

PROPOSED CONFERENCE REPORT NO. 1
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CALIFORNIA LEGISLATURE—1995-96 REGULAR SESSION

ASSEMBLY BILL

No. 1890

**Introduced by Assembly Members ~~Brulte, Conroy, and~~
~~Martinez~~ Member *Brulte***

***(Principal coauthors: Assembly Members Conroy,
Kuykendall, and Martinez)***

(Principal coauthors: Senators Leonard, Peace, and Sher)

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February 24, 1995



~~An act relating to public utilities. An act to amend Sections 955.1 and 3440.1 of the Civil Code, to amend Section 9104 of the Commercial Code, to amend Sections 63010, 63025.1, and 63071 of, and to add Article 6 (commencing with Section 63048) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, to amend Section 216 of, to add Chapter 2.3 (commencing with Section 330) to, to add Article 5.5 (commencing with Section 840) to Chapter 4 of, Part 1 of Division 1 of, to add Division 4.9 (commencing with Section 9600) to, and to repeal Article 12 (commencing with Section 394) of Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1890, as amended, Brulte. Public utilities: *electrical restructuring of the electric industry.*

Existing law provides for the furnishing of utility services, including residential electrical, gas, heat, and water services, by privately owned public utilities subject to the jurisdiction and control of the Public Utilities Commission and similar services by publicly owned public utilities including municipal corporations subject to their governing bodies and municipal utility districts and public utility districts subject to their boards and directors.

The bill would amend the Public Utilities Act to require that the commission undertake various actions, including the facilitation of the efforts of the state's electrical corporations to develop and obtain authorization of the Federal Energy Regulatory Commission for the creation and operation of an Independent System Operator and an Independent Power Exchange, and the authorization of direct transactions between electricity suppliers and end use customers, subject to implementation of a nonbypassable charge.

This bill would prohibit any person, corporation, electrical corporation, or local publicly owned electric utility or other governmental entity other than a retail customer's existing



electric service provider as of December 20, 1995, from providing electric service to a retail customer of a publicly owned electric utility unless the customer pays to the utility currently providing electric service, a nonbypassable generation-related severance fee or transition charge, as defined, established by the regulatory body for that utility.

The bill would prohibit a local publicly owned electric utility or other governmental entity from providing electrical service to a retail customer of an electrical corporation unless that customer pays a nonbypassable transition charge to the electrical corporation.

The bill would require the local regulatory body of each local publicly owned electric utility to determine whether it will authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable severance fee or transition charge, and provide for procedures to implement the direct transactions.

This bill would provide for the issuance of rate reduction bonds for the recovery of transition costs, as defined, by electrical corporations, pursuant to the restructuring of the electrical services industry.

Under the Bergeson-Peace Infrastructure and Economic Development Bank Act, the California Infrastructure and Economic Development Bank is authorized to, among other things, issue and sell or purchase bonds, as defined, make loans, and provide for other types of financing for qualifying projects for public improvements by specified public agencies, known as sponsors, and to execute any instrument necessary, convenient, or appropriate to carry out any power expressly given to the bank by the act. The act also establishes and makes available to the bank the California Infrastructure Bank Fund, a special fund continuously appropriated for these purposes.

By providing for the financing of transition costs under the act which is a new use of continuously appropriated funds, this bill would make an appropriation.

The bill would also incorporate changes to Section 216 of the Public Utilities Code proposed by AB 2501, to take effect if both bills are chaptered and this bill is chaptered last.



Since a violation of the Public Utilities Act is a misdemeanor, the bill would impose additional duties upon local law enforcement agencies, and the bill would also impose additional duties on local agencies, thereby constituting a state-mandated local program.

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.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities.~~

~~This bill would state the intent of the Legislature with respect to the restructuring of the electric industry.~~

~~The bill would become operative only if AB 3153 is enacted.~~

Vote: ~~majority~~ ²/₃. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1.—It is the intent of the Legislature to~~
2 SECTION 1. (a) *The Legislature finds and declares*
3 *that the restructuring of the California electricity*
4 *industry has been driven by changes in federal law*
5 *intended to increase competition in the provision of*
6 *electricity. It is the intent of the Legislature to ensure that*
7 *California’s transition to a more competitive electricity*
8 *market structure allows its citizens and businesses to*
9 *achieve the economic benefits of industry restructuring*
10 *at the earliest possible date, creates a new market*
11 *structure that provides competitive, low cost and reliable*
12 *electric service, provides assurances that electricity*
13 *customers in the new market will have sufficient*
14 *information and protection, and preserves California’s*
15 *commitment to developing diverse, environmentally*
16 *sensitive electricity resources.*



1 (b) It is the intent of the Legislature to provide the
2 legislative foundation for transforming the regulatory
3 framework of California's electric industry in ways that
4 meet the objectives stated in subdivision (a). It is the
5 further intent of the Legislature that during a limited
6 transition period ending March 31, 2002, to provide for all
7 of the following:

8 (1) Accelerated, equitable, nonbypassable recovery of
9 transition costs associated with uneconomic utility
10 investments and contractual obligations.

11 (2) An immediate rate reduction of no less than 10
12 percent for residential and small commercial ratepayers.

13 (3) The financing of the rate reduction through the
14 issuance of "rate reduction bonds" that create no new
15 financial obligations or liabilities for the State of
16 California.

17 (4) An anticipated result through implementation of
18 this act of a subsequent, cumulative rate reduction for
19 residential and small commercial customers of no less
20 than 20 percent by April 1, 2002.

21 (5) A "fire wall" that protects residential and small
22 business consumers from paying for statewide transition
23 cost policy exemptions required for reasons of equity or
24 business development and retention.

25 (6) Protection of the interests of utility employees who
26 might otherwise be economically displaced in a
27 restructured industry.

28 (c) It is the intent of the Legislature to direct the
29 creation of a proposed new market structure featuring
30 two state chartered, nonprofit market institutions: a
31 Power Exchange charged with providing an efficient,
32 competitive auction to meet electricity loads of exchange
33 customers, open on a nondiscriminatory basis to all
34 electricity providers; and an Independent System
35 Operator with centralized control of the statewide
36 transmission grid, charged with ensuring the efficient use
37 and reliable operation of the transmission system. A
38 five-member Oversight Board comprised of three
39 gubernatorial appointees, an appointee of the Senate
40 Committee on Rules and an appointee of the Speaker of



1 *the Assembly will oversee the two new institutions and*
2 *appoint governing boards that are broadly representative*
3 *of California electricity users and providers. It is the*
4 *further intent of the Legislature to direct the*
5 *Independent System Operator to seek federal*
6 *authorization to perform its functions and to be able to*
7 *secure the generation and transmission resources needed*
8 *to achieve specified planning and operational reserve*
9 *criteria. It is the further intent of the Legislature to*
10 *require development of maintenance standards that will*
11 *reduce the potential for outages and secure participation*
12 *in the operation of the Independent System Operator by*
13 *the state's independent local publicly owned utilities.*

14 *(d) It is the intent of the Legislature to protect the*
15 *consumer by requiring registration of certain sellers,*
16 *marketers, and aggregators of electricity service,*
17 *requiring information to be provided to consumers, and*
18 *providing for the compilation and investigation of*
19 *complaints. It is the further intent of the Legislature to*
20 *continue to fund low-income ratepayer assistance*
21 *programs, public purpose programs for public goods*
22 *research, development and demonstration, demand-side*
23 *management and renewable electric generation*
24 *technologies in an unbundled manner.*

25 *(e) It is the intent of the Legislature that electrical*
26 *corporations shall, by June 1, 1997, or on the earliest*
27 *possible date, apply concurrently for financing orders*
28 *from the Public Utilities Commission and rate reduction*
29 *bonds from the California Infrastructure and Economic*
30 *Development Bank in amounts sufficient to achieve a*
31 *rate reduction in the most expeditious manner for*
32 *residential and small commercial customers of not less*
33 *than 10 percent for 1998 and continuing through March*
34 *31, 2002.*

35 *SEC. 2. Section 955.1 of the Civil Code is amended to*
36 *read:*

37 *955.1. (a) Except as provided in Sections 954.5 and*
38 *955 and subject to subdivisions (b) and (c), a transfer*
39 *other than one intended to create a security interest*
40 *(~~Section 9102(1)(a)~~) (paragraph (1) of subdivision (a) of*



1 *Section 9102* of the Commercial Code) of any general
2 intangible (Section 9106 of the Commercial Code)
3 consisting of any right to payment and any transfer of
4 accounts or chattel paper excluded from the coverage of
5 Division 9 of the Commercial Code by ~~Section 9104(f)~~
6 ~~thereof~~ *subdivision (f) of Section 9104 of the Commercial*
7 *Code* shall be deemed perfected as against third persons
8 upon there being executed and delivered to the
9 transferee an assignment thereof in writing.

10 (b) As between bona fide assignees of the same right
11 for value without notice, the assignee first giving notice
12 thereof to the obligor in writing has priority.

13 (c) ~~Such an~~ *The* assignment is not, of itself, notice to
14 the obligor so as to invalidate any payments made by the
15 obligor to the transferor.

16 (d) *This section does not apply to transfers or*
17 *assignments of transition property, as defined in Section*
18 *840 of the Public Utilities Code.*

19 *SEC. 3. Section 3440.1 of the Civil Code is amended*
20 *to read:*

21 3440.1. This chapter does not apply to any of the
22 following:

23 (a) Things in action.

24 (b) Ships or cargoes if either are at sea or in a foreign
25 port.

26 (c) The sale of accounts or chattel paper governed by
27 the Uniform Commercial Code, security interests, and
28 contracts of bottomry or respondentia.

29 (d) Wines or brandies in the wineries, distilleries, or
30 wine cellars of the makers or owners of the wines or
31 brandies, or other persons having possession, care, and
32 control of the wines or brandies, and the pipes, casks, and
33 tanks in which the wines or brandies are contained, if the
34 transfers are made in writing and executed and
35 acknowledged, and if the transfers are recorded in the
36 book of official records in the office of the county recorder
37 of the county in which the wines, brandies, pipes, casks,
38 and tanks are situated.



1 (e) A transfer or assignment made for the benefit of
2 creditors generally or by any assignee acting under an
3 assignment for the benefit of creditors generally.

4 (f) Property exempt from enforcement of a money
5 judgment.

6 (g) Standing timber.

7 (h) Subject to the limitations in Section 3440.3, a
8 transfer of personal property if all of the following
9 conditions are satisfied:

10 (1) Prior to the date of the intended transfer, the
11 transferor or the transferee files a financing statement,
12 with respect to the property transferred, signed by the
13 transferor. The financing statement shall be filed in the
14 office of the Secretary of State in accordance with
15 Chapter 4 (commencing with Section 9401) of Division
16 9 of the Commercial Code, but may use the terms
17 “transferor” in lieu of “debtor” and “transferee” in lieu
18 of “secured party.” The provisions of Chapter 4
19 (commencing with Section 9401) of Division 9 of the
20 Commercial Code shall apply as appropriate to the
21 financing statement.

22 (2) The transferor or the transferee publishes a notice
23 of the intended transfer one time in a newspaper of
24 general circulation published in the judicial district in
25 which the personal property is located, if there is one, and
26 if there is none in the judicial district, then in a newspaper
27 of general circulation in the county embracing the
28 judicial district. The publication shall be completed not
29 less than 10 days before the date the transfer occurs. The
30 notice shall contain the name and address of the
31 transferor and transferee and a general statement of the
32 character of the personal property intended to be
33 transferred, and shall indicate the place where the
34 personal property is located and a date on or after which
35 the transfer is to be made.

36 (i) Personal property not located within this state at
37 the time of the transfer or attachment of the lien if the
38 provisions of this subdivision are not used for the purpose
39 of evading this chapter.



1 (j) A transfer of property which (1) is subject to a
2 statute or treaty of the United States or a statute of this
3 state that provides for the registration of transfers of title
4 or issuance of certificates of title and (2) is so far perfected
5 under that statute or treaty that a bona fide purchaser
6 cannot acquire an interest in the property transferred
7 that is superior to the interest of the transferee.

8 (k) A transfer of personal property in connection with
9 a transaction in which the property is immediately
10 thereafter leased by the transferor from the transferee
11 provided the transferee purchased the property for value
12 and in good faith (subdivision (c) of Section 10308 of the
13 Commercial Code).

14 (l) *Transition property, as defined in Section 840 of the*
15 *Public Utilities Code.*

16 *SEC. 4. Section 9104 of the Commercial Code is*
17 *amended to read:*

18 9104. This division does not apply:

19 (a) To a security interest subject to any statute of the
20 United States to the extent that such statute governs the
21 rights of parties to and third parties affected by
22 transactions in particular types of property; or

23 (c) To a lien given by statute or other rule of law for
24 services or materials except as provided in Section 9310
25 on priority of such liens; or

26 (d) To a transfer of a claim for wages, salary or other
27 compensation of an employee; or

28 (e) To a transfer, including creation of a security
29 interest, by a government or governmental subdivision or
30 agency; or

31 (f) To a sale of accounts or chattel paper as part of a
32 sale of the business out of which they arose, or an
33 assignment of accounts or chattel paper which is for the
34 purpose of collection only, or a transfer of a right to
35 payment under a contract to an assignee who is also to do
36 the performance under the contract or a transfer of a
37 single account to an assignee in whole or partial
38 satisfaction of a preexisting indebtedness; or

39 (g) To any loan made by an insurance company
40 pursuant to the provisions of a policy or contract issued by

1 it and upon the sole security of ~~such~~ *the* policy or contract;
2 or

3 (h) To a right represented by a judgment (other than
4 a judgment taken in a right to payment which was
5 collateral); or

6 (i) To any right of setoff; or

7 (j) Except to the extent that provision is made for
8 fixtures in Section 9313, to the creation or transfer of an
9 interest in or lien on real estate, including a lease or rents
10 thereunder and to any interest of a lessor and lessee in any
11 such lease or rents; or

12 (k) To a transfer in whole or in part of any claim arising
13 out of tort.

14 (l) To any security interest created by the assignment
15 of the benefits of any public construction contract under
16 the Improvement Act of 1911 (Division 7 (commencing
17 with Section 5000), Streets and Highways Code).

18 (m) *To transition property, as defined in Section 840*
19 *of the Public Utilities Code, except to the extent that the*
20 *provisions of this division are referenced in Article 5.5*
21 *(commencing with Section 840) of Chapter 4 of Part 1 of*
22 *Division 1 of the Public Utilities Code.*

23 *SEC. 5. Section 63010 of the Government Code is*
24 *amended to read:*

25 63010. For purposes of this division, the following
26 words and terms shall have the following meanings unless
27 the context clearly indicates or requires another or
28 different meaning or intent:

29 (a) “Act” means the Bergeson-Peace Infrastructure
30 and Economic Development Bank Act.

31 (b) “Bank” means the California Infrastructure and
32 Economic Development Bank.

33 (c) “Board” or “bank board” means the board of
34 directors of the California Infrastructure and Economic
35 Development Bank.

36 (d) “Bond purchase agreement” means a contractual
37 agreement executed between the bank and a sponsor, or
38 a special purpose trust authorized by the bank or a
39 sponsor, or both, whereby the bank or special purpose



1 trust authorized by the bank agrees to purchase bonds of
2 the sponsor for retention or sale.

3 (e) “Bonds” means bonds, including structured,
4 senior, and subordinated bonds or other securities; loans;
5 notes, including bond, revenue, tax or grant anticipation
6 notes; commercial paper; floating rate, and variable
7 maturity securities; and any other evidences of
8 indebtedness *or ownership*, including certificates of
9 participation *or beneficial interest, asset backed*
10 *certificates*, or lease-purchase *or installment purchase*
11 agreements, whether taxable or excludable from gross
12 income for federal income taxation purposes.

13 (f) “Cost,” as applied to a project or portion thereof
14 financed under this division, means all or any part of the
15 cost of construction, renovation, and acquisition of all
16 lands, structures, real or personal property, rights,
17 rights-of-way, franchises, licenses, easements, and
18 interests acquired or used for a project; the cost of
19 demolishing or removing any buildings or structures on
20 land so acquired, including the cost of acquiring any lands
21 to which the buildings or structures may be moved; the
22 cost of all machinery, equipment, and financing charges;
23 interest prior to, during, and for a period after,
24 completion of construction, renovation, or acquisition, as
25 determined by the bank; provisions for working capital;
26 reserves for principal and interest and for extensions,
27 enlargements, additions, replacements, renovations, and
28 improvements; the cost of architectural, engineering,
29 financial and legal services, plans, specifications,
30 estimates, administrative expenses, and other expenses
31 necessary or incidental to determining the feasibility of
32 any project or incidental to the construction, acquisition,
33 or financing of any project, *and transition costs in the case*
34 *of an electrical corporation.*

35 (g) “*Electrical corporation*” has the meaning set forth
36 in Section 218 of the Public Utilities Code.

37 (h) “Executive director” means the executive
38 director of the California Infrastructure and Economic
39 Development Bank appointed pursuant to Section 63021.

40 ~~(h)~~



1 (i) “Facilities” means real and personal property,
2 structures, conveyances, equipment, thoroughfares,
3 buildings, and supporting components thereof that are
4 directly related to providing the following:

5 (1) “City streets” includes any street, avenue,
6 boulevard, road, parkway, drive, or other way that is any
7 of the following:

8 (A) An existing municipal roadway.

9 (B) Is shown upon a plat approved pursuant to law and
10 includes the land between the street lines, whether
11 improved or unimproved, and may comprise pavement,
12 bridges, shoulders, gutters, curbs, guardrails, sidewalks,
13 parking areas, benches, fountains, plantings, lighting
14 systems, and other areas within the street lines, as well as
15 equipment and facilities used in the cleaning, grading,
16 clearance, maintenance, and upkeep thereof.

17 (2) “County highways” includes any county highway
18 as defined in Section 25 of the Streets and Highways Code,
19 that includes the land between the highway lines,
20 whether improved or unimproved, and may comprise
21 pavement, bridges, shoulders, gutters, curbs, guardrails,
22 sidewalks, parking areas, benches, fountains, plantings,
23 lighting systems, and other areas within the street lines,
24 as well as equipment and facilities used in the cleaning,
25 grading, clearance, maintenance, and upkeep thereof.

26 (3) “Drainage and flood control” includes ditches,
27 canals, levees, pumps, dams, conduits, pipes, storm
28 sewers, and dikes necessary to keep or direct water away
29 from people, equipment, buildings, and other protected
30 areas as may be established by lawful authority, as well as
31 the acquisition, improvement, maintenance, and
32 management of floodplain areas and all equipment used
33 in the maintenance and operation of the foregoing.

34 (4) “Educational facilities” includes libraries, child
35 care facilities, including, but not limited to, day care
36 facilities, and employment training facilities.

37 (5) “Environmental mitigation measures” includes
38 required construction or modification of public
39 infrastructure and purchase and installation of pollution
40 control and noise abatement equipment.



1 (6) “Parks and recreational facilities” includes local
2 parks, recreational property and equipment, parkways
3 and property.

4 (7) “Port facilities” includes docks, harbors, ports of
5 entry, piers, ships, small boat harbors and marinas, and
6 any other facilities, additions, or improvements in
7 connection therewith.

8 (8) “Communications” includes facilities for
9 telephone and telecommunications service.

10 (9) “Public transit” includes air and rail transport of
11 goods, airports, guideways, vehicles, rights-of-way,
12 passenger stations, maintenance and storage yards, and
13 related structures, including public parking facilities,
14 equipment used to provide or enhance transportation by
15 bus, rail, ferry, or other conveyance, either publicly or
16 privately owned, that provides to the public general or
17 special service on a regular and continuing basis.

18 (10) “Sewage collection and treatment” includes
19 pipes, pumps, and conduits that collect wastewater from
20 residential, manufacturing, and commercial
21 establishments, the equipment, structures, and facilities
22 used in treating wastewater to reduce or eliminate
23 impurities or contaminants, and the facilities used in
24 disposing of, or transporting, remaining sludge, as well as
25 all equipment used in the maintenance and operation of
26 the foregoing.

27 (11) “Solid-waste collection and disposal” includes
28 vehicles, vehicle-compatible waste receptacles, transfer
29 stations, recycling centers, sanitary landfills, and waste
30 conversion facilities necessary to remove solid waste,
31 except that which is hazardous as defined by law, from its
32 point of origin.

33 (12) “Water treatment and distribution” includes
34 facilities in which water is purified and otherwise treated
35 to meet residential, manufacturing, or commercial
36 purposes and the conduits, pipes, and pumps that
37 transport it to places of use.

38 (13) “Defense conversion” includes, but is not limited
39 to, facilities necessary for successfully converting military
40 bases consistent with an adopted base reuse plan.



