

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE MAY 5, 2014

AMENDED IN SENATE MARCH 28, 2014

SENATE BILL

No. 1414

Introduced by Senator Wolk

(~~Coauthor: Assembly Member~~ *Coauthors: Assembly Members Mullin
and Williams*)

February 21, 2014

An act to amend Sections 380 and 454.5 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 1414, as amended, Wolk. Electricity: resources adequacy requirements.

(1) The Public Utilities Act requires the Public Utilities Commission, in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities, *as defined*, in accordance with specified objectives. *The definition of a "load-serving entity" excludes a local publicly owned electric utility.* The act requires each load-serving entity to maintain physical generating capacity adequate to meet its load requirements to provide reliable electric service. The act requires the commission to determine the most efficient and equitable means for achieving prescribed objectives.

This bill would include ~~maximizing the cost-effective~~ *facilitating the economic dispatch and* use of demand response as an objective for the resource adequacy requirements referenced above. The bill would additionally require each load-serving entity to maintain ~~either both electrical demand reductions or response and~~ *physical generating*

capacity adequate to meet its load requirements. The bill would require the commission to determine the most efficient and equitable means to ensure ~~the inclusion of demand response that is reliable and cost effective in achieving environmental or demand reduction goals or grid reliability.~~ *that investments are made in new and existing demand response resources that are cost effective and help to achieve grid reliability and environmental goals. The bill would require the commission to establish a mechanism to value the development and deployment of load modifying demand response resources that can reduce a load-serving entity's resource adequacy obligation and ensure that changes in demand caused by load modifying demand response are expeditiously and comprehensively reflected in relevant forecasting and planning proceedings and associated analyses and encourage reflection of these changes in demand in the operation of the grid.*

(2) The act requires each electrical corporation to file with the commission a proposed procurement plan with specified information, including, among other things, a procurement process under which the electric corporation may request bids for procurement-related services, a showing that the procurement plan will achieve, among other objectives, the creation or maintenance of a diversified procurement portfolio, and the electric corporation's risk management policy, strategy, and practices.

This bill would require the proposed procurement plan to include a competitive procurement process that would also allow the electric corporation to request bids for demand side response services. The bill would require that the plan's diversified procurement portfolio include demand response ~~that is reliable and cost effective in achieving environmental goals and electrical grid reliability.~~ *products and tariffs that can either meet or reduce an electrical corporation's resource adequacy requirements, as determined by the commission. The bill would require that an electrical corporation's portfolio be cost effective and help to achieve electrical grid reliability and environmental goals.*

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

This bill would be part of the act and an order or other action of the commission would be required to implement the bill. Because a violation of this bill or an order or other action of the commission implementing those provisions would be a crime, and because the bill would make certain violations by a load-serving entity a crime, this bill would thereby

impose a state-mandated local program by creating new crimes and by expanding the definition of existing crimes.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

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

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. (a) *The Legislature finds and declares all of the*
2 *following:*

3 (1) *Demand response programs and tariffs empower customers*
4 *to save money and reduce pollution by making electrical demand*
5 *smart, dynamic, and responsive.*

6 (2) *Demand response allows for a smarter electrical grid that*
7 *reduces demand for electricity during peak hours when the grid*
8 *operator would otherwise often be forced to rely on quite inefficient*
9 *fossil fuel peaking plants.*

10 (3) *Demand response can play a pivotal role in integrating*
11 *clean energy resources onto the electrical grid by shifting*
12 *electricity usage to times when there is abundant electricity*
13 *generated by renewable energy resources available and can help*
14 *provide electrical capacity in southern California following the*
15 *closure of San Onofre Nuclear Generation Station and the phase*
16 *out of natural gas fired powerplants that employ once-through*
17 *cooling.*

18 (4) *Reducing and shifting demand for electricity through demand*
19 *response can negate the need for more costly investments in*
20 *powerplants and transmission lines.*

21 (5) *Increasing the role of demand response will reduce emissions*
22 *of greenhouse gases and other pollutants from the electricity sector.*

23 (6) *Other regions of the United States have achieved substantial*
24 *reductions in peak demand through deployment of demand*
25 *response.*

26 (7) *California lags far behind the goal established in the 2005*
27 *Energy Action Plan of reducing 5 percent of peak demand using*
28 *demand response.*

