

*The following is the text of California AB 1890, signed into law by the Governor of California in September of 1996, and implementing the restructuring of the California electricity market. The excerpt below deals specifically with recovery of stranded costs and is provided to the Technical Working Group as a reference. Sections 367-375 of this bill deal principally with recovering stranded and transition costs. The full text and legislative history for AB 1890 is available at:*

[http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab\\_1851-1900/ab\\_1890\\_bill\\_960924\\_chaptered.html](http://www.leginfo.ca.gov/pub/95-96/bill/asm/ab_1851-1900/ab_1890_bill_960924_chaptered.html)

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**CALIFORNIA 1996 LEGISLATIVE SERVICE**  
**1996 Portion of 1995-96 Regular Session**  
**Additions are indicated by <<+ Text +>>; deletions by**  
**<<- \* \* \* ->>. Changes in tables are made but not highlighted.**  
**CHAPTER 854**  
**A.B. No. 1890**  
**PUBLIC UTILITIES—ELECTRICAL RESTRUCTURING**

**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.

<< CA PUB UTIL § 367 >>

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.

<< CA PUB UTIL § 368 >>

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.

<< CA PUB UTIL § 369 >>

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.

<< CA PUB UTIL § 370 >>

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.

<< CA PUB UTIL § 371 >>

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.

<< CA PUB UTIL Prec. § 840 >>

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

<< CA PUB UTIL § 840 >>

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.

<< CA PUB UTIL § 841 >>

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 <sup>2</sup> 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.