

**ASSEMBLY BILL**

**No. 2395**

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**Introduced by Assembly Member Low**

February 18, 2016

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An act to amend Section 372 of the Public Utilities Code, relating to electrical restructuring.

LEGISLATIVE COUNSEL'S DIGEST

AB 2395, as introduced, Low. Electrical restructuring: cogeneration.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Provisions of the Public Utilities Act restructuring the electrical services industry state the policy of the state to encourage and support the development of cogeneration as an efficient, environmentally beneficial, competitive energy resource that will enhance the reliability of local generation supply, and promote local business growth.

This bill would make nonsubstantive changes to the policy of the state relative to cogeneration.

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 372 of the Public Utilities Code is
- 2     amended to read:
- 3     372. (a) It is the policy of the state to encourage and support
- 4     the development of cogeneration as an efficient, environmentally
- 5     beneficial, competitive energy resource that will enhance the
- 6     reliability of local generation supply, and promote local business

1 growth. Subject to the specific conditions provided in this section,  
2 the commission shall determine the applicability to customers of  
3 uneconomic costs as specified in Sections 367, 368, 375, and 376.  
4 Consistent with this state policy, the commission shall provide  
5 that these costs shall not apply to any of the following:

6 (1) To load served onsite or under an ~~over-the-fence~~  
7 *over-the-fence* arrangement by a nonmobile self-cogeneration or  
8 cogeneration facility that was operational on or before December  
9 20, 1995, or by increases in the capacity of a facility to the extent  
10 that the increased capacity was constructed by an entity holding  
11 an ownership interest in or operating the facility and does not  
12 exceed 120 percent of the installed capacity as of December 20,  
13 1995, provided that ~~prior to~~ *before* June 30, 2000, the costs shall  
14 apply to ~~over-the-fence~~ *over-the-fence* arrangements entered into  
15 after December 20, 1995, between unaffiliated parties. For the  
16 purposes of this subdivision, “affiliated” means ~~any~~ *a* person or  
17 entity that directly, or indirectly through one or more  
18 intermediaries, controls, is controlled by, or is under common  
19 control with another specified entity. “Control” means either of  
20 the following:

21 (A) The possession, directly or indirectly, of the power to direct  
22 or to cause the direction of the management or policies of a person  
23 or entity, whether through an ownership, beneficial, contractual,  
24 or equitable interest.

25 (B) Direct or indirect ownership of at least 25 percent of an  
26 entity, whether through an ownership, beneficial, or equitable  
27 interest.

28 (2) To load served by onsite or under an ~~over-the-fence~~  
29 *over-the-fence* arrangement by a nonmobile self-cogeneration or  
30 cogeneration facility for which the customer was committed to  
31 construction as of December 20, 1995, provided that the facility  
32 was substantially operational on or before January 1, 1998, or by  
33 increases in the capacity of a facility to the extent that the increased  
34 capacity was constructed by an entity holding an ownership interest  
35 in or operating the facility and does not exceed 120 percent of the  
36 installed capacity as of January 1, 1998, provided that ~~prior to~~  
37 *before* June 30, 2000, the costs shall apply to ~~over-the-fence~~  
38 *over-the-fence* arrangements entered into after December 20, 1995,  
39 between unaffiliated parties.

1 (3) To load served by existing, new, or portable emergency  
2 generation equipment used to serve the customer's load  
3 requirements during periods when utility service is unavailable,  
4 provided the emergency generation is not operated in parallel with  
5 the integrated electric grid, except on a momentary parallel basis.

6 (4) After June 30, 2000, to ~~any~~ a load served onsite or under an  
7 ~~over-the-fence~~ *over-the-fence* arrangement by ~~any~~ a nonmobile  
8 self-cogeneration or cogeneration facility.

