AMENDED IN ASSEMBLY MAY 5, 2009

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

california legislature—2009–10 regular session

ASSEMBLY BILL No. 413

Introduced by Assembly Member Fuentes

February 23, 2009

An act to amend Sections 327, 382, 739.1, and 747 of, and to add Sections 365.1, 739.9, and 745 to, the Public Utilities Code, and to amend Section 80110 of the Water Code, relating to energy.

legislative counsel's digest

AB 413, as amended, Fuentes. Energy: rates.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable.

This bill would prohibit the commission from requiring or permitting an electrical corporation to employ time-variant pricing, as defined, for residential customers, but would authorize the commission to authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing. The bill, commencing January 1, 2016, would authorize the commission to authorize an electrical corporation to employ default time-variant pricing for residential customers, if the customer has the option of receiving service pursuant to a rate schedule that is not based upon time-variant pricing and if residential customers that exercise the option to not receive service pursuant to the time-variant pricing incur no additional fee or surcharge to exercise that option.

(2) Existing law requires the commission to establish a program of assistance to low-income electric and gas customers, referred to as the California Alternate Rates for Energy or CARE program, and prohibits the cost to be borne solely by any single class of customer.

This bill would require the commission to establish the CARE program to provide assistance to low-income electric and gas customers with annual household incomes at or below 200% of the federal poverty guideline levels, and require that the cost of the program not be borne solely by any single class of customer. The bill would require, for an electrical corporation or public utility that is both an electrical corporation and a gas corporation, that the cost of the program be recovered on an equal cents per kilowatthour or per-therm basis from all classes of customers that were subject to the surcharge that funded the CARE program on January 1, 2008.

(3) Existing law relative to electrical restructuring requires that the electrical corporations and gas corporations that participate in the CARE program administer low-income energy efficiency and rate assistance programs described in specified statutes, and undertake certain actions in administering specified energy efficiency and weatherization programs.

This bill would require that electrical corporations, in administering the specified energy efficiency and weatherization programs, to target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage and develop programs that specifically target new construction by, and new and retrofit appliances for, nonprofit affordable housing providers. The bill would require the commission to require electrical corporations to deploy enhanced Low-Income Energy Efficiency (LIEE) programs, as defined, designed to reach as many eligible customers as practicable by December 31, 2014, particularly targeting those customers occupying apartment houses or similar multiunit residential structures, and would require the commission and electrical corporations and gas corporations to expend all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this requirement.

(4) Existing law relative to electrical restructuring requires the commission to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers.

Existing law requires the commission to designate a baseline quantity of electricity and gas necessary for a significant portion of the reasonable energy needs of the average residential customer, and requires that electrical and gas corporations file rates and charges, to be approved by the commission, providing baseline rates and requires the commission, in establishing baseline rates, to avoid excessive rate increases for residential customers.

Existing law enacted during the energy crisis of 2000–01, authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to sell electricity to retail end use customers and, with specified exceptions, local publicly owned electric utilities, at not more than the department's acquisition costs and to recover those costs through the issuance of bonds to be repaid by ratepayers. That law provides that the department is entitled to recover certain expenses resulting from its purchases and sales of electricity and authorizes the commission to enter into an agreement with the department relative to cost recovery. That law prohibits the commission from increasing the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities, until the department has recovered the costs of electricity it procured for electrical corporation retail end use customers. That law also suspends the right of retail end-use customers, other than community choice aggregators and a qualifying direct transaction customer, to acquire service through a direct transaction until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the prohibition that the commission not increase the electricity charges in effect on February 1, 2001, for residential customers for existing baseline quantities or usage by those customers of up to 130% of then existing baseline quantities. The bill would authorize the commission, until January 1, 2019, to increase the rates charged residential customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year. This authorization would be subject to the limitation that rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, not exceed 90% of the system average rate, as defined. The bill would authorize the commission to increase the rates for participants in the CARE program, subject to certain limitations. The bill would delete the existing suspension of direct transactions in the Water Code that was adopted during the energy crisis of 2000–01, and would instead require the commission to authorize direct transactions subject to a phase-in schedule of not less than 3 years and not more than 5 years, and subject to total and yearly direct transaction limits established, as specified, for each electrical corporation. The bill would continue the suspension of direct transactions except as expressly authorized, until the Legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.

