

AMENDED IN ASSEMBLY JULY 2, 2014  
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**  
(Coauthors: Assembly Members Mullin and Williams)

February 21, 2014

---

---

An act to amend Sections 380 and 454.5 ~~of~~ *of, and to add Section 380.5 to*, 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 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 both electrical demand 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 that investments are made in new and existing demand response resources that are cost effective and help to achieve grid reliability and ~~environmental~~ *the state's greenhouse gas emissions reduction* 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. *The bill would require the commission, in establishing a demand response program, to take certain actions. The bill would authorize the commission to establish metering, monitoring, and consumer protection policies for demand response programs involving third party demand response providers.*

(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 demandside response services. The bill would require that the plan's diversified procurement portfolio include demand response 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 clean  
11 energy resources onto the electrical grid by shifting electricity  
12 usage to times when there is abundant electricity generated by  
13 renewable energy resources available and can help provide  
14 electrical capacity in southern California following the closure of  
15 San Onofre Nuclear Generation Station and the phase out of natural  
16 gas fired powerplants that employ once-through cooling.

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

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

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

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

1 (b) In enacting this act, it is the intent of the Legislature to ensure  
2 that California and the Public Utilities Commission meet the state's  
3 ~~environmental~~ *greenhouse gas emissions reduction* and energy  
4 goals by increasing the 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 SEC. 2. Section 380 of the Public Utilities Code is amended  
11 to read:

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

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

17 (1) Facilitate development of new generating capacity, the  
18 retention of existing generating capacity, and demand response  
19 that are economic, needed, and maintain and help achieve the  
20 state's energy and ~~environmental~~ *greenhouse gas emissions*  
21 *reduction* goals.

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

25 (3) Minimize enforcement requirements and costs.

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

28 (5) Facilitate the economic dispatch and use of demand response,  
29 as determined by commission.

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

37 (d) Each load-serving entity shall, at a minimum, meet the most  
38 recent minimum planning reserve and reliability criteria approved  
39 by the Board of Directors of the Western Systems Coordinating  
40 Council or the Western Electricity Coordinating Council.

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

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

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

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

- 33 (1) Meeting the objectives of this section.
- 34 (2) Ensuring that investment is made in new generating capacity.
- 35 (3) Ensuring that existing generating capacity that is economic  
36 is retained.
- 37 (4) Ensuring that the cost of generating capacity and demand  
38 response is allocated equitably.
- 39 (5) Ensuring that community choice aggregators can determine  
40 the generation resources used to serve their customers.

1 (6) Ensuring that investments are made in new and existing  
2 demand response resources that are cost effective and help to  
3 achieve grid reliability and ~~environmental~~ *the state's greenhouse*  
4 *gas emissions reduction* goals.

5 (i) In making the determination pursuant to subdivision (h), the  
6 commission may consider a centralized resource adequacy  
7 mechanism among other options.

8 (j) The commission, in an existing or new proceeding, shall  
9 establish a mechanism to value the development and deployment  
10 of load modifying demand response resources that can reduce a  
11 load-serving entity's resource adequacy obligation pursuant to this  
12 section. In determining this value, the commission shall consider  
13 how these resources further the state's electrical grid reliability  
14 and ~~environmental~~ *the state's greenhouse gas emissions reduction*  
15 goals. The commission shall ensure that changes in demand caused  
16 by load modifying demand response are expeditiously and  
17 comprehensively reflected in relevant forecasting and planning  
18 proceedings and associated analyses and encourage reflection of  
19 these changes in demand in the operation of the grid.

20 (k) For purposes of this section, "load-serving entity" means an  
21 electrical corporation, electric service provider, or community  
22 choice aggregator. "Load-serving entity" does not include any of  
23 the following:

24 (1) A local publicly owned electric utility.

25 (2) The State Water Resources Development System commonly  
26 known as the State Water Project.

27 (3) Customer generation located on the customer's site or  
28 providing electric service through arrangements authorized by  
29 Section 218, if the customer generation, or the load it serves, meets  
30 one of the following criteria:

31 (A) It takes standby service from the electrical corporation on  
32 a commission-approved rate schedule that provides for adequate  
33 backup planning and operating reserves for the standby customer  
34 class.

