

Assembly Bill No. 1890

CHAPTER 854

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.

[Approved by Governor September 23, 1996. Filed
with Secretary of State September 24, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1890, Brulte. Public utilities: electrical restructuring.

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.

Appropriation: yes.

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

SECTION 1. (a) The Legislature finds and declares that the restructuring of the California electricity industry has been driven by



changes in federal law intended to increase competition in the provision of electricity. It is the intent of the Legislature to ensure that California's transition to a more competitive electricity market structure allows its citizens and businesses to achieve the economic benefits of industry restructuring at the earliest possible date, creates a new market structure that provides competitive, low cost and reliable electric service, provides assurances that electricity customers in the new market will have sufficient information and protection, and preserves California's commitment to developing diverse, environmentally sensitive electricity resources.

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

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

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

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

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

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

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

(c) It is the intent of the Legislature to direct the creation of a proposed new market structure featuring two state chartered, nonprofit market institutions: a Power Exchange charged with providing an efficient, competitive auction to meet electricity loads of exchange customers, open on a nondiscriminatory basis to all electricity providers; and an Independent System Operator with centralized control of the statewide transmission grid, charged with ensuring the efficient use and reliable operation of the transmission system. A five-member Oversight Board comprised of three gubernatorial appointees, an appointee of the Senate Committee on Rules and an appointee of the Speaker of the Assembly will oversee the two new institutions and appoint governing boards that are broadly representative of California electricity users and providers. It is the further intent of the Legislature to direct the Independent



System Operator to seek federal authorization to perform its functions and to be able to secure the generation and transmission resources needed to achieve specified planning and operational reserve criteria. It is the further intent of the Legislature to require development of maintenance standards that will reduce the potential for outages and secure participation in the operation of the Independent System Operator by the state's independent local publicly owned utilities.

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

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

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

955.1. (a) Except as provided in Sections 954.5 and 955 and subject to subdivisions (b) and (c), a transfer other than one intended to create a security interest (paragraph (1) of subdivision (a) of Section 9102 of the Commercial Code) of any general intangible (Section 9106 of the Commercial Code) consisting of any right to payment and any transfer of accounts or chattel paper excluded from the coverage of Division 9 of the Commercial Code by subdivision (f) of Section 9104 of the Commercial Code shall be deemed perfected as against third persons upon there being executed and delivered to the transferee an assignment thereof in writing.

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

(c) The assignment is not, of itself, notice to the obligor so as to invalidate any payments made by the obligor to the transferor.

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

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

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



- (a) Things in action.
- (b) Ships or cargoes if either are at sea or in a foreign port.
- (c) The sale of accounts or chattel paper governed by the Uniform Commercial Code, security interests, and contracts of bottomry or respondentia.
- (d) Wines or brandies in the wineries, distilleries, or wine cellars of the makers or owners of the wines or brandies, or other persons having possession, care, and control of the wines or brandies, and the pipes, casks, and tanks in which the wines or brandies are contained, if the transfers are made in writing and executed and acknowledged, and if the transfers are recorded in the book of official records in the office of the county recorder of the county in which the wines, brandies, pipes, casks, and tanks are situated.
- (e) A transfer or assignment made for the benefit of creditors generally or by any assignee acting under an assignment for the benefit of creditors generally.
- (f) Property exempt from enforcement of a money judgment.
- (g) Standing timber.
- (h) Subject to the limitations in Section 3440.3, a transfer of personal property if all of the following conditions are satisfied:
 - (1) Prior to the date of the intended transfer, the transferor or the transferee files a financing statement, with respect to the property transferred, signed by the transferor. The financing statement shall be filed in the office of the Secretary of State in accordance with Chapter 4 (commencing with Section 9401) of Division 9 of the Commercial Code, but may use the terms “transferor” in lieu of “debtor” and “transferee” in lieu of “secured party.” The provisions of Chapter 4 (commencing with Section 9401) of Division 9 of the Commercial Code shall apply as appropriate to the financing statement.
 - (2) The transferor or the transferee publishes a notice of the intended transfer one time in a newspaper of general circulation published in the judicial district in which the personal property is located, if there is one, and if there is none in the judicial district, then in a newspaper of general circulation in the county embracing the judicial district. The publication shall be completed not less than 10 days before the date the transfer occurs. The notice shall contain the name and address of the transferor and transferee and a general statement of the character of the personal property intended to be transferred, and shall indicate the place where the personal property is located and a date on or after which the transfer is to be made.
- (i) Personal property not located within this state at the time of the transfer or attachment of the lien if the provisions of this subdivision are not used for the purpose of evading this chapter.
- (j) A transfer of property which (1) is subject to a statute or treaty of the United States or a statute of this state that provides for the registration of transfers of title or issuance of certificates of title and



(2) is so far perfected under that statute or treaty that a bona fide purchaser cannot acquire an interest in the property transferred that is superior to the interest of the transferee.

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

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

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

9104. This division does not apply:

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

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

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

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

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

(g) To any loan made by an insurance company pursuant to the provisions of a policy or contract issued by it and upon the sole security of the policy or contract; or

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

(i) To any right of setoff; or

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

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

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

(m) To transition property, as defined in Section 840 of the Public Utilities Code, except to the extent that the provisions of this division



are referenced in Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.

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

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

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

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

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

(d) “Bond purchase agreement” means a contractual agreement executed between the bank and a sponsor, or a special purpose trust authorized by the bank or a sponsor, or both, whereby the bank or special purpose trust authorized by the bank agrees to purchase bonds of the sponsor for retention or sale.

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

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

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



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

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

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

(A) An existing municipal roadway.

