

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 2820 (Huffman) – Renewable energy resources.
As Introduced: February 22, 2008**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS
AMENDED**

SUMMARY OF BILL:

AB 2820 would require an electrical corporation to deliver renewable power generated by a “local public agency” (generally, city, county, or special district) to any local public agency designated by the local public agency owning the generation.

The bill states that deliveries under AB 2820 are not to be considered “direct transactions” and are not to be subject to the rules, orders, or tariffs implementing direct access established by the California Public Utilities Commission (Commission). However, this bill would create a special category of wheeling, applicable to renewable-fueled electricity generated by a public agency and delivered to another public agency, and may inappropriately limit the scope of future Commission actions with regard to direct access transactions. Deliveries on behalf of a local public agency would be subject to a new transmission and/or distribution tariff to be filed at the Federal Energy Regulatory Commission (FERC), as well as standby charges, the Department of Water Resources (DWR) and departed load surcharges as applicable.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 2820 appears to create a new class of firm transmission rights and it could be interpreted as granting preferential access to utility-owned transmission systems for municipally-owned power generated by renewable facilities. As such, it conflicts with the reformation of transmission operations and pricing embodied in the California ISO’s Market Redesign and Technology Upgrade (MRTU) initiative. AB 2820 runs counter to the direction of the CAISO, which is to phase out the existing hodgepodge of firm

transmission access rights. It could also encourage the unwarranted expansion of publicly-owned utilities, to the detriment of adjacent investor-owned utilities and their ratepayers.

SUMMARY OF SUGGESTED AMENDMENTS:

Amend the bill to clarify that: *“Deliveries of renewable power under provisions of this act shall not have priority over other uses or users of utility transmission and distribution grids. Such deliveries shall be subject to the provisions of the California ISO’s Market Redesign and Technology Upgrade (MRTU) initiative, when it becomes effective.”*

DIVISION ANALYSIS (Energy Division):

- AB 2820 states: “Every electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to a local public agency shall, upon request by a local public agency, and without discrimination or delay, use those facilities to deliver renewable electricity generated by a local public agency.” This language appears to create a new class of firm transmission rights in which renewable-fueled electricity generated by a public agency and delivered to another public agency would have superior transmission access rights to other transmission users.
- AB 2820 as written could be interpreted as conflicting with ongoing efforts to promote nondiscriminatory access to the electric grid. The California ISO is in the process of implementing a major reformation of transmission grid operations and pricing, termed the Market Redesign and Technology Upgrade (MRTU)¹ initiative. The purpose is to improve the efficiency of transmission operations and facilitate a smoothly functioning market for electricity.
- By setting municipal owners of renewable generation as a special class with preferred transmission access rights, AB 2820 potentially confers an additional economic advantage on publicly-owned utilities, and could therefore lead to

¹ As stated in the December 21, 2007 CAISO FERC tariff: “The MRTU Tariff is the product of more than seven years of study, analysis, stakeholder input, coordination with state authorities, and [Federal Energy Regulatory] Commission guidance to address structural flaws in the CAISO’s electricity markets and to develop an improved infrastructure for the CAISO’s markets and operations. As the [FERC] Commission has recognized, the CAISO’s MRTU initiative fixes flawed market rules that contributed to the 2000-2001 Western energy crisis, brings greater transparency to prices, improves congestion management, provides for resource adequacy, enhances market power mitigation, and streamlines the CAISO’s daily operations. The MRTU Tariff will provide substantial benefits to customers not only in California but across the Western Interconnection. This [MRTU] tariff reflects the [FERC] Commission’s guidance in a series of more than 30 orders going back to the year 2000 providing guidance to the CAISO and stakeholders on the MRTU design.”

additional municipalization, which is often to the detriment of remaining investor-owned utilities and their ratepayers.

- Existing state and federal law grants municipal utilities access to investor-owned utility transmission and distribution grids, on a nondiscriminatory basis. Grid owners are not permitted to operate in a manner that impedes the ability of public agencies (or any other grid user) to deliver renewable (or nonrenewable) electric power. Therefore, AB 2820 is unnecessary, because there is no existing problem in connection with transmission access by the “local public agencies” (whom this bill is ostensibly intended to benefit) that requires a legislative solution at this time.

PROGRAM BACKGROUND:

- Historically, access to the grid has been subject to firm rights granted by contract to certain municipal utilities. Such contracts are being phased out and firm transmission access rights are not being renewed as contracts expire. The CAISO’s MRTU initiative is intended to provide nondiscriminatory access to all users of the electric grid. By setting municipal owners of renewable generation as a special class with preferred transmission access rights, AB 2820 appears to conflict with the direction and intent of MRTU.

