 2790, subject to
8 commission oversight. In administering the programs described
9 in Section 2790, the electrical corporations and gas corporations,
10 to the extent practicable, shall do all of the following:

- 1 (1) Continue to leverage funds collected to fund the program
2 described in subdivision (a) with funds available from state and
3 federal sources.
- 4 (2) Work with state and local agencies, community-based
5 organizations, and other entities to ensure efficient and effective
6 delivery of programs.
- 7 (3) Encourage local employment and job skill development.
- 8 (4) Maximize the participation of eligible participants.
- 9 (5) Work to reduce consumers electric and gas consumption,
10 and bills.
- 11 (6) For electrical corporations, target energy efficiency and solar
12 programs to upper-tier and multifamily customers in a manner that
13 will result in long-term permanent reductions in electricity usage,
14 and develop programs that specifically target new construction
15 by, and new and retrofit appliances for, nonprofit affordable
16 housing providers.
- 17 (b) If the commission requires low-income energy efficiency
18 programs to be subject to competitive bidding, the electric and gas
19 corporation described in subdivision (a), as part of their bid
20 evaluation criteria, shall consider both cost-of-service criteria and
21 quality-of-service criteria. The bidding criteria, at a minimum,
22 shall recognize all of the following factors:
- 23 (1) The bidder's experience in delivering programs and services,
24 including, but not limited to, weatherization, appliance repair and
25 maintenance, energy education, outreach and enrollment services,
26 and bill payment assistance programs to targeted communities.
- 27 (2) The bidder's knowledge of the targeted communities.
- 28 (3) The bidder's ability to reach targeted communities.
- 29 (4) The bidder's ability to utilize and employ people from the
30 local area.
- 31 (5) The bidder's general contractor's license and evidence of
32 good standing with the Contractors' State License Board.
- 33 (6) The bidder's performance quality as verified by the funding
34 source.
- 35 (7) The bidder's financial stability.
- 36 (8) The bidder's ability to provide local job training.
- 37 (9) Other attributes that benefit local communities.
- 38 (c) Notwithstanding subdivision (b), the commission may
39 modify the bid criteria based upon public input from a variety of
40 sources, including representatives from low-income communities

1 and the program administrators identified in subdivision (b), in
2 order to ensure the effective and efficient delivery of high quality
3 low-income energy efficiency programs.

4 SEC. 2. Section 365.1 is added to the Public Utilities Code, to
5 read:

6 365.1. (a) Except as expressly authorized by this section, and
7 subject to the limitations in subdivisions (b) and (c), the right of
8 retail end-use customers pursuant to this chapter to acquire service
9 from other providers is suspended until the Legislature, by statute,
10 lifts the suspension or otherwise authorizes direct transactions. For
11 purposes of this section, “other provider” means any person,
12 corporation, or other entity that was authorized to provide electric
13 service within the service territory of an electrical corporation
14 pursuant to this chapter, and includes electric service providers,
15 an aggregator, broker, or marketer, as defined in Section 331, and
16 an electric service provider, as defined in Section 218.3.

17 (b) Notwithstanding subdivision (a), the commission may allow
18 individual retail nonresidential end-use customers to acquire
19 electric service from electric service providers, subject to the
20 limitation that the total annual kilowatthours supplied by all electric
21 service providers to distribution customers of an electrical
22 corporation shall not exceed the maximum total annual level of
23 kilowatthours supplied by all electric service providers, within that
24 electrical corporation’s distribution service territory, for any year
25 between April 1, 1998, and December 31, 2009. By January 31,
26 2010, the commission shall calculate and adopt a phase-in schedule
27 of not less than three years, and not more than five years, to raise
28 the allowable limit of kilowatthours supplied by other providers
29 from the number of kilowatthours provided by other providers as
30 of the operative date of this section, to the maximum total annual
31 level for each electrical corporation’s distribution service territory.

32 (c) The commission shall not authorize additional direct
33 transactions pursuant to subdivision (b) unless both of the following
34 conditions are met:

35 (1) (A) Other providers are subject to the same requirements
36 that are applicable to the state’s three largest electrical corporations
37 pursuant to the resource adequacy requirements established by the
38 commission pursuant to Section 380, the renewables portfolio
39 standard requirements established by the commission pursuant to
40 Article 16 (commencing with Section 399.11), and the requirements

1 for the electricity sector adopted by the State Air Resources Board
2 pursuant to the California Global Warming Solutions Act (Division
3 25.5 (commencing with Section 38500) of the Health and Safety
4 Code). This requirement is made notwithstanding any prior
5 decision of the commission.

