



Home Bill Information California Law Publications Other Resources My Subscriptions My Favorites

**SB-612 Electrical corporations and other load-serving entities: allocation of legacy resources.** (2021-2022)

SHARE THIS:



Date Published: 03/09/2021 09:00 PM

AMENDED IN SENATE MARCH 09, 2021

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

**SENATE BILL**

**NO. 612**

**Introduced by Senator Portantino**  
**(Coauthors: Senators Allen, Becker, McGuire, and Wiener)**  
**(Coauthors: Assembly Members Bauer-Kahan, Berman, Bloom, Boerner Horvath, Chiu, Kalra, Lee, Levine, Mullin, Muratsuchi, Robert Rivas, Stone, Ting, and Wood)**

**February 18, 2021**

~~An act relating to electricity.~~ *An act to amend Section 454.5 of, and to add Section 366.4 to, the Public Utilities Code, relating to electricity.*

**LEGISLATIVE COUNSEL'S DIGEST**

SB 612, as amended, Portantino. ~~Electrical corporations: allocation of legacy resources.~~ *Electrical corporations and other load-serving entities: allocation of legacy resources.*

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

*Existing law requires the commission to authorize and facilitate direct transactions between electric service providers and retail end-use customers, but suspends direct transactions except as expressly authorized. Existing law expressly requires the commission to authorize direct transactions for nonresidential end-use customers, subject to an annual maximum allowable total kilowatthour limit established, as specified, for each electrical corporation, to be achieved following a now-completed 3-to-5-year phase-in period. Existing law requires the commission, on or before June 1, 2019, to issue an order specifying, among other things, an increase in the annual maximum allowable total kilowatthour limit by 4,000 gigawatthours and to apportion that increase among the service territories of the electrical corporations. Existing law requires the commission, by June 1, 2020, to provide the Legislature with recommendations on the adoption and implementation of a 2nd direct transactions reopening schedule and requires that the commission make specified findings with respect to those recommendations, including that the recommendations do not cause undue shifting of costs to bundled service customers of an electrical corporation or to direct transaction customers.*

*Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the Public Utilities Commission in order for the commission to determine a cost-recovery mechanism to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical corporation's bundled customers. Existing law requires that the bundled retail customers of an electrical corporation not experience any cost increase as a result of the implementation of a community choice aggregator program and requires the commission to ensure that the departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load.*

*Pursuant to existing law, the commission has adopted decisions and orders imposing certain costs on customers of an electrical corporation that depart from receiving bundled electrical service from an electrical corporation to instead receive electric service from an electric service provider or a community choice aggregator.*

*This bill would require an electrical corporation, by July 1, 2022, and by each July 1 thereafter, to annually offer, for the following year, an allocation of each product, as defined, arising from legacy resources, as defined, to its bundled customers and to other load-serving entities, defined to include electric service providers and community choice aggregators, serving departing-load customers, as defined, who bear cost responsibility for those resources. The bill would authorize a load-serving entity within the service territory of the electrical corporation to elect to receive all or a portion of the vintaged proportional share of products allocated to its end-use customers and, if so, require it to pay to the electrical corporation the commission-established market price benchmark for the vintage proportional share of products received. The bill would require that an electrical corporation offer any products allocated to departing-load customers that a load-serving entity declines to elect to receive in the wholesale market in an annual solicitation and require that all revenues received through the annual solicitation be credited toward reducing any nonbypassable charge for all distribution customers of the electrical corporation. The bill would require the commission to recognize and account for the value of all products in the electrical corporation's legacy resource portfolio in determining any nonbypassable charge to be paid by departing-load customers.*

*Existing law requires that the commission review and accept, modify, or reject a procurement plan for each electrical corporation in accordance with specified elements, incentive mechanisms, and objectives, except that an electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from the requirement to file a procurement plan and the commission is required to grant the exemption upon a showing of good cause. Existing law requires that an approved procurement plan eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's actions in compliance with the plan, but authorizes the commission to establish a regulatory process to verify and ensure that each contract entered into pursuant to an approved plan was administered in accordance with the terms of the contract, and contract disputes that may arise are reasonably resolved.*

*This bill would require an electrical corporation with a commission-approved plan to conduct a request for offers on January 1, 2023, and by January 1 of each odd-numbered year thereafter, from any party to an existing electricity purchase agreement, at that party's full discretion, to modify the agreement to reduce the electrical corporation's total procurement costs on a present value basis over the remaining life of the contract and that is recovered from both bundled and departing-load customers. The bill would require an electrical corporation to publicly report the results of the request for offers in its annual proceeding for review of contract administration established by the commission pursuant to the above-described authorization. The bill would require the commission to determine in its annual proceeding for review of contract administration, if the electrical corporation's actions or inactions in response to the request for offers were reasonable and in the interest of bundled and departing load customers.*