1 (14) “Public safety facilities” includes, but is not
2 limited to, police stations, fire stations, court buildings,
3 jails, juvenile halls, and juvenile detention facilities.

4 (15) “State highways” includes any state highway as
5 described in Chapter 2 (commencing with Section 230)
6 of Division 1 of the Streets and Highways Code, and the
7 related components necessary for safe operation of the
8 highway.

9 ~~(i)~~

10 (j) “Financial assistance” in connection with a project,
11 includes, but is not limited to, any combination of grants,
12 loans, the proceeds of bonds issued by the bank or special
13 purpose trust, insurance, guarantees or other credit
14 enhancements or liquidity facilities, and contributions of
15 money, property, labor, or other things of value, as may
16 be approved by resolution of the board or the sponsor, or
17 both; the purchase or retention of bank bonds, the bonds
18 of a sponsor for their retention or for sale by the bank, or
19 the issuance of bank bonds or the bonds of a special
20 purpose trust used to fund the cost of a project for which
21 a sponsor is directly or indirectly liable, including, but not
22 limited to, bonds, the security for which is provided in
23 whole or in part pursuant to the powers granted by
24 Section 63025; bonds for which the bank has provided a
25 guarantee or enhancement, including, but not limited to,
26 the purchase of the subordinated bonds of the sponsor,
27 the subordinated bonds of a special purpose trust, or the
28 retention of the subordinated bonds of the bank pursuant
29 to Chapter 4 (commencing with Section 63060); or any
30 other type of assistance deemed appropriate by the bank
31 or the sponsor, except that no direct loans shall be made
32 to nonpublic entities *other than in connection with the*
33 *issuance of rate reduction bonds pursuant to a financing*
34 *order.*

35 For purposes of this subdivision, “grant” does not
36 include grants made by the bank except when acting as
37 an agent or intermediary for the distribution or
38 packaging of financing available from federal, private, or
39 other public sources.

40 ~~(j)~~



1 (k) “Financing order” has the meaning set forth in
2 Section 840 of the Public Utilities Code.

3 (l) “Guarantee trust fund” means the California
4 Infrastructure Guarantee Trust Fund.

5 ~~(k)~~

6 (m) “Infrastructure bank fund” means the California
7 Infrastructure and Economic Development Bank Fund.

8 ~~(l)~~

9 (n) “Loan agreement” means a contractual
10 agreement executed between the bank or a special
11 purpose trust and a sponsor that provides that the bank
12 or special purpose trust will loan funds to the sponsor and
13 that the sponsor will repay the principal and pay the
14 interest and redemption premium, if any, on the loan.

15 ~~(m)~~

16 (o) “Participating party” means any person, company,
17 corporation, partnership, firm, or other entity or group of
18 entities engaged in business within the state and that
19 applies for financing from the bank in conjunction with
20 a sponsor for the purpose of implementing a project.
21 *However, in the case of a project relating to the financing*
22 *of transition costs and the acquisition of transition*
23 *property on the request of an electrical corporation, the*
24 *participating party shall be deemed to be the same entity*
25 *as the sponsor for the financing.*

26 ~~(n)~~

27 (p) “Project” means designing, acquiring, planning,
28 permitting, entitling, constructing, improving,
29 extending, restoring, financing, and generally developing
30 facilities within the state *or financing transition costs and*
31 *the acquisition of transition property upon approval of a*
32 *financing order by the Public Utilities Commission, as*
33 *provided in Article 5.5 (commencing with Section 840) of*
34 *Chapter 4 of Part 1 of Division 1 of the Public Utilities*
35 *Code.*

36 ~~(o)~~

37 (q) “Rate reduction bonds” has the meaning set forth
38 in Section 840 of the Public Utilities Code.

39 (r) “Revenues” means all receipts, purchase
40 payments, loan repayments, lease payments, and all other



1 income or receipts derived by the bank or a sponsor from
2 the sale, lease, or other financing arrangement
3 undertaken by the bank, a sponsor or a participating
4 party, including, but not limited to, all receipts from a
5 bond purchase agreement, and any income or revenue
6 derived from the investment of any money in any fund
7 or account of the bank or a sponsor *and any receipts*
8 *derived from transition property*. Revenues shall not
9 include moneys in the General Fund of the state.

10 ~~(p)~~

11 (s) “Special purpose trust” means a trust, partnership,
12 limited partnership, association, corporation, nonprofit
13 corporation, or other entity authorized under the laws of
14 the state to serve as an instrumentality of the state to
15 accomplish public purposes and authorized by the bank
16 to acquire, by purchase or otherwise, for retention or sale,
17 the bonds of a sponsor or of the bank made or entered into
18 pursuant to this division and to issue special purpose trust
19 bonds or other obligations secured by these bonds or
20 other sources of public or private revenues. *In addition,*
21 *special purpose trust also means any entity authorized*
22 *under the laws of the state to serve as an instrumentality*
23 *of the state to accomplish public purposes and authorized*
24 *by the bank to acquire transition property and to issue*
25 *rate reduction bonds*.

26 ~~(q)~~

27 (t) “Sponsor” means any subdivision of the state or
28 local government including departments, agencies,
29 commissions, cities, counties, nonprofit corporations
30 formed on behalf of a sponsor, special districts, assessment
31 districts, and joint powers authorities within the state or
32 any combination of these subdivisions that has, or
33 proposes to acquire, an interest in a project and that
34 makes application to the bank for financial assistance in
35 connection with a project in a manner prescribed by the
36 bank. *In addition, an electrical corporation shall be*
37 *deemed to be the sponsor as well as the participating*
38 *party for any project relating to the financing of transition*
39 *costs and the acquisition of transition property on the*
40 *request of the electrical corporation*.



1 ~~(t)~~

2 (u) “State” means the State of California.

3 (v) “*Transition costs*” has the meaning set forth in
4 *Section 840 of the Public Utilities Code.*

5 (w) “*Transition property*” has the meaning set forth in
6 *Section 840 of the Public Utilities Code.*

7 *SEC. 6. Section 63025.1 of the Government Code is*
8 *amended to read:*

9 63025.1. The bank board may do or delegate the
10 following to the executive director:

11 (a) Sue and be sued in its own name.

12 (b) As provided in Chapter 5 (commencing with
13 Section 63070), issue bonds and authorize special purpose
14 trusts to issue bonds, including, at the option of the board,
15 bonds bearing interest that is taxable for the purpose of
16 federal income taxation, to pay all or any part of the cost
17 of any project.

18 (c) Engage the services of private consultants to
19 render professional and technical assistance and advice in
20 carrying out the purposes of this division.

21 (d) Employ attorneys, financial consultants, and other
22 advisers as may, in the bank’s judgment, be necessary in
23 connection with the issuance and sale, or authorization of
24 special purpose trusts for the issuance and sale, of any
25 bonds, notwithstanding Sections 11042 and 11043.

26 (e) Contract for engineering, architectural,
27 accounting, or other services of appropriate state
28 agencies as may, in its judgment, be necessary for the
29 successful development of a project.

30 (f) Pay the reasonable costs of consulting engineers,
31 architects, accountants, and construction, land use,
32 recreation, and environmental experts employed by any
33 sponsor or participating party if, in the bank’s judgment,
34 those services are necessary for the successful
35 development of a project.

36 (g) ~~Take~~ *Acquire, take* title to, and sell by installment
37 sale or otherwise, lands, structures, real or personal
38 property, rights, rights-of-way, franchises, easements, and
39 other interests in lands that are located within the state,
40 *or transition property* as the bank may deem necessary or



1 convenient for the financing of the project, upon terms
2 and conditions that it considers to be reasonable.

3 (h) Receive and accept from any source including, but
4 not limited to, the federal government, the state, or any
5 agency thereof, loans, contributions, or grants, in money,
6 property, labor, or other things of value, for, or in aid of,
7 a project, or any portion thereof.

8 (i) Make secured loans to any sponsor or participating
9 party in connection with the financing of a project in
10 accordance with an agreement between the bank and the
11 sponsor or a participating party. However, no loan shall
12 exceed the total cost of the project as determined by the
13 sponsor or the participating party and approved by the
14 bank.

15 (j) Make secured loans to any sponsor or participating
16 party in accordance with an agreement between the
17 bank and the sponsor or participating party to refinance
18 indebtedness incurred by the sponsor or participating
19 party in connection with projects undertaken and
20 completed prior to any agreement with the bank or
21 expectation that the bank would provide financing.

22 (k) Mortgage all or any portion of the bank's interest
23 in a project and the property on which any project is
24 located, whether owned or thereafter acquired,
25 including the granting of a security interest in any
26 property, tangible or intangible.

27 (l) Assign or pledge all or any portion of the bank's
28 interests in *transition property and the revenues*
29 *therefrom, or* assets, things of value, mortgages, deeds of
30 trust, bonds, bond purchase agreements, loan
31 agreements, indentures of mortgage or trust, or similar
32 instruments, notes, and security interests in property,
33 tangible or intangible and the revenues therefrom, of a
34 sponsor or a participating party to which the bank has
35 made loans, and the revenues therefrom, including
36 payment or income from any interest owned or held by
37 the bank, for the benefit of the holders of bonds.

38 (m) Receive or serve as a conduit for the making of
39 grants, and provide for contributions, guarantees,
40 insurance, credit enhancements or liquidity facilities, or



1 other financial enhancements to a sponsor or a
2 participating party as financial assistance for a project.

3 (n) Lease the project being financed to a sponsor or a
4 participating party, upon terms and conditions that the
5 bank deems proper but shall not be leased at a loss; charge
6 and collect rents therefor; terminate any lease upon the
7 failure of the lessee to comply with any of the obligations
8 thereof; include in any lease, if desired, provisions that the
9 lessee shall have options to renew the lease for a period
10 or periods, and at rents determined by the bank; purchase
11 any or all of the project; or, upon payment of all the
12 indebtedness incurred by the bank for the financing of
13 the project, the bank may convey any or all of the project
14 to the lessee or lessees.

15 (o) Charge and equitably apportion among sponsors
16 and participating parties the bank's administrative costs
17 and expenses incurred in the exercise of the powers and
18 duties conferred by this division.

19 (p) Issue, obtain, or aid in obtaining, from any
20 department or agency of the United States, from other
21 agencies of the state, or from any private company, any
22 insurance or guarantee to, or for, the payment or
23 repayment of interest or principal, or both, or any part
24 thereof, on any loan, lease, or obligation or any
25 instrument evidencing or securing the same, made or
26 entered into pursuant to this division.

27 (q) Notwithstanding any other provision of this
28 division, enter into any agreement, contract, or any other
29 instrument with respect to any insurance or guarantee;
30 accept payment in the manner and form as provided
31 therein in the event of default by a sponsor or a
32 participating party; and issue or assign any insurance or
33 guarantee as security for the bank's bonds.

34 (r) Enter into any agreement or contract, execute any
35 instrument, and perform any act or thing necessary or
36 convenient to, directly or indirectly, secure the bank's
37 bonds, the bonds issued by a special purpose trust, or a
38 sponsor's obligations to the bank or to a special purpose
39 trust, including, but not limited to, bonds of a sponsor
40 purchased by the bank or a special purpose trust for



1 retention or sale, with funds or moneys that are legally
2 available and that are due or payable to the sponsor by
3 reason of any grant, allocation, apportionment or
4 appropriation of the state or agencies thereof, to the
5 extent that the Controller shall be the custodian at any
6 time of these funds or moneys, or with funds or moneys
7 that are or will be legally available to the sponsor, the
8 bank, or the state or any agencies thereof by reason of any
9 grant, allocation, apportionment, or appropriation of the
10 federal government or agencies thereof; and in the event
11 of written notice that the sponsor has not paid or is in
12 default on its obligations to the bank or a special purpose
13 trust, direct the Controller to withhold payment of those
14 funds or moneys from the sponsor over which it is or will
15 be custodian and to pay the same to the bank or special
16 purpose trust or their assignee, or direct the state or any
17 agencies thereof to which any grant, allocation,
18 apportionment or appropriation of the federal
19 government or agencies thereof is or will be legally
20 available to pay the same upon receipt by the bank or
21 special purpose trust or their assignee, until the default
22 has been cured and the amounts then due and unpaid
23 have been paid to the bank or special purpose trust or
24 their assignee, or until arrangements satisfactory to the
25 bank or special purpose trust have been made to cure the
26 default.

27 (s) Enter into any agreement or contract, execute any
28 instrument, and perform any act or thing necessary,
29 convenient, or appropriate to carry out any power
30 expressly given to the bank by this division, including, but
31 not limited to, agreements for the sale of all or any part,
32 including principal, interest, redemption rights or any
33 other rights or obligations, of bonds of the bank or of a
34 special purpose trust, liquidity agreements, contracts
35 commonly known as interest rate swap agreements,
36 forward payment conversion agreements, futures or
37 contracts providing for payments based on levels of, or
38 changes in, interest rates or currency exchange rates, or
39 contracts to exchange cash-flows or a series of payments,
40 or contracts, including options, puts or calls to hedge



1 payments, rate, spread, currency exchange, or similar
2 exposure, or any other financial instrument commonly
3 known as a structured financial product.

4 (t) Purchase, with the proceeds of the bank's bonds,
5 transition property or bonds issued by, or for the benefit
6 of, any sponsor in connection with a project, pursuant to
7 a bond purchase agreement or otherwise. Bonds or
8 transition property purchased pursuant to this part may
9 be held by the bank, pledged or assigned by the bank, or
10 sold to public or private purchasers at public or
11 negotiated sale, in whole or in part, separately or together
12 with other bonds issued by the bank, and notwithstanding
13 any other provision of law, may be bought by the bank at
14 private sale.

15 (u) Enter into purchase and sale agreements with all
16 entities, public and private, including state and local
17 government pension funds, with respect to the sale or
18 purchase of bonds *or transition property*.

19 (v) Invest any moneys held in reserve or sinking funds,
20 or any moneys not required for immediate use or
21 disbursement, in obligations that are authorized by law
22 for the investment of trust funds in the custody of the
23 Treasurer.

24 (w) Authorize a special purpose trust or trusts to
25 purchase or retain, with the proceeds of the bonds of a
26 special purpose trust, transition property or bonds issued
27 by, or for the benefit of, any sponsor in connection with
28 a project or issued by the bank or a special purpose trust,
29 pursuant to a bond purchase agreement or otherwise.
30 Bonds or transition property purchased pursuant to this
31 title may be held by a special purpose entity, pledged or
32 assigned by a special purpose entity, or sold to public or
33 private purchasers at public or negotiated sale, in whole
34 or in part, with or without structuring, subordination or
35 credit enhancement, separately or together with other
36 bonds issued by a special purpose trust, and
37 notwithstanding any other provision of law, may be
38 bought by the bank or by a special purpose trust at private
39 sale.



1 (x) Approve the issuance of any bonds, notes, or other
2 evidences of indebtedness by the California Economic
3 Development and Financing Authority, established
4 pursuant to Section 15712, and the Rural Economic
5 Development Infrastructure Panel, established pursuant
6 to Section 15373.7.

7 (y) Approve the issuance of rate reduction bonds by
8 an entity other than the bank to acquire transition
9 property upon approval of the transaction in a financing
10 order by the Public Utilities Commission, as provided in
11 Article 5.5 (commencing with Section 840) of Chapter 4
12 of Part 1 of Division 1 of the Public Utilities Code.

13 SEC. 7. Article 6 (commencing with Section 63048) is
14 added to Chapter 2 of Division 1 of Title 6.7 of the
15 Government Code, to read:

16

17 *Article 6. Financing of Transition Costs*

18

19 63048. Notwithstanding any other provision of this
20 division, a project for the financing of transition costs and
21 the acquisition of transition property upon the request of
22 an electrical corporation shall be deemed to be in the
23 public interest and eligible for financing by the bank, and
24 Article 3 (commencing with Section 63040), Article 4
25 (commencing with Section 63042), and Article 5
26 (commencing with Section 63043), shall not apply to the
27 project or financing. The bank shall consider a project for
28 financing transition costs and the acquisition of transition
29 property upon filing of an application by an appropriate
30 participating party, on the terms and conditions the bank
31 shall determine. The bank shall establish procedures for
32 the expeditious review of applications from electrical
33 corporations for the issuance or approval of rate
34 reduction bonds. The review may be concurrent with the
35 Public Utilities Commission's processing of an application
36 for the pertinent financing order, so as to allow for the
37 issuance of rate reduction bonds as quickly as feasible
38 after the issuance of the pertinent financing order by the
39 Public Utilities Commission. Notwithstanding any other
40 provision of this division, the bank shall have no authority



1 *to alter or modify any term or condition related to the*
2 *transition costs or the transition property as set forth in*
3 *the pertinent financing order, and shall have no authority*
4 *over any matter that is subject to the approval of the*
5 *Public Utilities Commission under Article 5.5*
6 *(commencing with Section 840) of Chapter 4 of Part 1 of*
7 *Division 1 of the Public Utilities Code.*

8 *SEC. 8. Section 63071 of the Government Code is*
9 *amended to read:*

10 63071. (a) Notwithstanding any other provision of
11 law, but consistent with Sections 1 and 18 of Article XVI
12 of the California Constitution, a sponsor may issue bonds
13 for purchase by the bank pursuant to a bond purchase
14 agreement. The bank may issue bonds or authorize a
15 special purpose trust to issue bonds. These bonds may be
16 issued pursuant to the charter of any city or any city and
17 county that authorized the issuance of these bonds as a
18 sponsor and may also be issued by any sponsor pursuant
19 to the Revenue Bond Law of 1941 (Chapter 6
20 (commencing with Section 54300) of Division 2 of Title
21 5) to pay the costs and expenses pursuant to this title,
22 subject to the following conditions:

23 (1) With the prior approval of the bank, the sponsor
24 may sell these bonds in any manner as it may determine,
25 either by private sale, or by means of competitive bid.

26 (2) Notwithstanding Section 54418, the bonds may be
27 sold at a discount at any rate as the bank and sponsor shall
28 determine.

29 (3) Notwithstanding Section 54402, the bonds shall
30 bear interest at any rate and be payable at any time, as the
31 sponsor shall determine with the consent of the bank.

32 (b) The total amount of bonds that may be outstanding
33 at any one time under this chapter shall not exceed five
34 billion dollars (\$5,000,000,000), *exclusive of rate reduction*
35 *bonds. The total amount of rate reduction bonds that may*
36 *be outstanding at any one time under this chapter shall*
37 *not exceed ten billion dollars (\$10,000,000,000).*

38 (c) Bonds for which moneys or securities have been
39 deposited in trust, in amounts necessary to pay or redeem
40 the principal, interest, and any redemption premium



1 theron, shall be deemed not to be outstanding for
2 purposes of this section.

3 *SEC. 9. Section 216 of the Public Utilities Code is*
4 *amended to read:*

5 216. (a) “Public utility” includes every common
6 carrier, toll bridge corporation, pipeline corporation, gas
7 corporation, electrical corporation, telephone
8 corporation, telegraph corporation, water corporation,
9 sewer system corporation, and heat corporation, where
10 the service is performed for, or the commodity is
11 delivered to, the public or any portion thereof.

12 (b) Whenever any common carrier, toll bridge
13 corporation, pipeline corporation, gas corporation,
14 electrical corporation, telephone corporation, telegraph
15 corporation, water corporation, sewer system
16 corporation, or heat corporation performs a service for,
17 or delivers a commodity to, the public or any portion
18 thereof for which any compensation or payment
19 whatsoever is received, that common carrier, toll bridge
20 corporation, pipeline corporation, gas corporation,
21 electrical corporation, telephone corporation, telegraph
22 corporation, water corporation, sewer system
23 corporation, or heat corporation, is a public utility subject
24 to the jurisdiction, control, and regulation of the
25 commission and the provisions of this part.

26 (c) When any person or corporation performs any
27 service for, or delivers any commodity to, any person,
28 private corporation, municipality, or other political
29 subdivision of the state, ~~which~~ *that* in turn either directly
30 or indirectly, mediately or immediately, performs that
31 service for, or delivers that commodity to, the public or
32 any portion thereof, that person or corporation is a public
33 utility subject to the jurisdiction, control, and regulation
34 of the commission and the provisions of this part.

35 (d) Ownership or operation of a facility ~~which~~ *that*
36 employs cogeneration technology or produces power
37 from other than a conventional power source or the
38 ownership or operation of a facility which employs
39 landfill gas technology does not make a corporation or
40 person a public utility within the meaning of this section



1 solely because of the ownership or operation of such a
2 facility.

