

AMENDED IN ASSEMBLY MAY 31, 2016

AMENDED IN ASSEMBLY MAY 4, 2016

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, of 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, requirements 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 require the electrical corporation, in determining the availability of cost-effective, reliable, and feasible demand reduction resources, to consider the findings of the Demand Response Potential Study required by a specific order of the 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, if the commission approves new capacity additions in excess of 100 megawatts, that the electrical corporation met its unmet needs through all available energy efficiency and demand reduction resources that were cost effective, reliable, and feasible. The bill would require the commission, prior to approving a contract for any new or repowered gas-fired generation resources, to require the electrical corporation to demonstrate that it has undertaken all feasible efforts to meet identified resources needs through available renewable energy, energy storage, energy efficiency, and demand reduction resources that are 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

1 electricity delivery, that the Department of Water Resources shall  
2 provide under its power purchase agreements to the customers of  
3 each electrical corporation, which shall be reflected in the electrical  
4 corporation's proposed procurement plan. Each electrical  
5 corporation shall file a proposed procurement plan with the  
6 commission not later than 60 days after the commission specifies  
7 the allocation of electricity. The proposed procurement plan shall  
8 specify the date that the electrical corporation intends to resume  
9 procurement of electricity for its retail customers, consistent with  
10 its obligation to serve. After the commission's adoption of a  
11 procurement plan, the commission shall allow not less than 60  
12 days before the electrical corporation resumes procurement  
13 pursuant to this section.

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

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

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

27 (3) The duration of the plan.

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

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

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

38 (7) The upfront standards and criteria by which the acceptability  
39 and eligibility for rate recovery of a proposed procurement  
40 transaction will be known by the electrical corporation prior to

1 execution of the transaction. This shall include an expedited  
2 approval process for the commission's review of proposed contracts  
3 and subsequent approval or rejection thereof. The electrical  
4 corporation shall propose alternative procurement choices in the  
5 event a contract is rejected.

6 (8) Procedures for updating the procurement plan.

7 (9) A showing that the procurement plan will achieve the  
8 following:

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

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

19 (C) The electrical corporation shall first meet its unmet resource  
20 needs through all available energy efficiency and demand reduction  
21 resources that are cost effective, reliable, and feasible. In  
22 determining the availability of cost-effective, reliable, and feasible  
23 demand reduction resources, the commission shall consider the  
24 findings regarding technically and economically achievable demand  
25 reduction in the Demand Response Potential Study required  
26 pursuant to Commission Order D.14-12-024, to the extent those  
27 findings are not superseded by other demand reduction studies  
28 conducted by academic institutions or government agencies, and  
29 to the extent that any demand reduction is consistent with  
30 commission policy.

31 (D) (i) The electrical corporation shall undertake all feasible  
32 efforts to meet any identified resource need through available  
33 renewable energy, energy storage, energy efficiency, and demand  
34 reduction resources that are cost effective, reliable, and feasible.

35 (ii) Prior to approving a contract for any new or repowered  
36 gas-fired generation resource, the commission shall require the  
37 electrical corporation to demonstrate compliance with clause (i).

38 (10) The electrical corporation's risk management policy,  
39 strategy, and practices, including specific measures of price  
40 stability.

1 (11) A plan to achieve appropriate increases in diversity of  
2 ownership and diversity of fuel supply of nonutility electrical  
3 generation.

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

6 (c) The commission shall review and accept, modify, or reject  
7 each electrical corporation's procurement plan and any amendments  
8 or updates to the plan. The commission shall ensure that the plan  
9 contains the elements required pursuant to this section, including  
10 the elements described in subparagraph (D) of paragraph (9) of  
11 subdivision (b). The commission's review shall consider each  
12 electrical corporation's individual procurement situation, and shall  
13 give strong consideration to that situation in determining which  
14 one or more of the features set forth in this subdivision shall apply  
15 to that electrical corporation. A procurement plan approved by the  
16 commission shall contain one or more of the following features,  
17 provided that the commission may not approve a feature or  
18 mechanism for an electrical corporation if it finds that the feature  
19 or mechanism would impair the restoration of an electrical  
20 corporation's creditworthiness or would lead to a deterioration of  
21 an electrical corporation's 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 of these, provided that the Office of Ratepayer  
25 Advocates and other consumer groups that are nonmarket  
26 participants shall be provided access to this information under  
27 confidentiality 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 Energy Commission's existing authority  
35 and responsibilities as set forth in Sections 25216, 25216.5, and  
36 25323 of the Public Resources Code.

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

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

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

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

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

22 ~~SEC. 2. Section 921 is added to the Public Utilities Code, to~~  
 23 ~~read:~~

24 ~~921. To the extent that additional procurement is authorized~~  
 25 ~~for the electrical corporation in the integrated resource plan or the~~  
 26 ~~procurement process authorized pursuant to Section 454.5, the~~  
 27 ~~commission shall demonstrate to the Legislature, in a report~~  
 28 ~~submitted pursuant to Section 9795 of the Government Code not~~  
 29 ~~more than 60 days after the commission issues a final decision~~  
 30 ~~approving new capacity additions in excess of 100 megawatts, that~~  
 31 ~~the prioritized procurement of energy efficiency and demand~~  
 32 ~~reduction resources required by subparagraph (C) of paragraph~~  
 33 ~~(9) of subdivision (b) of Section 454.5 is achieved.~~

34 ~~SEC. 3.~~

35 *SEC. 2.* 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