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

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

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

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

~~Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes a community choice aggregator to aggregate the electrical load of interested electricity consumers within its boundaries and requires a community choice aggregator to file an implementation plan with the Public Utilities Commission in order for the commission to determine a cost recovery mechanism to be imposed on the community choice aggregator to prevent a shifting of costs to an electrical corporation's bundled customers. Existing law requires that the bundled retail customers of an electrical corporation not experience any cost increase as a result of the implementation of a community choice aggregator program and requires the commission to ensure that the departing load does not experience any cost increases as a result of an allocation of costs that were not incurred on behalf of the departing load. Pursuant to existing law, the commission has adopted decisions and orders imposing certain costs on customers of an electrical corporation that depart from receiving bundled service from the electrical corporation to instead receive electricity from an electric service provider or a community choice aggregator.~~

~~This bill would state the intent of the Legislature to enact subsequent legislation related to public utilities that would ensure fair and equal access to the benefits of legacy resources held in investor-owned utility portfolios and address the management of these resources to maximize value for all customers.~~

Vote: majority Appropriation: no Fiscal Committee: ~~no~~yes Local Program: ~~no~~yes

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** *Section 366.4 is added to the Public Utilities Code, to read:*

**366.4.** (a) *For purposes of this section, the following terms have the following meanings:*

(1) *"Departing-load customer" means a customer of an electrical corporation that departs from receiving electric service from an electrical corporation to instead receive electric service from another load-serving entity.*

(2) *"Legacy resource" means any generation resource or agreement to purchase electricity for delivery to end-use customers in California that was procured by an electrical corporation solely on behalf of the electrical corporation's end-use customers it served at the time of procurement and that is eligible for recovery to prevent cost shifting among the customers of load-serving entities.*

(3) *"Load-serving entity" has the same meaning as defined in Section 380.*

(4) *"Product" means electrical resources procured to meet the resource adequacy requirements of Section 380, electrical resources procured to meet the requirements of the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), electrical resources that do not emit greenhouse gases, and any new generating attributes identified after January 1, 2021, that have regulatory compliance or other identified market value.*

(5) *"Vintage" means the cost responsibility allocated by the commission, for purposes of legacy resource cost responsibility, to departing-load customers, which the commission allocates to those departing-load customers corresponding to the year the customer departs receiving electric service from the electrical corporation.*

(b) (1) *By July 1, 2022, and by each July 1 thereafter, the commission shall require an electrical corporation to annually offer, for the following year, an allocation of each product arising from legacy resources to its bundled customers and to other load-serving entities serving departing-load customers who bear cost responsibility for those resources.*

(2) *The electrical corporation shall offer this allocation in an amount up to each customer's proportional share of legacy resources in the customer's vintage, as determined by the commission.*

(3) *The electrical corporation shall offer the products for a term and in a manner that maximizes the value of the legacy resources.*

(c) (1) *A load-serving entity within the service territory of the electrical corporation may elect to receive all or a portion of the vintaged proportional share of products allocated to its end-use customers and shall pay to the electrical corporation the commission-established market price benchmark for the vintage proportional share of products received.*

(2) *The electrical corporation shall offer to load-serving entities serving departing-load customers within its service territory the same long-term renewable portfolio standard value available to bundled customers by*

*offering an allocation of eligible renewable portfolio standard resources with a remaining term of at least 10 years for a term equal to the proportionate share of the remaining term of the eligible renewable energy resources. These allocated resources shall count toward a load-serving entity's long-term procurement requirement pursuant to subdivision (b) of Section 399.13.*

*(3) To enable a load-serving entity to effectively align its supply with its customers' requirements, the electrical corporation shall, at a minimum, provide each load-serving entity electing to receive an allocation the following information for each allocated product:*

*(A) Not less than seven months before the beginning of the production year, the most recent three-year historical production data for the allocated products and the estimated annual production profile by vintage and resource type in all hours.*

*(B) Within 15 days following the end of each production month, actual production data for the prior month.*

*(d) (1) An electrical corporation shall offer any products allocated to departing-load customers that a load-serving entity declines to elect to receive pursuant to subdivision (c) in the wholesale market in an annual solicitation. All revenues received through the annual solicitation shall be credited toward reducing any nonbypassable charge for all distribution customers of the electrical corporation.*

*(2) The commission shall recognize and account for the value of all products in the electrical corporation's legacy resource portfolio in determining any nonbypassable charge to be paid by departing-load customers.*

**SEC. 2.** *Section 454.5 of the Public Utilities Code is amended to read:*

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

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

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

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

(3) The duration of the plan.