1 (b) *In enacting this act, it is the intent of the Legislature to*
2 *ensure that California and the Public Utilities Commission meet*
3 *the state’s environmental and energy goals by increasing the*
4 *utilization of clean demand response.*

5 (c) *It is further the intent of the Legislature, in enacting this act,*
6 *to ensure that the procurement, programmatic, rate-based, and*
7 *other options that the Public Utilities Commission is pursuing or*
8 *may pursue in furtherance of demand response are in no way*
9 *hindered or superseded by the provisions in this act.*

10 SECTION 1.

11 SEC. 2. Section 380 of the Public Utilities Code is amended
12 to read:

13 380. (a) The commission, in consultation with the Independent
14 System Operator, shall establish resource adequacy requirements
15 for all load-serving entities.

16 (b) In establishing resource adequacy requirements, the
17 commission shall achieve all of the following objectives:

18 (1) ~~Facilitate development of new generating capacity and~~
19 ~~capacity, the retention of existing generating capacity that is~~
20 ~~economic and needed. capacity, and demand response that are~~
21 ~~economic, needed, and maintain and help achieve the state’s~~
22 ~~energy and environmental goals.~~

23 (2) Equitably allocate the cost of generating capacity and ~~prevent~~
24 ~~demand response in a manner that prevents the~~ shifting of costs
25 between customer classes.

26 (3) Minimize enforcement requirements and costs.

27 (4) Maximize the ability of community choice aggregators to
28 determine the generation resources used to serve their customers.

29 ~~(5) Maximize the cost-effective use of demand response.~~

30 (5) *Facilitate the economic dispatch and use of demand*
31 *response, as determined by commission.*

32 (c) Each load-serving entity shall maintain physical generating
33 ~~capacity or and electrical demand reductions~~ *response* adequate
34 to meet its load requirements, including, but not limited to, peak
35 demand and planning and operating reserves. The generating
36 capacity or electrical demand ~~reductions~~ *response* shall be
37 deliverable to locations and at times as may be necessary to
38 maintain electric service system reliability and local area reliability.

39 (d) Each load-serving entity shall, at a minimum, meet the most
40 recent minimum planning reserve and reliability criteria approved

1 by the Board of ~~Trustees~~ *Directors* of the Western Systems
2 Coordinating Council or the Western Electricity Coordinating
3 Council.

4 (e) The commission shall implement and enforce the resource
5 adequacy requirements established in accordance with this section
6 in a nondiscriminatory manner. Each load-serving entity shall be
7 subject to the same requirements for resource adequacy and the
8 renewables portfolio standard program that are applicable to
9 electrical corporations pursuant to this section, or otherwise
10 required by law, or by order or decision of the commission. The
11 commission shall exercise its enforcement powers to ensure
12 compliance by all load-serving entities.

13 (f) The commission shall require sufficient information,
14 including, but not limited to, anticipated load, actual load, and
15 measures undertaken by a load-serving entity to ensure resource
16 adequacy, to be reported to enable the commission to determine
17 compliance with the resource adequacy requirements established
18 by the commission.

19 (g) An electrical corporation's costs of meeting resource
20 adequacy requirements, including, but not limited to, the costs
21 associated with system reliability and local area reliability, that
22 are determined to be reasonable by the commission, or are
23 otherwise recoverable under a procurement plan approved by the
24 commission pursuant to Section 454.5, shall be fully recoverable
25 from those customers on whose behalf the costs are incurred, as
26 determined by the commission, at the time the commitment to
27 incur the cost is made, on a fully nonbypassable basis, as
28 determined by the commission. The commission shall exclude any
29 amounts authorized to be recovered pursuant to Section 366.2
30 when authorizing the amount of costs to be recovered from
31 customers of a community choice aggregator or from customers
32 that purchase electricity through a direct transaction pursuant to
33 this subdivision.

34 (h) The commission shall determine and authorize the most
35 efficient and equitable means for achieving all of the following:

- 36 (1) Meeting the objectives of this section.
- 37 (2) Ensuring that investment is made in new generating capacity.
- 38 (3) Ensuring that existing generating capacity that is economic
39 is retained.

