

AMENDED IN ASSEMBLY APRIL 26, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2454

Introduced by Assembly Member Williams

February 19, 2016

An act to amend 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 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 corporation, in determining the availability of cost-effective, reliable, and feasible demand reduction and demand response resources, to consider the findings of 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. commission, as specified.~~

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, that community choice aggregators may self-provide renewable integration 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, ~~for if the commission approves new capacity additions authorized in excess of 500,000 watts, 100 megawatts,~~ 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, reductions,~~ and electricity-related products and the
20 remaining open 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 reliable, and feasible demand reduction and demand response
22 resources, the electrical corporation shall consider the findings
23 regarding technical, economic, and achievable demand reduction
24 and demand response potential in the Demand Response Potential
25 Study required pursuant to Commission Order D.14-12-024, to
26 the extent those findings are not superseded by subsequent demand
27 response reduction potential studies, and shall consider both
28 load-modifying and supply-side demand reduction and demand
29 response resources; *to the extent that any demand reduction is*
30 *consistent with commission policy.*

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 921 is added to the Public Utilities Code, to
 15 read:

16 921. To the extent that additional procurement is authorized
 17 for the electrical corporation in the integrated resource plan or the
 18 procurement process authorized pursuant to Section 454.5, the
 19 commission shall demonstrate to the Legislature, in a report
 20 submitted pursuant to Section 9795 of the Government Code not
 21 more than 60 days after the commission issues a final decision
 22 approving new capacity additions in excess of ~~500,000 watts~~, *100*
 23 *megawatts*, that the prioritized procurement of energy efficiency
 24 and demand reduction ~~and demand response~~ resources required
 25 by subparagraph (C) of paragraph (9) of subdivision (b) of Section
 26 454.5 is achieved.

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