6 (B) It is the intent of the Legislature in enacting this paragraph
7 that as a condition for allowing direct transactions, the resource
8 adequacy requirements, the renewable portfolio standard
9 requirements, and the requirements for reducing emissions of
10 greenhouse gases be applied in a competitively neutral manner.

11 (2) (A) The commission utilizes a mechanism that allocates
12 the net costs of new generation resources acquired by an electrical
13 corporation to meet system or local area reliability needs, on a
14 fully nonbypassable basis, either through a contract with a third
15 party, pursuant to commission authorization, or through direct
16 ownership of the generation resource by the electrical corporation,
17 pursuant to commission direction, to all of the following:

18 (i) Bundled service customers of the electrical corporation.

19 (ii) Customers that purchase electricity through a direct
20 transaction with other providers.

21 (iii) Customers of community choice aggregators.

22 (B) The resource adequacy benefits of new generation resources
23 acquired by an electrical corporation to meet system or local area
24 reliability needs shall be allocated to all customers who pay their
25 net costs. It is the intent of the Legislature that the mechanism
26 generally be consistent with that adopted by the commission in
27 Decision 06-07-029, as modified by Decision 07-11-05, but that
28 ~~no energy auction shall~~ *an energy auction shall not* be required as
29 a condition of employing the mechanism, *but may be allowed, to*
30 *value the electrical output of the resource for purposes of*
31 *determining the net costs of capacity to be recovered from*
32 *customers pursuant to this paragraph*, and the allocation of the
33 net costs of contracts with third parties shall be allowed for the
34 terms of those contracts. *It is the intent of the Legislature, in*
35 *enacting this subparagraph, to ensure that the customers to whom*
36 *the net costs and benefits of capacity are allocated are not required*
37 *to pay for the cost of electricity they do not consume.*

38 (d) The commission may report to the Legislature on the efficacy
39 of authorizing individual retail end-use residential customers to

1 enter into direct transactions, including appropriate consumer
2 protections.

3 SEC. 3. Section 382 of the Public Utilities Code is amended
4 to read:

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

10 (b) In order to meet legitimate needs of electric and gas
11 customers who are unable to pay their electric and gas bills and
12 who satisfy eligibility criteria for assistance, recognizing that
13 electricity is a basic necessity, and that all residents of the state
14 should be able to afford essential electricity and gas supplies, the
15 commission shall ensure that low-income ratepayers are not
16 jeopardized or overburdened by monthly energy expenditures.
17 Energy expenditure may be reduced through the establishment of
18 different rates for low-income ratepayers, different levels of rate
19 assistance, and energy efficiency programs.

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

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

26 (e) Beginning in 2002, an assessment of the needs of low-income
27 electricity and gas ratepayers shall be conducted periodically by
28 the commission with the assistance of the Low-Income Oversight
29 Board. The assessment shall evaluate low-income program
30 implementation and the effectiveness of weatherization services
31 and energy efficiency measures in low-income households. The
32 assessment shall consider whether existing programs adequately
33 address low-income electricity and gas customers' energy
34 expenditures, hardship, language needs, and economic burdens.

35 (f) The commission shall require electrical corporations to
36 deploy enhanced low-income energy efficiency programs designed
37 to reach as many eligible customers as practicable by December
38 31, 2014, particularly targeting those customers occupying
39 apartments or similar multiunit residential structures. The
40 commission and electrical corporations and gas corporations shall

1 make all reasonable efforts to coordinate ratepayer-funded
2 programs with other energy conservation and efficiency programs
3 and to obtain additional federal funding to support actions
4 undertaken pursuant to this subdivision. For purposes of this
5 subdivision, “enhanced programs” are programs that provide
6 long-term reductions in energy consumption at the dwelling unit
7 based on an audit or assessment of the dwelling unit, and may
8 include improved insulation, energy efficient appliances, measures
9 that utilize solar energy, and other improvements to the physical
10 structure.