LEGISLATIVE HISTORY:

Similar bills have been introduced this year proposing various “feed-in tariffs”, crediting mechanisms, or generation aggregation.

- AB 1714 (Negrete McCleod), as currently drafted, would codify a feed-in-tariff similar to the Commission’s recent AB 1969-implementing decision for up to 4MW projects. It would require publicly-owned utilities (POUs), effective 1, 2009, to make a renewable energy FIT available to its customers for facilities up to 4 MW as well (up to a statewide capacity of 240 Mw) in capacity at a base rate established by the Commission with adjustments by the POUs for the environmental and system benefits of renewable energy. The Senate Energy Committee passed SB 1714 (with significant amendments that are not yet in print) on April 15, 2008 (Vote: 6-1).
- AB 1807 (Fuentes) would require electrical corporations to offer feed-in tariffs to renewable electric generation facilities with effective generating capacities more than 1.5 MW and not more than 20 MW.
- AB 1920 (Huffman) seeks to allow the net energy metering of excess kWhs produced by solar energy systems funded by the California Solar Initiative and to incentivize the installations of solar energy systems beyond which is required to meet their on-site needs.

- AB 2466 (Laird) is similar to the intent of AB 2820 but with a different approach. The bill would allow local governments to count renewable production at one site against the energy usage of other sites under their control through a form of net-metering account aggregation.

FISCAL IMPACT:

The bill would have a fiscal impact of approximately \$100,000 for:

- One staff analysis (half time) to monitor and participate in new FERC proceedings.
- One PURA IV position (up to one-half time) to perform the require functions.

STATUS:

On April 7, 2008, the Assembly Committee on Utilities and Commerce passed AB 2820 to the Assembly Natural Resource Committee where it is awaiting a hearing.

SUPPORT/OPPOSITION:

Support: California Association of Sanitation Agencies (CASA)
Sierra Club California
Sonoma County Board of Supervisors

Opposition: Sempra Energy

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BILL LANGUAGE:

BILL NUMBER: AB 2820 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Huffman
(Coauthor: Senator Migden)

FEBRUARY 22, 2008

An act to add Article 13.5 (commencing with Section 398) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as introduced, Huffman. Renewable energy resources.

(1) Under existing law, the Public Utilities Commission is vested with regulatory authority over public utilities, including electrical corporations. The Public Utilities Act imposes various duties and responsibilities on the commission with respect to the purchase of electricity by electrical corporations and requires the commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard).

Existing law requires every electrical corporation to file with the commission a standard tariff for electricity generated by an electric generation facility, as defined, that is an eligible renewable energy resource and meets other size, deliverability, and interconnection requirements. Existing law requires the electrical corporation to make this tariff available to public water or wastewater agencies that own and operate an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the combined statewide cumulative rated generating capacity of those electric generation facilities equals 250 megawatts. Existing law provides that every kilowatthour of electricity generated by the electric generation facility counts toward the electrical corporation's renewables portfolio standard and resource adequacy requirements.

This bill would require an electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to a local public agency, as defined, upon the request of the local public agency, to use those facilities to deliver renewable electricity, as defined, generated by the local public agency. The bill would authorize a local public agency to designate specific renewable electric generation

facilities, as defined, owned by the local public agency for the generation of renewable electricity to be delivered to any local public agency, if the amount of all renewable electricity delivered to the electric grid by the designated renewable electric generation facility is the property of the generating local public agency. The bill would require a local public agency that receives renewable electricity delivered by an electrical corporation to pay certain rates and charges. The bill would require every electrical corporation to file with the commission a standard tariff for the delivery of renewable electricity pursuant to the bill, and to make these tariffs available to local public agencies that own and operate a renewable electric generation facility, upon request.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime. Because this bill would be part of the act and require an order or other action of the commission to implement its provisions and a violation of that order or action would be a crime, the bill would impose a state-mandated local program by expanding the definition of a crime.

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

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

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

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

SECTION 1. Article 13.5 (commencing with Section 398) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 13.5. Local Public Agencies

398. (a) As used in this section:

(1) "Environmental attributes" associated with the generation of renewable electricity include the credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances, however entitled, resulting from the avoidance of the emissions of any gas, chemical, or other substance attributable to a renewable electric generation facility.

(2) "Local public agency" means any city or county, whether general law or chartered, city and county, town, special district, school district, municipal corporation, political subdivision, joint powers authority or agency created pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, or other local public agency, if authorized by law to generate electricity, but shall not mean the state or any agency or department of the state.

