

APPENDIX A: RELEVANT CALIFORNIA PUBLIC UTILITIES CODES

CALIFORNIA PUBLIC UTILITIES CODE SECTION 851

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

CALIFORNIA PUBLIC UTILITIES CODE SECTION 367 (a) AND (b)

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 include transition costs as defined in subdivision (f) of Section 840, and shall be recovered from all customers or in the case

of fixed transition amounts, from the customers specified in subdivision (a) of Section 841, 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.
- (6) Fixed transition amounts, as defined in subdivision (d) of Section 840, may be recovered from the customers specified in subdivision (a) of Section 841 until all rate reduction bonds associated with the fixed transition amounts have been paid in full by the financing entity.

(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.

CALIFORNIA PUBLIC UTILITIES CODE SECTION 362

In proceedings pursuant to Section 455.5, 851, or 854, the commission shall ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power. In order to determine whether the facility needs to remain available and operational, the commission shall utilize standards that are no less stringent than the Western Systems Coordinating Council and North American Electric Reliability Council standards for planning reserve criteria.

CALIFORNIA PUBLIC UTILITIES CODE SECTION 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 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 finding 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 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.

CALIFORNIA PUBLIC UTILITIES CODE SECTION 454.3

The commission may, after a hearing, approve an increase of from one-half of 1 percent to 1 percent in the rate of return otherwise allowed an electrical corporation on its electric plant for investment by the corporation in facilities meeting one of the following requirements:

(a) The facility is designed to generate electricity from a renewable resource, including, but not limited to, solar energy geothermal steam, wind and hydroelectric power at new or existing dams; the facility is subject to Resources Agency review of its environmental impacts and determination that the facility is environmentally acceptable; its capital costs, when added to its costs of operation and maintenance, result in a cost of electricity generated over the useful life of the facility less than that of electricity generated by existing facilities utilizing nuclear power or fossil fuel; and the facility is

(b) The facility is capable of meeting the then applicable environmental pollution standards; its capital costs, when added to its costs of operation and maintenance, result in a cost of electricity generated over the useful life of the facility less than that of electricity generated by existing facilities utilizing nuclear power or fossil fuel; and the facility is uses and useful.

(c) The facility is experimental and is, in the determination of the commission, reasonable designed to improve or perfect technology for the generation of electricity from renewable resources or to more efficiently utilize other resources in a manner which will decrease environmental pollution from and lower the costs of the electricity generated.