11 SEC. 4. Section 739.1 of the Public Utilities Code is amended
12 to read:

13 739.1. (a) The commission shall establish a program of
14 assistance to low-income electric and gas customers with annual
15 household incomes at or below 200 percent of the federal poverty
16 guideline levels, the cost of which, ~~for an electrical corporation~~
17 *shall not be borne solely by any single class of customer. For an*
18 *electrical corporation or public utility that is both an electrical*
19 *corporation and a gas corporation, the costs, shall be recovered*
20 *on an equal cent-per-kilowatthour or per-therm basis from all*
21 *classes of customers that were subject to the surcharge that funded*
22 *the program on January 1, 2008. The program shall be referred to*
23 *as the California Alternate Rates for Energy or CARE program.*
24 *The commission shall ensure that the level of discount for*
25 *low-income electric and gas customers correctly reflects the level*
26 *of need.*

27 (b) The commission shall work with the public utility electrical
28 and gas corporations to establish penetration goals. The
29 commission shall authorize recovery of all administrative costs
30 associated with the implementation of the CARE program that the
31 commission determines to be reasonable, through a balancing
32 account mechanism. Administrative costs shall include, but are
33 not limited to, outreach, marketing, regulatory compliance,
34 certification and verification, billing, measurement and evaluation,
35 and capital improvements and upgrades to communications and
36 processing equipment.

37 (c) The commission shall examine methods to improve CARE
38 enrollment and participation. This examination shall include, but
39 need not be limited to, comparing information from CARE and
40 the Universal Lifeline Telephone Service (ULTS) to determine

1 the most effective means of utilizing that information to increase
2 CARE enrollment, automatic enrollment of ULTS customers who
3 are eligible for the CARE program, customer privacy issues, and
4 alternative mechanisms for outreach to potential enrollees. The
5 commission shall ensure that a customer consents prior to
6 enrollment. The commission shall consult with interested parties,
7 including ULTS providers, to develop the best methods of
8 informing ULTS customers about other available low-income
9 programs, as well as the best mechanism for telephone providers
10 to recover reasonable costs incurred pursuant to this section.

11 (d) (1) The commission shall improve the CARE application
12 process by cooperating with other entities and representatives of
13 California government, including the California Health and Human
14 Services Agency and the Secretary of California Health and Human
15 Services, to ensure that all gas and electric customers eligible for
16 public assistance programs in California that reside within the
17 service territory of an electrical corporation or gas corporation,
18 are enrolled in the CARE program. To the extent practicable, the
19 commission shall develop a CARE application process using the
20 existing ULTS application process as a model. The commission
21 shall work with public utility electrical and gas corporations and
22 the Low-Income Oversight Board established in Section 382.1 to
23 meet the low-income objectives in this section.

24 (2) The commission shall ensure that an electrical corporation
25 or gas corporation with a commission-approved program to provide
26 discounts based upon economic need in addition to the CARE
27 program, including a Family Electric Rate Assistance program,
28 utilize a single application form, to enable an applicant to
29 alternatively apply for any assistance program for which the
30 applicant may be eligible. It is the intent of the Legislature to allow
31 applicants under one program, that may not be eligible under that
32 program, but that may be eligible under an alternative assistance
33 program based upon economic need, to complete a single
34 application for any commission-approved assistance program
35 offered by the public utility.

36 (e) The commission's program of assistance to low-income
37 electric and gas customers shall, as soon as practicable, include
38 nonprofit group living facilities specified by the commission, if
39 the commission finds that the residents in these facilities
40 substantially meet the commission's low-income eligibility

1 requirements and there is a feasible process for certifying that the
2 assistance shall be used for the direct benefit, such as improved
3 quality of care or improved food service, of the low-income
4 residents in the facilities. The commission shall authorize utilities
5 to offer discounts to eligible facilities licensed or permitted by
6 appropriate state or local agencies, and to facilities, including
7 women’s shelters, hospices, and homeless shelters, that may not
8 have a license or permit but provide other proof satisfactory to the
9 utility that they are eligible to participate in the program.

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

14 (g) (1) As used in this subdivision, the following terms have
15 the following meanings:

16 (A) “Baseline quantity” has the same meaning as defined in
17 Section 739.

