

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2454**

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**Introduced by Assembly Member Williams**

February 19, 2016

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An act to amend ~~Sections 454.5 and 454.52~~ of *Section 454.5 of, and to add Section 921 to*, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2454, as amended, Williams. Energy: procurement plans.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. 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. 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 all available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

This bill would ~~recharacterize the term "demand reduction" as "demand response," as specified, for purposes of this provision. also require the electrical corporation's proposed procurement plan to include a showing that it will first meet its unmet needs through all available demand response resources.~~ The bill would require the electrical corporation in determining the availability of cost-effective, reliable, and feasible *demand reduction and demand response* resources, to consider the findings of ~~a specified study due to the commission in 2016, the Demand Response Potential Study required by a specific~~

*order of the commission, and to also consider both load-modifying and supply-side demand response resources.*

Under existing law, to the extent that additional procurement is authorized for an electrical corporation, as specified, the commission is required to ensure that the costs are allocated in a fair and equitable manner to all customers, that there is no cost-shifting among customers of load-serving entities, ~~and that community choice aggregators may self-provide renewable integration resources.~~ *resources, and that unmet resource needs are met through available energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.*

This bill would also require the commission to demonstrate to the Legislature, ~~as specified, for capacity additions authorized in excess of 500,000 watts,~~ that the electrical corporation met its unmet needs through all available energy efficiency and *demand reduction and demand response resources that were cost effective, reliable, and feasible.*

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

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. 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

1 corporation's proposed procurement plan. Each electrical  
2 corporation shall file a proposed procurement plan with the  
3 commission not later than 60 days after the commission specifies  
4 the allocation of electricity. The proposed procurement plan shall  
5 specify the date that the electrical corporation intends to resume  
6 procurement of electricity for its retail customers, consistent with  
7 its obligation to serve. After the commission's adoption of a  
8 procurement plan, the commission shall allow not less than 60  
9 days before the electrical corporation resumes procurement  
10 pursuant to this section.

11 (b) An electrical corporation's proposed procurement plan  
12 authorized pursuant to either this section or Section 454.52 shall  
13 include, but not be limited to, all of the following:

14 (1) An assessment of the price risk associated with the electrical  
15 corporation's portfolio, including any utility-retained generation,  
16 existing power purchase and exchange contracts, and proposed  
17 contracts or purchases under which an electrical corporation will  
18 procure electricity, electricity *demand reductions and* demand  
19 responses, and electricity-related products and the remaining open  
20 position to be served by spot market transactions.

21 (2) A definition of each electricity product, electricity-related  
22 product, and procurement related financial product, including  
23 support and justification for the product type and amount to be  
24 procured under the plan.

25 (3) The duration of the plan.

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

28 (5) A competitive procurement process under which the  
29 electrical corporation may request bids for procurement-related  
30 services, including the format and criteria of that procurement  
31 process.

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

36 (7) The upfront standards and criteria by which the acceptability  
37 and eligibility for rate recovery of a proposed procurement  
38 transaction will be known by the electrical corporation prior to  
39 execution of the transaction. This shall include an expedited  
40 approval process for the commission's review of proposed contracts

1 and subsequent approval or rejection thereof. The electrical  
2 corporation shall propose alternative procurement choices in the  
3 event a contract is rejected.

4 (8) Procedures for updating the procurement plan.

5 (9) A showing that the procurement plan will achieve the  
6 following:

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

13 (B) The electrical corporation shall create or maintain a  
14 diversified procurement portfolio consisting of both short-term  
15 and long-term electricity and electricity-related and *demand*  
16 *reduction and demand response* products.