3 (e) Any corporation or person engaged directly or
4 indirectly in developing, producing, transmitting,
5 distributing, delivering, or selling any form of heat
6 derived from geothermal or solar resources or from
7 cogeneration technology to any privately owned or
8 publicly owned public utility, or to the public or any
9 portion thereof, is not a public utility within the meaning
10 of this section solely by reason of engaging in any of those
11 activities.

12 (f) The ownership or operation of a facility ~~which~~ *that*
13 sells compressed natural gas at retail to the public for use
14 only as a motor vehicle fuel, and the selling of compressed
15 natural gas at retail from such a facility to the public for
16 use only as a motor vehicle fuel, does not make the
17 corporation or person a public utility within the meaning
18 of this section solely because of that ownership, operation,
19 or sale.

20 (g) *Generation assets owned by any public utility prior*
21 *to January 1, 1997, and subject to rate regulation by the*
22 *commission, shall continue to be subject to regulation by*
23 *the commission until those assets have undergone market*
24 *valuation in accordance with procedures established by*
25 *the commission.*

26 (h) *The ownership, control, operation, or*
27 *management of an electric plant used for direct*
28 *transactions or participation directly or indirectly in*
29 *direct transactions, as permitted by subdivision (b) of*
30 *Section 365, sales into the Power Exchange referred to in*
31 *Section 365, or the use or sale as permitted under*
32 *subdivisions (b) to (d), inclusive, of Section 218, shall not*
33 *make a corporation or person a public utility within the*
34 *meaning of this section solely because of that ownership,*
35 *participation, or sale.*

36 SEC. 9.5. *Section 216 of the Public Utilities Code is*
37 *amended to read:*

38 216. (a) "Public utility" includes every common
39 carrier, toll bridge corporation, pipeline corporation, gas
40 corporation, electrical corporation, telephone



1 corporation, telegraph corporation, water corporation,
2 sewer system corporation, and heat corporation, where
3 the service is performed for, or the commodity is
4 delivered to, the public or any portion thereof.

5 (b) Whenever any common carrier, toll bridge
6 corporation, pipeline corporation, gas corporation,
7 electrical corporation, telephone corporation, telegraph
8 corporation, water corporation, sewer system
9 corporation, or heat corporation performs a service for,
10 or delivers a commodity to, the public or any portion
11 thereof for which any compensation or payment
12 whatsoever is received, that common carrier, toll bridge
13 corporation, pipeline corporation, gas corporation,
14 electrical corporation, telephone corporation, telegraph
15 corporation, water corporation, sewer system
16 corporation, or heat corporation, is a public utility subject
17 to the jurisdiction, control, and regulation of the
18 commission and the provisions of this part.

19 (c) When any person or corporation performs any
20 service for, or delivers any commodity to, any person,
21 private corporation, municipality, or other political
22 subdivision of the state, ~~which~~ *that* in turn either directly
23 or indirectly, mediately or immediately, performs that
24 service for, or delivers that commodity to, the public or
25 any portion thereof, that person or corporation is a public
26 utility subject to the jurisdiction, control, and regulation
27 of the commission and the provisions of this part.

28 (d) Ownership or operation of a facility ~~which~~ *that*
29 employs cogeneration technology or produces power
30 from other than a conventional power source or the
31 ownership or operation of a facility which employs
32 landfill gas technology does not make a corporation or
33 person a public utility within the meaning of this section
34 solely because of the ownership or operation of such a
35 facility.

36 (e) Any corporation or person engaged directly or
37 indirectly in developing, producing, transmitting,
38 distributing, delivering, or selling any form of heat
39 derived from geothermal or solar resources or from
40 cogeneration technology to any privately owned or



1 publicly owned public utility, or to the public or any
2 portion thereof, is not a public utility within the meaning
3 of this section solely by reason of engaging in any of those
4 activities.

5 (f) The ownership or operation of a facility ~~which~~ that
6 sells compressed natural gas at retail to the public for use
7 only as a motor vehicle fuel, and the selling of compressed
8 natural gas at retail from such a facility to the public for
9 use only as a motor vehicle fuel, does not make the
10 corporation or person a public utility within the meaning
11 of this section solely because of that ownership, operation,
12 or sale.

13 (g) *Ownership or operation of a facility that has been*
14 *certified by the Federal Energy Regulatory Commission*
15 *as an exempt wholesale generator pursuant to Section 32*
16 *of the Public Utility Holding Company Act of 1935*
17 *(Chapter 2C (commencing with Section 79) of Title 15 of*
18 *the United States Code) does not make a corporation or*
19 *person a public utility within the meaning of this section,*
20 *solely due to the ownership or operation of that facility.*

21 (h) *Generation assets owned by any public utility*
22 *prior to January 1, 1997, and subject to rate regulation by*
23 *the commission, shall continue to be subject to regulation*
24 *by the commission until those assets have undergone*
25 *market valuation in accordance with procedures*
26 *established by the commission.*

27 (i) *The ownership, control, operation, or management*
28 *of an electric plant used for direct transactions or*
29 *participation directly or indirectly in direct transactions,*
30 *as permitted by subdivision (b) of Section 365, sales into*
31 *the Power Exchange referred to in Section 365, or the use*
32 *or sale as permitted under subdivisions (b) to (d),*
33 *inclusive, of Section 218, shall not make a corporation or*
34 *person a public utility within the meaning of this section*
35 *solely because of that ownership, participation, or sale.*

36 SEC. 10. Chapter 2.3 (commencing with Section 330)
37 is added to Part 1 of Division 1 of the Public Utilities Code,
38 to read:

39



1 CHAPTER 2.3. ELECTRICAL RESTRUCTURING

2
3 Article 1. General Provisions and Definitions

4
5 330. In order to provide guidance in carrying out this
6 chapter, the Legislature finds and declares all of the
7 following:

8 (a) It is the intent of the Legislature that a cumulative
9 rate reduction of at least 20 percent be achieved not later
10 than April 1, 2002, for residential and small commercial
11 customers, from the rates in effect on June 10, 1996. In
12 determining that the April 1, 2002, rate reduction has
13 been met, the commission shall exclude the costs of the
14 competitively procured electricity and the costs
15 associated with the rate reduction bonds, as defined in
16 Section 840.

17 (b) The people, businesses, and institutions of
18 California spend nearly twenty-three billion dollars
19 (\$23,000,000,000) annually on electricity, so that
20 reductions in the price of electricity would significantly
21 benefit the economy of the state and its residents.

22 (c) The Public Utilities Commission has opened
23 rulemaking and investigation proceedings with regard to
24 restructuring California's electric power industry and
25 reforming utility regulation.

26 (d) The commission has found, after an extensive
27 public review process, that the interests of ratepayers and
28 the state as a whole will be best served by moving from
29 the regulatory framework existing on January 1, 1997, in
30 which retail electricity service is provided principally by
31 electrical corporations subject to an obligation to provide
32 ultimate consumers in exclusive service territories with
33 reliable electric service at regulated rates, to a framework
34 under which competition would be allowed in the supply
35 of electric power and customers would be allowed to have
36 the right to choose their supplier of electric power.

37 (e) Competition in the electric generation market will
38 encourage innovation, efficiency, and better service from
39 all market participants, and will permit the reduction of
40 costly regulatory oversight.



1 (f) *The delivery of electricity over transmission and*
2 *distribution systems is currently regulated, and will*
3 *continue to be regulated to ensure system safety,*
4 *reliability, environmental protection, and fair access for*
5 *all market participants.*

6 (g) *Reliable electric service is of utmost importance to*
7 *the safety, health, and welfare of the state's citizenry and*
8 *economy. It is the intent of the Legislature that electric*
9 *industry restructuring should enhance the reliability of*
10 *the interconnected regional transmission systems, and*
11 *provide strong coordination and enforceable protocols*
12 *for all users of the power grid.*

13 (h) *It is important that sufficient supplies of electric*
14 *generation will be available to maintain the reliable*
15 *service to the citizens and businesses of the state.*

16 (i) *Reliable electric service depends on conscientious*
17 *inspection and maintenance of transmission and*
18 *distribution systems. To continue and enhance the*
19 *reliability of the delivery of electricity, the Independent*
20 *System Operator and the commission, respectively,*
21 *should set inspection, maintenance, repair, and*
22 *replacement standards.*

23 (j) *It is the intent of the Legislature that California*
24 *enter into a compact with western region states. That*
25 *compact should require the publicly and investor-owned*
26 *utilities located in those states, that sell energy to*
27 *California retail customers, to adhere to enforceable*
28 *standards and protocols to protect the reliability of the*
29 *interconnected regional transmission and distribution*
30 *systems.*

31 (k) *In order to achieve meaningful wholesale and*
32 *retail competition in the electric generation market, it is*
33 *essential to do all of the following:*

34 (1) *Separate monopoly utility transmission functions*
35 *from competitive generation functions, through*
36 *development of independent, third-party control of*
37 *transmission access and pricing.*

38 (2) *Permit all customers to choose from among*
39 *competing suppliers of electric power.*



1 (3) Provide customers and suppliers with open,
2 nondiscriminatory, and comparable access to
3 transmission and distribution services.

4 (1) The commission has properly concluded that:

5 (1) This competition will best be introduced by the
6 creation of an Independent System Operator and an
7 independent Power Exchange.

8 (2) Generation of electricity should be open to
9 competition and utility generation should be transitioned
10 from regulated status to unregulated status through
11 means of commission-approved market valuation
12 mechanisms.

13 (3) There is a need to ensure that no participant in
14 these new market institutions has the ability to exercise
15 significant market power so that operation of the new
16 market institutions would be distorted.

17 (4) These new market institutions should commence
18 simultaneously with the phase-in of customer choice, and
19 the public will be best served if these institutions and the
20 nonbypassable transition cost recovery mechanism
21 referred to in subdivisions (s) to (w), inclusive, are in
22 place simultaneously and no later than January 1, 1998.

23 (m) It is the intention of the Legislature that
24 California's publicly owned electric utilities and
25 investor-owned electric utilities should commit control of
26 their transmission facilities to the Independent System
27 Operator. These utilities should jointly advocate to the
28 Federal Energy Regulatory Commission a pricing
29 methodology for the Independent System Operator that
30 results in an equitable return on capital investment in
31 transmission facilities for all Independent System
32 Operator participants.

33 (n) Opportunities to acquire electric power in the
34 competitive market must be available to California
35 consumers as soon as practicable, but no later than
36 January 1, 1998, so that all customers can share in the
37 benefits of competition.

38 (o) Under the existing regulatory framework,
39 California's electrical corporations were granted



1 franchise rights to provide electricity to consumers in
2 their service territories.

3 (p) Consistent with federal and state policies,
4 California electrical corporations invested in power
5 plants and entered into contractual obligations in order
6 to provide reliable electrical service on a
7 nondiscriminatory basis to all consumers within their
8 service territories who requested service.

9 (q) The cost of these investments and contractual
10 obligations are currently being recovered in electricity
11 rates charged by electrical corporations to their
12 consumers.

13 (r) Transmission and distribution of electric power
14 remain essential services imbued with the public interest
15 that are provided over facilities owned and maintained
16 by the state's electrical corporations.

17 (s) It is proper to allow electrical corporations an
18 opportunity to continue to recover, over a reasonable
19 transition period, those costs and categories of costs for
20 generation-related assets and obligations, including costs
21 associated with any subsequent renegotiation or buyout
22 of existing generation-related contracts, that the
23 commission, prior to December 20, 1995, had authorized
24 for collection in rates and that may not be recoverable in
25 market prices in a competitive generation market, and
26 appropriate additions incurred after December 20, 1995,
27 for capital additions to generating facilities existing as of
28 December 20, 1995, that the commission determines are
29 reasonable and should be recovered, provided that the
30 costs are necessary to maintain those facilities through
31 December 31, 2001. In determining the costs to be
32 recovered, it is appropriate to net the negative value of
33 above market assets against the positive value of below
34 market assets.

35 (t) The transition to a competitive generation market
36 should be orderly, protect electric system reliability,
37 provide the investors in these electrical corporations with
38 a fair opportunity to fully recover the costs associated
39 with commission approved generation-related assets and
40 obligations, and be completed as expeditiously as possible.



1 (u) The transition to expanded customer choice,
2 competitive markets, and performance based
3 ratemaking as described in Decision 95-12-063, as
4 modified by Decision 96-01-009, of the Public Utilities
5 Commission, can produce hardships for employees who
6 have dedicated their working lives to utility employment.
7 It is preferable that any necessary reductions in the utility
8 work force directly caused by electrical restructuring, be
9 accomplished through offers of voluntary severance,
10 retraining, early retirement, outplacement, and related
11 benefits. Whether work force reductions are voluntary or
12 involuntary, reasonable costs associated with these sorts
13 of benefits should be included in the competition
14 transition charge.

15 (v) Charges associated with the transition should be
16 collected over a specific period of time on a
17 nonbypassable basis and in a manner that does not result
18 in an increase in rates to customers of electrical
19 corporations. In order to insulate the policy of
20 nonbypassability against incursions, if exemptions from
21 the competition transition charge are granted, a fire wall
22 shall be created that segregates recovery of the cost of
23 exemptions as follows:

24 (1) The cost of the competition transition charge
25 exemptions granted to members of the combined class of
26 residential and small commercial customers shall be
27 recovered only from those customers.

28 (2) The cost of the competition transition charge
29 exemptions granted to members of the combined class of
30 customers other than residential and small commercial
31 customers shall be recovered only from those customers.
32 The commission shall retain existing cost allocation
33 authority provided that the fire wall and rate freeze
34 principles are not violated.

35 (w) It is the intent of the Legislature to require and
36 enable electrical corporations to monetize a portion of
37 the competition transition charge for residential and
38 small commercial consumers so that these customers will
39 receive rate reductions of no less than 10 percent for 1998
40 continuing through 2002. Electrical corporations shall, by



1 June 1, 1997, or earlier; secure the means to finance the
2 competition transition charge by applying concurrently
3 for financing orders from the Public Utilities Commission
4 and for rate reduction bonds from the California
5 Infrastructure and Economic Development Bank.

6 (x) California's public utility electrical corporations
7 provide substantial benefits to all Californians, including
8 employment and support of the state's economy.
9 Restructuring the electric services industry pursuant to
10 the act that added this chapter will continue these
11 benefits, and will also offer meaningful and immediate
12 rate reductions for residential and small commercial
13 customers, and facilitate competition in the supply of
14 electric power.

15 331. The definitions set forth in this section shall
16 govern the construction of this chapter.

17 (a) "Aggregator" means any marketer, broker, public
18 agency, city, county, or special district, that combines the
19 loads of multiple end-use customers in facilitating the sale
20 and purchase of electric energy, transmission, and other
21 services on behalf of these customers.

22 (b) "Broker" means an entity that arranges the sale
23 and purchase of electric energy, transmission, and other
24 services between buyers and sellers, but does not take
25 title to any of the power sold.

26 (c) "Direct transaction" means a contract between
27 any one or more electric generators, marketers, or
28 brokers of electric power and one or more retail
29 customers providing for the purchase and sale of electric
30 power or any ancillary services.

31 (d) "Fire wall" means the line of demarcation
32 separating residential and small commercial customers
33 from all other customers as described in subdivision (e)
34 of Section 367.

35 (e) "Marketer" means any entity that buys electric
36 energy, transmission, and other services from traditional
37 utilities and other suppliers, and then resells those
38 services at wholesale or to an end-use customer.

39 (f) "Microcogeneration facility" means a
40 cogeneration facility of less than one megawatt.



1 (g) “Restructuring trusts” means the two tax-exempt
2 public benefit trusts established by Decision D. 96-08-038
3 of the Public Utilities Commission to provide for design
4 and development of the hardware and software systems
5 for the Power Exchange and the Independent System
6 Operator, respectively, and that may undertake other
7 activities, as needed, as ordered by the commission.

8 (h) “Small commercial customer” means a customer
9 that has a maximum peak demand of less than 20
10 kilowatts.

11

12 Article 2. Oversight Board

13

14 334. The Legislature finds and declares that in order
15 to ensure the success of electric industry restructuring, in
16 the transition to a new market structure it is important to
17 ensure a reliable supply of electricity. Reliable electric
18 service is of paramount importance to the safety, health,
19 and comfort of the people of California. Transmission
20 connections between electric utilities allow them to share
21 generation resources and reduce the number of power
22 plants necessary to maintain a reliable system. The
23 connections between utilities also create exposure to
24 events that can cause widespread and extended
25 transmission and service outages that reach far beyond
26 the originating utility service area. California utilities and
27 those in the western United States voluntarily adhere to
28 reliability standards developed by the Western Systems
29 Coordinating Council. The economic cost of extended
30 electricity outages, such as those that occurred in
31 California and throughout the Western Systems
32 Coordinating Council on July 2, 1996, and August 10, 1996,
33 to California’s residential, commercial, agricultural, and
34 industrial customers is significant. The proposed
35 restructuring of the electricity industry would transfer
36 responsibility for ensuring short- and long-term reliability
37 away from electric utilities and regulatory bodies to the
38 Independent System Operator and various market-based
39 mechanisms. The Legislature has an interest in ensuring
40 that the change in the locus of responsibility for reliability



1 *does not expose California citizens to undue economic*
2 *risk in connection with system reliability.*

3 *335. In order to ensure that the interests of the people*
4 *of California are served, a five-member Oversight Board*
5 *shall be formed as provided in Section 336. Its functions*
6 *shall be all of the following:*

7 *(a) To oversee the Independent System Operator and*
8 *the Power Exchange.*

9 *(b) To determine the composition and terms of*
10 *service and to appoint the members of the governing*
11 *boards of the Independent System Operator and the*
12 *Power Exchange.*

13 *(c) To serve as an appeal board for majority decisions*
14 *of the Independent System Operator governing board.*

15 *336. (a) The five-member Oversight Board shall be*
16 *comprised as follows:*

17 *(1) Three members, who are California residents and*
18 *electricity ratepayers, appointed by the Governor from*
19 *a list jointly provided by the California Energy Resources*
20 *Conservation and Development Commission and the*
21 *Public Utilities Commission, and subject to confirmation*
22 *by the Senate.*

23 *(2) One member of the Assembly appointed by the*
24 *Speaker of the Assembly.*

25 *(3) One member of the Senate appointed by the*
26 *Senate Committee on Rules.*

27 *(b) Legislative members shall be nonvoting members,*
28 *however, they are otherwise full members of the board*
29 *with all rights and privileges pertaining thereto.*

30 *(c) Oversight Board members shall serve three-year*
31 *terms with no limit on reappointment. For purposes of*
32 *the initial appointments set forth in paragraph (1), the*
33 *Governor shall appoint one member to a one-year term,*
34 *one to a two-year term, and one to a three-year term.*

35 *337. The Oversight Board, as the appointing body,*
36 *shall establish nominating procedures and qualifications*
37 *for Independent System Operator governing board*
38 *members. The Independent System Operator governing*
39 *board shall be composed of California residents and shall*
40 *include, but not be limited to, representatives of*



1 *investor-owned utility transmission owners, publicly*
2 *owned utility transmission owners, nonutility electricity*
3 *sellers, public buyers and sellers, private buyers and*
4 *sellers, industrial end-users, commercial end-users,*
5 *residential end-users, agricultural end-users, public*
6 *interest groups, and nonmarket participant*
7 *representatives. A simple majority of the board shall*
8 *consist of persons who are themselves unaffiliated with*
9 *electric generation, transmission or distribution*
10 *corporations.*

11 338. *The Oversight Board, as the appointing body,*
12 *shall establish nominating procedures and qualifications*
13 *for Power Exchange governing board members. The*
14 *Power Exchange governing board shall be composed of*
15 *California residents and shall include, but not be limited*
16 *to, representatives of investor-owned electric*
17 *distribution companies, publicly owned electric*
18 *distribution companies, nonutility generators, public*
19 *buyers and sellers, private buyers and sellers, industrial*
20 *end-users, commercial end-users, residential end-users,*
21 *agricultural end-users, public interest groups, and*
22 *nonmarket participant representatives.*

23 339. *The Oversight Board is the appeal board for*
24 *majority decisions of the Independent System Operator*
25 *governing board. Only members of the Independent*
26 *System Operator governing board may appeal a majority*
27 *decision to the Oversight Board.*

28 340. *The Oversight Board shall take the steps that are*
29 *necessary to ensure the earliest possible incorporation of*
30 *the Independent System Operator and the Power*
31 *Exchange as separately incorporated public benefit,*
32 *nonprofit corporations under the Corporations Code.*

33

34 *Article 3. Independent System Operator*

35

36 345. *The Independent System Operator shall ensure*
37 *efficient use and reliable operation of the transmission*
38 *grid consistent with achievement of planning and*
39 *operating reserve criteria no less stringent than those*
40 *established by the Western Systems Coordinating*



