

AMENDED IN ASSEMBLY MAY 24, 2004

AMENDED IN ASSEMBLY APRIL 12, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2006**

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**Introduced by Assembly Member Nunez**

February 13, 2004

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An act to add Article 17 (commencing with Section 400) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2006, as amended, Nunez. Electrical restructuring: Reliable Electric Service Act of 2004.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The existing Public Utilities Act requires the commission, pursuant to electrical restructuring, to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would establish a core and noncore model under which the utility's noncore customers may elect to receive electric service from the electrical corporation or from an electric service provider. An electrical corporation would have no obligation to procure electricity or otherwise meet resource adequacy requirements for noncore customers that elect to enter into a direct transaction for the purchase of electricity. The bill would require electrical corporations to file, and for the commission to approve, a long-term resource plan, as specified, sufficient to fulfill the utility's duty to serve while achieving best value for ratepayers. The bill would provide for the recovery of costs and investments made pursuant to an approved long-term resource plan. The bill would require that no costs be shifted to the utility's core customers as a result of the election by noncore customers to purchase electricity through direct transactions. The bill would require the commission, in consultation with the Independent System Operator, to establish resource adequacy requirements to ensure adequate physical generating capacity to meet peak demand plus requisite planning and operating reserves is available to reliably serve all customers, and would require the Independent System Operator to implement and enforce these resource adequacy requirements in a nondiscriminatory manner on all load serving entities, excluding a local publicly owned electric utility *and customer generation, as defined*. The bill would require the commission to adopt implementing rules and regulations.

A violation of the Public Utilities Act or an order of the commission is a crime under existing law.

Because a violation of the bill's provisions would be a violation of the act, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) An adequate and reliable supply of electricity is essential to  
4 the health, safety, and welfare of all California consumers.

5 (b) Safe, reliable, and affordable electric service is of utmost  
6 importance to the consumers of this state and its economy.

7 (c) Electrical corporations have an obligation to provide their  
8 customers with reliable electric service at just and reasonable rates.

9 (d) In order to provide safe, reliable, and affordable electric  
10 service to consumers, electrical corporations must provide needed  
11 resources, including cost effective energy efficiency and other  
12 demand reduction measures, utility-owned and procured  
13 generation, new and repowered generation, cogeneration,  
14 renewable generation, transmission, distribution, and an  
15 adequately sized, ~~well-trained~~ *well-trained* workforce, in a manner  
16 that produces the best value for ratepayers.

17 (e) In order to ensure that investments in resources are made in  
18 a manner that produces the best value for ratepayers, electrical  
19 corporations should prepare a long-term resource plan for  
20 commission review and approval, that achieves a diversified  
21 portfolio of efficient, cost effective supply and demand resources.

22 (f) In order to ensure that the long-term resource plan achieves  
23 a diversified portfolio of efficient, cost effective supply and  
24 demand resources, resource adequacy requirements shall be met  
25 first through cost effective energy efficiency and other demand  
26 reduction measures.

27 (g) In order to ensure that a long-term resource plan will result  
28 in investments in resources sufficient to provide reliable electric  
29 service to customers of an electrical corporation without stranding  
30 costs or shifting costs, a stable and predictable customer base is  
31 necessary and essential.

32 (h) In order to attract sufficient capital to make investments in  
33 needed resources, there must be assurance that reasonable costs  
34 and investments, including a return of and on direct investments,  
35 and payments made to third parties under contract with an  
36 electrical corporation for non-utility-owned generation, are  
37 recovered in rates.



1 (i) California consumers will not receive reliable and  
2 affordable electric service, nor will consumers avoid repetition of  
3 past problems with excessive wholesale electricity prices, rolling  
4 blackouts, and long-term supply contracts that threaten consumers  
5 with billions of dollars in above-market electricity costs, unless a  
6 durable framework is enacted to support investment in needed  
7 resources.