17 (C) The electrical corporation shall first meet its unmet resource  
18 needs through all available energy efficiency and *demand reduction*  
19 *and demand response* resources that are cost effective, reliable,  
20 and feasible. In determining the availability of ~~cost-effective,~~  
21 ~~cost-effective,~~ reliable, and feasible *demand reduction and demand*  
22 *response* resources, the electrical corporation shall consider the  
23 findings ~~of the study of regarding~~ technical, economic, and  
24 achievable *demand reduction and demand response potential* ~~that~~  
25 ~~is due to the commission in 2016, in the Demand Response~~  
26 ~~Potential Study required pursuant to Commission Order~~  
27 ~~D.14-12-024, to the extent those findings are not superseded by~~  
28 ~~subsequent demand response potential studies,~~ and shall consider  
29 both load-modifying and supply-side *demand reduction and*  
30 *demand response* resources.

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

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

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

39 (c) The commission shall review and accept, modify, or reject  
40 each electrical corporation's procurement plan. The commission's

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

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

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

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

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

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

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

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

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

38 (5) Provide for just and reasonable rates, with an appropriate  
39 balancing of price stability and price level in the electrical  
40 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 Energy Commission's existing authority  
26 and responsibilities as set forth in Sections 25216, 25216.5, and  
27 25323 of the Public Resources Code.

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

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

10 (k) The commission shall direct electrical corporations to include  
11 in their proposed procurement plans the integration costs described  
12 and determined pursuant to clause (v) of subparagraph (A) of  
13 paragraph (4) of subdivision (a) of Section 399.13.

14 ~~SEC. 2. Section 454.52 of the Public Utilities Code is amended~~  
15 ~~to read:~~

16 ~~454.52. (a) (1) Commencing in 2017, and to be updated~~  
17 ~~regularly thereafter, the commission shall adopt a process for each~~  
18 ~~load-serving entity, as defined in Section 380, to file an integrated~~  
19 ~~resource plan, and a schedule for periodic updates to the plan, to~~  
20 ~~ensure that load-serving entities do the following:~~

21 ~~(A) Meet the greenhouse gas emissions reduction targets~~  
22 ~~established by the State Air Resources Board, in coordination with~~  
23 ~~the commission and the Energy Commission, for the electricity~~  
24 ~~sector and each load-serving entity that reflect the electricity~~  
25 ~~sector’s percentage in achieving the economywide greenhouse gas~~  
26 ~~emissions reductions of 40 percent from 1990 levels by 2030.~~

27 ~~(B) Procure at least 50 percent eligible renewable energy~~  
28 ~~resources by December 31, 2030, consistent with Article 16~~  
29 ~~(commencing with Section 399.11) of Chapter 2.3.~~

30 ~~(C) Enable each electrical corporation to fulfill its obligation to~~  
31 ~~serve its customers at just and reasonable rates.~~

32 ~~(D) Minimize impacts on ratepayers’ bills.~~

33 ~~(E) Ensure system and local reliability.~~

34 ~~(F) Strengthen the diversity, sustainability, and resilience of the~~  
35 ~~bulk transmission and distribution systems, and local communities.~~

36 ~~(G) Enhance distribution systems and demand-side energy~~  
37 ~~management.~~

38 ~~(H) Minimize localized air pollutants and other greenhouse gas~~  
39 ~~emissions, with early priority on disadvantaged communities~~  
40 ~~identified pursuant to Section 39711 of the Health and Safety Code.~~

1 ~~(1) Meet the energy efficiency and demand response targets~~  
2 ~~established by the commission in concert with the Energy~~  
3 ~~Commission pursuant to Section 454.56 and Section 25310 of the~~  
4 ~~Public Resources Code.~~

5 ~~(2) (A) The commission may authorize all source procurement~~  
6 ~~for electrical corporations that includes various resource types~~  
7 ~~including demand-side resources, supply-side resources, and~~  
8 ~~demand-response resources that may be categorized as either load~~  
9 ~~modifying or supply side, taking into account the differing~~  
10 ~~electrical corporations' geographic service areas, to ensure that~~  
11 ~~each load-serving entity meets the goals set forth in paragraph (1).~~

12 ~~(B) The commission may approve procurement of resource~~  
13 ~~types that will reduce overall greenhouse gas emissions from the~~  
14 ~~electricity sector and meet the other goals specified in paragraph~~  
15 ~~(1), but due to the nature of the technology or fuel source may not~~  
16 ~~compete favorably in price against other resources over the time~~  
17 ~~period of the integrated resource plan.~~