18 (B) “California Solar Initiative” means the program providing
19 ratepayer funded incentives for eligible solar energy systems
20 adopted by the commission in Decision 05-12-044 and Decision
21 06-01-024, as modified by Article 1 (commencing with Section
22 2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with
23 Section 25780) of Division 15 of the Public Resources Code.

24 (C) “CalWORKs program” means the program established
25 pursuant to the California Work Opportunity and Responsibility
26 to Kids Act (Chapter 2 (commencing with Section 11200) of Part
27 3 of Division 9 the Welfare and Institutions Code).

28 (D) “Public goods charge” means the nonbypassable separate
29 rate component imposed pursuant to Article 7 (commencing with
30 Section 381) or Chapter 2.3 and the nonbypassable system benefits
31 charge imposed pursuant to the Reliable Electric Service
32 Investments Act (Article 15 (commencing with Section 399) of
33 Chapter 2.3).

34 (2) The commission may, subject to the limitation in paragraph
35 (4), increase the rates in effect for CARE program participants for
36 electricity usage up to 130 percent of baseline quantities by the
37 annual percentage increase in benefits under the CalWORKs
38 program as authorized by the Legislature for the fiscal year in
39 which the rate increase would take effect, but not to exceed 3
40 percent per year.

1 (3) Beginning January 1, 2019, the commission may, subject
2 to the limitation in paragraph (4), establish rates for CARE program
3 participants pursuant to this section and Sections 739 and 739.9,
4 subject to both of the following:

5 (A) The requirements of subdivision (b) of Section 382 that the
6 commission ensure that low-income ratepayers are not jeopardized
7 or overburdened by monthly energy expenditures.

8 (B) The requirement that the level of the discount for
9 low-income electricity and gas ratepayers correctly reflects the
10 level of need as determined by the needs assessment made pursuant
11 to subdivision (e) of Section 382.

12 (4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80
13 percent of the corresponding tier 1, tier 2, and tier 3 rates charged
14 residential customers not participating in the CARE program,
15 excluding any Department of Water Resources bond charge
16 imposed pursuant to Division 27 (commencing with Section 80000)
17 of the Water Code, the CARE surcharge portion of the public
18 goods charge, any charge imposed pursuant to the California Solar
19 Initiative, and any charge imposed to fund any other program that
20 exempts CARE participants from paying the charge.

21 (5) Rates charged CARE program participants shall not have
22 more than three tiers. An electrical corporation that does not have
23 a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order
24 to moderate the impact on program participants whose usage
25 exceeds 130 percent of baseline quantities, shall be phased in to
26 80 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 other charge
32 imposed to fund a program that exempts CARE participants from
33 paying the charge. For an electrical corporation that does not have
34 a tier 3 CARE rate that introduces a tier 3 CARE rate, the initial
35 rate shall be no more than 150 percent of the baseline CARE rate.
36 Any additional revenues collected by an electrical corporation
37 resulting from the adoption of a tier 3 CARE rate shall, until the
38 utility's next periodic general rate case review of cost allocation
39 and rate design, be credited to reduce rates of residential ratepayers

1 not participating in the CARE program with usage above 130
2 percent of baseline quantities.

3 SEC. 5. Section 739.9 is added to the Public Utilities Code, to
4 read:

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

17 (b) The rates charged residential customers for electricity usage
18 up to the baseline quantities, including any customer charge
19 revenues, shall not exceed 90 percent of the system average rate
20 prior to January 1, 2019, and may not exceed 92.5 percent after
21 that date. For purposes of this subdivision, the system average rate
22 shall be determined by dividing the electrical corporation's total
23 revenue requirements for bundled service customers by the adopted
24 forecast of total bundled service sales.

25 (c) This section does not require the commission to increase
26 any residential rate or restrict, or otherwise limit, the authority of
27 the commission to reduce any residential rate in effect immediately
28 preceding January 1, 2010.

29 SEC. 6. Section 745 is added to the Public Utilities Code, to
30 read:

31 745. (a) For purposes of this section, "time-variant pricing"
32 includes time-of-use rates, critical peak pricing, and real-time
33 pricing, but does not include programs that provide customers
34 discounts from standard tariff rates as an incentive to reduce
35 consumption at certain times, including peak time rebates.

