

ASSEMBLY BILL

No. 2201

Introduced by Assembly Member Bradford

February 23, 2012

An act to amend Section 454.5 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2201, as introduced, Bradford. Public utilities: electricity: procurement plans.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined. The Public Utilities Act requires the commission to review and adopt a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives. The act requires that an electrical corporation's proposed procurement plan include certain elements, including a showing that the electrical corporation will first meet its unmet needs through prescribed means.

This bill would make a technical, nonsubstantive change to that showing provision.

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

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

1 SECTION 1. Section 454.5 of the Public Utilities Code is
2 amended 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 electrical
6 corporation's proposed procurement plan. Each electrical
7 corporation shall file a proposed procurement plan with the
8 commission not later than 60 days after the commission specifies
9 the allocation of electricity. The proposed procurement plan shall
10 specify the date that the electrical corporation intends to resume
11 procurement of electricity for its retail customers, consistent with
12 its obligation to serve. After the commission's adoption of a
13 procurement plan, the commission shall allow not less than 60
14 days before the electrical corporation resumes procurement
15 pursuant to this section.

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

18 (1) An assessment of the price risk associated with the electrical
19 corporation's portfolio, including any utility-retained generation,
20 existing power purchase and exchange contracts, and proposed
21 contracts or purchases under which an electrical corporation will
22 procure electricity, electricity demand reductions, and
23 electricity-related products and the remaining open position to be
24 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 product
31 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 acceptability
2 and eligibility for rate recovery of a proposed procurement
3 transaction will be known by the electrical corporation prior to
4 execution of the transaction. This shall include an expedited
5 approval process for the commission's review of proposed contracts
6 and subsequent approval or rejection thereof. The electrical
7 corporation shall propose alternative procurement choices in the
8 event a contract is rejected.

9 (8) Procedures for updating the procurement plan.

10 (9) A showing that the procurement plan will achieve *all of the*
11 following:

12 (A) The electrical corporation, in order to fulfill its unmet
13 resource needs, shall procure resources from eligible renewable
14 energy resources in an amount sufficient to meet its procurement
15 requirements pursuant to the California Renewables Portfolio
16 Standard Program (Article 16 (commencing with Section 399.11)
17 of Chapter 2.3).

18 (B) The electrical corporation shall create or maintain a
19 diversified procurement portfolio consisting of both short-term
20 and long-term electricity and electricity-related and demand
21 reduction products.

22 (C) The electrical corporation shall first meet its unmet resource
23 needs through all available energy efficiency and demand reduction
24 resources that are cost effective, reliable, and feasible.

25 (10) The electrical corporation's risk management policy,
26 strategy, and practices, including specific measures of price
27 stability.

28 (11) A plan to achieve appropriate increases in diversity of
29 ownership and diversity of fuel supply of nonutility electrical
30 generation.

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

33 (c) The commission shall review and accept, modify, or reject
34 each electrical corporation's procurement plan. The commission's
35 review shall consider each electrical corporation's individual
36 procurement situation, and shall give strong consideration to that
37 situation in determining which one or more of the features set forth
38 in this subdivision shall apply to that electrical corporation. A
39 procurement plan approved by the commission shall contain one
40 or more of the following features, provided that the commission

1 may not approve a feature or mechanism for an electrical
2 corporation if it finds that the feature or mechanism would impair
3 the restoration of an electrical corporation's creditworthiness or
4 would lead to a deterioration of an electrical corporation's
5 creditworthiness:

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

13 (2) An incentive mechanism that establishes a procurement
14 benchmark or benchmarks and authorizes the electrical corporation
15 to procure from the market, subject to comparing the electrical
16 corporation's performance to the commission-authorized
17 benchmark or benchmarks. The incentive mechanism shall be
18 clear, achievable, and contain quantifiable objectives and standards.
19 The incentive mechanism shall contain balanced risk and reward
20 incentives that limit the risk and reward of an electrical corporation.

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

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

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

36 (2) Eliminate the need for after-the-fact reasonableness reviews
37 of an electrical corporation's actions in compliance with an
38 approved procurement plan, including resulting electricity
39 procurement contracts, practices, and related expenses. However,
40 the commission may establish a regulatory process to verify and

1 ensure that each contract was administered in accordance with the
2 terms of the contract, and contract disputes that may arise are
3 reasonably resolved.

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

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

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

34 (e) The commission shall provide for the periodic review and
35 prospective modification of an electrical corporation's procurement
36 plan.

37 (f) The commission may engage an independent consultant or
38 advisory service to evaluate risk management and strategy. The
39 reasonable costs of any consultant or advisory service is a

1 reimbursable expense and eligible for funding pursuant to Section
2 631.

3 (g) The commission shall adopt appropriate procedures to ensure
4 the confidentiality of any market sensitive information submitted
5 in an electrical corporation's proposed procurement plan or
6 resulting from or related to its approved procurement plan,
7 including, but not limited to, proposed or executed power purchase
8 agreements, data request responses, or consultant reports, or any
9 combination, provided that the Office of Ratepayer Advocates and
10 other consumer groups that are nonmarket participants shall be
11 provided access to this information under confidentiality
12 procedures authorized by the commission.

13 (h) Nothing in this section alters, modifies, or amends the
14 commission's oversight of affiliate transactions under its rules and
15 decisions or the commission's existing authority to investigate and
16 penalize an electrical corporation's alleged fraudulent activities,
17 or to disallow costs incurred as a result of gross incompetence,
18 fraud, abuse, or similar grounds. Nothing in this section expands,
19 modifies, or limits the State Energy Resources Conservation and
20 Development Commission's existing authority and responsibilities
21 as set forth in Sections 25216, 25216.5, and 25323 of the Public
22 Resources Code.

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

27 (j) (1) Prior to its approval pursuant to Section 851 of any
28 divestiture of generation assets owned by an electrical corporation
29 on or after the date of enactment of the act adding this section, the
30 commission shall determine the impact of the proposed divestiture
31 on the electrical corporation's procurement rates and shall approve
32 a divestiture only to the extent it finds, taking into account the
33 effect of the divestiture on procurement rates, that the divestiture
34 is in the public interest and will result in net ratepayer benefits.

35 (2) Any electrical corporation's procurement necessitated as a
36 result of the divestiture of generation assets on or after the effective
37 date of the act adding this subdivision shall be subject to the
38 mechanisms and procedures set forth in this section only if its
39 actual cost is less than the recent historical cost of the divested
40 generation assets.

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