

M e m o r a n d u m

Date: April 17, 2008

To: The Commission
(Meeting of April 24, 2008)

From: Pamela Loomis, Deputy Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 3058 (Asm U&C) – DWR electrical power contract modifications: just and reasonable charges review. As Introduced: April 7, 2008**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would establish the California Public Utilities Commission (CPUC) as the entity that determines whether certain contracts for the purchase of electricity that are modified or renegotiated by the Department of Water Resources (DWR) are “just and reasonable”.

Specifically, this bill would require that, for any contract that is entered into by DWR that is modified or renegotiated after December 31, 2007, the CPUC, instead of DWR, will determine whether the proposed modification or renegotiation is just and reasonable. The CPUC would make this determination subject to its authority under Section 451 of the Public Utilities Code.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

Under current practice, the DWR is in a position where it can unilaterally decide on whether to modify or renegotiate its contracts with counterparties, while also subsequently determining whether its own unilateral actions were “just and reasonable”. This bill, by giving the CPUC this latter responsibility, would ensure that any future modifications or renegotiations that take place will be beneficial to ratepayers.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Energy Division):

- Section 80110 of the Water Code authorized the Department of Water Resources, until January 1, 2003, to enter into contracts for the purchase of electricity, and to recover those costs through (1) the issuance of bonds to be repaid by ratepayers, and (2) as an annual revenue requirement that the Commission includes in the rates of IOU customers. Section 80110 requires that any determination with regard to whether the rates and charges that apply to those contracts are just and reasonable shall be made by DWR and not the CPUC.
- Section 451 of the Public Utilities Code requires that “All charges demanded or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered **shall be just and reasonable**. Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.” (emphasis added)
- This bill would change existing law by requiring that, for contracts that DWR amends or modifies after December 31, 2007, the CPUC will determine whether the proposed modification or renegotiation is just and reasonable under Section 451 of the PU Code.
- The problem addressed by the bill does exist. Recently DWR amended an existing contract unilaterally, against the recommendation of CPUC staff and the utility that is assigned that contract for operational purposes. At legislative hearings, witnesses provided information indicating that the result of the DWR action was a net cost to California ratepayers. Nevertheless, DWR subsequently found that the costs resulting from its action were “just and reasonable.” As a result of DWR’s action, the CPUC has had to (1) increase the rates of the utility that had to replace the “lost” DWR power, (2) process and incorporate into rates the amended costs of the DWR power portfolio, and (3) address a Petition to Modify the method used by the Commission to allocate DWR’s annual costs among the 3 IOUs that receive DWR power.
- The problem addressed by this bill does not seem amenable to solution by other means because DWR’s prior determinations that its costs are “just and reasonable” have been challenged by the IOUs in prior years, and were upheld first by DWR itself, and then by the courts. Therefore, the solution proposed by this legislation would effectively solve the problem by placing this responsibility with the CPUC, which has more extensive experience in making such determinations.
- This bill would help the CPUC’s objectives by allowing it to more directly determine whether proposed modifications and renegotiations of contracts by DWR in the future would have the effect of increasing or decreasing ratepayer costs—before those actions are undertaken, rather than after-the-fact.

PROGRAM BACKGROUND:

None.

LEGISLATIVE HISTORY:

Unknown.

FISCAL IMPACT:

Passage of this legislation would have a material effect on the CPUC's workload as the responsibility for a "just and reasonable" review of modifications to DWR electricity contracts would transfer from DWR to the CPUC. DWR has approximately 25 electricity contracts remaining outstanding, and has stated its intention to amend and/or modify each of them. The resulting requirements for a contract-by-contract determination of the whether resulting costs were "just and reasonable" would create significant new workload for Commission staff. The CPUC estimates that it will need 4 PYs at a cost of \$453, 552 in order to comply with this bill.

STATUS:

AB 3058 passed the Assembly Utilities & Commerce on April 14, 2008 (Vote: 11-0), and will be heard by the Assembly Appropriations Committee next.

SUPPORT/OPPOSITION:

Support: PG&E.

Oppose: None on file.

STAFF CONTACTS:

Pamela Loomis, Deputy Director
Office of Governmental Affairs

pcl@cpuc.ca.gov
(916) 327-8441

Sean Gallagher
Director - Energy Division

shg@cpuc.ca.gov
(415) 703-2059

BILL NUMBER: AB 3058 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 7, 2008
AMENDED IN ASSEMBLY MARCH 10, 2008

INTRODUCED BY Committee on Utilities and Commerce (Levine (Chair),
Keene (Vice Chair), Blakeslee, Davis, Fuentes, Furutani, Huffman,
Jones, Krekorian, Price, Smyth, and Tran)

MARCH 3, 2008

An act to amend Section 80110 of the Water Code, relating to
electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 3058, as amended, Committee on Utilities and Commerce. Electric
power contracts: just and reasonable charges.

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 authorized the Department of Water Resources, until
January 1, 2003, to enter into contracts for the purchase of
electricity, and to sell electricity to retail end-use customers and,
with specified exceptions, local publicly owned electric utilities,
at not more than the department's acquisition costs and to recover
those costs through the issuance of bonds to be repaid by ratepayers.
Existing law requires the department to retain title to all
electricity sold by it to retail end-use customers and provides that
the department is entitled to recover its costs as a revenue
requirement. Existing law requires any determination with regard to
whether the rates and charges that apply to those contracts are just
and reasonable to be made by the department and not the commission.

This bill would require the commission, for any contract for the
purchase of electricity by the department that is modified or
renegotiated, as defined, after December 31, 2007, to determine
whether *the cost and administration of the*
proposed modification or renegotiation is just and reasonable.

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

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

SECTION 1. Section 80110 of the Water Code is amended to read:

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

(b) The revenue requirements may also include any advances made to

the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001.

(c) For the purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. For any contract for the purchase of power by the department pursuant to this division that is modified or renegotiated after December 31, 2007, the commission shall exercise its authority pursuant to Section 451 to determine whether *the cost and administration of* the proposed modification or renegotiation is just and reasonable. For purposes of this subdivision, a contract is "modified or renegotiated" if there is any material change in the terms of the contract, including an extension, novation, or assignment.

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

(e) In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

(f) After the passage of a period of time after February 1, 2001, as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department no longer supplies power hereunder. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to the customers.