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

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

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

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

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

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

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

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

(9) “Public transit” includes air and rail transport of goods, airports, guideways, vehicles, rights-of-way, passenger stations,



maintenance and storage yards, and related structures, including public parking facilities, equipment used to provide or enhance transportation by bus, rail, ferry, or other conveyance, either publicly or privately owned, that provides to the public general or special service on a regular and continuing basis.

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

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

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

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

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

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

(j) “Financial assistance” in connection with a project, includes, but is not limited to, any combination of grants, loans, the proceeds of bonds issued by the bank or special purpose trust, insurance, guarantees or other credit enhancements or liquidity facilities, and contributions of money, property, labor, or other things of value, as may be approved by resolution of the board or the sponsor, or both; the purchase or retention of bank bonds, the bonds of a sponsor for their retention or for sale by the bank, or the issuance of bank bonds or the bonds of a special purpose trust used to fund the cost of a project for which a sponsor is directly or indirectly liable, including, but not limited to, bonds, the security for which is provided in whole or in part pursuant to the powers granted by Section 63025; bonds for which the bank has provided a guarantee or enhancement, including, but not limited to, the purchase of the subordinated bonds of the sponsor, the subordinated bonds of a special purpose trust, or the retention of the subordinated bonds of the bank pursuant to Chapter



4 (commencing with Section 63060); or any other type of assistance deemed appropriate by the bank or the sponsor, except that no direct loans shall be made to nonpublic entities other than in connection with the issuance of rate reduction bonds pursuant to a financing order.

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

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

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

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

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

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

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

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

(r) “Revenues” means all receipts, purchase payments, loan repayments, lease payments, and all other income or receipts derived by the bank or a sponsor from the sale, lease, or other financing arrangement undertaken by the bank, a sponsor or a participating party, including, but not limited to, all receipts from a bond purchase agreement, and any income or revenue derived from the investment of any money in any fund or account of the bank or a sponsor and any receipts derived from transition property. Revenues shall not include moneys in the General Fund of the state.



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

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

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

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

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

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

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

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

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

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

(d) Employ attorneys, financial consultants, and other advisers as may, in the bank’s judgment, be necessary in connection with the issuance and sale, or authorization of special purpose trusts for the



issuance and sale, of any bonds, notwithstanding Sections 11042 and 11043.

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

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

(g) Acquire, take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state, or transition property as the bank may deem necessary or convenient for the financing of the project, upon terms and conditions that it considers to be reasonable.

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

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

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

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

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

(m) Receive or serve as a conduit for the making of grants, and provide for contributions, guarantees, insurance, credit



enhancements or liquidity facilities, or other financial enhancements to a sponsor or a participating party as financial assistance for a project.

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

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

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

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

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary or convenient to, directly or indirectly, secure the bank's bonds, the bonds issued by a special purpose trust, or a sponsor's obligations to the bank or to a special purpose trust, including, but not limited to, bonds of a sponsor purchased by the bank or a special purpose trust for retention or sale, with funds or moneys that are legally available and that are due or payable to the sponsor by reason of any grant, allocation, apportionment or appropriation of the state or agencies thereof, to the extent that the Controller shall be the custodian at any time of these funds or moneys, or with funds or moneys that are or will be legally available to the sponsor, the bank, or the state or any agencies thereof by reason of any grant, allocation, apportionment, or appropriation of the federal government or agencies thereof; and in the event of written notice that the sponsor has not paid or is in default on its obligations to the bank or a special purpose trust, direct the Controller to withhold payment of those funds or moneys from



the sponsor over which it is or will be custodian and to pay the same to the bank or special purpose trust or their assignee, or direct the state or any agencies thereof to which any grant, allocation, apportionment or appropriation of the federal government or agencies thereof is or will be legally available to pay the same upon receipt by the bank or special purpose trust or their assignee, until the default has been cured and the amounts then due and unpaid have been paid to the bank or special purpose trust or their assignee, or until arrangements satisfactory to the bank or special purpose trust have been made to cure the default.

(s) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or appropriate to carry out any power expressly given to the bank by this division, including, but not limited to, agreements for the sale of all or any part, including principal, interest, redemption rights or any other rights or obligations, of bonds of the bank or of a special purpose trust, liquidity agreements, contracts commonly known as interest rate swap agreements, forward payment conversion agreements, futures or contracts providing for payments based on levels of, or changes in, interest rates or currency exchange rates, or contracts to exchange cash-flows or a series of payments, or contracts, including options, puts or calls to hedge payments, rate, spread, currency exchange, or similar exposure, or any other financial instrument commonly known as a structured financial product.

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

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

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

(w) Authorize a special purpose trust or trusts to purchase or retain, with the proceeds of the bonds of a special purpose trust, transition property or bonds issued by, or for the benefit of, any sponsor in connection with a project or issued by the bank or a special purpose trust, pursuant to a bond purchase agreement or otherwise. Bonds or transition property purchased pursuant to this title may be



held by a special purpose entity, pledged or assigned by a special purpose entity, or sold to public or private purchasers at public or negotiated sale, in whole or in part, with or without structuring, subordination or credit enhancement, separately or together with other bonds issued by a special purpose trust, and notwithstanding any other provision of law, may be bought by the bank or by a special purpose trust at private sale.

