

AMENDED IN SENATE AUGUST 2, 2016  
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**

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**Introduced by Assembly Member Williams**

February 19, 2016

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An act to amend Section 454.5 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 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. *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 compliance with above requirement regarding meeting its unmet needs.*

~~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 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:

1 454.5. (a) The commission shall specify the allocation of  
2 electricity, including quantity, characteristics, and duration of  
3 electricity delivery, that the Department of Water Resources shall  
4 provide under its power purchase agreements to the customers of  
5 each electrical corporation, which shall be reflected in the electrical  
6 corporation's proposed procurement plan. Each electrical  
7 corporation shall file a proposed procurement plan with the  
8 commission not later than 60 days after the commission specifies  
9 the allocation of electricity. The proposed procurement plan shall  
10 specify the date that the electrical corporation intends to resume  
11 procurement of electricity for its retail customers, consistent with  
12 its obligation to serve. After the commission's adoption of a  
13 procurement plan, the commission shall allow not less than 60  
14 days before the electrical corporation resumes procurement  
15 pursuant to this section.

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

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

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

29 (3) The duration of the plan.

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

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

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

1 (7) The upfront standards and criteria by which the acceptability  
2 and eligibility for rate recovery of a proposed procurement  
3 transaction will be known by the electrical corporation prior to  
4 execution of the transaction. This shall include an expedited  
5 approval process for the commission’s review of proposed contracts  
6 and subsequent approval or rejection thereof. The electrical  
7 corporation shall propose alternative procurement choices in the  
8 event a contract is rejected.

9 (8) Procedures for updating the procurement plan.

10 (9) A showing that the procurement plan will achieve the  
11 following:

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

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

22 (C) (i) The electrical corporation shall first meet its unmet  
23 resource needs through all available energy efficiency and demand  
24 reduction resources that are cost effective, reliable, and feasible.  
25 In

26 (ii) In determining the availability of cost-effective, reliable,  
27 and feasible demand reduction resources, the commission shall  
28 consider the findings regarding technically and economically  
29 achievable demand reduction in the Demand Response Potential  
30 Study required pursuant to Commission Order D.14-12-024, to  
31 the extent those findings are not superseded by other demand  
32 reduction studies conducted by academic institutions or government  
33 agencies, and to the extent that any demand reduction is consistent  
34 with commission policy.

35 ~~(D) (i) The electrical corporation shall undertake all feasible  
36 efforts to meet any identified resource need through available  
37 renewable energy, energy storage, energy efficiency, and demand  
38 reduction resources that are cost effective, reliable, and feasible.~~

39 (ii)

1 (iii) Prior to approving a contract for any new or repowered  
2 gas-fired generation resource, the commission shall require the  
3 electrical corporation to demonstrate compliance with clause (i).

4 (10) The electrical corporation's risk management policy,  
5 strategy, and practices, including specific measures of price  
6 stability.

7 (11) A plan to achieve appropriate increases in diversity of  
8 ownership and diversity of fuel supply of nonutility electrical  
9 generation.

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

12 (c) The commission shall review and accept, modify, or reject  
13 each electrical corporation's procurement plan and any amendments  
14 or updates to the plan. The commission shall ensure that the plan  
15 contains the elements required pursuant to this section, including  
16 the elements described in subparagraph (D) of paragraph (9) of  
17 subdivision (b). The commission's review shall consider each  
18 electrical corporation's individual procurement situation, and shall  
19 give strong consideration to that situation in determining which  
20 one or more of the features set forth in this subdivision shall apply  
21 to that electrical corporation. A procurement plan approved by the  
22 commission shall contain one or more of the following features,  
23 provided that the commission may not approve a feature or  
24 mechanism for an electrical corporation if it finds that the feature  
25 or mechanism would impair the restoration of an electrical  
26 corporation's creditworthiness or would lead to a deterioration of  
27 an electrical corporation's creditworthiness:

28 (1) A competitive procurement process under which the  
29 electrical corporation may request bids for procurement-related  
30 services. The commission shall specify the format of that  
31 procurement process, as well as criteria to ensure that the auction  
32 process is open and adequately subscribed. Any purchases made  
33 in compliance with the commission-authorized process shall be  
34 recovered in the generation component of rates.