- 1 (4) Ensuring that the cost of generating capacity *and demand*
- 2 *response* is allocated equitably.
- 3 (5) Ensuring that community choice aggregators can determine
- 4 the generation resources used to serve their customers.
- 5 ~~(6) Ensuring inclusion of demand response that is reliable and~~
- 6 ~~cost effective in achieving environmental or demand reduction~~
- 7 ~~goals or grid reliability.~~
- 8 (6) *Ensuring that investments are made in new and existing*
- 9 *demand response resources that are cost effective and help to*
- 10 *achieve grid reliability and environmental goals.*
- 11 (i) In making the determination pursuant to subdivision (h), the
- 12 commission may consider a centralized resource adequacy
- 13 mechanism among other options.
- 14 (j) *The commission, in an existing or new proceeding, shall*
- 15 *establish a mechanism to value the development and deployment*
- 16 *of load modifying demand response resources that can reduce a*
- 17 *load-serving entity’s resource adequacy obligation pursuant to*
- 18 *this section. In determining this value, the commission shall*
- 19 *consider how these resources further the state’s electrical grid*
- 20 *reliability and environmental goals. The commission shall ensure*
- 21 *that changes in demand caused by load modifying demand response*
- 22 *are expeditiously and comprehensively reflected in relevant*
- 23 *forecasting and planning proceedings and associated analyses*
- 24 *and encourage reflection of these changes in demand in the*
- 25 *operation of the grid.*
- 26 ~~(j)~~
- 27 (k) For purposes of this section, “load-serving entity” means an
- 28 electrical corporation, electric service provider, or community
- 29 choice aggregator. “Load-serving entity” does not include any of
- 30 the following:
- 31 (1) A local publicly owned electric utility.
- 32 (2) The State Water Resources Development System commonly
- 33 known as the State Water Project.
- 34 (3) Customer generation located on the customer’s site or
- 35 providing electric service through arrangements authorized by
- 36 Section 218, if the customer generation, or the load it serves, meets
- 37 one of the following criteria:
- 38 (A) It takes standby service from the electrical corporation on
- 39 a commission-approved rate schedule that provides for adequate

1 backup planning and operating reserves for the standby customer
2 class.

3 (B) It is not physically interconnected to the electrical
4 transmission or distribution grid, so that, if the customer generation
5 fails, backup electricity is not supplied from the electrical grid.

6 (C) There is physical assurance that the load served by the
7 customer generation will be curtailed concurrently and
8 commensurately with an outage of the customer generation.

9 ~~SEC. 2.~~

10 *SEC. 3.* Section 454.5 of the Public Utilities Code is amended
11 to read:

12 454.5. (a) The commission shall specify the allocation of
13 electricity, including quantity, characteristics, and duration of
14 electricity delivery, that the Department of Water Resources shall
15 provide under its power purchase agreements to the customers of
16 each electrical corporation, which shall be reflected in the electrical
17 corporation's proposed procurement plan. Each electrical
18 corporation shall file a proposed procurement plan with the
19 commission not later than 60 days after the commission specifies
20 the allocation of electricity. The proposed procurement plan shall
21 specify the date that the electrical corporation intends to resume
22 procurement of electricity for its retail customers, consistent with
23 its obligation to serve. After the commission's adoption of a
24 procurement plan, the commission shall allow not less than 60
25 days before the electrical corporation resumes procurement
26 pursuant to this section.

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

29 (1) An assessment of the price risk associated with the electrical
30 corporation's portfolio, including any utility-retained generation,
31 existing power purchase and exchange contracts, and proposed
32 contracts or purchases under which an electrical corporation will
33 procure electricity, electricity demand reductions, and
34 electricity-related products and the remaining open position to be
35 served by spot market transactions.

36 (2) A definition of each electricity product, electricity-related
37 product, and procurement related financial product, including
38 support and justification for the product type and amount to be
39 procured under the plan.

40 (3) The duration of the plan.

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

3 (5) A competitive procurement process under which the
4 electrical corporation may request bids for procurement-related
5 services and demand response services, including the format and
6 criteria of that procurement process.

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

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

19 (8) Procedures for updating the procurement plan.