(5) Existing law requires the commission to prepare and submit to the Governor and the Legislature a written report on an annual basis before February 1 of each year on the costs of programs and activities conducted by an electrical corporation or gas corporation that has more than a specified number of customers in California.

This bill would also require the report to contain the commission's recommendations for actions that can be undertaken during the upcoming year to limit utility cost increases, consistent with the state's carbon reduction, energy, and environmental goals. The bill would require the commission to annually require electrical and gas corporations to study and report to the commission on measures that they recommend be undertaken to limit cost increases.

(6) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

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

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

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

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

SECTION 1. Section 327 of the Public Utilities Code is amended to read:

327. (a) The electrical corporations and gas corporations that participate in the California Alternate Rates for Energy program, as established pursuant to Section 739.1, shall administer low-income energy efficiency and rate assistance programs described in Sections 382, 739.1, 739.2, and 2790, subject to commission oversight. In administering the programs described in Section 2790, the electrical corporations and gas corporations, to the extent practicable, shall do all of the following:

(1) Continue to leverage funds collected to fund the program described in subdivision (a) with funds available from state and federal sources.

(2) Work with state and local agencies, community-based organizations, and other entities to ensure efficient and effective delivery of programs.

(3) Encourage local employment and job skill development.

(4) Maximize the participation of eligible participants.

(5) Work to reduce consumers electric and gas consumption, and bills.

(6) For electrical corporations, target energy efficiency and solar programs to upper-tier and multifamily customers in a manner that will result in long-term permanent reductions in electricity usage, and develop programs that specifically target new construction by, and new and retrofit appliances for, nonprofit affordable housing providers.

(b) If the commission requires low-income energy efficiency programs to be subject to competitive bidding, the electric and gas corporation described in subdivision (a), as part of their bid evaluation criteria, shall consider both cost-of-service criteria and quality-of-service criteria. The bidding criteria, at a minimum, shall recognize all of the following factors:

(1) The bidder's experience in delivering programs and services, including, but not limited to, weatherization, appliance repair and maintenance, energy education, outreach and enrollment services, and bill payment assistance programs to targeted communities.

(2) The bidder's knowledge of the targeted communities.

(3) The bidder's ability to reach targeted communities.

(4) The bidder's ability to utilize and employ people from the local area.

(5) The bidder's general contractor's license and evidence of good standing with the Contractors' State License Board.

(6) The bidder's performance quality as verified by the funding source.

(7) The bidder's financial stability.

(8) The bidder's ability to provide local job training.

(9) Other attributes that benefit local communities.

(c) Notwithstanding subdivision (b), the commission may modify the bid criteria based upon public input from a variety of sources, including representatives from low-income communities and the program administrators identified in subdivision (b), in order to ensure the effective and efficient delivery of high quality low-income energy efficiency programs.

SEC. 2. Section 365.1 is added to the Public Utilities Code, to read:

365.1. (a) Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, "other provider" means any person, corporation, or other entity that was authorized to provide electric service within the service territory of an electrical corporation pursuant to this chapter, and includes electric service providers, an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3.

(b) The commission may allow individual retail nonresidential end-use customers to acquire electric service from electric service providers, subject to the limitation that the total annual kilowatthours supplied by all electric service providers to distribution customers of an electrical corporation shall not exceed the maximum total annual level of kilowatthours supplied by all electric service providers, within that electrical corporation's distribution service territory, for any year between April 1, 1998, and January 1, 2010. By January 31, 2010, the commission shall calculate and adopt a phase-in schedule of not less than three years, and not more than five years, to raise the allowable limit of kilowatthours supplied by other providers from the number of kilowatthours provided by other providers as of January 1, 2010, to the maximum total annual level for each electrical corporation's distribution service territory.