8 SEC. 2. Article 17 (commencing with Section 400) is added  
9 to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code,  
10 to read:

11  
12 Article 17. Reliable Electric Service Act of 2004  
13

14 400. This article shall be known, and may be cited, as the  
15 Reliable Electric Service Act of 2004.

16 400.1. (a) An electrical corporation has an obligation to  
17 provide the utility’s customers with reliable electric service at just  
18 and reasonable rates, pursuant to Section 451.

19 (b) For purposes of this article, “electric service” includes  
20 providing adequate and efficient resources, including cost  
21 effective energy efficiency and other demand response resources,  
22 utility-owned and procured generation resources, new and  
23 repowered generation resources, cogeneration, renewable  
24 generation resources, transmission and distribution resources,  
25 metering, billing, and employing an adequately sized, ~~well-trained~~  
26 *well-trained* utility workforce.

27 (c) Notwithstanding subdivisions (a) and (b), an electrical  
28 corporation has no obligation to procure electricity or otherwise  
29 meet resource adequacy requirements for any customer that elects  
30 to enter a direct transaction. No costs incurred by the electrical  
31 corporation to serve customers that have entered into a direct  
32 transaction, shall be shifted to the utility’s bundled customers.

33 400.5. (a) To ensure that adequate investments are made in  
34 resources necessary to provide customers with reliable electric  
35 service, the commission shall authorize an electrical corporation  
36 to provide efficient, cost effective resources, including cost  
37 effective energy efficiency and demand response resources,  
38 utility-owned and procured generation resources, new and  
39 repowered generation resources, cogeneration, and renewable



1 generation resources, consistent with the electrical corporation's  
2 procurement plan adopted pursuant to Section 454.4.

3 (b) The commission shall, after public hearing, approve and  
4 thereafter maintain just and reasonable rates sufficient to ensure  
5 that the electrical corporation fully recovers the cost of  
6 investments found reasonable by the commission in the resources  
7 necessary to provide customers with reliable electric service,  
8 including a reasonable opportunity to fully recover a reasonable  
9 return on investment over the life of the resource, in addition to  
10 costs reasonably incurred to operate and maintain those resources,  
11 on a timely basis.

12 (c) The cost recovery assurance for investments in resources  
13 applies to both of the following:

14 (1) Direct investments made by an electrical corporation.

15 (2) The electrical corporation's full costs of contracting for  
16 generation resources with another entity, including the ~~cost of~~  
17 *reasonable costs, as determined by the commission, for any*  
18 collateral requirements and debt equivalence.

19 (d) Nothing in this article alters the requirements of Section  
20 455.5, 463, or 1005.5.

21 (e) *It is the intent of the Legislature in enacting this section to*  
22 *affirm, without requiring revision, California's traditional*  
23 *doctrine regarding an electrical corporation's reasonable*  
24 *opportunity to fully recover reasonable costs and investments, as*  
25 *reflected in regulatory and judicial decisions prior to 1994.*

26 400.10. (a) To ensure that adequate investments necessary to  
27 meet the electrical corporation's obligation to provide reliable  
28 electric service are made, every electrical corporation shall  
29 prepare a long-term resource plan in accordance with Section  
30 454.5 to achieve a diversified portfolio of efficient cost effective  
31 supply and demand resources to serve the utility's customers. The  
32 plan shall include demand and supply forecasts for 5-, 10-, and  
33 15-year periods, and shall ensure that adequate resources are  
34 available to reliably serve the utility's customers. The demand  
35 forecasts shall reflect energy efficiency programs approved by the  
36 commission. The commission shall, after public hearing, review  
37 and approve a long-term resource plan for every electrical  
38 corporation consistent with Section 454.5, including those  
39 revisions to the utility filed plan that the commission determines  
40 are necessary.



1 (b) The plan shall provide for investments in all practicable and  
2 cost effective energy efficiency and demand response resources,  
3 including load management, that offer equivalent or better system  
4 reliability, equivalent or better environmental improvements, and  
5 equivalent or lower costs to ratepayers than supply alternatives.