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

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

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

Article 6. Financing of Transition Costs

63048. Notwithstanding any other provision of this division, a project for the financing of transition costs and the acquisition of transition property upon the request of an electrical corporation shall be deemed to be in the public interest and eligible for financing by the bank, and Article 3 (commencing with Section 63040), Article 4 (commencing with Section 63042), and Article 5 (commencing with Section 63043), shall not apply to the project or financing. The bank shall consider a project for financing transition costs and the acquisition of transition property upon filing of an application by an appropriate participating party, on the terms and conditions the bank shall determine. The bank shall establish procedures for the expeditious review of applications from electrical corporations for the issuance or approval of rate reduction bonds. The review may be concurrent with the Public Utilities Commission's processing of an application for the pertinent financing order, so as to allow for the issuance of rate reduction bonds as quickly as feasible after the issuance of the pertinent financing order by the Public Utilities Commission. Notwithstanding any other provision of this division, the bank shall have no authority to alter or modify any term or condition related to the transition costs or the transition property as set forth in the pertinent financing order, and shall have no authority over any matter that is subject to the approval of the Public Utilities Commission under Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code.



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

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

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

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

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

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

(c) Bonds for which moneys or securities have been deposited in trust, in amounts necessary to pay or redeem the principal, interest, and any redemption premium thereon, shall be deemed not to be outstanding for purposes of this section.

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

216. (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph



corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

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

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

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

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

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

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

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



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

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

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

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

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

(g) Ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (Chapter 2C (commencing with Section 79) of Title 15 of the United States Code) does not make a corporation or



person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

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

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

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

CHAPTER 2.3. ELECTRICAL RESTRUCTURING

Article 1. General Provisions and Definitions

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

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

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

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

(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject to an obligation to provide ultimate consumers in exclusive service territories with reliable electric service at regulated rates, to a framework under which competition would be allowed in the supply of electric power



and customers would be allowed to have the right to choose their supplier of electric power.

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

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

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

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

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

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

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

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

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

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

(l) The commission has properly concluded that:

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



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

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

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

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

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

(o) Under the existing regulatory framework, California's electrical corporations were granted franchise rights to provide electricity to consumers in their service territories.

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

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

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

(s) It is proper to allow electrical corporations an opportunity to continue to recover, over a reasonable transition period, those costs and categories of costs for generation-related assets and obligations, including costs associated with any subsequent renegotiation or buyout of existing generation-related contracts, that the commission, prior to December 20, 1995, had authorized for collection in rates and



that may not be recoverable in market prices in a competitive generation market, and appropriate additions incurred after December 20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that the costs are necessary to maintain those facilities through December 31, 2001. In determining the costs to be recovered, it is appropriate to net the negative value of above market assets against the positive value of below market assets.

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

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

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

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

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

(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the



competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

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

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

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

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

(c) “Direct transaction” means a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services.

(d) “Fire wall” means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

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

(f) “Microgeneration facility” means a cogeneration facility of less than one megawatt.

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

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

Article 2. Oversight Board

334. The Legislature finds and declares that in order to ensure the success of electric industry restructuring, in the transition to a new market structure it is important to ensure a reliable supply of



electricity. Reliable electric service is of paramount importance to the safety, health, and comfort of the people of California. Transmission connections between electric utilities allow them to share generation resources and reduce the number of powerplants necessary to maintain a reliable system. The connections between utilities also create exposure to events that can cause widespread and extended transmission and service outages that reach far beyond the originating utility service area. California utilities and those in the western United States voluntarily adhere to reliability standards developed by the Western Systems Coordinating Council. The economic cost of extended electricity outages, such as those that occurred in California and throughout the Western Systems Coordinating Council on July 2, 1996, and August 10, 1996, to California's residential, commercial, agricultural, and industrial customers is significant. The proposed restructuring of the electricity industry would transfer responsibility for ensuring short- and long-term reliability away from electric utilities and regulatory bodies to the Independent System Operator and various market-based mechanisms. The Legislature has an interest in ensuring that the change in the locus of responsibility for reliability does not expose California citizens to undue economic risk in connection with system reliability.

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

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

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

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

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

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

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

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

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



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

337. The Oversight Board, as the appointing body, shall establish nominating procedures and qualifications for Independent System Operator governing board members. The Independent System Operator governing board shall be composed of California residents and shall include, but not be limited to, representatives of investor-owned utility transmission owners, publicly owned utility transmission owners, nonutility electricity sellers, public buyers and sellers, private buyers and sellers, industrial end-users, commercial end-users, residential end-users, agricultural end-users, public interest groups, and nonmarket participant representatives. A simple majority of the board shall consist of persons who are themselves unaffiliated with electric generation, transmission or distribution corporations.

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

339. The Oversight Board is the appeal board for majority decisions of the Independent System Operator governing board. Only members of the Independent System Operator governing board may appeal a majority decision to the Oversight Board.

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

Article 3. Independent System Operator

345. The Independent System Operator shall ensure efficient use and reliable operation of the transmission grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council.



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

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

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

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

350. The Independent System Operator, in consultation with the California Energy Resources Conservation and Development Commission, the Public Utility Commission, the Western Systems



Coordinating Council, and concerned regulatory agencies in other western states, shall within six months after the Federal Energy Regulatory Commission approval of the Independent System Operator, provide a report to the Legislature that does the following:

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

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

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

(d) Identifies communication protocols that may be needed to be established to provide advance warning of incipient problems.

(e) Identifies the need for additional generation reserves and other voltage support equipment, if any, or other resources that may be necessary to carry out its functions.

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

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

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

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

Article 4. Power Exchange

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

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

Article 5. Regional Compact

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



Article 6. Requirements for the Public Utilities Commission

360. The commission shall ensure that existing, and if necessary, additional filings at the Federal Energy Regulatory Commission request confirmation of the relevant provisions of this chapter and seek the authority needed to give the Independent System Operator the ability to secure generating and transmission resources necessary to guarantee achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council.