(c) The commission shall not authorize additional direct transactions pursuant to subdivision (b) unless both of the following conditions are met:

(1) Other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations pursuant to the resource adequacy requirements established by the commission pursuant to Section 380, the renewables portfolio standard requirements established by the commission pursuant to Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). It is the intent of the Legislature in making these requirements that, as a condition for allowing direct transactions, the resource adequacy requirements, renewables portfolio standard requirements, and requirements for reducing emissions of greenhouse gases be applied in a competitively neutral manner.

(2) (A) The commission utilizes a mechanism that allocates the net *capacity* costs of new generation resources acquired by an electrical corporation to meet system or local area reliability needs, ~~on a fully nonbypassable basis~~ *as determined by the commission*, either through a contract with a third party, pursuant to commission authorization, or through direct ownership of the generation resource by the electrical corporation, pursuant to commission direction, to all of the following*, on a fully nonbypassable basis*:

(i) Bundled service customers of the electrical corporation.

(ii) Customers that purchase electricity through a direct transaction with other providers.

(iii) Customers of community choice aggregators.

(B) The resource adequacy benefits of new generation resources shall be allocated to all customers who pay their net ~~costs. The allocation mechanism used by the commission should generally be consistent with that adopted by the commission in Decision 06-07-029, as modified by Decision 07-11-05, but that no energy auction shall be required as a condition of employing the mechanism, but may be allowed, to value the electricity generated by~~ *capacity costs. Net capacity costs shall be determined by* *subtracting the energy value of the resource from the total costs paid by the electrical corporation under the contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required, but may be allowed as a means to value the electrical output of* the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net costs of contracts with third parties shall be allowed for the terms of those contracts.

~~It~~

(C) It is the intent of the Legislature, in enacting this ~~subparagraph~~ *paragraph*, to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the costs of electricity they do not consume.

(d) The commission may report to the Legislature on the efficacy of authorizing individual retail end-use residential customers to enter into direct transactions, including appropriate consumer protections.

SEC. 3. Section 382 of the Public Utilities Code is amended to read:

382. (a) Programs provided to low-income electricity customers, including, but not limited to, targeted energy-efficiency services and the California Alternate Rates for Energy program shall be funded at not less than 1996 authorized levels based on an assessment of customer need.

(b) In order to meet legitimate needs of electric and gas customers who are unable to pay their electric and gas bills and who satisfy eligibility criteria for assistance, recognizing that electricity is a basic necessity, and that all residents of the state should be able to afford essential electricity and gas supplies, the commission shall ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures. Energy expenditure may be reduced through the establishment of different rates for low-income ratepayers, different levels of rate assistance, and energy efficiency programs.

(c) Nothing in this section shall be construed to prohibit electric and gas providers from offering any special rate or program for low-income ratepayers that is not specifically required in this section.

(d) The commission shall allocate funds necessary to meet the low-income objectives in this section.

(e) Beginning in 2002, an assessment of the needs of low-income electricity and gas ratepayers shall be conducted periodically by the commission with the assistance of the Low-Income Oversight Board. The assessment shall evaluate low-income program implementation and the effectiveness of weatherization services and energy efficiency measures in low-income households. The assessment shall consider whether existing programs adequately address low-income electricity and gas customers' energy expenditures, hardship, language needs, and economic burdens.

(f) The commission shall require electrical corporations to deploy enhanced low-income energy efficiency programs designed to reach as many eligible customers as practicable by December 31, 2014, particularly targeting those customers occupying apartments or similar multiunit residential structures. The commission and electrical corporations and gas corporations shall make all reasonable efforts to coordinate ratepayer-funded programs with other energy conservation and efficiency programs and to obtain additional federal funding to support actions undertaken pursuant to this subdivision. For purposes of this subdivision, "enhanced programs" are programs that provide long-term reductions in energy consumption at the dwelling unit based on an audit or assessment of the dwelling unit, and may include improved insulation, energy efficient appliances, measures that utilize solar energy, and other cost-effective improvements to the physical structure.