1 *Council and the North American Electric Reliability*
2 *Council.*

3 346. *The Independent System Operator shall*
4 *immediately participate in all relevant Federal Energy*
5 *Regulatory Commission proceedings. The Independent*
6 *System Operator shall ensure that additional filings at the*
7 *Federal Energy Regulatory Commission request*
8 *confirmation of the relevant provisions of this chapter*
9 *and seek the authority needed to give the Independent*
10 *System Operator the ability to secure generating and*
11 *transmission resources necessary to guarantee*
12 *achievement of planning and operating reserve criteria*
13 *no less stringent than those established by the Western*
14 *Systems Coordinating Council and the North American*
15 *Electric Reliability Council.*

16 347. *The Independent System Operator governing*
17 *board may form appropriate technical advisory*
18 *committees composed of market and nonmarket*
19 *participants to advise the Independent System Operator*
20 *governing board on issues including, but not limited to,*
21 *rules and protocols and operating procedures.*

22 348. *The Independent System Operator shall adopt*
23 *inspection, maintenance, repair, and replacement*
24 *standards for the transmission facilities under its control*
25 *no later than March 31, 1997. The standards, which shall*
26 *be performance or prescriptive standards, or both, as*
27 *appropriate, for each substantial type of transmission*
28 *equipment or facility, shall provide for high quality, safe,*
29 *and reliable service. In adopting its standards, the*
30 *Independent System Operator shall consider: cost, local*
31 *geography and weather, applicable codes, national*
32 *electric industry practices, sound engineering judgment,*
33 *and experience. The Independent System Operators*
34 *shall also adopt standards for reliability, and safety during*
35 *periods of emergency and disaster. The Independent*
36 *System Operator shall require each transmission facility*
37 *owner or operator to report annually on its compliance*
38 *with the standards. That report shall be made available to*
39 *the public.*

1 349. *The Independent System Operator shall*
2 *perform a review following a major outage that affects at*
3 *least 10 percent of the customers of the entity providing*
4 *the local distribution service. The review shall address the*
5 *cause of the major outage, the response time and*
6 *effectiveness, and whether the transmission facility*
7 *owner or operator's operation and maintenance practices*
8 *enhanced or undermined the ability to restore service*
9 *efficiently and in a timely manner. If the Independent*
10 *System Operator finds that the operation and*
11 *maintenance practices of the transmission facility owner*
12 *or operator prolonged the response time or was*
13 *responsible for the outage, the Independent System*
14 *Operator may order appropriate sanctions, subject to the*
15 *Federal Energy Regulatory Commission approving that*
16 *authority.*

17 350. *The Independent System Operator, in*
18 *consultation with the California Energy Resources*
19 *Conservation and Development Commission, the Public*
20 *Utility Commission, the Western Systems Coordinating*
21 *Council, and concerned regulatory agencies in other*
22 *western states, shall within six months after the Federal*
23 *Energy Regulatory Commission approval of the*
24 *Independent System Operator, provide a report to the*
25 *Legislature that does the following:*

26 (a) *Conducts an independent review and assessment*
27 *of Western Systems Coordinating Council operating*
28 *reliability criteria.*

29 (b) *Quantifies the economic cost of major transmission*
30 *outages relating to the Pacific Intertie, Southwest Power*
31 *Link, DC link, and other important high voltage lines that*
32 *carry power both into and from California.*

33 (c) *Identifies the range of cost-effective options that*
34 *would prevent or mitigate the consequence of major*
35 *transmission outages.*

36 (d) *Identifies communication protocols that may be*
37 *needed to be established to provides advance warning of*
38 *incipient problems.*

39 (e) *Identifies the need for additional generation*
40 *reserves and other voltage support equipment, if any, or*



1 *other resources that may be necessary to carry out its*
2 *functions.*

3 *(f) Identifies transmission capacity additions that may*
4 *be necessary at certain times of the year or under certain*
5 *conditions.*

6 *(g) Assesses the adequacy of current and prospective*
7 *institutional provisions for the maintenance of reliability.*

8 *(h) Identifies mechanisms to enforce transmission*
9 *right-of-way maintenance.*

10 *(i) Contains recommendations regarding*
11 *cost-beneficial improvements to electric system*
12 *reliability for the citizens of California.*

13
14 *Article 4. Power Exchange*

15
16 *355. The Power Exchange shall provide an efficient*
17 *competitive auction, open on a nondiscriminatory basis to*
18 *all suppliers, that meets the loads of all exchange*
19 *customers at efficient prices.*

20 *356. The Power Exchange governing board may form*
21 *appropriate technical advisory committees comprised of*
22 *market and nonmarket participants to advise the*
23 *governing board on relevant issues.*

24
25 *Article 5. Regional Compact*

26
27 *359. It is the intent of the Legislature that California*
28 *enter into a compact with western region states. That*
29 *compact should require the publicly and investor-owned*
30 *utilities located in those states that sell energy to*
31 *California retail customers, to adhere to enforceable*
32 *standards and protocols to protect the reliability of the*
33 *interconnected regional transmission and distribution*
34 *systems.*

35
36 *Article 6. Requirements for the Public Utilities*
37 *Commission*

38
39 *360. The commission shall ensure that existing, and if*
40 *necessary, additional filings at the Federal Energy*

1 *Regulatory Commission request confirmation of the*
2 *relevant provisions of this chapter and seek the authority*
3 *needed to give the Independent System Operator the*
4 *ability to secure generating and transmission resources*
5 *necessary to guarantee achievement of planning and*
6 *operating reserve criteria no less stringent than those*
7 *established by the Western Systems Coordinating*
8 *Council and the North American Electric Reliability*
9 *Council.*

10 *361. The commission shall ensure that any funds*
11 *secured by the restructuring trusts established for the*
12 *purposes of developing the Independent System*
13 *Operator and the Power Exchange shall be placed at the*
14 *disposal of the Independent System Operator and the*
15 *Power Exchange respectively.*

16 *362. In proceedings pursuant to Section 455.5, 851, or*
17 *854, the commission shall ensure that facilities needed to*
18 *maintain the reliability of the electric supply remain*
19 *available and operational, consistent with maintaining*
20 *open competition and avoiding an overconcentration of*
21 *market power. In order to determine whether the facility*
22 *needs to remain available and operational, the*
23 *commission shall utilize standards that are no less*
24 *stringent than the Western Systems Coordinating Council*
25 *and North American Electric Reliability Council*
26 *standards for planning reserve criteria.*

27 *363. (a) In order to ensure the continued safe and*
28 *reliable operation of public utility electric generating*
29 *facilities, the commission shall require in any proceeding*
30 *under Section 851 involving the sale, but not spin-off, of*
31 *a public utility electric generating facility, for*
32 *transactions initiated prior to December 31, 2001, and*
33 *approved by the commission by December 31, 2002, that*
34 *the selling utility contract with the purchaser of the*
35 *facility for the selling utility, an affiliate, or a successor*
36 *corporation to operate and maintain the facility for at*
37 *least two years. The commission may require these*
38 *conditions to be met for transactions initiated on or after*
39 *January 1, 2002. The commission shall require the*



1 contracts to be reasonable for both the seller and the
2 buyer.

3 (b) Subdivision (a) shall apply only if the facility is
4 actually operated during the two-year period following
5 the sale. Subdivision (a) shall not require the purchaser
6 to operate a facility, nor shall it preclude a purchaser from
7 temporarily closing the facility to make capital
8 improvements.

9 364. (a) The commission shall adopt inspection,
10 maintenance, repair, and replacement standards for the
11 distribution systems of investor-owned electric utilities
12 no later than March 31, 1997. The standards, which shall
13 be performance or prescriptive standards, or both, as
14 appropriate, for each substantial type of distribution
15 equipment or facility, shall provide for high quality, safe
16 and reliable service.

17 (b) In setting its standards, the commission shall
18 consider: cost, local geography and weather, applicable
19 codes, national electric industry practices, sound
20 engineering judgment, and experience. The commission
21 shall also adopt standards for operation, reliability, and
22 safety during periods of emergency and disaster. The
23 commission shall require each utility to report annually
24 on its compliance with the standards. That report shall be
25 made available to the public.

26 (c) The commission shall conduct a review to
27 determine whether the standards prescribed in this
28 section have been met. If the commission finds that the
29 standards have not been met, the commission may order
30 appropriate sanctions, including penalties in the form of
31 rate reductions or monetary fines. The review shall be
32 performed after every major outage. Any money
33 collected pursuant to this subdivision shall be used to
34 offset funding for the California Alternative Rates for
35 Energy Program.

36 365. The actions of the commission pursuant to this
37 chapter shall be consistent with the findings and
38 declarations contained in Section 330. In addition, the
39 commission shall do all of the following:

1 (a) Facilitate the efforts of the state's electrical
2 corporations to develop and obtain authorization from
3 the Federal Energy Regulatory Commission for the
4 creation and operation of an Independent System
5 Operator and an independent Power Exchange, for the
6 determination of which transmission and distribution
7 facilities are subject to the exclusive jurisdiction of the
8 commission, and for approval, to the extent necessary, of
9 the cost recovery mechanism established as provided in
10 Sections 367 to 376, inclusive. The commission shall also
11 participate fully in all proceedings before the Federal
12 Energy Regulatory Commission in connection with the
13 Independent System Operator and the independent
14 Power Exchange, and shall encourage the Federal
15 Energy Regulatory Commission to adopt protocols and
16 procedures that strengthen the reliability of the
17 interconnected transmission grid, encourage all publicly
18 owned utilities in California to become full participants,
19 and maximize enforceability of such protocols and
20 procedures by all market participants.

21 (b) (1) Authorize direct transactions between
22 electricity suppliers and end use customers, subject to
23 implementation of the nonbypassable charge referred to
24 in Sections 367 to 376, inclusive. Direct transactions shall
25 commence simultaneously with the start of an
26 Independent System Operator and Power Exchange
27 referred to in subdivision (a). The simultaneous
28 commencement shall occur as soon as practicable, but no
29 later than January 1, 1998. The commission shall develop
30 a phase-in schedule at the conclusion of which all
31 customers shall have the right to engage in direct
32 transactions. Any phase-in of customer eligibility for
33 direct transactions ordered by the commission shall be
34 equitable to all customer classes and accomplished as soon
35 as practicable, consistent with operational and other
36 technological considerations, and shall be completed for
37 all customers by January 1, 2002.

38 (2) Customers shall be eligible for direct access
39 irrespective of any direct access phase-in implemented
40 pursuant to this section if at least one-half of that



1 customer's electrical load is supplied by energy from a
2 renewable resource provider certified pursuant to
3 Section 383, provided however that nothing in this
4 section shall provide for direct access for electric
5 consumers served by municipal utilities unless so
6 authorized by the governing board of that municipal
7 utility.

8 366. (a) The commission shall take actions as needed
9 to facilitate direct transactions between electricity
10 suppliers and end use customers. Customers shall be
11 entitled to aggregate their electric loads on a voluntary
12 basis, provided that each customer does so by a positive
13 written declaration. If no positive declaration is made by
14 a customer, that customer shall continue to be served by
15 the existing electrical corporation or its successor in
16 interest.

17 (b) Aggregation of customer electrical load shall be
18 authorized by the commission for all customer classes,
19 including, but not limited to small commercial or
20 residential customers. Aggregation may be accomplished
21 by private market aggregators, cities, counties, special
22 districts or on any other basis made available by market
23 opportunities and agreeable by positive written
24 declaration by individual consumers.

25 (c) If a public agency seeks to serve as a community
26 aggregator on behalf of residential customers, it shall be
27 obligated to offer the opportunity to purchase electricity
28 to all residential customers within its jurisdiction.

29 (d) No electric utility, or any person, firm,
30 corporation, or governmental entity shall make any
31 change or authorize a different electric utility or electric
32 marketer to make any change in the aggregator or
33 provider of electric power for any small commercial
34 customer until one of the following means of confirming
35 the change has been completed.

36 (1) Independent third-party telephone verification.

37 (2) Receipt of a written confirmation received in the
38 mail from the consumer after the consumer has received
39 an information package confirming the telephone
40 agreement.



1 (3) *The customer signs a document fully explaining*
2 *the nature and effect of the change in service.*

3 (4) *The customer's consent is obtained through*
4 *electronic means, including but not limited to, computer*
5 *transactions.*

6 (e) *For residential customers no change in the*
7 *aggregator or provider of electric power may be made*
8 *until the change has been confirmed by an independent*
9 *third-party verification company, as follows:*

10 (1) *The third-party verification company shall meet*
11 *each of the following criteria:*

12 (A) *Be independent from the entity that seeks to*
13 *provide the new service.*

14 (B) *Not be directly or indirectly managed, controlled,*
15 *or directed, or owned wholly or in part, by an entity that*
16 *seeks to provide the new service or by any corporation,*
17 *firm, or person who directly or indirectly manages,*
18 *controls, or directs, or owns more than 5 percent of the*
19 *entity.*

20 (C) *Operate from facilities physically separate from*
21 *those of the entity that seeks to provide the new service.*

22 (D) *Not derive commissions or compensation based*
23 *upon the number of sales confirmed.*

24 (2) *The entity seeking to verify the sale shall do so by*
25 *connecting the resident by telephone to the third-party*
26 *verification company or by arranging for the third-party*
27 *verification company to call the resident to confirm the*
28 *sale.*

29 (3) *The third-party verification company shall obtain*
30 *the resident's oral confirmation regarding the change,*
31 *and shall record that confirmation by obtaining*
32 *appropriate verification data. The record shall be*
33 *available to the resident upon request. Information*
34 *obtained from the subscriber through confirmation shall*
35 *not be used for marketing purposes. Any unauthorized*
36 *release of this information is grounds for a civil suit by the*
37 *aggrieved resident against the entity or its employees*
38 *who are responsible for the violation.*

39 (4) *Notwithstanding paragraphs (1), (2), and (3), a*
40 *service provider shall not be required to comply with*



1 *these provisions when the customer directly calls the*
2 *service provider to make changes in service providers.*
3 *However, a service provider shall not avoid the*
4 *verification requirements by asking a customer to contact*
5 *a service provider directly to make any change in the*
6 *service provider. A service provider shall be required to*
7 *comply with these verification requirements for its own*
8 *competitive services. However, a service provider shall*
9 *not be required to perform any verification requirements*
10 *for any changes solicited by another service provider.*

11 *367. The commission shall identify and determine*
12 *those costs and categories of costs for generation-related*
13 *assets and obligations, consisting of generation facilities,*
14 *generation-related regulatory assets, nuclear*
15 *settlements, and power purchase contracts, including,*
16 *but not limited to, restructurings, renegotiations or*
17 *terminations thereof approved by the commission, that*
18 *were being collected in commission-approved rates on*
19 *December 20, 1995, and that may become uneconomic as*
20 *a result of a competitive generation market, in that these*
21 *costs may not be recoverable in market prices in a*
22 *competitive market, and appropriate costs incurred after*
23 *December 20, 1995, for capital additions to generating*
24 *facilities existing as of December 20, 1995, that the*
25 *commission determines are reasonable and should be*
26 *recovered, provided that these additions are necessary to*
27 *maintain the facilities through December 31, 2001. These*
28 *uneconomic costs shall be recovered from all customers*
29 *on a nonbypassable basis and shall:*

30 *(a) Be amortized over a reasonable time period,*
31 *including collection on an accelerated basis, consistent*
32 *with not increasing rates for any rate schedule, contract,*
33 *or tariff option above the levels in effect on June 10, 1996;*
34 *provided that, the recovery shall not extend beyond*
35 *December 31, 2001, except as follows:*

36 *(1) Costs associated with employee-related transition*
37 *costs as set forth in subdivision (b) of Section 375 shall*
38 *continue until fully collected; provided, however, that*
39 *the cost collection shall not extend beyond December 31,*
40 *2006.*



1 (2) Power purchase contract obligations shall
2 continue for the duration of the contract. Costs associated
3 with any buy-out, buy-down, or renegotiation of the
4 contracts shall continue to be collected for the duration
5 of any agreement governing the buy-out, buy-down, or
6 renegotiated contract; provided, however, no power
7 purchase contract shall be extended as a result of the
8 buy-out, buy-down, or renegotiation.

9 (3) Costs associated with contracts approved by the
10 commission to settle issues associated with the Biennial
11 Resource Plan Update may be collected through March
12 31, 2002; provided that only 80 percent of the balance of
13 the costs remaining after December 31, 2001, shall be
14 eligible for recovery.

15 (4) Nuclear incremental cost incentive plans for the
16 San Onofre nuclear generating station shall continue for
17 the full term as authorized by the commission in Decision
18 96-01-011 and Decision 96-04-059; provided that the
19 recovery shall not extend beyond December 31, 2003.

20 (5) Costs associated with the exemptions provided in
21 subdivision (a) of Section 374 may be collected through
22 March 31, 2002, provided that only fifty million dollars
23 (\$50,000,000) of the balance of the costs remaining after
24 December 31, 2001, shall be eligible for recovery.

25 (b) Be based on a calculation mechanism that nets the
26 negative value of all above market utility-owned
27 generation-related assets against the positive value of all
28 below market utility-owned generation related assets.
29 For those assets subject to valuation, the valuations used
30 for the calculation of the uneconomic portion of the net
31 book value shall be determined not later than December
32 31, 2001, and shall be based on appraisal, sale, or other
33 divestiture. The commission's determination of the costs
34 eligible for recovery and of the valuation of those assets
35 at the time the assets are exposed to market risk or
36 retired, in a proceeding under Section 455.5, 851, or
37 otherwise, shall be final, and notwithstanding Section
38 1708 or any other provision of law, may not be rescinded,
39 altered or amended.



1 (c) Be limited in the case of utility-owned fossil
2 generation to the uneconomic portion of the net book
3 value of the fossil capital investment existing as of January
4 1, 1998, and appropriate costs incurred after December
5 20, 1995, for capital additions to generating facilities
6 existing as of December 20, 1995, that the commission
7 determines are reasonable and should be recovered,
8 provided that the additions are necessary to maintain
9 such facilities through December 31, 2001. All “going
10 forward costs” of fossil plant operation, including
11 operation and maintenance, administrative and general,
12 fuel and fuel transportation costs, shall be recovered
13 solely from independent Power Exchange Revenues or
14 from contracts with the Independent System Operator,
15 provided that for the purposes of this chapter, the
16 following costs may be recoverable pursuant to this
17 section:

18 (1) Commission-approved operating costs for
19 particular utility-owned fossil power plants or units, at
20 particular times when reactive power/voltage support is
21 not yet procurable at market-based rates in locations
22 where it is deemed needed for the reactive
23 power/voltage support by the Independent System
24 Operator, provided that the units are otherwise
25 authorized to recover market-based rates and provided
26 further that for an electrical corporation that is also a gas
27 corporation and that serves at least four million customers
28 as of December 20, 1995, the commission shall allow the
29 electrical corporation to retain any earnings from
30 operations of the reactive power/voltage support plants
31 or units and shall not require the utility to apply any
32 portions to offset recovery of transition costs. Cost
33 recovery under the cost recovery mechanism shall end on
34 December 31, 2001.