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

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

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

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

364. (a) The commission shall adopt inspection, maintenance, repair, and replacement standards for the distribution systems of investor-owned electric utilities no later than March 31, 1997. The standards, which shall be performance or prescriptive standards, or both, as appropriate, for each substantial type of distribution



equipment or facility, shall provide for high quality, safe and reliable service.

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

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

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

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

(b) (1) Authorize direct transactions between electricity suppliers and end use customers, subject to implementation of the nonbypassable charge referred to in Sections 367 to 376, inclusive. Direct transactions shall commence simultaneously with the start of an Independent System Operator and Power Exchange referred to in subdivision (a). The simultaneous commencement shall occur as soon as practicable, but no later than January 1, 1998. The commission shall develop a phase-in schedule at the conclusion of which all customers shall have the right to engage in direct transactions. Any



phase-in of customer eligibility for direct transactions ordered by the commission shall be equitable to all customer classes and accomplished as soon as practicable, consistent with operational and other technological considerations, and shall be completed for all customers by January 1, 2002.

(2) Customers shall be eligible for direct access irrespective of any direct access phase-in implemented pursuant to this section if at least one-half of that customer's electrical load is supplied by energy from a renewable resource provider certified pursuant to Section 383, provided however that nothing in this section shall provide for direct access for electric consumers served by municipal utilities unless so authorized by the governing board of that municipal utility.

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

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

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

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

(1) Independent third-party telephone verification.

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

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

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

(e) For residential customers no change in the aggregator or provider of electric power may be made until the change has been



confirmed by an independent third-party verification company, as follows:

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

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

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

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

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

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

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

(4) Notwithstanding paragraphs (1), (2), and (3), a service provider shall not be required to comply with these provisions when the customer directly calls the service provider to make changes in service providers. However, a service provider shall not avoid the verification requirements by asking a customer to contact a service provider directly to make any change in the service provider. A service provider shall be required to comply with these verification requirements for its own competitive services. However, a service provider shall not be required to perform any verification requirements for any changes solicited by another service provider.

367. The commission shall identify and determine those costs and categories of costs for generation-related assets and obligations, consisting of generation facilities, generation-related regulatory assets, nuclear settlements, and power purchase contracts, including, but not limited to, restructurings, renegotiations or terminations thereof approved by the commission, that were being collected in commission-approved rates on December 20, 1995, and that may become uneconomic as a result of a competitive generation market, in that these costs may not be recoverable in market prices in a competitive market, and appropriate costs incurred after December



20, 1995, for capital additions to generating facilities existing as of December 20, 1995, that the commission determines are reasonable and should be recovered, provided that these additions are necessary to maintain the facilities through December 31, 2001. These uneconomic costs shall be recovered from all customers on a nonbypassable basis and shall:

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

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

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

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

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

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

(b) Be based on a calculation mechanism that nets the negative value of all above market utility-owned generation-related assets against the positive value of all below market utility-owned generation related assets. For those assets subject to valuation, the valuations used for the calculation of the uneconomic portion of the net book value shall be determined not later than December 31, 2001, and shall be based on appraisal, sale, or other divestiture. The commission's determination of the costs eligible for recovery and of the valuation of those assets at the time the assets are exposed to market risk or retired, in a proceeding under Section 455.5, 851, or



otherwise, shall be final, and notwithstanding Section 1708 or any other provision of law, may not be rescinded, altered or amended.

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

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

(2) An electrical corporation that, as of December 20, 1995, served at least four million customers, and that was also a gas corporation that served less than four thousand customers, may recover, pursuant to this section, 100 percent of the uneconomic portion of the fixed costs paid under fuel and fuel transportation contracts that were executed prior to December 20, 1995, and were subsequently determined to be reasonable by the commission, or 100 percent of the buy-down or buy-out costs associated with the contracts to the extent the costs are determined to be reasonable by the commission.

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

(e) (1) Be allocated among the various classes of customers, rate schedules, and tariff options to ensure that costs are recovered from these classes, rate schedules, contract rates, and tariff options,



including self-generation deferral, interruptible, and standby rate options in substantially the same proportion as similar costs are recovered as of June 10, 1996, through the regulated retail rates of the relevant electric utility, provided that there shall be a fire wall segregating the recovery of the costs of competition transition charge exemptions such that the costs of competition transition charge exemptions granted to members of the combined class of residential and small commercial customers shall be recovered only from these customers, and the costs of competition transition charge exemptions granted to members of the combined class of customers, other than residential and small commercial customers, shall be recovered only from these customers.

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

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

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

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



(b) The cost recovery plan shall provide for identification and separation of individual rate components such as charges for energy, transmission, distribution, public benefit programs, and recovery of uneconomic costs. The separation of rate components required by this subdivision shall be used to ensure that customers of the electrical corporation who become eligible to purchase electricity from suppliers other than the electrical corporation pay the same unbundled component charges, other than energy, a bundled service customer pays. No cost shifting among customer classes, rate schedules, contract, or tariff options shall result from the separation required by this paragraph. Nothing in this provision is intended to affect the rates, terms, and conditions or to limit the use of any Federal Energy Regulatory Commission-approved contract entered into by the electrical corporation prior to the effective date of this provision.

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

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

(e) As to an electrical corporation that is also a gas corporation serving more than four million California customers, so long as any cost recovery plan adopted in accordance with this section satisfies subdivision (a), it shall also provide for annual increases in base revenues, effective January 1, 1997, and January 1, 1998, equal to the inflation rate for the prior year plus two percentage points, as measured by the consumer price index. The increase shall do both of the following:

(1) Remain in effect pending the next general rate case review, which shall be filed not later than December 31, 1997, for rates which would become effective in January 1999. For purposes of any commission-approved performance-based ratemaking mechanism or general rate case review, the increases in base revenue authorized



by this subdivision shall create no presumption that the level of base revenue reflecting those increases constitute the appropriate starting point for subsequent revenues.