36 (b) The commission shall not require or permit an electrical
37 corporation to employ mandatory or default time-variant pricing
38 for residential customers prior to January 1, 2016.

39 (c) The commission may authorize an electrical corporation to
40 offer residential customers the option of receiving service pursuant

1 to time-variant pricing and to participate in other demand response
2 programs.

3 (d) The commission shall only approve an electrical
4 corporation's use of time-variant pricing if residential customers
5 have the option to not receive service pursuant to time-variant
6 pricing and incur no additional fees and surcharges as a result of
7 the exercise of that option.

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

9 80110. (a) The department shall retain title to all electricity
10 sold by it to the retail end-use customers. The department shall be
11 entitled to recover, as a revenue requirement, amounts and at the
12 times necessary to enable it to comply with Section 80134, and
13 shall advise the commission as the department determines to be
14 appropriate.

15 (b) The revenue requirements may also include any advances
16 made to the department hereunder or hereafter for purposes of this
17 division, or from the Department of Water Resources Electric
18 Power Fund, and General Fund moneys expended by the
19 department pursuant to the Governor's Emergency Proclamation
20 dated January 17, 2001.

21 (c) (1) For the purposes of this division and except as otherwise
22 provided in this section, the Public Utility Commission's authority
23 as set forth in Section 451 of the Public Utilities Code shall apply,
24 except any just and reasonable review under Section 451 shall be
25 conducted and determined by the department. Prior to the execution
26 of any modification of any contract for the purchase of electricity
27 by the department pursuant to this division, on or after the effective
28 date of this section, the department or the commission, as
29 applicable, shall do the following:

30 (A) The department shall notify the public of its intent to modify
31 a contract and the opportunity to comment on the proposed
32 modification.

33 (B) At least 21 days after providing public notice, the department
34 shall make a determination as to whether the proposed
35 modifications are just and reasonable. The determination shall
36 include responses to any public comments.

37 (C) No later than 70 days before the date of execution of the
38 contract modification, the department shall provide a written report
39 to the commission setting forth the justification for the
40 determination that the proposed modification is just and reasonable,

1 including documents, analysis, response to public comments, and
2 other information relating to the determination.

3 (D) Within 60 days of the date of receipt of the department's
4 written report, the commission shall review the report and make
5 public its comments. If the commission in its comments
6 recommends against the proposed modification, the department
7 shall not execute the proposed contract modification.

8 (2) This subdivision does not apply to the modification of a
9 contract modified to settle litigation to which the commission is
10 a party.

11 (3) This subdivision does not apply to the modification of a
12 contract for the purchase of electricity that is generated from a
13 facility owned by a public agency if the contract requires the public
14 agency to sell electricity to the department at or below the public
15 agency's cost of that electricity.

16 (4) This subdivision does not apply to the modification of a
17 contract to address issues relating to billing, scheduling, delivery
18 of electricity, and related contract matters arising out of the
19 implementation by the Independent System Operator of its market
20 redesign and technology upgrade program.

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

24 (B) A change to a contract is not material if it is only
25 administrative in nature or the change in ratepayer value results
26 in ratepayer savings, not to exceed twenty-five million dollars
27 (\$25,000,000) per year. For the purpose of making a determination
28 that a change is only administrative in nature or results in ratepayer
29 savings of twenty-five million dollars (\$25,000,000) or less per
30 year, the executive director of the commission shall concur in
31 writing with each of those determinations by the department.

32 (d) The commission may enter into an agreement with the
33 department with respect to charges under Section 451 for purposes
34 of this division, and that agreement shall have the force and effect
35 of a financing order adopted in accordance with Article 5.5
36 (commencing with Section 840) of Chapter 4 of Part 1 of Division
37 1 of the Public Utilities Code, as determined by the commission.

38 (e) The department shall have the same rights with respect to
39 the payment by retail end-use customers for electricity sold by the
40 department as do providers of electricity to the customers.

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

10 SEC. 9. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety within
12 the meaning of Article IV of the Constitution and shall go into
13 immediate effect. The facts constituting the necessity are:

14 In order to avert a rate crisis involving unfair and unreasonable
15 rates being charged for electric and gas service by electrical and
16 gas corporations, it is necessary that this act take effect
17 immediately.