6 (c) The plan shall provide for investments in necessary  
7 generation resources, including extensions, renewal, or  
8 renegotiations of contracts for existing generation resources, new  
9 or repowered generation and cogeneration projects.

10 (d) (1) The plan may provide for investments in distributed  
11 generation that would improve system reliability, thereby  
12 deferring or eliminating investments in distribution facilities that  
13 would otherwise be needed to improve system reliability, by either  
14 direct investment by the electrical corporation or under contract  
15 with a third party, provided the electrical corporation finds that the  
16 investment in distributed generation would accomplish each of the  
17 following:

18 (A) Result in overall cost savings for ratepayers due to deferral  
19 or elimination of electric distribution projects.

20 (B) Provide the required reliability and operational  
21 characteristics to support adequate service reliability to customers  
22 in the affected area.

23 (2) In cases where the distributed generation is provided under  
24 contract with a third party to reduce distribution system loads, the  
25 third party must maintain physical assurance that the contracted  
26 load reduction will be available during all required time periods.

27 (e) The plan shall provide for the continuation of the  
28 self-generation incentive program authorized pursuant to Section  
29 379.6 for ultraclean *and low-emission* distributed generation, as  
30 defined in Section 353.2.

31 (f) The plan shall provide that an electrical corporation shall  
32 meet the resource adequacy requirements, by owning or  
33 contracting for sufficient physical generating capacity to meet 100  
34 percent of annual peak demand, plus requisite operating and  
35 planning reserve margins as determined by the commission, for  
36 the electric load served by the electrical corporation. For purposes  
37 of this article, ‘electric load served by the electrical corporation’  
38 does not include the electrical load of customers who elect to enter  
39 into a direct transaction.



1 400.15. (a) An electrical corporation's procurement plan  
2 approved by the commission pursuant to Section 454.5, shall  
3 ensure that the resource selection process for generation resources  
4 necessary to meet resource adequacy requirements achieves best  
5 value for ratepayers by considering price, reliability, stability,  
6 efficiency, cost-effectiveness, system impacts, resource diversity,  
7 and risk.

8 (b) In accordance with an electrical corporation's procurement  
9 plan approved pursuant to Section 454.5, to meet resource  
10 adequacy requirements each electrical corporation shall manage a  
11 diversified portfolio of non-utility-owned generation under  
12 contract with the utility, and utility-owned generation, combining  
13 the potential benefits of a competitive wholesale market, including  
14 operating efficiencies and lower prices, with the stability of  
15 cost-of-service generation resources, to achieve best value for  
16 ratepayers.

17 (c) In order to meet resource adequacy requirements, each  
18 electrical corporation shall recommend for commission approval  
19 generation resources that provide the best value for ratepayers,  
20 consistent with all the following:

21 (1) The electrical corporation shall conduct competitive  
22 solicitations for nonutility generation, consistent with the  
23 electrical corporation's procurement plan approved pursuant to  
24 Section 454.5.

25 (2) The electrical corporation may enter into a bilateral  
26 contract for nonutility generation, consistent with the electrical  
27 corporation's procurement plan approved pursuant to Section  
28 454.5. Prior to approving a bilateral contract for nonutility  
29 generation, the commission shall find that the contract is  
30 reasonably priced relative to a market-based benchmark.

31 (3) The electrical corporation may file for a certificate of public  
32 convenience and necessity for utility-owned generation,  
33 consistent with the electrical corporation's procurement plan  
34 approved pursuant to Section 454.5. Prior to approving the  
35 certificate of public convenience and necessity, the commission  
36 shall find that the utility-owned generation is reasonably priced  
37 relative to a market-based benchmark.