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

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

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

369. The commission shall establish an effective mechanism that ensures recovery of transition costs referred to in Sections 367, 368, 375, and 376, and subject to the conditions in Sections 371 to 374, inclusive, from all existing and future consumers in the service territory in which the utility provided electricity services as of December 20, 1995; provided, that the costs shall not be recoverable for new customer load or incremental load of an existing customer where the load is being met through a direct transaction and the transaction does not otherwise require the use of transmission or distribution facilities owned by the utility. However, the obligation to pay the competition transition charges cannot be avoided by the formation of a local publicly owned electrical corporation on or after December 20, 1995, or by annexation of any portion of an electrical corporation's service area by an existing local publicly owned electric utility.

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

370. The commission shall require, as a prerequisite for any consumer in California to engage in direct transactions permitted in Section 365, that beginning with the commencement of these direct transactions, the consumer shall have an obligation to pay the costs provided in Sections 367, 368, 375, and 376, and subject to the conditions in Sections 371 to 374, inclusive, directly to the electrical corporation providing electricity service in the area in which the



consumer is located. This obligation shall be set forth in the applicable rate schedule, contract, or tariff option under which the customer is receiving service from the electrical corporation. To the extent the consumer does not use the electrical corporation's facilities for direct transaction, the obligation to pay shall be confirmed in writing, and the customer shall be advised by any electricity marketer engaged in the transaction of the requirement that the customer execute a confirmation. The requirement for marketers to inform customers of the written requirement shall cease on January 1, 2002.

371. (a) Except as provided in Sections 372 and 374, the uneconomic costs provided in Sections 367, 368, 375, and 376 shall be applied to each customer based on the amount of electricity purchased by the customer from an electrical corporation or alternate supplier of electricity, subject to changes in usage occurring in the normal course of business.

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

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

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

(1) To load served onsite or under an over the fence arrangement by a nonmobile self-cogeneration or cogeneration facility that was operational on or before December 20, 1995, or by increases in the



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

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

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

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

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

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

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

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

(2) Provide that a customer that holds a self-cogeneration or cogeneration deferral agreement that was in place on or before



December 20, 1995, or that was executed pursuant to paragraph (1) in the event the agreement expires, or is terminated, may do any of the following:

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

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

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

(3) Subject to the fire wall described in subdivision (e) of Section 367 provide that the ratemaking treatment for self-cogeneration or cogeneration deferral agreements executed prior to December 20, 1995, or executed pursuant to paragraph (1) shall be consistent with the ratemaking treatment for the contracts approved before January 1995.

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

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

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

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

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

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

(b) Subject to the fire wall specified in subdivision (e) of Section 367, the provisions of this section and Sections 372 and 374 shall apply in the event the commission authorizes a nonbypassable charge prior



to the implementation of an Independent System Operator and Power Exchange referred to in subdivision (a) of Section 365.

374. (a) In recognition of statutory authority and past investments existing as of December 20, 1995, and subject to the fire wall specified subdivision (e) of Section 367, the obligation to pay the uneconomic costs identified in Sections 367, 368, 375, and 376 shall not apply to the following:

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

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

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

(C) The load allocated to each utility service territory pursuant to subparagraph (A) shall be further allocated among the respective irrigation districts within that service territory by the California Energy Resources Conservation and Development Commission. An individual irrigation district requesting such an allocation shall submit to the commission by January 31, 1997, detailed plans that show the load that it serves or will serve and for which it intends to utilize the allocation within the time frame requested. These plans shall include specific information on the irrigation districts' organization for electric distribution, contracts, financing and engineering plans for capital facilities, as well as detailed information about the loads to be served, and shall not be less than eight megawatts or more than 40 megawatts. Provided, however, any portion of the 110 megawatts that remains unallocated may be reallocated to projects without regard to the 40 megawatts limitation. In making such an allocation among irrigation districts, the Energy Resources Conservation and Development Commission shall assess the viability of each submission and whether it can be accomplished in the timeframe proposed. The Energy Resources Conservation and Development Commission shall have the discretion to allocate the load covered by this section in a manner that best ensures its usage within the allocation period.

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

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



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

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

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

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

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

(D) The total allocation provided by this paragraph shall be phased in over five years beginning January 1, 1997, with the exception of load already being served by the district as of June 1, 1996, which shall be deducted from the total allocation and shall not be subject to the costs provided in Sections 367, 368, 375, and 376.

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

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

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

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

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

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

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

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

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

376. To the extent that the costs of programs to accommodate implementation of direct access, the Power Exchange, and the Independent System Operator, that have been funded by an electrical corporation and have been found by the commission or the Federal Energy Regulatory Commission to be recoverable from the utility's customers, reduce an electrical corporation's opportunity to recover its utility generation-related plant and regulatory assets by the end of the year 2001, the electrical corporation may recover unrecovered utility generation-related plant and regulatory assets after December 31, 2001, in an amount equal to the utility's cost of commission-approved or Federal Energy Regulatory Commission



approved restructuring-related implementation programs. An electrical corporation's ability to collect the amounts from retail customers after the year 2001 shall be reduced to the extent the Independent System Operator or the Power Exchange reimburses the electrical corporation for the costs of any of these programs.