20 (9) A showing that the procurement plan will achieve the
21 following:

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

28 (B) The electrical corporation shall create or maintain a
29 diversified procurement portfolio consisting of both short-term
30 and long-term electricity and electricity-related and ~~demand~~
31 ~~reduction~~ *demand-side* products, including demand response ~~that~~
32 ~~is reliable and cost effective in achieving environmental goals and~~
33 ~~electrical grid reliability.~~ *products and tariffs that can either meet*
34 *or reduce an electrical corporation's resource adequacy*
35 *requirements, as determined by the commission. An electrical*
36 *corporation's portfolio must be cost effective and help to achieve*
37 *electrical grid reliability and environmental goals.*

38 (C) The electrical corporation shall first meet its unmet resource
39 needs through all available energy efficiency and ~~demand-reduction~~
40 *response* resources that are cost effective, reliable, and feasible.

1 (10) The electrical corporation’s risk management policy,
2 strategy, and practices, including specific measures of price
3 stability

4 (11) A plan to achieve appropriate increases in diversity of
5 ownership and diversity of fuel supply of nonutility electrical
6 generation.

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

9 (c) The commission shall review and accept, modify, or reject
10 each electrical corporation’s procurement plan. The commission’s
11 review shall consider each electrical corporation’s individual
12 procurement situation, and shall give strong consideration to that
13 situation in determining which one or more of the features set forth
14 in this subdivision shall apply to that electrical corporation. A
15 procurement plan approved by the commission shall contain one
16 or more of the following features, provided that the commission
17 may not approve a feature or mechanism for an electrical
18 corporation if it finds that the feature or mechanism would impair
19 the restoration of an electrical corporation’s creditworthiness or
20 would lead to a deterioration of an electrical corporation’s
21 creditworthiness:

22 (1) A competitive procurement process under which the
23 electrical corporation may request bids for procurement-related
24 services. The commission shall specify the format of that
25 procurement process, as well as criteria to ensure that the auction
26 process is open and adequately subscribed. Any purchases made
27 in compliance with the commission-authorized process shall be
28 recovered in the generation component of rates.

29 (2) An incentive mechanism that establishes a procurement
30 benchmark or benchmarks and authorizes the electrical corporation
31 to procure from the market, subject to comparing the electrical
32 corporation’s performance to the commission-authorized
33 benchmark or benchmarks. The incentive mechanism shall be
34 clear, achievable, and contain quantifiable objectives and standards.
35 The incentive mechanism shall contain balanced risk and reward
36 incentives that limit the risk and reward of an electrical corporation.

37 (3) Upfront achievable standards and criteria by which the
38 acceptability and eligibility for rate recovery of a proposed
39 procurement transaction will be known by the electrical corporation
40 prior to the execution of the bilateral contract for the transaction.

1 The commission shall provide for expedited review and either
2 approve or reject the individual contracts submitted by the electrical
3 corporation to ensure compliance with its procurement plan. To
4 the extent the commission rejects a proposed contract pursuant to
5 this criteria, the commission shall designate alternative procurement
6 choices obtained in the procurement plan that will be recoverable
7 for ratemaking purposes.

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

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

12 (2) Eliminate the need for after-the-fact reasonableness reviews
13 of an electrical corporation's actions in compliance with an
14 approved procurement plan, including resulting electricity
15 procurement contracts, practices, and related expenses. However,
16 the commission may establish a regulatory process to verify and
17 ensure that each contract was administered in accordance with the
18 terms of the contract, and contract disputes that may arise are
19 reasonably resolved.

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

1 deemed appropriate by the commission consistent with the
2 objectives of this section.

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

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

10 (e) The commission shall provide for the periodic review and
11 prospective modification of an electrical corporation's procurement
12 plan.

13 (f) The commission may engage an independent consultant or
14 advisory service to evaluate risk management and strategy. The
15 reasonable costs of any consultant or advisory service is a
16 reimbursable expense and eligible for funding pursuant to Section
17 631.

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

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

38 (i) An electrical corporation that serves less than 500,000 electric
39 retail customers within the state may file with the commission a

1 request for exemption from this section, which the commission
2 shall grant upon a showing of good cause.

3 (j) (1) Prior to its approval pursuant to Section 851 of any
4 divestiture of generation assets owned by an electrical corporation
5 on or after the date of enactment of the act adding this section, the
6 commission shall determine the impact of the proposed divestiture
7 on the electrical corporation’s procurement rates and shall approve
8 a divestiture only to the extent it finds, taking into account the
9 effect of the divestiture on procurement rates, that the divestiture
10 is in the public interest and will result in net ratepayer benefits.

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

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

20 ~~SEC. 3:~~

21 *SEC. 4.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.