(3) "Renewable electric generation facility" means a facility for the generation of electricity that is owned and operated by a local public agency that meets all of the following criteria:

(A) Has an effective generating capacity of not more than 20

megawatts.

(B) Is located on property owned or under the control of the local public agency.

(C) Is a facility described in paragraph (1) of subdivision (b) of Section 25741 of the Public Resources Code.

(4) "Renewable electricity" means electricity produced by a local public agency from a renewable electric generation facility.

(b) To ensure that no electrical corporation operates its transmission and distribution system in a manner that impedes the ability of public agencies to reduce their electricity costs through the delivery of renewable electricity generated by public agencies, an electrical corporation shall meet all of the requirements of this section.

(c) Every electrical corporation that owns and operates transmission and distribution facilities that deliver electricity at one or more locations to a local public agency shall, upon request by a local public agency, and without discrimination or delay, use those facilities to deliver renewable electricity generated by a local public agency. A local public agency may designate specific renewable electric generation facilities owned by the local public agency for the generation of renewable electricity to be delivered to any local public agency pursuant to this section, if the amount of all renewable electricity delivered to the electric grid by the designated renewable electric generation facility is the property of the generating local public agency.

(d) (1) No rule, order, or tariff of the commission implementing direct transactions is applicable to renewable electricity generated by a renewable electric generation facility, that is delivered to a local public agency for use by a local public agency, and is transported over the transmission and distribution system of an electrical corporation, pursuant to an election made by a local public agency pursuant to subdivision (c).

(2) Deliveries of renewable electricity generated by a renewable electric generation facility, and delivered to local public agencies for use by local public agencies, that are transported over the transmission and distribution system of an electrical corporation pursuant to subdivision (c), are not "direct transactions between electricity suppliers and end-use customers" within the meaning of Sections 365 and 366, and those sections are not applicable to those deliveries.

(3) Notwithstanding Section 218, a public agency that owns and operates a renewable electric generation facility is not an electrical corporation solely because of the delivery of renewable electricity to a public agency pursuant to this section.

(e) A local public agency that receives renewable electricity delivered by an electrical corporation pursuant to subdivision (c) shall pay the following:

(1) Applicable rates approved by the commission for distribution, or distribution and transmission, or any transmission rates as required under federal law.

(2) A standby charge, as defined in Section 2807, except that no standby charge shall be imposed on the electrical generating capacity or the kilowatthour production of renewable electricity generated by a renewable electric generation facility that, if operated by an eligible customer-generator pursuant to Section 2827, an eligible biogas digester customer-generator pursuant to Section 2827.9, or eligible fuel cell customer-generator pursuant to Section 2827.10,

would be exempt from standby charges. The commission shall adopt or maintain just and reasonable standby charges that are based only upon assumptions that are supported by factual data, and shall exclude any assumptions that forced outages or other reductions in renewable electricity generation by renewable electric generation facilities will occur simultaneously on multiple systems, or during periods of peak electrical system demand, or both.

(3) A surcharge to reimburse the Department of Water Resources for all charges that would otherwise be imposed on the local public agency by the commission to recover bond-related costs pursuant to an agreement between the commission and the Department of Water Resources pursuant to Section 80110 of the Water Code, as well as the costs of the department equal to the share of the department's estimated net unavoidable power purchase contract costs attributable to the local public agency. The commission shall ensure that the charges are nonbypassable.

(4) A departing load surcharge to reimburse the electrical corporation that previously served the local public agency for both of the following:

(A) The electrical corporation's unrecovered past undercollections for electricity purchases, including any financing costs, attributable to that local public agency, that the commission lawfully determines may be recovered in rates.

(B) Any additional costs of the electrical corporation recoverable in commission-approved rates, equal to the share of the electrical corporation's estimated net unavoidable electricity purchase contract costs attributable to the local public agency, as determined by the commission.

(f) The commission shall ensure that the delivery of renewable electricity by an electrical corporation pursuant to subdivision (c) does not result in a shifting of costs to bundled service customers, either immediately or over time.

(g) Every electrical corporation shall file with the commission a standard tariff for the delivery of renewable electricity pursuant to subdivision (c). Every electrical corporation shall make these tariffs available to local public agencies that own and operate a renewable electric generation facility, upon request. An electrical corporation may make the terms of the tariff available to local public agencies in the form of a standard contract subject to commission approval.

(h) The environmental attributes associated with renewable electricity generated by a local public agency at a renewable electric generation facility shall remain the property of the local public agency notwithstanding the transmission of the renewable electricity by an electrical corporation pursuant to subdivision (c).

SEC. 2. 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.