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

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

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

Article 7. Research, Environmental, and Low-Income Funds

381. (a) To ensure that the funding for the programs described in subdivision (b) and Section 382 are not commingled with other revenues, the commission shall require each electrical corporation to identify a separate rate component to collect the revenues used to fund these programs. The rate component shall be a nonbypassable element of the local distribution service and collected on the basis of usage. This rate component shall fall within the rate levels identified in subdivision (a) of Section 368.

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

- (1) Cost-effective energy efficiency and conservation activities.
- (2) Public interest research and development not adequately provided by competitive and regulated markets.
- (3) In-state operation and development of existing and new and emerging renewable resource technologies defined as electricity produced from other than a conventional power source within the



meaning of Section 2805, provided that a power source utilizing more than 25 percent fossil fuel may not be included.

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

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

(2) Research, development, and demonstration programs to advance science or technology that are not adequately provided by competitive and regulated markets shall be funded at not less than the following levels commencing January 1, 1998 through December 31, 2001: for San Diego Gas and Electric Company a level of four million dollars (\$4,000,000) per year; for Southern California Edison Company a level of twenty-eight million five hundred thousand dollars (\$28,500,000) per year; and for Pacific Gas and Electric Company a level of thirty million dollars (\$30,000,000) per year.

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

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



(5) Up to ninety million dollars (\$90,000,000) of the amount collected pursuant to subdivision (d) may be used to resolve outstanding issues related to contractual arrangements in the Southern California Edison service territory stemming from the Biennial Resource Planning Update auction. Moneys remaining after fully funding the provisions of this paragraph shall be reallocated for purposes of paragraph (3).

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

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

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

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

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

382. Programs provided to low-income electricity customers, including, but not limited to, targeted energy-efficiency services and the California Alternative Rates for Energy Program shall be funded



at not less than 1996 authorized levels based on an assessment of customer need. The commission shall allocate funds necessary to meet the low-income objectives in this section.

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

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

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

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

(b) The California Energy Resources Conservation and Development Commission shall review the purposes described in this section and report to the Legislature by March 31, 1997, with recommendations regarding market-based mechanisms to allocate available funds. The programs should be based on market principles and include options and implementation mechanisms which:

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

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

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

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

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

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

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



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

Article 8. Publicly Owned Utilities

385. (a) Each local publicly owned electric utility shall establish a nonbypassable, usage based charge on local distribution service of not less than the lowest expenditure level of the three largest electrical corporations in California on a percent of revenue basis, calculated from each utility's total revenue requirement for the year ended December 31, 1994, and each utility's total annual expenditure under paragraphs (1), (2), and (3) of subdivision (c) of Section 381 and Section 382, to fund investments by the utility and other parties in any or all of the following:

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

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

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

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

Article 9. State Agencies

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

(b) The Department of General Services or any other state or local agency intending to enter into an energy savings contract may establish a pool of qualified energy service companies based on qualifications, experience, pricing or other pertinent factors. Energy service contracts for individual projects undertaken by any state or local agency may be awarded through a competitive selection process to individuals or firms identified in such a pool. The pool of qualified energy service companies and contractors shall be reestablished at least every two years or shall expire.

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



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

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

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

Article 10. Nonutility Power Generators

390. (a) Subject to applicable contractual terms, energy prices paid to nonutility power generators by a public utility electrical corporation based upon the commission’s prescribed “short run avoided cost energy methodology” shall be determined as set forth in subdivisions (b) and (c).

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



(c) The short-run avoided cost energy payments paid to nonutility power generators by electrical corporations shall be based on the clearing price paid by the independent Power Exchange if (1) the commission has issued an order determining that the independent Power Exchange is functioning properly for the purposes of determining the short-run avoided cost energy payments to be made to nonutility power generators, and either (2) the fossil-fired generation units owned, directly or indirectly, by the public utility electrical corporation are authorized to charge market-based rates and the “going forward” costs of those units are being recovered solely through the clearing prices paid by the independent Power Exchange or from contracts with the Independent System Operator, whether those contracts are market-based or based on operating costs for particular utility-owned powerplant units and at particular times when reactive power/voltage support is not yet procurable at market-based rates at locations where it is needed, and are not being recovered directly or indirectly through any other source, or (3) the public utility electrical corporation has divested 90 percent of its gas-fired generation facilities that were operated to meet load in 1994 and 1995. However, nonutility power generators subject to this section may, upon appropriate notice to the public utility electrical corporation, exercise a one-time option to elect to thereafter receive energy payments based upon the clearing price from the independent Power Exchange.

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

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

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

(g) The term “going forward costs” shall include, but not be limited to, all costs associated with fuel transportation and fuel supply, administrative and general, and operation and maintenance;



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

Article 11. Information Practices

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

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

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

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

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

(2) Electrical corporations shall provide conspicuous notice that if the customer elects to purchase electricity from another provider that the customer will continue to be liable for payment of the competition transition charge. This paragraph does not limit the commission from requiring additional information.

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



Article 12. Consumer Protection

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

- (1) Legal name.
- (2) Current telephone number.
- (3) Current address.
- (4) Agent for service of process.

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

(c) The commission shall accept, compile, and help resolve consumer complaints regarding entities offering electrical service that are required to be registered pursuant to this section.

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

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

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

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

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

- (1) Actual damages.
- (2) The consumer's reasonable attorney's fees and court costs.



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

(4) Equitable relief as the court deems proper.

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

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

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

Article 13. Fuel Price Volatility

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

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

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

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

(4) In no case shall an electrical corporation's authorized System Average Rate under the Fuel Price Index Mechanism exceed the



average of the authorized system average rates for the two largest electrical corporations as of June 10, 1996.