38 ~~(d) For purposes of this article, "nonutility generation" means~~  
39 ~~facilities for the generation of electricity, owned and operated by~~



1 ~~an entity other than an electrical corporation or an affiliate of an~~  
2 ~~electrical corporation.~~

3 400.18. An electrical corporation shall invest in new or  
4 expanded transmission facilities and control systems that are  
5 needed to ensure efficient use and reliable operation of the  
6 electrical grid for customers. With respect to any new or expanded  
7 electrical transmission facility for which the Independent System  
8 Operator has made a determination that the project is needed to  
9 meet reliability standards or to promote economic efficiency, that  
10 determination shall be conclusive for purposes of determining  
11 *necessity when the commission determines* whether to issue a  
12 certificate of public convenience and necessity pursuant to  
13 Chapter 5 (commencing with Section 1001).

14 400.20. (a) The Legislature finds and declares all of the  
15 following:

16 (1) To ensure that an electrical corporation can properly plan  
17 for and provide resources to reliably serve its customers without  
18 ~~stranding~~ *incurring stranded* costs or shifting costs among  
19 customers, a stable and predictable customer base is necessary and  
20 essential.

21 (2) A core and noncore electric service model, under which an  
22 electrical corporation is required to provide electric service to all  
23 core customers with a maximum peak demand of less than 500  
24 kilowatts on a cost-of-service basis, while noncore customers with  
25 a maximum peak demand of at least 500 kilowatts, can elect to  
26 enter into a direct transaction to purchase electricity from a  
27 nonutility electric service provider, will, if properly structured,  
28 provide this stability.

29 (3) Under a properly structured core and noncore electric  
30 service model, a utility's core customers are indifferent to whether  
31 or not a noncore customer elects to purchase electricity from an  
32 electrical corporation or through a direct transaction.

33 (4) To ensure indifference, the commission is required to  
34 prevent any shifting of costs to a utility's core customers, from  
35 noncore customers that elect to purchase electricity through direct  
36 transactions.

37 (5) It is in the public interest to allow noncore customers that  
38 elect to purchase electricity through direct transactions, a safe  
39 harbor of limited duration during which they can receive  
40 electricity from an electrical corporation, provided the utility's



1 core customers are indifferent to whether a noncore customer  
2 purchases electricity from an electrical corporation during the safe  
3 harbor period. To ensure indifference, a noncore customer should  
4 pay the higher of the incremental costs of additional short-term  
5 spot electricity procured or generated to serve them or the  
6 otherwise applicable tariff rate.

7 400.21. On or before December 31, 2005, the commission  
8 shall adopt rules and regulations to implement a core and noncore  
9 model that accomplish all of the following:

10 (a) Core customers, and noncore customers that do not elect to  
11 enter into a direct transaction pursuant to this section, shall receive  
12 reliable electric service from an electrical corporation on a  
13 cost-of-service basis.

14 (b) Noncore customers may elect to enter into a direct  
15 transaction with a nonutility electric service provider. The electric  
16 service provider shall be fully responsible for meeting the resource  
17 adequacy requirements of the electricity load established by the  
18 commission for the customers it serves, and the long-term resource  
19 plan of the electrical corporation shall exclude the resource  
20 adequacy requirements of the electricity load serviced by an  
21 electric service provider.

22 (c) A noncore customer that does not elect to enter into a direct  
23 transaction with a nonutility electric service provider shall be  
24 subject to a five-year rolling commitment to the electrical  
25 corporation.

26 (d) A noncore customer that elects to enter into a direct  
27 transaction may thereafter receive default electric commodity  
28 service from the electrical corporation under terms established by  
29 the commission to ensure that a noncore customer shall pay the  
30 higher of the incremental costs of additional short-term spot  
31 electricity procured or generated to serve the noncore customer or  
32 the otherwise applicable tariff rate.

33 (e) The commission shall adopt rules sufficient to avoid any  
34 shifting of costs to the electrical corporation's core customers that  
35 would result from noncore customers electing to purchase  
36 electricity through direct transactions. Noncore customers shall  
37 continue to pay those costs recoverable pursuant to subdivisions  
38 (d), (e), (f), and (g) of Section 366.2.