9 (b) Further, consistent with state policy, with respect to  
10 self-cogeneration or cogeneration deferral agreements, the  
11 commission shall do the following:

12 (1) Provide that a utility shall execute a final self-cogeneration  
13 or cogeneration deferral agreement with ~~any~~ a customer that, on  
14 or before December 20, 1995, had executed a letter of intent (or  
15 similar documentation) to enter into the agreement with the utility,  
16 provided that the final agreement shall be consistent with the terms  
17 and conditions set forth in the letter of intent and the commission  
18 shall review and approve the final agreement.

19 (2) Provide that a customer that holds a self-cogeneration or  
20 cogeneration deferral agreement that was in place on or before  
21 December 20, 1995, or that was executed pursuant to paragraph  
22 (1) in the event the agreement expires, or is terminated, may do  
23 any of the following:

24 (A) Continue through December 31, 2001, to receive utility  
25 service at the rate and under terms and conditions applicable to  
26 the customer under the deferral agreement that, as executed,  
27 includes an allocation of uneconomic costs consistent with  
28 subdivision (e) of Section 367.

29 (B) Engage in a direct transaction for the purchase of electricity  
30 and pay uneconomic costs consistent with Sections 367, 368, 375,  
31 and 376.

32 (C) Construct a self-cogeneration or cogeneration facility of  
33 approximately the same capacity as the facility previously deferred,  
34 provided that the costs provided in Sections 367, 368, 375, and  
35 376 shall apply consistent with subdivision (e) of Section 367,  
36 unless otherwise authorized by the commission pursuant to  
37 subdivision (c).

38 (3) Subject to the firewall described in subdivision (e) of Section  
39 367, provide that the ratemaking treatment for self-cogeneration  
40 or cogeneration deferral agreements executed ~~prior to~~ *before*

1 December 20, 1995, or executed pursuant to paragraph (1) shall  
2 be consistent with the ratemaking treatment for the contracts  
3 approved before January 1995.

4 (c) The commission shall authorize, within 60 days of the receipt  
5 of a joint application from the serving utility and one or more  
6 interested parties, applicability conditions as follows:

7 (1) The costs identified in Sections 367, 368, 375, and 376 shall  
8 not, ~~prior to~~ *before* June 30, 2000, apply to load served onsite by  
9 a nonmobile self-cogeneration or cogeneration facility that became  
10 operational on or after December 20, 1995.

11 (2) The costs identified in Sections 367, 368, 375, and 376 shall  
12 not, ~~prior to~~ *before* June 30, 2000, apply to ~~any a~~ load served under  
13 ~~over-the-fence~~ *over-the-fence* arrangements entered into after  
14 December 20, 1995, between unaffiliated entities.

15 (d) For the purposes of this subdivision, all onsite or ~~over the~~  
16 ~~fence over-the-fence~~ arrangements shall be consistent with Section  
17 218 as it existed on December 20, 1995.

18 (e) To facilitate the development of new microcogeneration  
19 applications, electrical corporations may apply to the commission  
20 for a financing order to finance the transition costs to be recovered  
21 from customers employing the applications.

22 (f) To encourage the continued development, installation, and  
23 interconnection of clean and efficient self-generation and  
24 cogeneration resources, to improve system reliability for consumers  
25 by retaining existing generation and encouraging new generation  
26 to connect to the electric grid, and to increase self-sufficiency of  
27 consumers of electricity through the deployment of self-generation  
28 and cogeneration, both of the following shall occur:

29 (1) The commission and the Electricity Oversight Board shall  
30 determine if ~~any a~~ policy or action undertaken by the Independent  
31 System Operator, directly or indirectly, unreasonably discourages  
32 the connection of existing self-generation or cogeneration or new  
33 self-generation or cogeneration to the grid.

34 (2) If the commission and the Electricity Oversight Board find  
35 that ~~any a~~ policy or action of the Independent System Operator  
36 unreasonably discourages the connection of existing self-generation  
37 or cogeneration or new self-generation or cogeneration to the grid,  
38 the commission and the Electricity Oversight Board shall undertake

- 1 all necessary efforts to revise, mitigate, or eliminate that policy or
- 2 action of the Independent System Operator.

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