35 (2) An electrical corporation that, as of December 20,
36 1995, served at least four million customers, and that was
37 also a gas corporation that served less than four thousand
38 customers, may recover, pursuant to this section, 100
39 percent of the uneconomic portion of the fixed costs paid
40 under fuel and fuel transportation contracts that were



1 *executed prior to December 20, 1995, and were*
2 *subsequently determined to be reasonable by the*
3 *commission, or 100 percent of the buy-down or buy-out*
4 *costs associated with the contracts to the extent the costs*
5 *are determined to be reasonable by the commission.*

6 *(d) Be adjusted throughout the period through March*
7 *31, 2002, to track accrual and recovery of costs provided*
8 *for in this subdivision. Recovery of costs prior to*
9 *December 31, 2001, shall include a return as provided for*
10 *in Decision 95-12-063, as modified by Decision 96-01-009,*
11 *together with associated taxes.*

12 *(e) (1) Be allocated among the various classes of*
13 *customers, rate schedules, and tariff options to ensure*
14 *that costs are recovered from these classes, rate*
15 *schedules, contract rates, and tariff options, including*
16 *self-generation deferral, interruptible, and standby rate*
17 *options in substantially the same proportion as similar*
18 *costs are recovered as of June 10, 1996, through the*
19 *regulated retail rates of the relevant electric utility,*
20 *provided that there shall be a fire wall segregating the*
21 *recovery of the costs of competition transition charge*
22 *exemptions such that the costs of competition transition*
23 *charge exemptions granted to members of the combined*
24 *class of residential and small commercial customers shall*
25 *be recovered only from these customers, and the costs of*
26 *competition transition charge exemptions granted to*
27 *members of the combined class of customers, other than*
28 *residential and small commercial customers, shall be*
29 *recovered only from these customers.*

30 *(2) Individual customers shall not experience rate*
31 *increases as a result of the allocation of transition costs.*
32 *However, customers who elect to purchase energy from*
33 *suppliers other than the Power Exchange through a*
34 *direct transaction, may incur increases in the total price*
35 *they pay for electricity to the extent the price for the*
36 *energy exceeds the Power Exchange price.*

37 *(3) The commission shall retain existing cost allocation*
38 *authority, provided the fire wall and rate freeze*
39 *principles are not violated.*



1 368. Each electrical corporation shall propose a cost
2 recovery plan to the commission for the recovery of the
3 uneconomic costs of an electrical corporation's
4 generation-related assets and obligations identified in
5 Section 367. The commission shall authorize the electrical
6 corporation to recover the costs pursuant to the plan
7 where the plan meets the following criteria:

8 (a) The cost recovery plan shall set rates for each
9 customer class, rate schedule, contract, or tariff option, at
10 levels equal to the level as shown on electric rate
11 schedules as of June 10, 1996, provided that rates for
12 residential and small commercial customers shall be
13 reduced so that these customers shall receive rate
14 reductions of no less than 10 percent for 1998 continuing
15 through 2002. These rate levels for each customer class,
16 rate schedule, contract, or tariff option shall remain in
17 effect until the earlier of March 31, 2002, or the date on
18 which the commission-authorized costs for utility
19 generation-related assets and obligations have been fully
20 recovered. The electrical corporation shall be at risk for
21 those costs not recovered during that time period. Each
22 utility shall amortize its total uneconomic costs, to the
23 extent possible, such that each year during the transition
24 period its recorded rate of return on the remaining
25 uneconomic assets does not exceed its authorized rate of
26 return for those assets. For purposes of determining the
27 extent to which the costs have been recovered, any
28 over-collections recorded in Energy Costs Adjustment
29 Clause and Electric Revenue Adjustment Mechanism
30 balancing accounts, as of December 31, 1996, shall be
31 credited to the recovery of the costs.

32 (b) The cost recovery plan shall provide for
33 identification and separation of individual rate
34 components such as charges for energy, transmission,
35 distribution, public benefit programs, and recovery of
36 uneconomic costs. The separation of rate components
37 required by this subdivision shall be used to ensure that
38 customers of the electrical corporation who become
39 eligible to purchase electricity from suppliers other than
40 the electrical corporation pay the same unbundled



1 component charges, other than energy, a bundled service
2 customer pays. No cost shifting among customer classes,
3 rate schedules, contract, or tariff options shall result from
4 the separation required by this paragraph. Nothing in this
5 provision is intended to affect the rates, terms, and
6 conditions or to limit the use of any Federal Energy
7 Regulatory Commission-approved contract entered into
8 by the electrical corporation prior to the effective date of
9 this provision.

10 (c) In consideration of the risk that the uneconomic
11 costs identified in Section 367 may not be recoverable
12 within the period identified in subdivision (a) of Section
13 367, an electrical corporation that, as of December 20,
14 1995, served more than four million customers, and that
15 was also a gas corporation that served less than four
16 thousand customers, shall have the flexibility to employ
17 risk management tools, such as forward hedges, to
18 manage the market price volatility associated with
19 unexpected fluctuations in natural gas prices and the
20 out-of-pocket costs of acquiring the risk management
21 tools shall be considered reasonable and collectible within
22 the transition freeze period. This subdivision applies only
23 to the transaction costs associated with the risk
24 management tools and shall not include any losses from
25 changes in market prices.

26 (d) In order to ensure implementation of the cost
27 recovery plan, the limitation on the maximum amount of
28 cost recovery for nuclear facilities that may be collected
29 in any year adopted by the commission in Decision
30 96-01-011 and Decision 96-04-059 shall be eliminated to
31 allow the maximum opportunity to collect the nuclear
32 costs within the transition cap period.

33 (e) As to an electrical corporation that is also a gas
34 corporation serving more than four million California
35 customers, so long as any cost recovery plan adopted in
36 accordance with this section satisfies subdivision (a), it
37 shall also provide for annual increases in base revenues,
38 effective January 1, 1997, and January 1, 1998, equal to the
39 inflation rate for the prior year plus two percentage



1 *points, as measured by the consumer price index. The*
2 *increase shall do both of the following:*

3 *(1) Remain in effect pending the next general rate*
4 *case review, which shall be filed not later than December*
5 *31, 1997, for rates which would become effective in*
6 *January 1999. For purposes of any commission-approved*
7 *performance-based ratemaking mechanism or general*
8 *rate case review, the increases in base revenue*
9 *authorized by this subdivision shall create no*
10 *presumption that the level of base revenue reflecting*
11 *those increases constitute the appropriate starting point*
12 *for subsequent revenues.*

13 *(2) Be used by the utility for the purposes of*
14 *enhancing its transmission and distribution system safety*
15 *and reliability, including, but not limited to, vegetation*
16 *management and emergency response. To the extent the*
17 *revenues are not expended for system safety and*
18 *reliability, they shall be credited against subsequent*
19 *safety and reliability base revenue requirements. Any*
20 *excess revenues carried over shall not be used to pay any*
21 *monetary sanctions imposed by the commission.*

22 *(f) The cost recovery plan shall provide the electrical*
23 *corporation with the flexibility to manage the*
24 *renegotiation, buy-out, or buy-down of the electrical*
25 *corporation's power purchase obligations, consistent with*
26 *review by the commission to assure that the terms*
27 *provide net benefits to ratepayers and are otherwise*
28 *reasonable in protecting the interests of both ratepayers*
29 *and shareholders.*

30 *(h) An example of a plan authorized by this section is*
31 *the document entitled "Restructuring Rate Settlement"*
32 *transmitted to the commission by Pacific Gas and Electric*
33 *Company on June 12, 1996.*

34 *369. The commission shall establish an effective*
35 *mechanism that ensures recovery of transition costs*
36 *referred to in Sections 367, 368, 375, and 376, and subject*
37 *to the conditions in Sections 371 to 374, inclusive, from all*
38 *existing and future consumers in the service territory in*
39 *which the utility provided electricity services as of*
40 *December 20, 1995; provided, that the costs shall not be*



1 recoverable for new customer load or incremental load of
2 an existing customer where the load is being met through
3 a direct transaction and the transaction does not
4 otherwise require the use of transmission or distribution
5 facilities owned by the utility. However, the obligation to
6 pay the competition transition charges cannot be avoided
7 by the formation of a local publicly owned electrical
8 corporation on or after December 20, 1995, or by
9 annexation of any portion of an electrical corporation's
10 service area by an existing local publicly owned electric
11 utility.

12 This section shall not apply to service taken under
13 tariffs, contracts, or rate schedules that are on file,
14 accepted, or approved by the Federal Energy Regulatory
15 Commission, unless otherwise authorized by the Federal
16 Energy Regulatory Commission.

17 370. The commission shall require, as a prerequisite
18 for any consumer in California to engage in direct
19 transactions permitted in Section 365, that beginning
20 with the commencement of these direct transactions, the
21 consumer shall have an obligation to pay the costs
22 provided in Sections 367, 368, 375, and 376, and subject to
23 the conditions in Sections 371 to 374, inclusive, directly to
24 the electrical corporation providing electricity service in
25 the area in which the consumer is located. This obligation
26 shall be set forth in the applicable rate schedule, contract,
27 or tariff option under which the customer is receiving
28 service from the electrical corporation. To the extent the
29 consumer does not use the electrical corporation's
30 facilities for direct transaction, the obligation to pay shall
31 be confirmed in writing, and the customer shall be
32 advised by any electricity marketer engaged in the
33 transaction of the requirement that the customer execute
34 a confirmation. The requirement for marketers to inform
35 customers of the written requirement shall cease on
36 January 1, 2002.

37 371. (a) Except as provided in Sections 372 and 374,
38 the uneconomic costs provided in Sections 367, 368, 375,
39 and 376 shall be applied to each customer based on the
40 amount of electricity purchased by the customer from an



1 *electrical corporation or alternate supplier of electricity,*
2 *subject to changes in usage occurring in the normal*
3 *course of business.*

4 *(b) Changes in usage occurring in the normal course*
5 *of business are those resulting from changes in business*
6 *cycles, termination of operations, departure from the*
7 *utility service territory, weather, reduced production,*
8 *modifications to production equipment or operations,*
9 *changes in production or manufacturing processes, fuel*
10 *switching, including installation of fuel cells pending a*
11 *contrary determination by the California Energy*
12 *Resources Conservation and Development Commission*
13 *in Section 383, enhancement or increased efficiency of*
14 *equipment or performance of existing self-cogeneration*
15 *equipment, replacement of existing cogeneration*
16 *equipment with new power generation equipment of*
17 *similar size as described in paragraph (1) of subdivision*
18 *(a) of Section 372, installation of demand-side*
19 *management equipment or facilities, energy*
20 *conservation efforts, or other similar factors.*

21 *(c) Nothing in this section shall be interpreted to*
22 *exempt or alter the obligation of a customer to comply*
23 *with the requirements of Section 119075 et seq. of the*
24 *Health and Safety Code. Nothing in this section shall be*
25 *construed as a limitation on the ability of residential*
26 *customers to alter their pattern of electricity purchases*
27 *by activities on the customer side of the meter.*

28 *372. (a) It is the policy of the state to encourage and*
29 *support the development of cogeneration as an efficient,*
30 *environmentally beneficial, competitive energy resource*
31 *that will enhance the reliability of local generation*
32 *supply, and promote local business growth. Subject to the*
33 *specific conditions provided in this section, the*
34 *commission shall determine the applicability to*
35 *customers of uneconomic costs as specified in Sections*
36 *367, 368, 375, and 376. Consistent with this state policy, the*
37 *commission shall provide that these costs shall not apply*
38 *to any of the following:*

39 *(1) To load served onsite or under an over the fence*
40 *arrangement by a nonmobile self-cogeneration or*



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

15 (A) The possession, directly or indirectly, of the power
16 to direct or to cause the direction of the management or
17 policies of a person or entity, whether through an
18 ownership, beneficial, contractual, or equitable interest.

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

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

35 (3) To load served by existing, new, or portable
36 emergency generation equipment used to serve the
37 customer’s load requirements during periods when utility
38 service is unavailable, provided such emergency
39 generation is not operated in parallel with the integrated
40 electric grid, except on a momentary parallel basis.



1 (4) After June 30, 2000, to any load served onsite or
2 under an over the fence arrangement by any nonmobile
3 self-cogeneration or cogeneration facility.

4 (b) Further, consistent with state policy, with respect
5 to self-cogeneration or cogeneration deferral
6 agreements, the commission shall do the following:

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

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

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

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

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

37 (3) Subject to the fire wall described in subdivision (e)
38 of Section 367 provide that the ratemaking treatment for
39 self-cogeneration or cogeneration deferral agreements
40 executed prior to December 20, 1995, or executed



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

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

8 (1) The costs identified in Sections 367, 368, 375, and
9 376 shall not, prior to June 30, 2000, apply to load served
10 onsite by a nonmobile self-cogeneration or cogeneration
11 facility that became operational on or after December 20,
12 1995.

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

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

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

25 373. (a) Electrical corporations may apply to the
26 commission for an order determining that the costs
27 identified in Sections 367, 368, 375, and 376 not be
28 collected from a particular class of customer or category
29 of electricity consumption.

30 (b) Subject to the fire wall specified in subdivision (e)
31 of Section 367, the provisions of this section and Sections
32 372 and 374 shall apply in the event the commission
33 authorizes a nonbypassable charge prior to the
34 implementation of an Independent System Operator and
35 Power Exchange referred to in subdivision (a) of Section
36 365.

37 374. (a) In recognition of statutory authority and past
38 investments existing as of December 20, 1995, and subject
39 to the fire wall specified subdivision (e) of Section 367,
40 the obligation to pay the uneconomic costs identified in



1 Sections 367, 368, 375, and 376 shall not apply to the
2 following:

3 (1) One hundred ten megawatts of load served by
4 irrigation districts, as hereafter allocated by this
5 paragraph:

6 (A) The 110 megawatts of load shall be allocated
7 among the service territories of the three largest
8 electrical corporations in the ratio of the number of
9 irrigation districts in the service territory of each utility
10 to the total number of irrigation districts in the service
11 territories of all three utilities.

12 (B) The total amount of load allocated to each utility
13 service area shall be phased in over five years beginning
14 January 1, 1997, so that one-fifth of the allocation is
15 allocated in each of the five years. Any allocation which
16 remains unused at the end of any year shall be carried
17 over to the succeeding year and added to the allocation
18 for that year.

19 (C) The load allocated to each utility service territory
20 pursuant to subparagraph (A) shall be further allocated
21 among the respective irrigation districts within that
22 service territory by the California Energy Resources
23 Conservation and Development Commission. An
24 individual irrigation district requesting such an allocation
25 shall submit to the commission by January 31, 1997,
26 detailed plans that show the load that it serves or will
27 serve and for which it intends to utilize the allocation
28 within the time frame requested. These plans shall
29 include specific information on the irrigation districts'
30 organization for electric distribution, contracts, financing
31 and engineering plans for capital facilities, as well as
32 detailed information about the loads to be served, and
33 shall not be less than eight megawatts or more than 40
34 megawatts. Provided, however, any portion of the 110
35 megawatts that remains unallocated may be reallocated
36 to projects without regard to the 40 megawatts limitation.
37 In making such an allocation among irrigation districts,
38 the Energy Resources Conservation and Development
39 Commission shall assess the viability of each submission
40 and whether it can be accomplished in the timeframe



1 *proposed. The Energy Resources Conservation and*
2 *Development Commission shall have the discretion to*
3 *allocate the load covered by this section in a manner that*
4 *best ensures its usage within the allocation period.*

5 *(D) At least 50 percent of each year's allocation to a*
6 *district shall be applied to that portion of load that is used*
7 *to power pumps for agricultural purposes.*

8 *(E) Any load pursuant to this subdivision shall be*
9 *served by distribution facilities owned by, or leased to, the*
10 *district in question.*

11 *(F) Any load allocated pursuant to paragraph (1) shall*
12 *be located within the boundaries of the affected irrigation*
13 *district, or within the boundaries specified in an*
14 *applicable service territory boundary agreement*
15 *between an electrical corporation and the affected*
16 *irrigation district; additionally, the provisions of*
17 *subparagraph (C) of paragraph (1) shall be applicable to*
18 *any load within the Counties of Stanislaus or San Joaquin,*
19 *or both, served by any irrigation district that is currently*
20 *serving or will be serving retail customers.*

21 *(2) Seventy-five megawatts of load served by the*
22 *Merced Irrigation District hereafter prescribed in this*
23 *paragraph:*

24 *(A) The total allocation provided by this paragraph*
25 *shall be phased in over five years beginning January 1,*
26 *1997, so that one-fifth of the allocation is received in each*
27 *of the five years. Any allocation which remains unused at*
28 *the end of any year shall be carried over to the succeeding*
29 *year and added to the allocation for that year.*

30 *(B) Any load to which the provision of this paragraph*
31 *is applicable shall be served by distribution facilities*
32 *owned by, or leased to, Merced Irrigation District.*

33 *(C) A load to which the provisions of this paragraph*
34 *are applicable shall be located within the boundaries of*
35 *Merced Irrigation District as those boundaries existed on*
36 *December 20, 1995, together with the territory of Castle*
37 *Air Force Base which was located outside of the district*
38 *on that date.*

39 *(D) The total allocation provided by this paragraph*
40 *shall be phased in over five years beginning January 1,*



1 1997, with the exception of load already being served by
2 the district as of June 1, 1996, which shall be deducted
3 from the total allocation and shall not be subject to the
4 costs provided in Sections 367, 368, 375, and 376.

5 (3) To loads served by irrigation districts, water
6 districts, water storage districts, municipal utility
7 districts, and other water agencies which, on December
8 20, 1995, were members of the Southern San Joaquin
9 Valley Power Authority, or the Eastside Power Authority;
10 provided, however, that this paragraph shall be
11 applicable only to that portion of each district or agency's
12 load that is used to power pumps which are owned by that
13 district or agency as of December 20, 1995, or
14 replacements thereof, and is being used to pump water
15 for district purposes. The rates applicable to these
16 districts and agencies shall be adjusted as of January 1,
17 1997.

18 (4) The provisions of this subdivision shall no longer be
19 operative after March 31, 2002.

20 (5) The provisions of paragraph (1) shall not be
21 applicable to any irrigation district, water district or
22 water agency described in paragraph (2) or (3).

23 (6) Transmission services provided to any irrigation
24 district described in paragraph (1) or (2) shall be
25 provided pursuant to otherwise applicable tariffs.

26 (7) Nothing in this chapter shall be deemed to grant
27 the commission any jurisdiction over irrigation districts
28 not already granted to the commission by existing law.

29 (b) To give the full effect to the legislative intent in
30 enacting Section 701.8, the costs provided in Sections 367,
31 368, 375, and 376 shall not apply to the load served by
32 preference power purchased from a federal power
33 marketing agency, or its successor, pursuant to Section
34 701.8 as it existed on January 1, 1996, provided the power
35 is used solely for the customer's own systems load and not
36 for sale. The costs of this provision shall be borne by all
37 ratepayers in the affected service territory,
38 notwithstanding the fire wall established in subdivision
39 (e) of Section 367.



1 (c) To give effect to an existing relationship, the
2 obligation to pay the uneconomic costs specified in
3 Sections 367, 368, 375, and 376 shall not apply to that
4 portion of the load of the University of California campus
5 situated in Yolo County that was being served as of May
6 31, 1996, by preference power purchased from a federal
7 marketing agency, or its successor, provided the power is
8 used solely for the facility load of that campus and not,
9 directly or indirectly, for sale.

10 375. (a) In order to mitigate potential negative
11 impacts on utility personnel directly affected by electric
12 industry restructuring, as described in Decision 95-12-063,
13 as modified by Decision 96-01-009, the commission shall
14 allow the recovery of reasonable employee related
15 transition costs incurred and projected for severance,
16 retraining, early retirement, outplacement and related
17 expenses for the employees.

18 (b) The costs, including employee related transition
19 costs for employees performing services in connection
20 with Section 363, shall be added to the amount of
21 uneconomic costs allowed to be recovered pursuant to
22 this section and Sections 367, 368, and 376, provided
23 recovery of these employee related transition costs shall
24 extend beyond December 31, 2001, provided recovery of
25 the costs shall not extend beyond December 31, 2006.
26 However, there shall be no recovery for employee
27 related transition costs associated with officers, senior
28 supervisory employees, and professional employees
29 performing predominantly regulatory functions.

30 376. To the extent that the costs of programs to
31 accommodate implementation of direct access, the
32 Power Exchange, and the Independent System Operator,
33 that have been funded by an electrical corporation and
34 have been found by the commission or the Federal
35 Energy Regulatory Commission to be recoverable from
36 the utility's customers, reduce an electrical corporation's
37 opportunity to recover its utility generation-related plant
38 and regulatory assets by the end of the year 2001, the
39 electrical corporation may recover unrecovered utility
40 generation-related plant and regulatory assets after



1 *December 31, 2001, in an amount equal to the utility's cost*
2 *of commission-approved or Federal Energy Regulatory*
3 *Commission approved restructuring-related*
4 *implementation programs. An electrical corporation's*
5 *ability to collect the amounts from retail customers after*
6 *the year 2001 shall be reduced to the extent the*
7 *Independent System Operator or the Power Exchange*
8 *reimburses the electrical corporation for the costs of any*
9 *of these programs.*

10 *377. The commission shall continue to regulate the*
11 *nonnuclear generation assets owned by any public utility*
12 *prior to January 1, 1997, that are subject to commission*
13 *regulation until those assets have been subject to market*
14 *valuation in accordance with procedures established by*
15 *the commission. If, after market valuation, the public*
16 *utility wishes to retain ownership of nonnuclear*
17 *generation assets in the same corporation as the*
18 *distribution utility, the public utility shall demonstrate to*
19 *the satisfaction of the commission, through a public*
20 *hearing, that it would be consistent with the public*
21 *interest and would not confer undue competitive*
22 *advantage on the public utility to retain that ownership*
23 *in the same corporation as the distribution utility.*

24 *378. The commission shall authorize new optional*
25 *rate schedules and tariffs, including new service*
26 *offerings, that accurately reflect the loads, locations,*
27 *conditions of service, cost of service, and market*
28 *opportunities of customer classes and subclasses.*

29 *379. Nuclear decommissioning costs shall not be part*
30 *of the costs described in Sections 367, 368, 375, and 376, but*
31 *shall be recovered as a nonbypassable charge until the*
32 *time as the costs are fully recovered. Recovery of*
33 *decommissioning costs may be accelerated to the extent*
34 *possible.*

35

36 *Article 7. Research, Environmental, and Low-Income*
37 *Funds*

38

39 *381. (a) To ensure that the funding for the programs*
40 *described in subdivision (b) and Section 382 are not*



1 commingled with other revenues, the commission shall
2 require each electrical corporation to identify a separate
3 rate component to collect the revenues used to fund these
4 programs. The rate component shall be a nonbypassable
5 element of the local distribution service and collected on
6 the basis of usage. This rate component shall fall within
7 the rate levels identified in subdivision (a) of Section 368.

