

M e m o r a n d u m

Date: March 28, 2007

To: The Commission
(Meeting of April 12, 2007)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 533 (Galgiani) – Local publicly-owned electric utilities:
cost responsibility surcharge.**
As Introduced: February 21, 2007

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Oppose

SUMMARY OF BILL: This bill would prohibit the Commission from imposing a cost responsibility surcharge (CRS) on a customer of a local publicly owned electric utility (POU) if the customer's service location has not previously received service from an investor owned utility (IOU) and if the customer's service location is within the service territory of an irrigation district prior to January 1, 2004 that meets the requirements of PU Code Section 9608.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 533 is inconsistent with current Commission policy that departing load, with certain specific exceptions, must pay (1) a CRS for costs incurred during California's electricity crisis, and (2) separate non-bypassable charges to collect certain costs dating to electric restructuring in 1996, such as nuclear decommissioning, tail CTC, and rate reduction bonds.

DIVISION ANALYSIS (Energy/Legal Division):

If enacted, this bill would result in increased rates for bundled customers, as these rates will recover costs that the Commission has previously determined should be collected from new load in POU service territories that had previously been IOU service territories.

The Commission's policies have the goal of ensuring that electric-restructuring costs, and subsequent electricity crisis-related costs, are shared equally by all Californians on whose behalf the costs were incurred. If enacted, this bill would remove cost responsibility from one group of customers, and shift that burden unfairly onto another group.

This bill would prohibit the Commission from imposing any charge, including, but not limited to, a cost responsibility surcharge, on a POU customer, if the customer's service location has not previously received service from an electrical corporation and if the customer's service location is within the service territory of an irrigation prior to January 1, 2004 that meets the requirements of PU Code Section 9608.

PU Code 9608 says that PU Code Section 454.1 and 9607 do NOT apply to an irrigation district that meets the following specifications:

- purchase by irrigation district of electrical corporation distribution and sub transmission facilities
- commission approval of a service area agreement between the irrigation district and electrical corporation and;
- the electrical corporation in said area has been relieved of its obligation to serve by the commission.

PU Code Section 454.1 and 9607 establish rules, payment of fees, etc for customers leaving electrical corporation service for irrigation district service.

PROGRAM BACKGROUND:

As explained below, this legislation would reverse present Commission policies toward load that departs IOU service, as those policies have evolved over the last decade since electric restructuring began.

Existing law, PU Code Section 369, provides for collection of "tail" competition transition charges (CTC) from certain new load in POU territories.

Existing law, Water Code sec. 80110, enacted by Chapter 4, Statutes of 2001 (1st Ex. Sess.) (AB 1X, Keeley), required the Commission to suspend direct transactions until the end of the duration of all Department of Water Resources (DWR) power purchase contracts and authorizes DWR to recover costs incurred in connection with electric power purchases and transmission, scheduling and other related expenses.

Further existing law, Chapter 838, Statutes of 2002 (AB 117, Migden), affirms the Commission's authority to determine the "fair share" of cost responsibility of departing utility customers served by DWR purchases via bundled service on or after February 1, 2001, to prevent any shifting of recoverable costs between customers.

Pursuant to the statutes listed above, the Commission, in D. 03-07-028, imposed a CRS on Municipal Departing Load (MDL) within the service territories of the three major IOUs. The CRS consists of several distinct components:

- DWR Bond Charge.
- DWR Power Charge, representing the above-market portion of DWR power costs
- Tail Competitive Transition Charge (CTC) covering the components specified in PU Code Section 367. Section 369 made the CTC applicable to MDL customers in the IOU service territory as of December 20, 1995.
- For SCE only, a “Historical Procurement Charge.”
 - D.04-02-062 and D.04-11-015, along with SB 772, § 848.1(c), created similar CRS policies for PG&E’s post-bankruptcy Regulatory Asset Charge (RAC) and Energy Recovery Bond (ERB) Charges

The MDL CRS was ordered to apply to designated customers that took bundled service on or after February 1, 2001 in the service territories of the IOUs and subsequently departed to be served by a publicly-owned utility (POU). D. 03-07-028 also excepted MDL of existing POUs formed and delivering electricity to retail end-use customers before February 1, 2001.

In D.03-08-076, the Commission granted limited rehearing of D.03-07-028.

Following hearings, the Commission issued a series of decisions that addressed the question of exceptions for departing load served by a POU. D.04-11-014 found, on rehearing, as follows:

1. First, in the case of PG&E, the Commission found that an explicit adjustment was made in its load forecast provided to DWR to recognize future bypass due to anticipated transfers of existing IOU load to irrigation districts and municipalities.
 - a. Therefore, a corresponding CRS exception is warranted to recognize the effects of this MDL “transferred load” component.
 - b. The Commission further concluded that any **new** load served by publicly-owned utilities within the annexed areas covered by the PG&E transferred load should likewise be excepted from paying the CRS. This is based on the conclusion that the DWR forecasts did not include a provision for such new load in these annexed areas that were assumed to be served by publicly-owned utilities.

2. Second, the Commission affirmed the exception granted for “new load” of existing publicly-owned utilities, but made the following determinations about this exception.
 - a. First, publicly-owned utilities must have been formed and serving at least 100 customers as of July 10, 2003, the date of issuance of D.03-07-028, to qualify for an exception for new load.
 - b. Second, the Commission applied a cap on the “new load” exceptions on an interim basis of a total of 150 MW in the PG&E and SCE territories combined before the end of 2012, for entities that are only serving “new” load and have no transferred load (note below that this cap was subsequently changed and clarified in later Commission orders).