SEC. 4. Section 739.1 of the Public Utilities Code is amended to read:

739.1. (a) As used in this subdivision, the following terms have the following meanings:

(1) "Baseline quantity" has the same meaning as defined in Section 739.

(2) "California Solar Initiative" means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the commission in Decision 05-12-044 and Decision 06-01-024, as modified by Article 1 (commencing with Section 2851) of Chapter 9 of Part 2 and Chapter 8.8 (commencing with Section 25780) of Division 15 of the Public Resources Code.

(3) "CalWORKs program" means the program established pursuant to the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 the Welfare and Institutions Code).

(4) "Public goods charge" means the nonbypassable separate rate component imposed pursuant to Article 7 (commencing with Section 381) of Chapter 2.3 and the nonbypassable system benefits charge imposed pursuant to the Reliable Electric Service Investments Act (Article 15 (commencing with Section 399) of Chapter 2.3).

(b) (1) The commission shall establish a program of assistance to low-income electric and gas customers with annual household incomes at or below 200 percent of the federal poverty guideline levels, the cost of which shall not be borne solely by any single class of customer. For an electrical corporation and for a public utility that is both an electrical corporation and a gas corporation, the costs shall be recovered on an equal cent-per-kilowatthour or equal cents-per-therm basis from all classes of customers that were subject to the surcharge that funded the program on January 1, 2008. The program shall be referred to as the California Alternate Rates for Energy or CARE program. The commission shall ensure that the level of discount for low-income electric and gas customers correctly reflects the level of need.

(2) The commission may, subject to the limitation in paragraph (4), increase the rates in effect for CARE program participants for electricity usage up to 130 percent of baseline quantities by the annual percentage increase in benefits under the CalWORKs program as authorized by the Legislature for the fiscal year in which the rate increase would take effect, but not to exceed 3 percent per year. This paragraph shall become inoperative on January 1, 2019, unless a later enacted statute deletes or extends that date.

(3) Beginning January 1, 2019, the commission may, subject to the limitation in paragraph (4), establish rates for CARE program participants pursuant to Sections 739, 739.9, and this section, subject to both of the following requirements:

(A) That low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures.

(B) That the level of discount for low-income electric and gas customers correctly reflects the level of need as determined by the needs assessment conducted pursuant to subdivision (e) of Section 382.

(4) Tier 1, tier 2, and tier 3 CARE rates shall not exceed 80 percent of the corresponding tier 1, tier 2, and tier 3 rates charged residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any charge imposed to fund any other program that exempts CARE participants from paying the charge.

(5) Rates charged to CARE program participants shall not have more than three tiers. An electrical corporation that does not have a tier 3 CARE rate may introduce a tier 3 CARE rate that, in order to moderate the impact on program participants whose usage exceeds 130 percent of baseline quantities, shall be phased in to 80 percent of the corresponding rates charged residential customers not participating in the CARE program, excluding any Department of Water Resources bond charge imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, the CARE surcharge portion of the public goods charge, any charge imposed pursuant to the California Solar Initiative, and any other charge imposed to fund a program that exempts CARE participants from paying the charge. For electrical corporations that currently do not have a tier 3 CARE rate, the initial rate shall be no more than 150 percent of the CARE baseline rate and any additional revenues collected by an electrical corporation resulting from the adoption of a tier 3 CARE rate shall, until the utility's next periodic general rate case review of cost allocation and rate design, be tracked and credited to reduce rates of residential ratepayers not participating in the CARE program with usage above 130 percent of baseline quantities.

(c) The commission shall work with the public utility electrical and gas corporations to establish penetration goals. The commission shall authorize recovery of all administrative costs associated with the implementation of the CARE program that the commission determines to be reasonable, through a balancing account mechanism. Administrative costs shall include, but are not limited to, outreach, marketing, regulatory compliance, certification and verification, billing, measurement and evaluation, and capital improvements and upgrades to communications and processing equipment.