8 (b) The commission shall allocate funds collected
9 pursuant to subdivision (a), and any interest earned on
10 collected funds, to programs which enhance system
11 reliability and provide in-state benefits as follows:

12 (1) Cost-effective energy efficiency and conservation
13 activities.

14 (2) Public interest research and development not
15 adequately provided by competitive and regulated
16 markets.

17 (3) In-state operation and development of existing
18 and new and emerging renewable resource technologies
19 defined as electricity produced from other than a
20 conventional power source within the meaning of Section
21 2805, provided that a power source utilizing more than 25
22 percent fossil fuel may not be included.

23 (c) The Public Utilities Commission shall order the
24 respective electrical corporations to collect and spend
25 these funds, as follows:

26 (1) Cost-effective energy efficiency and conservation
27 activities shall be funded at not less than the following
28 levels commencing January 1, 1998, through December
29 31, 2001: for San Diego Gas and Electric Company a level
30 of thirty-two million dollars (\$32,000,000) per year; for
31 Southern California Edison Company a level of ninety
32 million dollars (\$90,000,000) for each of the years 1998,
33 1999, and 2000; fifty million dollars (\$50,000,000) for the
34 year 2001; and for Pacific Gas and Electric Company a
35 level of one hundred six million dollars (\$106,000,000) per
36 year.

37 (2) Research, development, and demonstration
38 programs to advance science or technology that are not
39 adequately provided by competitive and regulated
40 markets shall be funded at not less than the following



1 levels commencing January 1, 1998 through December
2 31, 2001: for San Diego Gas and Electric Company a level
3 of four million dollars (\$4,000,000) per year; for Southern
4 California Edison Company a level of twenty-eight
5 million five hundred thousand dollars (\$28,500,000) per
6 year; and for Pacific Gas and Electric Company a level of
7 thirty million dollars (\$30,000,000) per year.

8 (3) In-state operation and development of existing
9 and new and emerging renewable resource technologies
10 shall be funded at not less than the following levels on a
11 statewide basis: one hundred nine million five hundred
12 thousand dollars (\$109,500,000) per year for each of the
13 years 1998, 1999, and 2000, and one hundred thirty-six
14 million five hundred thousand dollars (\$136,500,000) for
15 the year 2001. To accomplish these funding levels over
16 the period described herein the San Diego Gas and
17 Electric Company shall spend twelve million dollars
18 (\$12,000,000) per year, the Southern California Edison
19 Company shall expend no less than forty-nine million five
20 hundred thousand dollars (\$49,500,000) for the years
21 1998, 1999, and 2000, and no less than seventy-six million
22 five hundred thousand dollars (\$76,500,000) for the year
23 2001, and the Pacific Gas and Electric Company shall
24 expend no less than forty-eight million dollars
25 (\$48,000,000) per year through the year 2001. Additional
26 funding not to exceed seventy-five million dollars
27 (\$75,000,000) shall be allocated from moneys collected
28 pursuant to subdivision (d) in order to provide a level of
29 funding totaling five hundred forty million dollars
30 (\$540,000,000).

31 (4) Up to fifty million dollars (\$50,000,000) of the
32 amount collected pursuant to subdivision (d) may be
33 used to resolve outstanding issues related to
34 implementation of subdivision (a) of Section 374. Moneys
35 remaining after fully funding the provisions of this
36 paragraph shall be reallocated for purposes of paragraph
37 (3).

38 (5) Up to ninety million dollars (\$90,000,000) of the
39 amount collected pursuant to subdivision (d) may be
40 used to resolve outstanding issues related to contractual



1 arrangements in the Southern California Edison service
2 territory stemming from the Biennial Resource Planning
3 Update auction. Moneys remaining after fully funding
4 the provisions of this paragraph shall be reallocated for
5 purposes of paragraph (3).

6 (d) Notwithstanding any other provisions of this
7 chapter, entities subject to the jurisdiction of the Public
8 Utilities Commission shall extend the period for
9 competition transition charge collection up to three
10 months beyond its otherwise applicable termination of
11 December 31, 2001, so as to ensure that the aggregate
12 portion of the research, environmental, and low-income
13 funds allocated to renewable resources shall equal five
14 hundred forty million dollars (\$540,000,000) and that the
15 costs specified in paragraphs (3), (4), and (5) of
16 subdivision (c) are collected.

17 (e) Each electrical corporation shall allow customers
18 to make voluntary contributions through their utility bill
19 payments as either a fixed amount or a variable amount
20 to support programs established pursuant to paragraph
21 (3) of subdivision (b). Funds collected by electrical
22 corporations for these purposes shall be forwarded in a
23 timely manner to the appropriate fund as specified by the
24 commission.

25 (f) The commission shall determine how to utilize
26 funds for purposes of paragraphs (1) and (2) of
27 subdivision (b), provided that only those research and
28 development funds for transmission and distribution
29 functions shall remain with the regulated public utilities
30 under the supervision of the commission. The
31 commission shall provide for the transfer of all research
32 and development funds collected for purposes of
33 paragraph (2) of subdivision (b) other than those for
34 transmission and distribution functions and funds
35 collected for purposes of paragraph (3) of subdivision (b)
36 to the California Energy Resources Conservation and
37 Development Commission pursuant to administration
38 and expenditure criteria to be established by the
39 Legislature.



1 (g) *The commission's authority to collect funds*
2 *pursuant to this section for purposes of paragraph (3) of*
3 *subdivision (b) shall become inoperative on March 31,*
4 *2002.*

5 (h) *For purposes of this article, "emerging renewable*
6 *technology" means a new renewable technology,*
7 *including, but not limited to, photovoltaic technology,*
8 *that is determined by the California Energy Resources*
9 *Conservation and Development Commission to be*
10 *emerging from research and development and that has*
11 *significant commercial potential.*

12 382. *Programs provided to low-income electricity*
13 *customers, including, but not limited to, targeted*
14 *energy-efficiency services and the California Alternative*
15 *Rates for Energy Program shall be funded at not less than*
16 *1996 authorized levels based on an assessment of*
17 *customer need. The commission shall allocate funds*
18 *necessary to meet the low-income objectives in this*
19 *section.*

20 383. (a) *Moneys collected pursuant to paragraph (3)*
21 *of subdivision (b) of Section 381 shall be transferred to a*
22 *subaccount of the Energy Resources Programs Account*
23 *of the California Energy Resources Conservation and*
24 *Development Commission to be held until further action*
25 *by the Legislature for purposes of:*

26 (1) *Supporting the operation of existing and the*
27 *development of new and emerging in-state renewable*
28 *resource technologies.*

29 (2) *Supporting the operations of existing renewable*
30 *resource generation facilities which provide fire*
31 *suppression benefits, reduce materials going into*
32 *landfills, and mitigate the amount of open-field burning*
33 *of agricultural waste.*

34 (3) *Supporting the operations of existing, innovative*
35 *solar thermal technologies that provide essential peak*
36 *generation and related reliability benefits.*

37 (b) *The California Energy Resources Conservation*
38 *and Development Commission shall review the purposes*
39 *described in this section and report to the Legislature by*
40 *March 31, 1997, with recommendations regarding*



1 market-based mechanisms to allocate available funds.
2 The programs should be based on market principles and
3 include options and implementation mechanisms which:

4 (1) Reward the most cost-effective generation
5 meeting the purposes of subdivision (a) through
6 mechanisms such as the establishment of a clearinghouse
7 or a marketing agent to identify the most competitive
8 renewable resource providers while fostering a market
9 for renewable resources.

10 (2) Implement a process for certifying eligible
11 renewable resource providers.

12 (3) Allow customers to receive a rebate from the fund
13 through mechanisms such as a reduction in their
14 electricity bill or a direct payment from the fund for the
15 transition charges that would otherwise apply to their
16 purchases from renewable resource providers.

17 (4) Allocate moneys between (A) new and emerging
18 and (B) existing renewable resource technology
19 providers, provided that no less than 40 percent of the
20 funds shall be allocated to either category.

21 (5) Utilize financing and other mechanisms to
22 maximize the effectiveness of available funds.

23 (c) The report described in this section shall also
24 include consideration of:

25 (1) The need for mechanisms to ensure that
26 cogeneration facilities that utilize energy from
27 environmental pollution in its process, or
28 microgeneration facilities with a total generating
29 capacity of less than one megawatt remain competitive
30 in the electric services market.

31 (2) Whether fuel cells should be treated as fuel
32 switching for purposes of application of the competition
33 transition charge as specified in Section 371.

34

35

Article 8. Publicly Owned Utilities

36

37 385. (a) Each local publicly owned electric utility
38 shall establish a nonbypassable, usage based charge on
39 local distribution service of not less than the lowest
40 expenditure level of the three largest electrical



1 corporations in California on a percent of revenue basis,
2 calculated from each utility's total revenue requirement
3 for the year ended December 31, 1994, and each utility's
4 total annual expenditure under paragraphs (1), (2), and
5 (3) of subdivision (c) of Section 381 and Section 382, to
6 fund investments by the utility and other parties in any
7 or all of the following:

8 (1) Cost-effective demand-side management services
9 to promote energy-efficiency and energy conservation.

10 (2) New investment in renewable energy resources
11 and technologies consistent with existing statutes and
12 regulations which promote those resources and
13 technologies.

14 (3) Research, development and demonstration
15 programs for the public interest to advance science or
16 technology which is not adequately provided by
17 competitive and regulated markets.

18 (4) Services provided for low-income electricity
19 customer, including but not limited to, targeted energy
20 efficiency service and rate discounts.

21

22

Article 9. State Agencies

23

24 388. (a) Notwithstanding any other provision of law,
25 any state agency may enter into an energy savings
26 contract with a qualified energy service company for the
27 purchase or exchange of thermal or electrical energy or
28 water, or to acquire energy efficiency and/or water
29 conservation services, for a term not exceeding 35 years,
30 at those rates and upon those terms that are approved by
31 the agency.

32 (b) The Department of General Services or any other
33 state or local agency intending to enter into an energy
34 savings contract may establish a pool of qualified energy
35 service companies based on qualifications, experience,
36 pricing or other pertinent factors. Energy service
37 contracts for individual projects undertaken by any state
38 or local agency may be awarded through a competitive
39 selection process to individuals or firms identified in such
40 a pool. The pool of qualified energy service companies



1 and contractors shall be reestablished at least every two
2 years or shall expire.

3 (c) For purposes of this section, the following
4 definitions apply:

5 (1) “Energy savings” means a measured and verified
6 reduction in fuel, energy or water consumption when
7 compared to an established baseline of consumption.

8 (2) “Qualified energy service company” means a
9 company with a demonstrated ability to provide or
10 arrange for building or facility energy auditors, selection
11 and design of appropriate energy savings measures,
12 project financing, implementation of these measures, and
13 maintenance and ongoing measurement of these
14 measures as to ensure and verify energy savings.

15 389. The Secretary of the California Environmental
16 Protection Agency, in consultation with interested
17 stakeholders including relevant state and federal
18 agencies, boards, and commissions, shall evaluate and
19 recommend to the Legislature public policy strategies
20 that address the feasibility of shifting costs from electric
21 utility ratepayers, in whole or in part, to other classes of
22 beneficiaries. This evaluation also shall address the
23 quantification of benefits attributable to the solid-fuel
24 biomass industry and implementation requirements,
25 including statutory amendments and transition period
26 issues that may be relevant, to bring about equitable and
27 effective allocation of solid-fuel biomass electricity costs
28 that ensure the retention of the economic and
29 environmental benefits of the biomass industry while
30 promoting measurable reduction in real costs to
31 ratepayers. This evaluation shall be in coordination with
32 the California Energy Resources Conservation and
33 Development Commission’s efforts pursuant to
34 subdivision (b) of Section 383, addressing renewable
35 policy implementation issues. The Secretary shall submit
36 a final report to the Legislature, using existing agency
37 resources, prior to March 31, 1997.

38



1 Article 10. Nonutility Power Generators

2
3 390. (a) Subject to applicable contractual terms,
4 energy prices paid to nonutility power generators by a
5 public utility electrical corporation based upon the
6 commission's prescribed "short run avoided cost energy
7 methodology" shall be determined as set forth in
8 subdivisions (b) and (c).

9 (b) Until the requirements of subdivision (c) have
10 been satisfied, short run avoided cost energy payments
11 paid to nonutility power generators by an electrical
12 corporation shall be based on a formula that reflects a
13 starting energy price, adjusted monthly to reflect
14 changes in a starting gas index price in relation to an
15 average of current California natural gas border price
16 indices. The starting energy price shall be based on
17 12-month averages of recent, pre-January 1, 1996,
18 short-run avoided energy prices paid by each public
19 utility electrical corporation to nonutility power
20 generators. The starting gas index price shall be
21 established as an average of index gas prices for the same
22 annual periods.

23 (c) The short-run avoided cost energy payments paid
24 to nonutility power generators by electrical corporations
25 shall be based on the clearing price paid by the
26 independent Power Exchange if (1) the commission has
27 issued an order determining that the independent Power
28 Exchange is functioning properly for the purposes of
29 determining the short-run avoided cost energy payments
30 to be made to nonutility power generators, and either (2)
31 the fossil-fired generation units owned, directly or
32 indirectly, by the public utility electrical corporation are
33 authorized to charge market-based rates and the "going
34 forward" costs of those units are being recovered solely
35 through the clearing prices paid by the independent
36 Power Exchange or from contracts with the Independent
37 System Operator, whether those contracts are
38 market-based or based on operating costs for particular
39 utility-owned powerplant units and at particular times
40 when reactive power/voltage support is not yet



1 *procurable at market-based rates at locations where it is*
2 *needed, and are not being recovered directly or*
3 *indirectly through any other source, or (3) the public*
4 *utility electrical corporation has divested 90 percent of its*
5 *gas-fired generation facilities that were operated to meet*
6 *load in 1994 and 1995. However, nonutility power*
7 *generators subject to this section may, upon appropriate*
8 *notice to the public utility electrical corporation, exercise*
9 *a one-time option to elect to thereafter receive energy*
10 *payments based upon the clearing price from the*
11 *independent Power Exchange.*

12 *(d) If a nonutility power generator is being paid*
13 *short-run avoided costs energy payments by an electrical*
14 *corporation by a firm capacity contract, a forecast*
15 *as-available capacity contract, or a forecast as-delivered*
16 *capacity contract on the basis of the clearing price paid*
17 *by the independent Power Exchange as described in*
18 *subdivision (c) above, the value of capacity in the*
19 *clearing price, if any, shall not be paid to the nonutility*
20 *power generator. The value of capacity in the clearing*
21 *price, if any, equals the difference between the market*
22 *clearing customer demand bid at the level of generation*
23 *dispatched by the independent Power Exchange and the*
24 *highest supplier bid dispatched.*

25 *(e) Short-run avoided energy cost payments made*
26 *pursuant to this section are in addition to contractually*
27 *specified capacity payments. Nothing in this section shall*
28 *be construed to affect, modify or amend the terms and*
29 *conditions of existing nonutility power generators'*
30 *contracts with respect to the sale of energy or capacity or*
31 *otherwise.*

32 *(f) Nothing in this section shall be construed to limit*
33 *the level of transition cost recovery provided to utilities*
34 *under electric industry restructuring policies established*
35 *by the commission.*

36 *(g) The term "going forward costs" shall include, but*
37 *not be limited to, all costs associated with fuel*
38 *transportation and fuel supply, administrative and*
39 *general, and operation and maintenance; provided that,*
40 *for purposes of this section, the following shall not be*



1 considered “going forward costs”: (1)
2 commission-approved capital costs for capital additions to
3 fossil-fueled powerplants, provided that such additions
4 are necessary for the continued operation of the
5 powerplants utilized to meet load and such additions are
6 not undertaken primarily to expand, repower or enhance
7 the efficiency of plant operations; or, (2)
8 commission-approved operating costs for particular
9 utility-owned powerplant units and at particular times
10 when reactive power/voltage support is not yet
11 procurable at market-based rates in locations where it is
12 needed, provided that the recovery shall end on
13 December 31, 2001.

14
15 Article II. Information Practices

16
17 392. (a) The restructuring of the electricity industry
18 will create a new electricity market with new marketers
19 and sellers offering new goods and services, many of
20 which may not be readily evaluated by the average
21 consumer.

22 (b) It is the intent of the Legislature that (1)
23 electricity consumers be provided with sufficient and
24 reliable information to be able to compare and select
25 among products and services provided in the electricity
26 market, and (2) consumers be provided with
27 mechanisms to protect themselves from marketing
28 practices that are unfair or abusive.

29 (c) (1) Electrical corporations shall disclose each
30 component of the electrical bill as follows:

31 (A) The total charges associated with transmission and
32 distribution, including that portion comprising the
33 research, environmental, and low-income funds.

34 (B) The total charges associated with generation,
35 including the competition transition charge.

36 (2) Electrical corporations shall provide conspicuous
37 notice that if the customer elects to purchase electricity
38 from another provider that the customer will continue to
39 be liable for payment of the competition transition

1 charge. This paragraph does not limit the commission
2 from requiring additional information.

3 (d) Prior to the implementation of the competition
4 transition charge, electric corporations, in conjunction
5 with the commission, shall devise and implement a
6 customer education program informing customers of the
7 changes to the electric industry. The program shall
8 provide customers with information necessary to help
9 them make appropriate choices as to their electric
10 service. The education program shall be subject to
11 approval by the commission.

12

13

Article 12. Consumer Protection

14

15 394. (a) Except for an electrical corporation as
16 defined in Section 218, each entity offering electrical
17 service to residential and small commercial customers
18 within the service territory of an electrical corporation
19 shall register with the commission. The registration shall
20 include the following seller information:

21

(1) Legal name.

22

(2) Current telephone number.

23

(3) Current address.

24

(4) Agent for service of process.

25

(b) Except for an electrical corporation as defined in
26 Section 218, each entity offering electrical service to
27 residential and small commercial customers with the
28 service territory of an electrical corporation shall, at the
29 time of the offering, provide the potential customer with
30 a written notice describing the price, terms, and
31 conditions of the service, an explanation of the
32 applicability and amount of the competition transition
33 charge, as determined pursuant to Sections 367 to 375,
34 inclusive, and a notice describing the potential
35 customer's right to rescind the contract. The commission
36 shall assist these entities in developing the notice. The
37 commission may suggest inclusion of additional
38 information that would be useful to the customer.