D.04-12-059 addressed applications for rehearing of D.04-11-014, and accordingly modified that decision to reduce the 150 MW interim cap to 80 MW and to clarify that transferred and new MDL remain responsible for tail CTC and the DWR Bond Charge to the extent these charges are applicable. Additionally, D.04-11-014 was clarified with respect to the CRS exception for new load located in the geographic areas covered by the transferred load forecast in PG&E’s Bypass Report:

“New MDL within those geographic areas covered by the transferred load identified in PG&E’s August 2000 Bypass Report, including geographic areas served by all publicly owned utilities identified in the Bypass Report as those areas existed as of February 1, 2001, is excepted from any obligation to pay CRS.”

Next, D.05-07-038 resolved a Petition to Modify D.04-12-059, as follows:

- Affirmed that the new MDL exception within the geographic area served by an existing publicly owned utility (POU) covered in the Pacific Gas and Electric Company (PG&E) Bypass Report is in addition to, and not interchangeable with, the associated transferred load.
- Clarified that the new MDL exception for existing POUs covered in the PG&E Bypass Report is not subject to any specific numerical megawatt cut-off, but is limited in terms of the geographic area covered by the transferred load and served by a POU at the time of the PG&E Bypass Report.
- Clarified that the 80 MW cap adopted in D.04-12-059 applies only to new MDL served by the POUs that were formed and serving at least 100 customers as of July 10, 2003, but that were not specifically named in the PG&E Bypass Report.

Finally, in the Commission's proceeding related to PG&E's bankruptcy, D.05-08-035 found that new municipal departing load (new MDL) is excepted from PG&E's Regulatory Asset Charge (RAC) and Energy Recovery Bond Charges to the same extent that new MDL is excepted from the California Department of Water Resources (DWR) Power Charge. However, transferred load was not found to be excepted from the RAC and Energy Recovery Bond Charges.

This bill, by imposing a blanket prohibition on any charges, would wipe out the policies developed by the Commission. As directed by the Legislature, those policies have been crafted with the goal of ensuring that restructuring and crisis-related costs are shared equally by all Californians on whose behalf the costs were incurred. If enacted, this bill would remove cost responsibility from a select group of customers, and shift that burden unfairly onto another group.

LEGAL IMPACTS:

Regarding the Commission's adopted method for calculating tail CTC, on November 23, 2005, Merced Irrigation District and Modesto Irrigation District filed a Petition for Writ of Review of Commission Decision Nos. 05-01-031, 05-02-040, 05-10-046, and 05-10-047 in the California Court of Appeal, Fifth Appellate District. On May 16, 2006, Merced Irrigation District and Modesto Irrigation District filed a related Petition for Writ of Review of Commission Decision Nos. 05-12-045 and 06-04-041 regarding the Commission's methodology for calculating tail CTC in the California Court of Appeal, Fifth Appellate District.

Regarding the Commission's methodology for calculating the CRS and the level of undercollections applicable to MDL, on February 13, 2007, Merced Irrigation District and Modesto Irrigation District jointly filed a petition for writ of review of Commission Decision Nos. 06-07-030, 07-01-020 in the California Supreme Court.

LEGISLATIVE HISTORY:

SB 1554 (Bowen & Cox) – contained language similar to that found in AB 533. The Commission opposed SB 1554 and the bill failed passage in the Assembly Utilities & Commerce Committee.

AB 426 (Cox) – again contained language similar to that found in AB 533. AB 426 died on the Assembly floor with concurrence in Senate Amendments pending.

FISCAL IMPACT:

None.

STATUS:

AB 533 is awaiting a hearing in the Assembly Utilities & Commerce Committee.

SUPPORT/OPPOSITION:

Support: Turlock Irrigation District (sponsor)

Opposition: None on file

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Date: March 28, 2007

BILL LANGUAGE:

BILL NUMBER: AB 533 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Galgiani

FEBRUARY 21, 2007

An act to add Section 9601.5 to the Public Utilities Code, relating to local publicly owned electric utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 533, as introduced, Galgiani. Local publicly owned electric utilities: cost responsibility surcharge.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. The commission has imposed a cost responsibility surcharge on municipal departing load, as defined in commission decisions. With certain exceptions, a local publicly owned electric utility is prohibited from providing electric service to a retail customer of an electrical corporation unless the customer first confirms in writing an obligation to pay to the electrical corporation a nonbypassable generation-related severance fee or transition charge established by the regulatory body for that electrical corporation.

This bill would prohibit the commission from imposing a cost responsibility surcharge, as defined, on a customer of a local publicly owned electric utility if the customer's service location has not previously received service from an electrical corporation and if the customer's service location is within the service territory of an irrigation district meeting certain requirements.

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

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

SECTION 1. Section 9601.5 is added to the Public Utilities Code, to read:

9601.5. (a) The commission shall not impose a cost responsibility surcharge on a customer of a local publicly owned electric utility if the customer's service location has not previously received service from an electrical corporation and the customer's service location was receiving electric service from an irrigation district prior to January 1, 2004, that meets the requirements of Section 9608.

(b) As used in this section, "cost responsibility surcharge" includes the energy recovery bond charge imposed pursuant to Section 848.1, the Department of Water Resources power and bond charges imposed pursuant to Division 27 (commencing with Section 80000) of the Water Code, a charge imposed pursuant to the Nuclear Facility Decommissioning Act of 1985 (Chapter 2 (commencing with Section 8321)

of Division 4.1), or a charge imposed by a financing order pursuant to Article 5.6 (commencing with Section 848) of Chapter 4 of Part 1 of Division 1.