39 (f) The commission shall adopt rules that defer new elections  
40 to enter into direct transactions for the purchase of electricity by



1 noncore customers until the commission has approved a cost  
2 recovery mechanism that ensures that new elections by noncore  
3 customers to purchase electricity through direct transactions will  
4 not result in the underrecovery of any costs attributable to those  
5 noncore customers.

6 (g) Customers that are purchasing electricity pursuant to a  
7 direct transaction as of January 1, 2005, including customers that  
8 qualify as core customers, may choose to continue to purchase  
9 electricity pursuant to a direct transaction or to return to service  
10 provided by the electrical corporation.

11 (h) For purposes of this article, “core customer” means any  
12 customer with a maximum peak demand of less than 500 kilowatts.

13 (i) For purposes of this article, ~~“non-core~~ “noncore customer”  
14 means any customer with a single meter with a maximum peak  
15 demand of at least 500 kilowatts.

16 (j) In designating the earliest possible date for implementation  
17 of a community choice aggregation program, the commission  
18 shall ensure that there will be no cost-shifting or stranding of  
19 investments made pursuant to a long-term resource plan of the  
20 electrical corporation that has been approved by the commission  
21 pursuant to Section 454.5.

22 400.22. (a) All electrical load serving entities, including  
23 nonutility electric service providers and community choice  
24 aggregators, shall be subject to the same requirements for resource  
25 adequacy, resource diversity, and the renewable portfolio  
26 standard, as applicable to electrical corporations.

27 (b) The commission, in consultation with the Independent  
28 System Operator, shall establish resource adequacy requirements  
29 to ensure adequate physical generating capacity to meet peak  
30 demand and planning and operating reserves, is available to serve  
31 all customers reliably. The Independent System Operator shall  
32 implement and enforce these resource adequacy requirements in  
33 a nondiscriminatory manner on all load serving entities. Load  
34 serving entities may procure physical generating capacity through  
35 a market-based mechanism. For purposes of this article, “load  
36 serving entity” does not include a local publicly owned electrical  
37 utility as defined in Section 9604 *or customer generation. For*  
38 *purposes of this subdivision, “customer generation” means*  
39 *cogeneration, renewable technologies, or any other type of*  
40 *generation that is dedicated wholly or in part to serve a specific*



1 *customer's load and that relies on nonutility or dedicated utility*  
2 *distribution wires, rather than the utility grid, to serve the*  
3 *customer, the customer's affiliates, or the customer's tenants, or*  
4 *not more than two other persons or corporations. Those two*  
5 *persons or corporations must be located on site or adjacent to the*  
6 *real property on which the generator is located. "Customer*  
7 *generation" includes distributed energy resources as defined in*  
8 *Section 353.1 and ultraclean and low-emission distributed*  
9 *generation as defined in Section 353.2.*

10 400.30. To ensure that the utility's obligation to provide  
11 customers with reliable electric service at just and reasonable rates  
12 is met by an electrical corporation, the commission shall adopt  
13 rules and regulations consistent with the policies and provisions of  
14 this article.

15 400.40. Nothing in this chapter shall alter or affect any  
16 outcome of a competitive procurement process conducted by an  
17 electrical corporation pursuant to any other law, including Section  
18 454.5, prior to January 1, 2005.

19 SEC. 3. No reimbursement is required by this act pursuant to  
20 Section 6 of Article XIII B of the California Constitution because  
21 the only costs that may be incurred by a local agency or school  
22 district will be incurred because this act creates a new crime or  
23 infraction, eliminates a crime or infraction, or changes the penalty  
24 for a crime or infraction, within the meaning of Section 17556 of  
25 the Government Code, or changes the definition of a crime within  
26 the meaning of Section 6 of Article XIII B of the California  
27 Constitution.