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

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

1     *SEC. 3. Section 380.5 is added to the Public Utilities Code, to*  
2 *read:*

3     380.5. (a) *In establishing a demand response program, the*  
4 *commission shall do all of the following:*

5     (1) *Establish rules for how and when back-up generation may*  
6 *be used within the program and establish reporting and data*  
7 *collection requirements to verify compliance with those rules.*

8     (2) *Ensure the program approved for resource adequacy*  
9 *requirements will deliver the expected results and ensure customers*  
10 *that benefit from promoting and maintaining grid reliability share*  
11 *in the costs of the demandside resources.*

12     (3) *Require monitoring of technologies used in the program to*  
13 *ensure compliance with applicable federal and state environmental*  
14 *laws.*

15     (4) *Before the implementation of third-party programs for*  
16 *residential customers, establish customer protection rules*  
17 *regarding the participation, cost of participation, and ability to*  
18 *opt out of the program without cost.*

19     (5) *Establish a method to calculate the customer's average level*  
20 *for peak consumption at time intervals in which the customer would*  
21 *be eligible for demand response program payments or credits.*

22     (b) *The commission may establish metering, monitoring, and*  
23 *consumer protection policies for demand response programs*  
24 *involving third party demand response providers.*

25     ~~SEC. 3.~~

26     *SEC. 4. Section 454.5 of the Public Utilities Code is amended*  
27 *to read:*

28     454.5. (a) *The commission shall specify the allocation of*  
29 *electricity, including quantity, characteristics, and duration of*  
30 *electricity delivery, that the Department of Water Resources shall*  
31 *provide under its power purchase agreements to the customers of*  
32 *each electrical corporation, which shall be reflected in the electrical*  
33 *corporation's proposed procurement plan. Each electrical*  
34 *corporation shall file a proposed procurement plan with the*  
35 *commission not later than 60 days after the commission specifies*  
36 *the allocation of electricity. The proposed procurement plan shall*  
37 *specify the date that the electrical corporation intends to resume*  
38 *procurement of electricity for its retail customers, consistent with*  
39 *its obligation to serve. After the commission's adoption of a*  
40 *procurement plan, the commission shall allow not less than 60*

1 days before the electrical corporation resumes procurement  
2 pursuant to this section.

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

5 (1) An assessment of the price risk associated with the electrical  
6 corporation’s portfolio, including any utility-retained generation,  
7 existing power purchase and exchange contracts, and proposed  
8 contracts or purchases under which an electrical corporation will  
9 procure electricity, electricity demand reductions, and  
10 electricity-related products and the remaining open position to be  
11 served by spot market transactions.

12 (2) A definition of each electricity product, electricity-related  
13 product, and procurement related financial product, including  
14 support and justification for the product type and amount to be  
15 procured under the plan.

16 (3) The duration of the plan.

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

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

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

27 (7) The upfront standards and criteria by which the acceptability  
28 and eligibility for rate recovery of a proposed procurement  
29 transaction will be known by the electrical corporation prior to  
30 execution of the transaction. This shall include an expedited  
31 approval process for the commission’s review of proposed contracts  
32 and subsequent approval or rejection thereof. The electrical  
33 corporation shall propose alternative procurement choices in the  
34 event a contract is rejected.

35 (8) Procedures for updating the procurement plan.

36 (9) A showing that the procurement plan will achieve the  
37 following:

38 (A) The electrical corporation, in order to fulfill its unmet  
39 resource needs, shall procure resources from eligible renewable  
40 energy resources in an amount sufficient to meet its procurement

1 requirements pursuant to the California Renewables Portfolio  
2 Standard Program (Article 16 (commencing with Section 399.11)  
3 of Chapter 2.3).

4 (B) The electrical corporation shall create or maintain a  
5 diversified procurement portfolio consisting of both short-term  
6 and long-term electricity and electricity-related and demand-side  
7 products, including demand response products and tariffs that can  
8 either meet or reduce an electrical corporation's resource adequacy  
9 requirements, as determined by the commission. ~~An electrical  
10 corporation's portfolio must be cost effective and help to achieve  
11 electrical grid reliability and environmental goals.~~

12 (C) The electrical corporation shall first meet its unmet resource  
13 needs through all available energy efficiency and demand response  
14 resources that are cost effective, reliable, and feasible.

15 (10) The electrical corporation's risk management policy,  
16 strategy, and practices, including specific measures of price  
17 stability

18 (11) A plan to achieve appropriate increases in diversity of  
19 ownership and diversity of fuel supply of nonutility electrical  
20 generation.

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

23 (c) The commission shall review and accept, modify, or reject  
24 each electrical corporation's procurement plan. The commission's  
25 review shall consider each electrical corporation's individual  
26 procurement situation, and shall give strong consideration to that  
27 situation in determining which one or more of the features set forth  
28 in this subdivision shall apply to that electrical corporation. A  
29 procurement plan approved by the commission shall contain one  
30 or more of the following features, provided that the commission  
31 may not approve a feature or mechanism for an electrical  
32 corporation if it finds that the feature or mechanism would impair  
33 the restoration of an electrical corporation's creditworthiness or  
34 would lead to a deterioration of an electrical corporation's  
35 creditworthiness:

36 (1) A competitive procurement process under which the  
37 electrical corporation may request bids for procurement-related  
38 services. The commission shall specify the format of that  
39 procurement process, as well as criteria to ensure that the auction  
40 process is open and adequately subscribed. Any purchases made

1 in compliance with the commission-authorized process shall be  
2 recovered in the generation component of rates.