35 (2) An incentive mechanism that establishes a procurement  
36 benchmark or benchmarks and authorizes the electrical corporation  
37 to procure from the market, subject to comparing the electrical  
38 corporation's performance to the commission-authorized  
39 benchmark or benchmarks. The incentive mechanism shall be  
40 clear, achievable, and contain quantifiable objectives and standards.

1 The incentive mechanism shall contain balanced risk and reward  
2 incentives that limit the risk and reward of an electrical corporation.

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

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

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

18 (2) Eliminate the need for after-the-fact reasonableness reviews  
19 of an electrical corporation's actions in compliance with an  
20 approved procurement plan, including resulting electricity  
21 procurement contracts, practices, and related expenses. However,  
22 the commission may establish a regulatory process to verify and  
23 ensure that each contract was administered in accordance with the  
24 terms of the contract, and contract disputes that may arise are  
25 reasonably resolved.

26 (3) Ensure timely recovery of prospective procurement costs  
27 incurred pursuant to an approved procurement plan. The  
28 commission shall establish rates based on forecasts of procurement  
29 costs adopted by the commission, actual procurement costs  
30 incurred, or combination thereof, as determined by the commission.  
31 The commission shall establish power procurement balancing  
32 accounts to track the differences between recorded revenues and  
33 costs incurred pursuant to an approved procurement plan. The  
34 commission shall review the power procurement balancing  
35 accounts, not less than semiannually, and shall adjust rates or order  
36 refunds, as necessary, to promptly amortize a balancing account,  
37 according to a schedule determined by the commission. Until  
38 January 1, 2006, the commission shall ensure that any  
39 overcollection or undercollection in the power procurement  
40 balancing account does not exceed 5 percent of the electrical

1 corporation's actual recorded generation revenues for the prior  
2 calendar year excluding revenues collected for the Department of  
3 Water Resources. The commission shall determine the schedule  
4 for amortizing the overcollection or undercollection in the  
5 balancing account to ensure that the 5 percent threshold is not  
6 exceeded. After January 1, 2006, this adjustment shall occur when  
7 deemed appropriate by the commission consistent with the  
8 objectives of this section.

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

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

16 (e) The commission shall provide for the periodic review and  
17 prospective modification of an electrical corporation's procurement  
18 plan.

19 (f) The commission may engage an independent consultant or  
20 advisory service to evaluate risk management and strategy. The  
21 reasonable costs of any consultant or advisory service is a  
22 reimbursable expense and eligible for funding pursuant to Section  
23 631.

24 (g) The commission shall adopt appropriate procedures to ensure  
25 the confidentiality of any market sensitive information submitted  
26 in an electrical corporation's proposed procurement plan or  
27 resulting from or related to its approved procurement plan,  
28 including, but not limited to, proposed or executed power purchase  
29 agreements, data request responses, or consultant reports, or any  
30 combination of these, provided that the Office of Ratepayer  
31 Advocates and other consumer groups that are nonmarket  
32 participants shall be provided access to this information under  
33 confidentiality procedures authorized by the commission.

34 (h) Nothing in this section alters, modifies, or amends the  
35 commission's oversight of affiliate transactions under its rules and  
36 decisions or the commission's existing authority to investigate and  
37 penalize an electrical corporation's alleged fraudulent activities,  
38 or to disallow costs incurred as a result of gross incompetence,  
39 fraud, abuse, or similar grounds. Nothing in this section expands,  
40 modifies, or limits the Energy Commission's existing authority

1 and responsibilities as set forth in Sections 25216, 25216.5, and  
2 25323 of the Public Resources Code.

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

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

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

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

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

28 SEC. 2. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the penalty  
33 for a crime or infraction, within the meaning of Section 17556 of  
34 the Government Code, or changes the definition of a crime within  
35 the meaning of Section 6 of Article XIII B of the California  
36 Constitution.

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