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

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

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

(7) The upfront standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation before execution of the transaction. This shall include an expedited approval process for the commission's review of proposed contracts and subsequent approval or rejection of a contract. The electrical corporation shall propose alternative procurement choices in the event a contract is rejected.

(8) Procedures for updating the procurement plan.

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

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

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

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

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

(D) (i) The electrical corporation, in soliciting bids for new gas-fired generating units, shall actively seek bids for resources that are not gas-fired generating units located in communities that suffer from cumulative pollution burdens, including, but not limited to, high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.

(ii) In considering bids for, or negotiating contracts for, new gas-fired generating units, the electrical corporation shall provide greater preference to resources that are not gas-fired generating units located in communities that suffer from cumulative pollution burdens, including, but not limited to, high emission levels of toxic air contaminants, criteria air pollutants, and greenhouse gases.

(iii) This subparagraph does not apply to contracts signed by an electrical corporation and approved by the commission before January 1, 2017.

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

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

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

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

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

(2) An incentive mechanism that establishes a procurement benchmark or benchmarks and authorizes the electrical corporation to procure from the market, subject to comparing the electrical corporation's performance to the commission-authorized benchmark or benchmarks. The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and standards. The incentive mechanism shall contain balanced risk and reward incentives that limit the risk and reward of an electrical corporation.

(3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate recovery of a proposed procurement transaction will be known by the electrical corporation before the execution of the

bilateral contract for the transaction. The commission shall provide for expedited review and either approve or reject the individual contracts submitted by the electrical corporation to ensure compliance with its procurement plan. To the extent the commission rejects a proposed contract pursuant to this criteria, the commission shall designate alternative procurement choices obtained in the procurement plan that will be recoverable for ratemaking purposes.

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

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

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

(3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved procurement plan. The commission shall establish rates based on forecasts of procurement costs adopted by the commission, actual procurement costs incurred, or a combination thereof, as determined by the commission. The commission shall establish power procurement balancing accounts to track the differences between recorded revenues and costs incurred pursuant to an approved procurement plan. The commission shall review the power procurement balancing accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to promptly amortize a balancing account, according to a schedule determined by the commission. Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in the power procurement balancing account does not exceed 5 percent of the electrical corporation's actual recorded generation revenues for the prior calendar year excluding revenues collected for the Department of Water Resources. The commission shall determine the schedule for amortizing the overcollection or undercollection in the balancing account to ensure that the 5-percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when deemed appropriate by the commission consistent with the objectives of this section.

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

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

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

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

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

*(h) Each electrical corporation with an approved plan shall conduct a request for offers from any party to an existing electricity purchase agreement, at that party's full discretion, to modify the agreement to reduce the electrical corporation's total procurement costs on a present value basis over the remaining life of the contract and that is recovered from both bundled and departing-load customers, as defined in Section 366.4. Each electrical corporation shall issue a request for offer on January 1, 2023, and by January 1 of each odd-numbered year thereafter. The electrical corporation shall publicly report the results of the request for offers in its annual proceeding for review of contract administration pursuant to paragraph (2) of subdivision (d), identifying the total cost savings to customers, without disclosing competitively sensitive price information for individual contracts. The commission shall determine in its annual proceeding for review of contract administration pursuant to paragraph (2) of subdivision (d) if the electrical corporation's actions or inactions in response to the request for offers were reasonable and in the interest of bundled and departing load customers.*

(h)

(i) This section does not alter, modify, or amend the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. This section does not expand, modify, or limit the Energy Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.

(i)

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

(j)

(k) (1) Before its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after September 24, 2002, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.

(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after September 24, 2002, shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

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

(k)

(l) The commission shall direct electrical corporations to include in their proposed procurement plans the integration costs described and determined pursuant to clause (v) of subparagraph (A) of paragraph (5) of subdivision (a) of Section 399.13.

(l)

(m) Before approving an electrical corporation's contract for any new gas-fired generating unit, the commission shall require the electrical corporation to demonstrate compliance with its approved procurement plan.

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

~~SECTION 1. It is the intent of the Legislature to enact subsequent legislation related to public utilities that would ensure fair and equal access to the benefits of legacy resources held in investor-owned utility portfolios and address the management of these resources to maximize value for all customers.~~