

1998

## Electric Utilities. Assessments. Bonds.

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## Electric Utilities. Assessments. Bonds. Initiative Statute.

Official Title and Summary Prepared by the Attorney General

### ELECTRIC UTILITIES. ASSESSMENTS. BONDS. INITIATIVE STATUTE.

- Prohibits assessment of utility tax, bond payments or surcharges for payment of costs of nuclear power plants/related assets.
- Limits authority of electric companies to recover costs for non-nuclear generation plants.
- Prohibits issuance of rate reduction bonds and assessments on customers for payment of bond principal, interest, and related costs.
- Provides judicial review of Public Utilities Commission decisions relating to electric restructuring and financing costs by writ of mandate.
- May provide up to 20% electricity rate reduction for residential and small commercial customers of investor-owned utilities by January 1, 1999.
- Restricts customer information dissemination.

#### Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- State government net revenue reductions potentially in the high tens of millions of dollars annually through 2001-02.
- Local government net revenue reductions potentially in the tens of millions of dollars annually through 2001-02.
- State and local government savings in utility costs, potentially in the tens of millions of dollars annually through 2001-02.

#### Analysis by the Legislative Analyst

##### BACKGROUND

In 1996 and 1997, the state significantly changed the way the electricity industry is regulated in California. New state laws deregulated the *generation* of electricity—that is, its actual production. (They did not, however, deregulate the transmission or distribution of electrical power.) These new laws also set up statewide entities to ensure the availability of power and the reliability of the statewide electrical system.

Before deregulation, private utilities were able to recover the costs of generating electricity through the rates they charged to their customers, as long as the California Public Utilities Commission (PUC) approved these costs as “reasonable.” Under deregulation, the prices that customers pay for electricity will not be set by government-approved rates, but will be determined in the competitive market.

The state’s “restructuring” of the electricity industry primarily affects the state’s *private* electric utilities. There are three major private electricity utilities in California: Pacific Gas & Electric, San Diego Gas & Electric, and Southern California Edison.

There are three main provisions of the restructuring laws that would be affected by this measure.

**Transition Cost Recovery.** Restructuring allows private electric utilities to recover their “transition” costs through surcharges to customers. These “transition” costs (also referred to as “stranded” costs) are defined as the costs of existing power plants that are unprofitable in a competitive energy market. The PUC was required to approve the amount of transition costs the utility companies could recover through surcharges. The transition cost recovery period began January 1, 1998 and

ends no later than December 31, 2001. There are some exceptions to this time line, such as (1) certain costs related to the San Onofre nuclear power plants in San Diego County, which can be recovered until December 31, 2003; and (2) costs related to contracts to purchase electricity from certain renewable generation facilities (for example, windmills and solar power) and cogeneration facilities, which can be recovered over the life of the contracts.

**Required Rate Reduction.** The restructuring laws require a 10 percent reduction in electricity rates that were in effect on June 10, 1996 for residential and small commercial customers of the private utilities. This rate reduction was effective January 1, 1998 and continues until the earlier of March 31, 2002, or such time as transition costs have been fully recovered. The Legislature also expressed its intent, but did not require, that a cumulative rate reduction of 20 percent be achieved by April 1, 2002 for these customers.

**Bonds.** The restructuring laws also called for the issuance of “rate reduction” bonds. Before the bonds could be sold, the PUC was required to find that issuance of the bonds would help provide the 10 percent rate reduction for residential and small commercial customers. The restructuring laws also declare that (1) the bonds are not to be an obligation of the state or any of its political subdivisions and (2) the state will not limit or alter the provisions relating to transition charges and the bond arrangements.

In November and December 1997, a total of \$6 billion worth of such bonds were sold by a special purpose trust authorized by the state. The bonds are to be paid off through additional

charges on the electricity bills of residential and small commercial customers of the private utilities.

#### **PROPOSAL**

This initiative measure modifies the provisions of current law discussed above in the following manner:

- **Transition Cost Recovery.** The measure would not allow private electric utilities to charge customers for the transition costs for nuclear power plants (other than reasonable decommissioning costs). In addition, before the private utilities could charge customers for the transition costs of non-nuclear generation (other than costs associated with renewable electricity generation facilities) the utilities would be required to demonstrate to the PUC that these costs could not be recovered in the competitive market (with a fair rate of return).
- **Required Rate Reduction.** The measure would require at least a 20 percent rate reduction (rather than the 10 percent reduction required in current law) on the total electricity bill for residential and small commercial customers compared to the rates for these customers on June 10, 1996. The rate reduction would begin January 1, 1999. (The measure is unclear as to how long this rate reduction would last.)
- **Bonds.** The measure would not allow the utilities to charge customers for the costs of repaying the rate reduction bonds. Legal questions have been raised regarding the application of the measure's provisions to these bonds. For instance, the measure could be interpreted as interfering with a contractual arrangement already entered into with the bondholders. (The state and federal constitutions prohibit impairments of contracts.) At this time, it is not clear whether the measure would have any impact on the repayment of these bonds or, if it did, what the impact would be.