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

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

Article 5.5. Financing of Transition Costs

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

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

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

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

(2) The bank submits to the Joint Legislative Budget Committee a certified copy of the bank's resolution, together with a report setting forth the basis for the bank's determination that a financing entity other than the bank or a special purpose trust will produce greater ratepayer savings and at least 30 days have elapsed from the date of submission.

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

(d) "Fixed transition amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution,



connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover (1) transition costs, and (2) the costs of providing, recovering, financing, or refinancing the transition costs through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring rate reduction bonds. If requested by the electrical corporation in its application for a financing order, fixed transition amounts shall include nonbypassable rates and other charges to recover federal and state taxes whose recovery period is modified by the transactions approved in the financing order.

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

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

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



841. (a) An electrical corporation shall, by June 1, 1997, and may from time to time thereafter apply to the commission for a determination that certain transition costs may be recovered through fixed transition amounts, which would therefore constitute transition property under this article. An electrical corporation may request this determination by the commission in separate proceedings or in an order instituting investigation or order instituting rulemaking, or both. The electrical corporation shall in its application specify that the residential and small commercial customers as defined in subdivision (h) of Section 331 would benefit from reduced rates through the issuance of rate reduction bonds. The commission shall designate fixed transition amounts as recoverable in one or more financing orders if the commission determines, as part of its findings in connection with the financing order, that the designation of the fixed transition amounts, and issuance of rate reduction bonds in connection with some or all of the fixed transition amounts would reduce rates that residential and small commercial customers would have paid if the financing order were not adopted. These customers shall continue to pay fixed transition amounts after December 31, 2001, until the bonds are paid in full by the financing entity. No electrical corporation shall be found to have acted imprudently or unreasonably for failing to amend a power purchase contract where the amendment would modify or waive an existing requirement that the seller be a qualifying facility pursuant to federal law.

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

(c) Notwithstanding Section 455.5, Section 1708, or any other provision of law, except as otherwise provided in this subdivision with respect to transition property that has been made the basis for the issuance of rate reduction bonds, the financing orders and the fixed transition amounts shall be irrevocable and the commission shall not have authority either by rescinding, altering, or amending the financing order or otherwise, to revalue or revise for ratemaking purposes the transition costs, or the costs of providing, recovering, financing, or refinancing the transition costs, determine that the fixed transition amounts or rates are unjust or unreasonable, or in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when



setting other rates for the electrical corporation; nor shall the amount of revenues arising with respect thereto be subject to reduction, impairment, postponement, or termination. Except as otherwise provided in this subdivision, the State of California does hereby pledge and agree with the owners of transition property and holders of rate reduction bonds that the state shall neither limit nor alter the fixed transition amounts, transition property, financing orders, and all rights thereunder until the obligations, together with the interest thereon, are fully met and discharged, provided nothing contained in this section shall preclude the limitation or alteration if and when adequate provision shall be made by law for the protection of the owners and holders. The bank as agent for the state is authorized to include this pledge and undertaking for the state in these obligations. Notwithstanding any other provision of this section, the commission shall approve the adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order, and the costs of capital associated with the provision, recovery, financing, or refinancing thereof, including the costs of issuing, servicing, and retiring the rate reduction bonds contemplated by the financing order. The adjustments shall not impose fixed transition amounts upon classes of customers who were not subject to the fixed transition amounts in the pertinent financing order.

(d) (1) Financing orders issued under this article do not constitute a debt or liability of the state or of any political subdivision thereof, other than the financing entity, and do not constitute a pledge of the full faith and credit of the state or any of its political subdivisions, other than the financing entity, but are payable solely from the funds provided therefor under this article and shall be consistent with Sections 1 and 18 of Article XVI of the California Constitution. This subdivision shall in no way preclude bond guarantees or enhancements pursuant to this article. All the bonds shall contain on the face thereof a statement to the following effect:

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

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

(e) The commission shall establish procedures for the expeditious processing of applications for financing orders, including the approval or disapproval thereof within 120 days of the electrical



corporation's making application therefor. The commission shall provide in any financing order for a procedure for the expeditious approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the pertinent financing order, as required by subdivision (c). The procedure shall require the commission to determine whether the adjustments are required on each anniversary of the issuance of the financing order, and at the additional intervals as may be provided for in the financing order, and for the adjustments, if required, to be approved within 90 days of each anniversary of the issuance of the financing order, or of each additional interval provided for in the financing order.

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

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

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

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

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

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

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

(b) Electrical corporations may sell and assign all or portions of their interest in transition property to an affiliate. Electrical corporations or their affiliates may sell or assign their interests to one or more financing entities that make that property the basis for issuance of rate reduction bonds to the extent approved in the pertinent financing orders. Electrical corporations, their affiliates, or



financing entities may pledge transition property as collateral for rate reduction bonds to the extent approved in the pertinent financing orders providing for a security interest in the transition property, in the manner as set forth in Section 843. In addition transition property may be sold or assigned by (1) the financing entity or a trustee for the holders of rate reduction bonds in connection with the exercise of remedies upon a default, or (2) any person acquiring the transition property after a sale or assignment pursuant to this subdivision.

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

(d) Notwithstanding Section 1708 or any other provision of law, any requirement under this article or a financing order that the commission take action with respect to the subject matter of a financing order shall be binding upon the commission, as it may be constituted from time to time, and any successor agency exercising functions similar to the commission and the commission shall have no authority to rescind, alter, or amend that requirement in a financing order. The approval by the commission in a financing order of the issuance by an electrical corporation or a financing entity of rate reduction bonds shall include the approvals, if any, as may be required by Article 5 (commencing with Section 816) and Section 701.5. Nothing in Section 701.5 shall be construed to prohibit the issuance of rate reduction bonds upon the terms and conditions as may be approved by the commission in a financing order. Section 851 shall not be applicable to the transfer or pledge of transition property, the issuance of rate reduction bonds, or related transactions approved in a financing order.