3 (2) An incentive mechanism that establishes a procurement  
4 benchmark or benchmarks and authorizes the electrical corporation  
5 to procure from the market, subject to comparing the electrical  
6 corporation's performance to the commission-authorized  
7 benchmark or benchmarks. The incentive mechanism shall be  
8 clear, achievable, and contain quantifiable objectives and standards.  
9 The incentive mechanism shall contain balanced risk and reward  
10 incentives that limit the risk and reward of an electrical corporation.

11 (3) Upfront achievable standards and criteria by which the  
12 acceptability and eligibility for rate recovery of a proposed  
13 procurement transaction will be known by the electrical corporation  
14 prior to the execution of the bilateral contract for the transaction.  
15 The commission shall provide for expedited review and either  
16 approve or reject the individual contracts submitted by the electrical  
17 corporation to ensure compliance with its procurement plan. To  
18 the extent the commission rejects a proposed contract pursuant to  
19 this criteria, the commission shall designate alternative procurement  
20 choices obtained in the procurement plan that will be recoverable  
21 for ratemaking purposes.

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

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

26 (2) Eliminate the need for after-the-fact reasonableness reviews  
27 of an electrical corporation's actions in compliance with an  
28 approved procurement plan, including resulting electricity  
29 procurement contracts, practices, and related expenses. However,  
30 the commission may establish a regulatory process to verify and  
31 ensure that each contract was administered in accordance with the  
32 terms of the contract, and contract disputes that may arise are  
33 reasonably resolved.

34 (3) Ensure timely recovery of prospective procurement costs  
35 incurred pursuant to an approved procurement plan. The  
36 commission shall establish rates based on forecasts of procurement  
37 costs adopted by the commission, actual procurement costs  
38 incurred, or combination thereof, as determined by the commission.  
39 The commission shall establish power procurement balancing  
40 accounts to track the differences between recorded revenues and

1 costs incurred pursuant to an approved procurement plan. The  
2 commission shall review the power procurement balancing  
3 accounts, not less than semiannually, and shall adjust rates or order  
4 refunds, as necessary, to promptly amortize a balancing account,  
5 according to a schedule determined by the commission. Until  
6 January 1, 2006, the commission shall ensure that any  
7 overcollection or undercollection in the power procurement  
8 balancing account does not exceed 5 percent of the electrical  
9 corporation's actual recorded generation revenues for the prior  
10 calendar year excluding revenues collected for the Department of  
11 Water Resources. The commission shall determine the schedule  
12 for amortizing the overcollection or undercollection in the  
13 balancing account to ensure that the 5 percent threshold is not  
14 exceeded. After January 1, 2006, this adjustment shall occur when  
15 deemed appropriate by the commission consistent with the  
16 objectives of this section.

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

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

24 (e) The commission shall provide for the periodic review and  
25 prospective modification of an electrical corporation's procurement  
26 plan.

27 (f) The commission may engage an independent consultant or  
28 advisory service to evaluate risk management and strategy. The  
29 reasonable costs of any consultant or advisory service is a  
30 reimbursable expense and eligible for funding pursuant to Section  
31 631.

32 (g) The commission shall adopt appropriate procedures to ensure  
33 the confidentiality of any market sensitive information submitted  
34 in an electrical corporation's proposed procurement plan or  
35 resulting from or related to its approved procurement plan,  
36 including, but not limited to, proposed or executed power purchase  
37 agreements, data request responses, or consultant reports, or any  
38 combination, provided that the Office of Ratepayer Advocates and  
39 other consumer groups that are nonmarket participants shall be

1 provided access to this information under confidentiality  
2 procedures authorized by the commission.

3 (h) Nothing in this section alters, modifies, or amends the  
4 commission's oversight of affiliate transactions under its rules and  
5 decisions or the commission's existing authority to investigate and  
6 penalize an electrical corporation's alleged fraudulent activities,  
7 or to disallow costs incurred as a result of gross incompetence,  
8 fraud, abuse, or similar grounds. Nothing in this section expands,  
9 modifies, or limits the State Energy Resources Conservation and  
10 Development Commission's existing authority and responsibilities  
11 as set forth in Sections 25216, 25216.5, and 25323 of the Public  
12 Resources Code.

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

17 (j) (1) Prior to its approval pursuant to Section 851 of any  
18 divestiture of generation assets owned by an electrical corporation  
19 on or after the date of enactment of the act adding this section, the  
20 commission shall determine the impact of the proposed divestiture  
21 on the electrical corporation's procurement rates and shall approve  
22 a divestiture only to the extent it finds, taking into account the  
23 effect of the divestiture on procurement rates, that the divestiture  
24 is in the public interest and will result in net ratepayer benefits.

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

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

34 ~~SEC. 4.~~

35 *SEC. 5.* No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

1 the Government Code, or changes the definition of a crime within  
2 the meaning of Section 6 of Article XIII B of the California  
3 Constitution.

O