(d) The commission shall examine methods to improve CARE enrollment and participation. This examination shall include, but need not be limited to, comparing information from CARE and the Universal Lifeline Telephone Service (ULTS) to determine the most effective means of utilizing that information to increase CARE enrollment, automatic enrollment of ULTS customers who are eligible for the CARE program, customer privacy issues, and alternative mechanisms for outreach to potential enrollees. The commission shall ensure that a customer consents prior to enrollment. The commission shall consult with interested parties, including ULTS providers, to develop the best methods of informing ULTS customers about other available low-income programs, as well as the best mechanism for telephone providers to recover reasonable costs incurred pursuant to this section.

(e) (1) The commission shall improve the CARE application process by cooperating with other entities and representatives of California government, including the California Health and Human Services Agency and the Secretary of California Health and Human Services, to ensure that all gas and electric customers eligible for public assistance programs in California that reside within the service territory of an electrical corporation or gas corporation, are enrolled in the CARE program. To the extent practicable, the commission shall develop a CARE application process using the existing ULTS application process as a model. The commission shall work with public utility electrical and gas corporations and the Low-Income Oversight Board established in Section 382.1 to meet the low-income objectives in this section.

(2) The commission shall ensure that an electrical corporation or gas corporation with a commission-approved program to provide discounts based upon economic need in addition to the CARE program, including a Family Electric Rate Assistance program, utilize a single application form, to enable an applicant to alternatively apply for any assistance program for which the applicant may be eligible. It is the intent of the Legislature to allow applicants under one program, that may not be eligible under that program, but that may be eligible under an alternative assistance program based upon economic need, to complete a single

application for any commission-approved assistance program offered by the public utility.

(f) The commission's program of assistance to low-income electric and gas customers shall, as soon as practicable, include nonprofit group living facilities specified by the commission, if the commission finds that the residents in these facilities substantially meet the commission's low-income eligibility requirements and there is a feasible process for certifying that the assistance shall be used for the direct benefit, such as improved quality of care or improved food service, of the low-income residents in the facilities. The commission shall authorize utilities to offer discounts to eligible facilities licensed or permitted by appropriate state or local agencies, and to facilities, including women's shelters, hospices, and homeless shelters, that may not have a license or permit but provide other proof satisfactory to the utility that they are eligible to participate in the program.

(g) It is the intent of the Legislature that the commission ensure CARE program participants are afforded the lowest possible electric and gas rates and, to the extent possible, are exempt from additional surcharges attributable to the energy crisis of 2000–01.

SEC. 5. Section 739.9 is added to the Public Utilities Code, to read:

739.9. (a) The commission may, subject to the limitation in subdivision (b), increase the rates charged residential customers for electricity usage up to 130 percent of the baseline quantities, as defined in Section 739, by the annual percentage change in the Consumer Price Index from the prior year plus 1 percent, but not less than 3 percent and not more than 5 percent per year. For purposes of this subdivision, the annual percentage change in the Consumer Price Index shall be calculated using the same formula that was used to determine the annual Social Security Cost of Living Adjustment on January 1, 2008. This subdivision shall become inoperative on January 1, 2019, unless a later enacted statute deletes or extends that date.

(b) The rates charged residential customers for electricity usage up to the baseline quantities, including any customer charge revenues, shall not exceed 90 percent of the system average rate prior to January 1, 2019, and may not exceed 92.5 percent after that date. For purposes of this subdivision, the system average rate shall be determined by dividing the electrical corporation's total revenue requirements for bundled service customers by the adopted forecast of total bundled service sales.

(c) This section does not require the commission to raise any residential rate or restrict, or otherwise limit, the authority of the commission to reduce any residential rate in effect immediately preceding January 1, 2010.

SEC. 6. Section 745 is added to the Public Utilities Code, to read:

745. (a) The commission shall not require or permit an electrical corporation to employ mandatory time-variant pricing for residential customers.

(b) The commission may authorize an electrical corporation to offer residential customers the option of receiving service pursuant to time-variant pricing.