18 ~~(b) (1) Each load-serving entity shall prepare and file an~~  
19 ~~integrated resource plan consistent with paragraph (2) of~~  
20 ~~subdivision (a) on a time schedule directed by the commission and~~  
21 ~~subject to commission review.~~

22 ~~(2) Each electrical corporation's plan shall follow the provisions~~  
23 ~~of Section 454.5.~~

24 ~~(3) The plan of a community choice aggregator shall be~~  
25 ~~submitted to its governing board for approval and provided to the~~  
26 ~~commission for certification, consistent with paragraph (5) of~~  
27 ~~subdivision (a) of Section 366.2, and shall achieve the following:~~

28 ~~(A) Economic, reliability, environmental, security, and other~~  
29 ~~benefits and performance characteristics that are consistent with~~  
30 ~~the goals set forth in paragraph (1) of subdivision (a).~~

31 ~~(B) A diversified procurement portfolio consisting of both~~  
32 ~~short-term and long-term electricity and electricity-related and~~  
33 ~~demand response products.~~

34 ~~(C) The resource adequacy requirements established pursuant~~  
35 ~~to Section 380.~~

36 ~~(4) The plan of an electric service provider shall achieve the~~  
37 ~~goals set forth in paragraph (1) of subdivision (a) through a~~  
38 ~~diversified portfolio consisting of both short-term and long-term~~  
39 ~~electricity, electricity-related, and demand response products.~~

1 ~~(e) To the extent that additional procurement is authorized for~~  
2 ~~the electrical corporation in the integrated resource plan or the~~  
3 ~~procurement process authorized pursuant to Section 454.5, the~~  
4 ~~commission shall demonstrate to the Legislature, in a report~~  
5 ~~submitted pursuant to Section 9795 of the Government Code not~~  
6 ~~more than 60 days after the commission issues a final decision~~  
7 ~~approving new capacity additions in excess of 500,000 watts, that~~  
8 ~~the prioritized procurement of energy efficiency and demand~~  
9 ~~response resources required by subparagraph (C) of paragraph (9)~~  
10 ~~of subdivision (b) of Section 454.5 is achieved, that the costs are~~  
11 ~~allocated in a fair and equitable manner to all customers consistent~~  
12 ~~with 454.51, that there is no cost-shifting among customers of~~  
13 ~~load-serving entities, and that community choice aggregators may~~  
14 ~~self-provide renewable integration resources consistent with~~  
15 ~~Section 454.51.~~

16 ~~(d) In order to eliminate redundancy and increase efficiency,~~  
17 ~~the process adopted pursuant to subdivision (a) shall incorporate,~~  
18 ~~and not duplicate, any other planning processes of the commission.~~

19 *SEC. 2. Section 921 is added to the Public Utilities Code, to*  
20 *read:*

21 *921. To the extent that additional procurement is authorized*  
22 *for the electrical corporation in the integrated resource plan or*  
23 *the procurement process authorized pursuant to Section 454.5,*  
24 *the commission shall demonstrate to the Legislature, in a report*  
25 *submitted pursuant to Section 9795 of the Government Code not*  
26 *more than 60 days after the commission issues a final decision*  
27 *approving new capacity additions in excess of 500,000 watts, that*  
28 *the prioritized procurement of energy efficiency and demand*  
29 *reduction and demand response resources required by*  
30 *subparagraph (C) of paragraph (9) of subdivision (b) of Section*  
31 *454.5 is achieved.*

32 *SEC. 3. No reimbursement is required by this act pursuant to*  
33 *Section 6 of Article XIII B of the California Constitution because*  
34 *the only costs that may be incurred by a local agency or school*  
35 *district will be incurred because this act creates a new crime or*  
36 *infraction, eliminates a crime or infraction, or changes the penalty*  
37 *for a crime or infraction, within the meaning of Section 17556 of*  
38 *the Government Code, or changes the definition of a crime within*

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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