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

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

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



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

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

(c) A perfected security interest in transition property is a continuously perfected security interest in all revenues and proceeds arising with respect thereto, whether or not the revenues or proceeds have accrued. Conflicting security interests shall rank according to priority in time of perfection. Transition property shall constitute property for all purposes, including for contracts securing rate reduction bonds, whether or not the revenues and proceeds arising with respect thereto have accrued.

(d) Subject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to the transition property with other funds of the electrical corporation that is the pledgor or transferor of the transition property, or by any security interest in a deposit account of that electrical corporation perfected under Division 9 (commencing with Section 9101) of the Commercial Code into which the revenues are deposited. Subject to the terms of the security agreement, upon compliance with the requirements of subdivision (g) of Section 9302 of the Commercial Code, the pledgees of the transition property shall have a perfected security interest in all cash and deposit accounts of the electrical corporation in which revenues arising with respect to the transition property have been commingled with other funds, but the perfected security interest shall be limited to an amount not greater than the amount of the revenues with respect to the transition property received by the electrical corporation within 12 months before (1) any default under the security agreement or (2) the institution of insolvency proceedings by or against the electrical corporation, less



payments from the revenues to the pledgees during that 12-month period.

(e) If an event of default occurs under the security agreement covering the transition property, the pledgees of the transition property, subject to the terms of the security agreement, shall have all rights and remedies of a secured party upon default under Division 9 (commencing with Section 9101) of the Commercial Code, and shall be entitled to foreclose or otherwise enforce their security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section. In addition, the commission may require, in the financing order creating the transition property, that, in the event of default by the electrical corporation in payment of revenues arising with respect to the transition property, the commission and any successor thereto, upon the application by the pledgees or transferees, including transferees under Section 844, of the transition property, and without limiting any other remedies available to the pledgees or transferees by reason of the default, shall order the sequestration and payment to the pledgees or transferees of revenues arising with respect to the transition property. Any order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor, pledgor, or transferor of the transition property. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the rate reduction bonds, and other costs arising under the security agreement, shall be remitted to the debtor or to the pledgor or transferor.

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

844. (a) A transfer of transition property by an electrical corporation to an affiliate or to a financing entity, or by an affiliate of an electrical corporation or a financing entity to another financing entity, which the parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in a financing order, shall be treated as an absolute transfer of all of the transferor's right, title, and interest (as in a true sale), and not as a pledge or other financing, of the transition property, other than for federal and state income and franchise tax purposes. Granting to holders of rate reduction bonds a preferred right to revenues of the electrical corporation, or the provision by the company of other credit enhancement with respect to rate reduction bonds, shall not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

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



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

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

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

845. Any successor to the electrical corporation, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding, or pursuant to any merger, sale, or transfer, by operation of law, or otherwise, shall perform and satisfy all obligations of the electrical corporation pursuant to this article in the same manner and to the same extent as the electrical corporation, including, but not limited to, collecting and paying to the holders of rate reduction bonds or their representatives or the applicable financing entity revenues arising with respect to the transition property sold to the applicable financing entity or pledged to secure rate reduction bonds.

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

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

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

**DIVISION 4.9. RESTRUCTURING OF PUBLICLY OWNED
ELECTRIC UTILITIES IN CONNECTION WITH THE**



RESTRUCTURING OF THE ELECTRICAL SERVICES
INDUSTRY

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

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

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

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

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



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

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

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

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

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

(b) Following a final Federal Energy Regulatory Commission decision approving the Independent System Operator, no California electrical corporation or local publicly owned electric utility shall be authorized to collect any competition transition charge authorized pursuant to this division and Chapter 2.3 (commencing with Section 330) of Part 1 of Division 1 unless it commits control of its transmission facilities to the Independent System Operator.

9601. (a) Except with respect to supply options of the nature specified in Section 218, with the exception of paragraph (3) of subdivision (b) of that section, as it existed on December 20, 1995, no 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, shall provide partial or full electric service to a retail customer of a local publicly owned electric utility unless the customer first confirms in writing an obligation to pay, through tariff or otherwise, to the utility currently providing electric service, a nonbypassable



generation-related severance fee or transition charge established by the regulatory body for that utility. The severance fee or transition charge shall be paid directly to the local publicly owned utility providing electricity service in the service area in which the consumer is located.

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

(c) No local publicly owned electric utility or electrical corporation shall sell electric power to the retail customers of another local publicly owned electric utility or electrical corporation unless the first utility has agreed to let the second utility make sales of electric power to the retail customers of the first utility.

9602. (a) After a public hearing, the local regulatory body of each local publicly owned electric utility shall 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 referred to in Section 9603.

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

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

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

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

9603. (a) Not less than six months prior to the date of implementation of direct transactions, the regulatory body shall establish the nonbypassable generation-related severance fee or transition charge which shall include, but shall not be limited to,



employee related transition costs incurred and projected for severance, out placement, retraining, early retirement, and related expenses for employees directly affected by restructuring.

(b) The regulatory body of a local publicly owned electric utility, prior to adopting any generation related severance fee or transition charge, shall make available for public review the basis for the severance fee or transition charge and shall hold at least one public hearing.

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

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

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

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

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

9605. (a) Nothing in this division or Chapter 2.3 (commencing with Section 350) of Part 1 of Division 1 shall affect preexisting ratemaking authority of a regulatory body of any local publicly owned electric utility.

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

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



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

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

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

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

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because of 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.

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

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

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



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

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