

ASSEMBLY BILL

No. 1936

Introduced by Assembly Member Quirk

February 19, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1936, as introduced, Quirk. Electrical corporation 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 accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, except that an electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from the requirement to file a procurement plan and the commission is required to grant the exemption upon a showing of good cause.

This bill would make a nonsubstantive revision to the act's requirement that the commission review and accept, modify, or reject a procurement plan for each electrical corporation.

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:

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

18 (b) An electrical corporation’s proposed procurement plan shall
19 include, but not be limited to, all of the following:

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

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

31 (3) The duration of the plan.

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

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

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

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

13 (8) Procedures for updating the procurement plan.

14 (9) A showing that the procurement plan will achieve the
15 following:

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

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

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

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

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

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

37 (c) The commission shall review and accept, modify, or reject
38 each electrical corporation's procurement plan. The commission's
39 review shall consider each electrical corporation's individual
40 procurement situation, and shall give strong consideration to that

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

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

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

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

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

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

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

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

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

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

1 (e) The commission shall provide for the periodic review and
2 prospective modification of an electrical corporation’s procurement
3 plan.

4 (f) The commission may engage an independent consultant or
5 advisory service to evaluate risk management and strategy. The
6 reasonable costs of any consultant or advisory service is a
7 reimbursable expense and eligible for funding pursuant to Section
8 631.

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

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

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

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

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

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