(c) Commencing January 1, 2016, the commission may authorize an electrical corporation to employ default time-variant pricing for residential customers, if the customer has the option of receiving service pursuant to a rate schedule that is not based upon time-variant pricing. The commission shall only approve an electrical corporation's default use of time-variant pricing if residential customers that exercise the option to not receive service pursuant to time-variant pricing incur no additional fee or surcharge to exercise that option.

(d) For purposes of this section, "time-variant pricing" includes time-of-use rates, critical-peak pricing, and real-time pricing, but does not include programs that provide customers with discounts from the standard tariff rate as an incentive to reduce consumption at certain times, including peak-time rebates.

SEC. 7. Section 747 of the Public Utilities Code is amended to read:

747. (a) It is the intent of the Legislature that the commission reduce rates for electricity and natural gas to the lowest amount possible.

(b) (1) The commission shall prepare a written report on the costs of programs and activities conducted by each electrical corporation and gas corporation that is subject to this section, including activities conducted to comply with their duty to serve. The report shall be completed on an annual basis before February 1 of each year, and shall identify, clearly and concisely, all of the following:

(A) Each program mandated by statute and its annual cost to ratepayers.

(B) Each program mandated by the commission and its annual cost to ratepayers.

(C) Energy purchase contract costs and bond-related costs incurred pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(D) All other aggregated categories of costs currently recovered in retail rates as determined by the commission.

(2) The report shall also contain the commission's recommendations for actions that can be undertaken during the upcoming year to limit utility cost increases, consistent with the state's carbon reduction, energy, and environmental goals.

(3) In preparing the report, the commission shall annually require electrical and gas corporations to study and report to the commission on measures that they recommend be undertaken to limit cost increases.

(c) As used in this section, the reporting requirements apply to electrical corporations with at least 1,000,000 retail customers in California and gas corporations with at least 500,000 retail customers in California.

(d) The report required by subdivision (b) shall be submitted to the Governor and the Legislature no later than February 1 of each year.

(e) The commission shall post the report required by subdivision (b) in a conspicuous area of its Internet Web site.

SEC. 8. Section 80110 of the Water Code is amended to read:

80110. (a) The department shall retain title to all power sold by it to the retail end-use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate.

(b) The revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.

(c) (1) For the purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. Prior to the execution of any modification of any contract for the purchase of power by the department pursuant to this division, on or after the effective date of this section, the department or the commission, as applicable, shall do the following:

(A) The department shall notify the public of its intent to modify a contract and the opportunity to comment on the proposed modification.

(B) At least 21 days after providing public notice, the department shall make a determination as to whether the proposed modifications are just and reasonable. The determination shall include responses to any public comments.

(C) No later than 70 days before the date of execution of the contract modification, the department shall provide a written report to the commission setting forth the justification for the determination that the proposed modification is just and reasonable, including documents, analysis, response to public comments, and other information relating to the determination.

(D) Within 60 days of the date of receipt of the department's written report, the commission shall review the report and make public its comments. If the commission in its comments recommends against the proposed modification, the department shall not execute the proposed contract modification.

(2) This subdivision does not apply to the modification of a contract modified to settle litigation to which the commission is a party.

(3) This subdivision does not apply to the modification of a contract for the purchase of electricity that is generated from a facility owned by a public agency if the contract requires the public agency to sell electricity to the department at or below the public agency's cost of that power.

(4) This subdivision does not apply to the modification of a contract to address issues relating to billing, scheduling, delivery of electricity, and related contract matters arising out of the implementation by the Independent System Operator of its market redesign and technology upgrade program.

(5) (A) For purposes of this subdivision, the department proposes to "modify" a contract if there is any material change proposed in the terms of the contract.

(B) A change to a contract is not material if it is only administrative in nature or the change in ratepayer value results in ratepayer savings, not to exceed twenty-five million dollars ($25,000,000) per year. For the purpose of making a determination that a change is only administrative in nature or results in ratepayer savings of twenty-five million dollars ($25,000,000) or less per year, the executive director of the commission shall concur in writing with each of those determinations by the department.

(d) The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission.

(e) The department shall have the same rights with respect to the payment by retail end-use customers for power sold by the department as do providers of power to the customers.

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

O