39

(c) The commission shall accept, compile, and help
40 resolve consumer complaints regarding entities offering



1 *electrical service that are required to be registered*
2 *pursuant to this section.*

3 395. (a) *In addition to any other right to revoke an*
4 *offer, residential and small commercial customers of*
5 *electrical service, as defined in subdivision (h) of Section*
6 *331, have the right to cancel a contract for electric service*
7 *until midnight of the third business day after the day on*
8 *which the buyer signs an agreement or offer to purchase.*

9 (b) *Cancellation occurs when the buyer gives written*
10 *notice of cancellation to the seller at the address specified*
11 *in the agreement or offer.*

12 (c) *Notice of cancellation, if given by mail, is effective*
13 *when deposited in the mail properly addressed with*
14 *postage prepaid.*

15 (d) *Notice of cancellation given by the buyer need not*
16 *take the particular form as provided with the contract or*
17 *offer to purchase and, however expressed, is effective if*
18 *it indicates the intention of the buyer not to be bound by*
19 *the contract.*

20 396. (a) *A consumer damaged by a violation of this*
21 *article by an entity offering electrical service is entitled*
22 *to recover all of the following:*

23 (1) *Actual damages.*

24 (2) *The consumer's reasonable attorney's fees and*
25 *court costs.*

26 (3) *Exemplary damages, in the amount the court*
27 *deems proper, for intentional or willful violations.*

28 (4) *Equitable relief as the court deems proper.*

29 (b) *The rights, remedies, and penalties established by*
30 *this article are in addition to the rights, remedies, or*
31 *penalties established under any other law.*

32 (c) *Nothing in this article shall abrogate any authority*
33 *of the Attorney General to enforce existing law.*

34 (d) *This article shall remain in effect only until*
35 *January 1, 2002, and as of that date is repealed, unless a*
36 *later enacted statute, that is enacted before January 1,*
37 *2002, deletes or extends that date.*

38



Article 13. Fuel Price Volatility

1
 2
 3 397. (a) Notwithstanding subdivision (a) of Section
 4 368, to ensure the continued safe and reliable provision of
 5 electric service during the transition to competition, and
 6 to limit the effect of fuel price volatility in electric rates
 7 paid by California consumers, it is in the public interest
 8 to allow an electrical corporation which is also a gas
 9 corporation and served fewer than four million customers
 10 as of December 20, 1995, to file with the commission a rate
 11 cap mechanism which shall include a Fuel Price Index
 12 Mechanism requiring limited adjustments in an electrical
 13 corporation's authorized System Average Rate in effect
 14 on June 10, 1996, to reflect price changes in the fuel
 15 market. The commission shall authorize an electrical
 16 corporation to implement a rate cap mechanism which
 17 includes a Fuel Price Index Mechanism provided the
 18 following criteria are met:

19 (1) The Fuel Price Index Mechanism shall be based on
 20 the Southern California Border Index price for natural
 21 gas as published periodically in Natural Gas Intelligence
 22 Magazine. The "Starting Point" of the Fuel Price Index
 23 Mechanism shall be defined as the California Border
 24 Index price as published in Natural Gas Intelligence for
 25 January 1, 1996.

26 (2) The Fuel Price Index Mechanism shall include a
 27 "deadband" defined as a price range for natural gas that
 28 is any price up to 10 percent higher, or lower, than the
 29 Starting Point.

30 (3) The electrical corporation shall not file for a
 31 change in its authorized System Average Rate unless the
 32 California Border Index price, on a 12-month, rolling
 33 average basis, is outside the deadband. If the published
 34 California Border Index is outside of the deadband, the
 35 electrical corporation shall increase, or decrease, its
 36 authorized System Average Rate by an amount equal to
 37 the product of 25 percent multiplied by the percentage
 38 by which the 12-month rolling average natural gas price
 39 is higher, or lower, than the deadband.



1 (4) In no case shall an electrical corporation's
2 authorized System Average Rate under the Fuel Price
3 Index Mechanism exceed the average of the authorized
4 system average rates for the two largest electrical
5 corporations as of June 10, 1996.

6 (5) This section shall become inoperative on
7 December 31, 2001.

8 SEC. 11. Article 5.5 (commencing with Section 840)
9 is added to Chapter 4 of Part 1 of Division 1 of the Public
10 Utilities Code, to read:

11

12 Article 5.5. Financing of Transition Costs

13

14 840. For the purposes of this article, the following
15 terms shall have the following meanings:

16 (a) "Bank" means the California Infrastructure and
17 Economic Development Bank.

18 (b) "Financing entity" means the bank, any special
19 purpose trust, as defined in Section 63101 of the
20 Government Code, that is authorized by the bank to issue
21 rate reduction bonds and acquire transition property, or
22 any other entity authorized by the bank to issue rate
23 reduction bonds and acquire transition property. The
24 bank may authorize another entity to issue rate reduction
25 bonds only if all of the following conditions are met:

26 (1) The bank by resolution has determined that
27 allowing another entity to issue rate reduction bonds
28 would produce greater overall ratepayer savings, taking
29 into account all relevant considerations including, but not
30 limited to, the exclusion of interest on rate reduction
31 bonds issued by the bank from investors' gross income for
32 California or federal income tax purposes, or both,
33 earnings on funds collected and held by the electrical
34 corporation prior to deposit in a fund or account for the
35 benefit of holders of rate reduction bonds, and all costs of
36 issuance and other transaction costs.

37 (2) The bank submits to the Joint Legislative Budget
38 Committee a certified copy of the bank's resolution,
39 together with a report setting forth the basis for the
40 bank's determination that a financing entity other than



1 *the bank or a special purpose trust will produce greater*
2 *ratepayer savings and at least 30 days have elapsed from*
3 *the date of submission.*

4 (c) *“Financing order” shall mean an order of the*
5 *commission adopted in accordance with this article,*
6 *which shall include, without limitation, a procedure to*
7 *require the expeditious approval by the commission of*
8 *periodic adjustments to fixed transition amounts included*
9 *therein to ensure recovery of all transition costs and the*
10 *costs of capital associated with the proposed provision,*
11 *recovery, financing, or refinancing thereof, including the*
12 *costs of issuing, servicing, and retiring the rate reduction*
13 *bonds contemplated by the financing order. These*
14 *adjustments shall not impose fixed transition amounts*
15 *upon classes of customers who were not subject to the*
16 *fixed transition amounts in the pertinent financing order.*

17 (d) *“Fixed transition amounts” means those*
18 *nonbypassable rates and other charges, including, but not*
19 *limited to, distribution, connection, disconnection, and*
20 *termination rates and charges, that are authorized by the*
21 *commission in a financing order to recover (1) transition*
22 *costs, and (2) the costs of providing, recovering,*
23 *financing, or refinancing the transition costs through a*
24 *plan approved by the commission in the financing order,*
25 *including the costs of issuing, servicing, and retiring rate*
26 *reduction bonds. If requested by the electrical*
27 *corporation in its application for a financing order, fixed*
28 *transition amounts shall include nonbypassable rates and*
29 *other charges to recover federal and state taxes whose*
30 *recovery period is modified by the transactions approved*
31 *in the financing order.*

32 (e) *“Rate reduction bonds” means bonds, notes,*
33 *certificates of participation or beneficial interest, or other*
34 *evidences of indebtedness or ownership, issued pursuant*
35 *to an executed indenture or other agreement of a*
36 *financing entity, the proceeds of which are used to*
37 *provide, recover, finance, or refinance transition costs*
38 *and to acquire transition property and that are secured by*
39 *or payable from transition property.*



1 (f) “Transition costs” means the costs, and categories
2 of costs, of an electrical corporation for
3 generation-related assets and obligations, consisting of
4 generation facilities, generation-related regulatory
5 assets, nuclear settlements, and power purchase
6 contracts, including, but not limited to, voluntary
7 restructuring, renegotiations, or terminations thereof
8 approved by the commission, that were being collected
9 in commission-approved rates on December 20, 1995, and
10 that may become uneconomic as a result of a competitive
11 generation market in that those costs may not be
12 recoverable in market prices in a competitive market,
13 and appropriate costs incurred after December 20, 1995,
14 for capital additions to generating facilities existing as of
15 December 20, 1995, that the commission determines are
16 reasonable and should be recovered, provided that these
17 costs are necessary to maintain the facilities through
18 December 31, 2001. Transition costs shall also include the
19 costs of refinancing or retiring of debt or equity capital of
20 the electrical corporation, and associated federal and
21 state tax liabilities.

22 (g) “Transition property” means the property right
23 created pursuant to this article including, without
24 limitation, the right, title, and interest of an electrical
25 corporation or a financing entity to all revenues,
26 collections, claims, payments, money, or proceeds of or
27 arising from or constituting fixed transition amounts that
28 are the subject of a financing order, including those
29 nonbypassable rates and other charges referred to in
30 subdivision (b) that are authorized by the commission in
31 the financing order to recover transition costs and the
32 costs of providing, recovering, financing, or refinancing
33 the transition costs, including the costs of issuing,
34 servicing, and retiring rate reduction bonds.

35 841. (a) An electrical corporation shall, by June 1,
36 1997, and may from time to time thereafter apply to the
37 commission for a determination that certain transition
38 costs may be recovered through fixed transition amounts,
39 which would therefore constitute transition property
40 under this article. An electrical corporation may request



1 *this determination by the commission in separate*
2 *proceedings or in an order instituting investigation or*
3 *order instituting rulemaking, or both. The electrical*
4 *corporation shall in its application specify that the*
5 *residential and small commercial customers as defined in*
6 *subdivision (h) of Section 331 would benefit from*
7 *reduced rates through the issuance of rate reduction*
8 *bonds. The commission shall designate fixed transition*
9 *amounts as recoverable in one or more financing orders*
10 *if the commission determines, as part of its findings in*
11 *connection with the financing order, that the designation*
12 *of the fixed transition amounts, and issuance of rate*
13 *reduction bonds in connection with some or all of the*
14 *fixed transition amounts would reduce rates that*
15 *residential and small commercial customers would have*
16 *paid if the financing order were not adopted. These*
17 *customers shall continue to pay fixed transition amounts*
18 *after December 31, 2001, until the bonds are paid in full*
19 *by the financing entity. No electrical corporation shall be*
20 *found to have acted imprudently or unreasonably for*
21 *failing to amend a power purchase contract where the*
22 *amendment would modify or waive an existing*
23 *requirement that the seller be a qualifying facility*
24 *pursuant to federal law.*

25 *(b) The commission may issue financing orders in*
26 *accordance with this article to facilitate the provision,*
27 *recovery, financing, or refinancing of transition costs. A*
28 *financing order may be adopted only upon the*
29 *application of an electrical corporation and shall become*
30 *effective in accordance with its terms only after the*
31 *electrical corporation files with the commission the*
32 *electrical corporation's written consent to all terms and*
33 *conditions of the financing order. A financing order may*
34 *specify how amounts collected from a customer shall be*
35 *allocated between fixed transition amounts and other*
36 *charges.*

37 *(c) Notwithstanding Section 455.5, Section 1708, or*
38 *any other provision of law, except as otherwise provided*
39 *in this subdivision with respect to transition property that*
40 *has been made the basis for the issuance of rate reduction*



1 *bonds, the financing orders and the fixed transition*
2 *amounts shall be irrevocable and the commission shall not*
3 *have authority either by rescinding, altering, or*
4 *amending the financing order or otherwise, to revalue or*
5 *revise for ratemaking purposes the transition costs, or the*
6 *costs of providing, recovering, financing, or refinancing*
7 *the transition costs, determine that the fixed transition*
8 *amounts or rates are unjust or unreasonable, or in any way*
9 *reduce or impair the value of transition property either*
10 *directly or indirectly by taking fixed transition amounts*
11 *into account when setting other rates for the electrical*
12 *corporation; nor shall the amount of revenues arising with*
13 *respect thereto be subject to reduction, impairment,*
14 *postponement, or termination. Except as otherwise*
15 *provided in this subdivision, the State of California does*
16 *hereby pledge and agree with the owners of transition*
17 *property and holders of rate reduction bonds that the*
18 *state shall neither limit nor alter the fixed transition*
19 *amounts, transition property, financing orders, and all*
20 *rights thereunder until the obligations, together with the*
21 *interest thereon, are fully met and discharged, provided*
22 *nothing contained in this section shall preclude the*
23 *limitation or alteration if and when adequate provision*
24 *shall be made by law for the protection of the owners and*
25 *holders. The bank as agent for the state is authorized to*
26 *include this pledge and undertaking for the state in these*
27 *obligations. Notwithstanding any other provision of this*
28 *section, the commission shall approve the adjustments to*
29 *the fixed transition amounts as may be necessary to*
30 *ensure timely recovery of all transition costs that are the*
31 *subject of the pertinent financing order, and the costs of*
32 *capital associated with the provision, recovery, financing,*
33 *or refinancing thereof, including the costs of issuing,*
34 *servicing, and retiring the rate reduction bonds*
35 *contemplated by the financing order. The adjustments*
36 *shall not impose fixed transition amounts upon classes of*
37 *customers who were not subject to the fixed transition*
38 *amounts in the pertinent financing order.*

39 *(d) (1) Financing orders issued under this article do*
40 *not constitute a debt or liability of the state or of any*



1 *political subdivision thereof, other than the financing*
2 *entity, and do not constitute a pledge of the full faith and*
3 *credit of the state or any of its political subdivisions, other*
4 *than the financing entity, but are payable solely from the*
5 *funds provided therefor under this article and shall be*
6 *consistent with Sections 1 and 18 of Article XVI of the*
7 *California Constitution. This subdivision shall in no way*
8 *preclude bond guarantees or enhancements pursuant to*
9 *this article. All the bonds shall contain on the face thereof*
10 *a statement to the following effect:*

11 *“Neither the full faith and credit nor the taxing power*
12 *of the State of California is pledged to the payment of the*
13 *principal of, or interest on, this bond.”*

14 *(2) The issuance of bonds under this article shall not*
15 *directly, indirectly, or contingently obligate the state or*
16 *any political subdivision thereof to levy or to pledge any*
17 *form of taxation therefor or to make any appropriation for*
18 *their payment. Nothing in this section shall prevent, or*
19 *construed to prevent, the financing entity from pledging*
20 *the full faith and credit of the infrastructure bank fund to*
21 *the payment of bonds or issuance of bonds authorized*
22 *pursuant to this article.*

23 *(e) The commission shall establish procedures for the*
24 *expeditious processing of applications for financing*
25 *orders, including the approval or disapproval thereof*
26 *within 120 days of the electrical corporation’s making*
27 *application therefor. The commission shall provide in any*
28 *financing order for a procedure for the expeditious*
29 *approval by the commission of periodic adjustments to*
30 *the fixed transition amounts that are the subject of the*
31 *pertinent financing order, as required by subdivision (c).*
32 *The procedure shall require the commission to*
33 *determine whether the adjustments are required on each*
34 *anniversary of the issuance of the financing order, and at*
35 *the additional intervals as may be provided for in the*
36 *financing order, and for the adjustments, if required, to*
37 *be approved within 90 days of each anniversary of the*
38 *issuance of the financing order, or of each additional*
39 *interval provided for in the financing order.*



1 (f) Fixed transition amounts shall constitute transition
2 property when, and to the extent that, a financing order
3 authorizing the fixed transition amounts has become
4 effective in accordance with this article, and the
5 transition property shall thereafter continuously exist as
6 property for all purposes with all of the rights and
7 privileges of this article for the period and to the extent
8 provided in the financing order, but in any event until the
9 transition bonds are paid in full, including all principal,
10 interest, premium, costs, and arrearages thereon.

11 (g) Any surplus fixed transition amounts in excess of
12 the amounts necessary to pay principal, premium, if any,
13 interest and expenses of the issuance of the rate reduction
14 bonds shall be remitted to the financing entity and may
15 be used to benefit residential and small commercial
16 customers if this would not result in a recharacterization
17 of the tax, accounting, and other intended characteristics
18 of the financing, including, but not limited to, the
19 following:

20 (1) Avoiding the recognition of debt on the electrical
21 corporation's balance sheet for financial accounting and
22 regulatory purposes.

23 (2) Treating the rate reduction bonds as debt of the
24 electrical corporation or its affiliates for federal income
25 tax purposes.

26 (3) Treating the transfer of the transition property by
27 the electrical corporation as a true sale for bankruptcy
28 purposes.

29 (4) Avoiding any adverse impact of the financing on
30 the electrical corporation's credit rating.

31 842. (a) Financing entities may issue rate reduction
32 bonds upon approval by the commission in the pertinent
33 financing orders. Rate reduction bonds shall be
34 nonrecourse to the credit or any assets of the electrical
35 corporation, other than the transition property as
36 specified in the pertinent financing order.

37 (b) Electrical corporations may sell and assign all or
38 portions of their interest in transition property to an
39 affiliate. Electrical corporations or their affiliates may sell
40 or assign their interests to one or more financing entities



1 that make that property the basis for issuance of rate
2 reduction bonds to the extent approved in the pertinent
3 financing orders. Electrical corporations, their affiliates,
4 or financing entities may pledge transition property as
5 collateral for rate reduction bonds to the extent approved
6 in the pertinent financing orders providing for a security
7 interest in the transition property, in the manner as set
8 forth in Section 843. In addition transition property may
9 be sold or assigned by (1) the financing entity or a trustee
10 for the holders of rate reduction bonds in connection with
11 the exercise of remedies upon a default, or (2) any person
12 acquiring the transition property after a sale or
13 assignment pursuant to this subdivision.

14 (c) To the extent that any interest in transition
15 property is so sold or assigned, or is so pledged as
16 collateral, the commission shall authorize the electrical
17 corporation to contract with the financing entity that it
18 will continue to operate its system to provide service to
19 its customers, will collect amounts in respect of the fixed
20 transition amounts for the benefit and account of the
21 financing entity, and will account for and remit these
22 amounts to or for the account of the financing entity.
23 Contracting with the financing entity in accordance with
24 that authorization shall not impair or negate the
25 characterization of the sale, assignment, or pledge as an
26 absolute transfer, a true sale, or security interest, as
27 applicable.

28 (d) Notwithstanding Section 1708 or any other
29 provision of law, any requirement under this article or a
30 financing order that the commission take action with
31 respect to the subject matter of a financing order shall be
32 binding upon the commission, as it may be constituted
33 from time to time, and any successor agency exercising
34 functions similar to the commission and the commission
35 shall have no authority to rescind, alter, or amend that
36 requirement in a financing order. The approval by the
37 commission in a financing order of the issuance by an
38 electrical corporation or a financing entity of rate
39 reduction bonds shall include the approvals, if any, as may
40 be required by Article 5 (commencing with Section 816)



1 and Section 701.5. Nothing in Section 701.5 shall be
2 construed to prohibit the issuance of rate reduction bonds
3 upon the terms and conditions as may be approved by the
4 commission in a financing order. Section 851 shall not be
5 applicable to the transfer or pledge of transition property,
6 the issuance of rate reduction bonds, or related
7 transactions approved in a financing order.

8 843. (a) A security interest in transition property is
9 valid, is enforceable against the pledgor and third parties,
10 subject to the rights of any third parties holding security
11 interests in the transition property perfected in the
12 manner described in this section, and attaches when all
13 of the following have taken place:

14 (1) The commission has issued the financing order
15 authorizing the bondable transition amounts included in
16 the transition property.

17 (2) Value has been given by the pledgees of the
18 transition property.

19 (3) The pledgor has signed a security agreement
20 covering the transition property.

21 (b) A valid and enforceable security interest in
22 transition property is perfected when it has attached and
23 when a financing statement has been filed in accordance
24 with Chapter 4 (commencing with Section 9401) of
25 Division 9 of the Commercial Code naming the pledgor
26 of the transition property as “debtor” and identifying the
27 transition property. Any description of the transition
28 property shall be sufficient if it refers to the financing
29 order creating the transition property. A copy of the
30 financing statement shall be filed with the commission by
31 the electrical corporation that is the pledgor or transferor
32 of the transition property, and the commission may
33 require the electrical corporation to make other filings
34 with respect to the security interest in accordance with
35 procedures it may establish, provided that the filings shall
36 not affect the perfection of the security interest.

37 (c) A perfected security interest in transition property
38 is a continuously perfected security interest in all
39 revenues and proceeds arising with respect thereto,
40 whether or not the revenues or proceeds have accrued.



1 *Conflicting security interests shall rank according to*
2 *priority in time of perfection. Transition property shall*
3 *constitute property for all purposes, including for*
4 *contracts securing rate reduction bonds, whether or not*
5 *the revenues and proceeds arising with respect thereto*
6 *have accrued.*

7 *(d) Subject to the terms of the security agreement*
8 *covering the transition property and the rights of any*
9 *third parties holding security interests in the transition*
10 *property perfected in the manner described in this*
11 *section, the validity and relative priority of a security*
12 *interest created under this section is not defeated or*
13 *adversely affected by the commingling of revenues*
14 *arising with respect to the transition property with other*
15 *funds of the electrical corporation that is the pledgor or*
16 *transferor of the transition property, or by any security*
17 *interest in a deposit account of that electrical corporation*
18 *perfected under Division 9 (commencing with Section*
19 *9101) of the Commercial Code into which the revenues*
20 *are deposited. Subject to the terms of the security*
21 *agreement, upon compliance with the requirements of*
22 *subdivision (g) of Section 9302 of the Commercial Code,*
23 *the pledgees of the transition property shall have a*
24 *perfected security interest in all cash and deposit*
25 *accounts of the electrical corporation in which revenues*
26 *arising with respect to the transition property have been*
27 *commingled with other funds, but the perfected security*
28 *interest shall be limited to an amount not greater than the*
29 *amount of the revenues with respect to the transition*
30 *property received by the electrical corporation within 12*
31 *months before (1) any default under the security*
32 *agreement or (2) the institution of insolvency*
33 *proceedings by or against the electrical corporation, less*
34 *payments from the revenues to the pledgees during that*
35 *12-month period.*

36 *(e) If an event of default occurs under the security*
37 *agreement covering the transition property, the pledgees*
38 *of the transition property, subject to the terms of the*
39 *security agreement, shall have all rights and remedies of*
40 *a secured party upon default under Division 9*



1 (commencing with Section 9101) of the Commercial
2 Code, and shall be entitled to foreclose or otherwise
3 enforce their security interest in the transition property,
4 subject to the rights of any third parties holding prior
5 security interests in the transition property perfected in
6 the manner provided in this section. In addition, the
7 commission may require, in the financing order creating
8 the transition property, that, in the event of default by the
9 electrical corporation in payment of revenues arising
10 with respect to the transition property, the commission
11 and any successor thereto, upon the application by the
12 pledgees or transferees, including transferees under
13 Section 844, of the transition property, and without
14 limiting any other remedies available to the pledgees or
15 transferees by reason of the default, shall order the
16 sequestration and payment to the pledgees or transferees
17 of revenues arising with respect to the transition
18 property. Any order shall remain in full force and effect
19 notwithstanding any bankruptcy, reorganization, or
20 other insolvency proceedings with respect to the debtor,
21 pledgor, or transferor of the transition property. Any
22 surplus in excess of amounts necessary to pay principal,
23 premium, if any, interest, costs, and arrearages on the rate
24 reduction bonds, and other costs arising under the
25 security agreement, shall be remitted to the debtor or to
26 the pledgor or transferor.

27 (f) Section 5451 of the Government Code shall not
28 apply to any pledge of transition property by a financing
29 entity.

30 844. (a) A transfer of transition property by an
31 electrical corporation to an affiliate or to a financing
32 entity, or by an affiliate of an electrical corporation or a
33 financing entity to another financing entity, which the
34 parties have in the governing documentation expressly
35 stated to be a sale or other absolute transfer, in a
36 transaction approved in a financing order, shall be
37 treated as an absolute transfer of all of the transferor's
38 right, title, and interest (as in a true sale), and not as a
39 pledge or other financing, of the transition property,
40 other than for federal and state income and franchise tax



1 purposes. Granting to holders of rate reduction bonds a
2 preferred right to revenues of the electrical corporation,
3 or the provision by the company of other credit
4 enhancement with respect to rate reduction bonds, shall
5 not impair or negate the characterization of any transfer
6 as a true sale, other than for federal and state income and
7 franchise tax purposes.

8 (b) A transfer of transition property shall be deemed
9 perfected as against third persons when both of the
10 following have taken place:

11 (1) The commission has issued the financing order
12 authorizing the fixed transition amounts included in the
13 transition property.

14 (2) An assignment of the transition property in writing
15 has been executed and delivered to the transferee.

16 (c) As between bona fide assignees of the same right
17 for value without notice, the assignee first filing a
18 financing statement in accordance with Chapter 4
19 (commencing with Section 9401) of Division 9 of the
20 Commercial Code naming the assignor of the transition
21 property as debtor and identifying the transition
22 property has priority. Any description of the transition
23 property shall be sufficient if it refers to the financing
24 order creating the transition property. A copy of the
25 financing statement shall be filed by the assignee with the
26 commission, and the commission may require the
27 assignor or the assignee to make other filings with respect
28 to the transfer in accordance with procedures it may
29 establish, but these filings shall not affect the perfection
30 of the transfer.

31 845. Any successor to the electrical corporation,
32 whether pursuant to any bankruptcy, reorganization, or
33 other insolvency proceeding, or pursuant to any merger,
34 sale, or transfer, by operation of law, or otherwise, shall
35 perform and satisfy all obligations of the electrical
36 corporation pursuant to this article in the same manner
37 and to the same extent as the electrical corporation,
38 including, but not limited to, collecting and paying to the
39 holders of rate reduction bonds or their representatives
40 or the applicable financing entity revenues arising with



1 *respect to the transition property sold to the applicable*
2 *financing entity or pledged to secure rate reduction*
3 *bonds.*

4 *846. The authority of the commission to issue*
5 *financing orders pursuant to Section 841 shall expire on*
6 *December 31, 2015. The expiration of the authority shall*
7 *have no effect upon financing orders adopted by the*
8 *commission pursuant to this article or any transition*
9 *property arising therefrom, or upon the charges*
10 *authorized to be levied thereunder, or the rights,*
11 *interests, and obligations of the electrical corporation or*
12 *a financing entity or holders of transition bonds pursuant*
13 *to the financing order, or the authority of the commission*
14 *to monitor, supervise, or take further action with respect*
15 *to the order in accordance with the terms of this article*
16 *and of the order.*

17 *847. Regulations adopted to implement this article*
18 *shall not be subject to the Administrative Procedure Act*
19 *(Chapter 3.5 (commencing with Section 11340) of Part 1*
20 *of Division 3 of Title 2 of the Government Code).*

21 *SEC. 12. Division 4.9 (commencing with Section*
22 *9600) is added to the Public Utilities Code, to read:*

23

24 *DIVISION 4.9. RESTRUCTURING OF PUBLICLY*
25 *OWNED ELECTRIC UTILITIES IN CONNECTION*
26 *WITH THE RESTRUCTURING OF THE*
27 *ELECTRICAL SERVICES INDUSTRY*

28

29 *9600. (a) It is the intent of the Legislature that*
30 *California's local publicly owned electric utilities and*
31 *electric corporations should commit control of their*
32 *transmission facilities to the Independent System*
33 *Operator as described in Chapter 2.3 (commencing with*
34 *Section 330) of Part 1 of Division 1. These utilities should*
35 *jointly advocate to the Federal Energy Regulatory*
36 *Commission a pricing methodology for the Independent*
37 *System Operator that results in an equitable return on*
38 *capital investment in transmission facilities for all*
39 *Independent System Operator participants and is based*
40 *on the following principles:*



1 (1) Utility specific access charge rates as proposed in
2 Docket No. EC96-19-000 as finally approved by the
3 Federal Energy Regulatory Commission reflecting the
4 costs of that utility's transmission facilities shall go into
5 effect on the first day of the Independent System
6 Operator operation. The utility specific rates shall honor
7 all of the terms and conditions of existing transmission
8 service contracts and shall recognize any wheeling
9 revenues of existing transmission service arrangements
10 to the transmission owner.

11 (2) (A) No later than two years after the initial
12 operation of the Independent System Operator, the
13 Independent System Operator shall recommend for
14 adoption by the Federal Energy Regulatory Commission
15 a rate methodology determined by a decision of the
16 Independent System Operator governing board,
17 provided that the decision shall be based on principles
18 approved by the governing board including, but not
19 limited to, an equitable balance of costs and benefits, and
20 shall define the transmission facility costs, if any, which
21 shall be rolled in to the transmission service rate and
22 spread equally among all Independent System Operator
23 transmission users, and those transmission facility costs, if
24 any, which should be specifically assigned to a specific
25 utility's service area.

26 (B) If there is no governing board decision, the rate
27 methodology shall be determined following a decision by
28 the alternative dispute resolution method set forth in the
29 Independent System Operator bylaws.

30 (C) If no alternative dispute resolution decision is
31 rendered, then a default rate methodology shall be a
32 uniform regional transmission access charge and a utility
33 specific local transmission access charge, provided that
34 the default rate methodology shall be recommended for
35 implementation upon termination of the cost recovery
36 plan set forth in Section 368 or no later than two years
37 after the initial operation of the Independent System
38 Operator, whichever is later. For purposes of this
39 paragraph, regional transmission facilities are defined to
40 be transmission facilities operating at or above 230



1 kilovolts plus an appropriate percentage of transmission
2 facilities operating below 230 kilovolts; all other
3 transmission facilities shall be considered local. The
4 appropriate percentage of transmission facilities
5 described above shall be consistent with the guidelines in
6 Federal Energy Regulatory Commission Order No. 888
7 and any exception approved by that commission.

8 (3) If the rate methodology implemented as a result of
9 a decision by the Independent System Operator
10 governing board or resulting from the independent
11 system operator alternative dispute resolution process
12 results in rates different than those in effect prior to the
13 decision for any transmission facility owner, the amount
14 of any differences between the new rates and the prior
15 rates shall be recorded in a tracking account to be
16 recovered from customers and paid to the appropriate
17 transmission owners by the transmission facility owner
18 after termination of the cost recovery plan set forth in
19 Section 368. The recovery and payments shall be based on
20 an amortization period not to exceed three years in the
21 case of the electrical corporations or five years in the case
22 of the local publicly owned electric utilities.

23 (4) The costs of transmission facilities placed in service
24 after the date of initial implementation of the
25 Independent System Operator shall be recovered using
26 the rate methodology in effect at the time the facilities go
27 into operation.

28 (5) The electrical corporations and the local publicly
29 owned electric utilities shall jointly develop language for
30 implementation proposals to the Federal Energy
31 Regulatory Commission based on these principles.

32 (6) Nothing in this section shall compel any party to
33 violate restrictions applicable to facilities financed with
34 tax-exempt bonds or contractual restrictions and
35 covenants regarding use of transmission facilities existing
36 as of December 20, 1995.

37 (b) Following a final Federal Energy Regulatory
38 Commission decision approving the Independent System
39 Operator, no California electrical corporation or local
40 publicly owned electric utility shall be authorized to



1 collect any competition transition charge authorized
2 pursuant to this division and Chapter 2.3 (commencing
3 with Section 330) of Part 1 of Division 1 unless it commits
4 control of its transmission facilities to the Independent
5 System Operator.

6 9601. (a) Except with respect to supply options of the
7 nature specified in Section 218, with the exception of
8 paragraph (3) of subdivision (b) of that section, as it
9 existed on December 20, 1995, no person, corporation,
10 electrical corporation, or local publicly owned electric
11 utility or other governmental entity other than a retail
12 customer's existing electric service provider as of
13 December 20, 1995, shall provide partial or full electric
14 service to a retail customer of a local publicly owned
15 electric utility unless the customer first confirms in
16 writing an obligation to pay, through tariff or otherwise,
17 to the utility currently providing electric service, a
18 nonbypassable generation-related severance fee or
19 transition charge established by the regulatory body for
20 that utility. The severance fee or transition charge shall
21 be paid directly to the local publicly owned utility
22 providing electricity service in the service area in which
23 the consumer is located.

24 (b) Except as provided in subdivision (a) of Section
25 374, no local publicly owned electric utility or other
26 governmental entity shall provide partial or full electric
27 service to a retail customer of an electrical corporation
28 unless the customer of that electrical corporation first
29 confirms in writing an obligation to pay, through tariff or
30 otherwise, to the electrical corporation currently
31 providing electric service, a nonbypassable
32 generation-related transition charge established by the
33 regulatory body for that electrical corporation. The
34 charge shall be paid directly to the electrical corporation
35 providing electricity in the service area in which the
36 consumer is located.

37 (c) No local publicly owned electric utility or
38 electrical corporation shall sell electric power to the retail
39 customers of another local publicly owned electric utility
40 or electrical corporation unless the first utility has agreed



1 to let the second utility make sales of electric power to the
2 retail customers of the first utility.

3 9602. (a) After a public hearing, the local regulatory
4 body of each local publicly owned electric utility shall
5 determine whether it will authorize direct transactions
6 between electricity suppliers and end use customers,
7 subject to implementation of the nonbypassable
8 severance fee or transition charge referred to in Section
9 9603.

10 (b) If the regulatory body authorizes direct
11 transactions, a phase-in of these transactions shall
12 commence no later than the latter of January 1, 2000, or
13 two years after the start of the phase-in of direct
14 transactions by the electrical corporations pursuant to
15 subdivision (b) of Section 365, and shall be completed by
16 the later of December 31, 2010, or two years after the
17 completion of the phase-in by electrical corporations.

18 (c) The regulatory body shall develop a phase-in
19 schedule at the conclusion of which all customers shall
20 have the right to engage in direct transactions.

21 (d) Any phase-in of customer eligibility for direct
22 transactions ordered by the regulatory body shall be
23 equitable to all customer classes.

24 (e) If the regulatory body does not authorize direct
25 access as contemplated in this section, then the publicly
26 owned electric utility shall not be eligible to recover the
27 nonbypassable charge as provided in Section 9603.

28 9603. (a) Not less than six months prior to the date of
29 implementation of direct transactions, the regulatory
30 body shall establish the nonbypassable
31 generation-related severance fee or transition charge
32 which shall include, but shall not be limited to, employee
33 related transition costs incurred and projected for
34 severance, out placement, retraining, early retirement,
35 and related expenses for employees directly affected by
36 restructuring.

37 (b) The regulatory body of a local publicly owned
38 electric utility, prior to adopting any generation related
39 severance fee or transition charge, shall make available
40 for public review the basis for the severance fee or



1 transition charge and shall hold at least one public
2 hearing.

3 9604. For purposes of this division, the following
4 definitions apply:

5 (a) “Direct transaction” means a contract between
6 one or more electric generators, marketers, or brokers,
7 public or private, of electric power and one or more retail
8 customers providing for the purchase and sale of electric
9 power and ancillary services.

10 (b) “Service area” means an area in which, as of
11 December 20, 1995, an investor-owned electric utility or
12 a local publicly owned electric utility was obligated to
13 provide service.

14 (c) “Severance fee” or “transition charge” for a local
15 publicly owned electric utility shall mean that charge or
16 periodic charge assessed to customers to recover the
17 reasonable uneconomic portion of costs associated with
18 generation-related assets and obligations, nuclear
19 decommissioning, and capitalized energy efficiency
20 investment programs approved prior to August 15, 1996.

21 (d) “Local publicly owned electric utility” as used in
22 this division means a municipality or municipal
23 corporation operating as a “public utility” furnishing
24 electric service as provided in Section 10001, a municipal
25 utility district furnishing electric service formed pursuant
26 to Division 6 (commencing with Section 11501), a public
27 utility district furnishing electric services formed
28 pursuant to the Public Utility District Act set forth in
29 Division 7 (commencing with Section 15501), an
30 irrigation district furnishing electric services formed
31 pursuant to the Irrigation District Law set forth in
32 Division 11 (commencing with Section 20500) of the
33 Water Code, or a joint powers authority that includes one
34 or more of these agencies and that owns generation or
35 transmission facilities, or furnishes electric services over
36 its own or its member’s electric distribution system.

37 9605. (a) Nothing in this division or Chapter 2.3
38 (commencing with Section 350) of Part 1 of Division 1
39 shall affect preexisting ratemaking authority of a



1 regulatory body of any local publicly owned electric
2 utility.

3 (b) Nothing in this division shall modify or abrogate
4 any agreement, or any rights or obligations in any such
5 agreement, between retail electric service providers
6 relating to service areas.

7 (c) Nothing in this division shall limit or affect the
8 statutory rights of a local publicly owned electric utility
9 to negotiate and design rates for existing customers and
10 new customers not choosing to be served by an alternate
11 supplier.

12 (d) Nothing in this division shall limit electric supply
13 options within the service territory of a local publicly
14 owned electric utility to the extent the options are of the
15 nature specified in Section 218 as it existed on December
16 20, 1995, with the exception of paragraph (3) of
17 subdivision (b) of that section, and the imposition of a
18 severance fee or transition charge on customers electing
19 those options shall be prohibited whether the elections
20 are made before or after the availability of direct
21 transactions within the service area of the local publicly
22 owned electric utility.

23 9606. All city-owned electric utilities shall report on
24 the periodic bill the amount expected to be transferred
25 to the general fund of the city on a no less than annual
26 basis.

27 SEC. 13. Section 9.5 of this bill incorporates
28 amendments to Section 216 of the Public Utilities Code
29 proposed by both this bill and AB 2501. It shall only
30 become operative if (1) both bills are enacted and
31 become effective on or before January 1, 1997, (2) each
32 bill amends Section 216 of the Public Utilities Code, and
33 (3) this bill is enacted after AB 2501, in which case Section
34 9 of this bill shall not become operative.

35 SEC. 14. The provisions of this act are severable. If
36 any provision of this act or its application is held invalid,
37 that invalidity shall not affect other provisions or
38 applications that can be given effect without the invalid
39 provision or application.

1 SEC. 15. No reimbursement is required by this act
2 pursuant to Section 6 of Article XIII B of the California
3 Constitution because of costs that may be incurred by a
4 local agency or school district will be incurred because
5 this act creates a new crime or infraction, eliminates a
6 crime or infraction, or changes the penalty for a crime or
7 infraction, within the meaning of Section 17556 of the
8 Government Code, or changes the definition of a crime
9 within the meaning of Section 6 of Article XIII B of the
10 California Constitution.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

15 No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution
17 because of the other costs that may be incurred by a local
18 agency or school district are the result of a program for
19 which legislative authority was requested by that local
20 agency or school district, within the meaning of Section
21 17556 of the Government Code and Section 6 of Article
22 XIII B of the California Constitution.

23 SEC. 16. This act is an urgency statute necessary for
24 the immediate preservation of the public peace, health,
25 or safety within the meaning of Article IV of the
26 Constitution and shall go into immediate effect. The facts
27 constituting the necessity are:

28 In order to provide for meaningful participation in
29 hearings before the Federal Energy Regulatory
30 Commission and to provide for the safety and reliability
31 of electrical services to Californians at the earliest
32 possible time, it is necessary for this act to take effect
33 immediately.

34 ~~restructure the electric utility industry now regulated by~~
35 ~~the State of California into a more competitive and~~
36 ~~efficient system that will bring lower electrical rates to all~~
37 ~~consumers at the earliest possible time, and simplify the~~
38 ~~regulation of the industry, while preserving system~~
39 ~~safety, reliability, and environmental protection. In~~
40 ~~pursuit of these reforms, it is the intent of the Legislature~~



1 ~~that the following policy issues shall be addressed as a part~~
2 ~~of the restructuring process:~~

3 ~~(a) The future structure of the generation of~~
4 ~~electricity, including all of the following:~~

5 ~~(1) The design of the new model for providing~~
6 ~~increased competition in the generation of electricity,~~
7 ~~specifically addressing, but not limited to, issues such as~~
8 ~~whether the model should be one of direct access with~~
9 ~~voluntary, market driven power pools, a system of~~
10 ~~mandatory power pools regulated by the state and federal~~
11 ~~government, or a system of community level access to~~
12 ~~generation, and how the transition to the new model will~~
13 ~~be implemented.~~

14 ~~(2) Market power, antitrust and divestiture of~~
15 ~~generation assets irrespective of what model is adopted.~~

16 ~~(3) How generation services would be regulated, if at~~
17 ~~all, and how consumers will be protected.~~

18 ~~(b) Transition cost calculation, including but not~~
19 ~~limited to:~~

20 ~~(1) Definition of transition costs to be considered.~~

21 ~~(2) Methodology for determining value of~~
22 ~~noneconomic and economic assets.~~

23 ~~(3) An appropriate sharing of costs.~~

24 ~~(4) The amortization period for recovery of costs.~~

25 ~~(5) The cost recovery mechanism.~~

26 ~~(c) Future structure of the transmission and~~
27 ~~distribution system, including all of the following:~~

28 ~~(1) Access to the transmission and distribution system~~
29 ~~based on the generation or market model policy issues~~
30 ~~addressed pursuant to subdivision (a).~~

31 ~~(2) The role of the independent system or grid~~
32 ~~operator in assuring smooth, efficient, and reliable system~~
33 ~~operation.~~

34 ~~(3) The nature of the future role of regulation of these~~
35 ~~continuing monopoly functions to ensure that~~
36 ~~cost-effectiveness, safety, and reliability are maximized in~~
37 ~~the future with appropriate regulation.~~

38 ~~(d) State policy issues, including all of the following:~~

39 ~~(1) The future of all state-mandated policies that are~~
40 ~~related to electrical energy and the manner in which they~~



1 will be continued as a part of a restructured electrical
2 industry, including programs dealing with low-income
3 customers, renewable and fuel diversity acquisition,
4 demand side management, electrical energy research
5 and development, biomass energy production, low- or
6 zero-emission vehicles, minority, women, disabled, and
7 veteran business enterprises, and economic
8 development.

9 (2) The manner in which the costs of the programs to
10 be continued will be recovered.

11 (e) Financial integrity and viability of the
12 investor-owned utilities that is inherent in any electric
13 industry restructuring.

14 (f) State and federal jurisdictional issues, including
15 both of the following:

16 (1) A cognizance of current and proposed federal law
17 and regulations regarding interstate transmission of
18 electricity and other issues.

19 (2) Changes in state policy to be coordinated with
20 federal government policy to minimize, to the extent
21 possible, jurisdictional problems.

22 SEC. 2. This act shall become operative only if
23 Assembly Bill 3153 of the 1995-96 Regular Session is
24 enacted.

25 _____
26 CORRECTIONS

27
28 **Heading — Line 16.**

29 **Text — Pages 5, 6, 57, 69, and 71.**

30 _____
31