The measure also requires certain PUC decisions relating to electric restructuring and the financing of transition costs be referred to the courts of appeal, rather than directly to the California Supreme Court.

#### **FISCAL EFFECT**

The measure has several provisions that probably would be challenged in the courts. How these issues are ultimately resolved by the courts could significantly affect the fiscal impact of the measure. However, as written, the measure could result in significant impacts on state and local government revenues and expenditures.

In estimating the measure's fiscal impacts, a key assumption is the level of stranded assets currently eligible for cost recovery by the utilities but that would not be eligible for recovery under this measure. In order to estimate the potential impacts, we have assumed that stranded costs affected by this measure would approximate the value of the utilities' nuclear-related stranded costs—about \$10 billion.

#### **State and Local Tax Revenues**

**Impacts on Utilities.** With regard to taxes paid by the utilities:

- The elimination of transition costs currently collected by the utilities (through billings to customers) would reduce the income to these utilities, which is currently subject to the state bank and corporation tax. This would result in

reductions in state tax revenues, potentially up to \$200 million annually through 2001–02. In addition, because many local governments levy utility fees based on billings, their revenues would also decline—perhaps by tens of millions of dollars statewide per year through 2001–02. If the inability to recover stranded costs led to an early shutdown of any nuclear plant, there would be further reductions in corporate income taxes.

- The measure could also result in a reduction in property tax valuations of nuclear facilities because of the inability of a private utility to recover its stranded costs. Any such reductions would result in unknown losses in local property taxes—potentially in the low tens of millions of dollars annually.

**Impacts on Utility Customers.** With regard to taxes paid by the utilities' customers:

- Customers receiving utility rate reductions would have more discretionary income available to save or spend on other goods and services. This could result in state and local governments receiving more revenues from the sales tax. This additional revenue could total in the high tens of millions of dollars annually through 2001–02, of which about three-fourths would go to state government and the remainder to local governments.
- The reduction in transition cost payments would lower the energy-related costs of business customers, leading to higher net incomes that would be subject to state corporate and personal income taxes. We estimate that this could result in more tax revenue to the state totaling in the high tens of millions of dollars per year through 2001–02.

**Summary of Revenue Effects.** The net impact of these changes on state government revenues would be annual revenue reductions, potentially in the high tens of millions of dollars annually through 2001–02. The net impact on local governments would be revenue reductions, potentially in the tens of millions of dollars annually through 2001–02.

#### **State and Local Expenditures**

**State Spending on Schools.** The measure could affect state spending on schools in two ways. First, the reduction in state revenues (discussed above) could reduce the amounts the state would have to pay schools in future years. This could result in state savings—potentially up to half the amount of the annual state revenue losses. Second, the state would also be required to offset any local school district losses of property taxes that resulted from any reduction in the property values of nuclear facilities. This would increase state spending on schools.

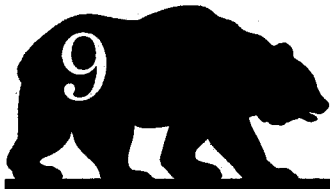
**Utility Cost Savings.** The state and local governments would realize savings associated with lower utility rates resulting from elimination of transition costs related to nuclear power plants. The savings could be in the tens of millions of dollars annually.

**State Administrative Costs.** The measure could result in additional workload for the PUC and the courts. This would involve activities such as hearings regarding rate reductions and related fair rate of return. The measure could also require additional legal costs associated with cases before the courts of appeal. These costs would probably be less than \$5 million annually.

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**For the text of Proposition 9 see page 118**

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## Electric Utilities. Assessments. Bonds. Initiative Statute.

### Argument in Favor of Proposition 9

For years, Californians have been forced to buy electricity from giant utility monopolies that charge some of the highest electric rates in the nation. That was supposed to change when federal policy opened the way for all states to break up the utility monopolies that control electricity and allow consumers to choose competing suppliers. But California's biggest utility companies—SoCal Edison, PG&E and San Diego Gas & Electric—afraid of losing their protected markets and guaranteed profits, spent millions on lobbyists and campaign contributions to cut a special deal with the politicians in Sacramento.

What they got stands out as one of the worst cases of legislative pandering in California history. Instead of opening California to competition, consumer choice, and lower rates, the State Legislature gave the giant utilities special advantages that wipe out any real competition and block residential consumers and small businesses from genuine rate reductions.

As part of the deal, the utilities were allowed to freeze the price of electricity for residential and small business users at recent high levels. The giant utilities also got their money-losing investments in nuclear power paid off as part of a disguised \$28 billion tax on consumers' electricity bills—an outrageous act of corporate welfare costing average ratepayers close to \$1000 (much more if you have air conditioning). Thanks to the giant utilities, consumers are paying a high price for "deregulation" but get none of the benefits.

Adding insult to injury, the Legislature sugarcoated the \$28 billion utility bailout tax with a phony 10% reduction. The utility companies were allowed to borrow billions to finance the rate cut. But consumers will have to pay the borrowed money back, with interest, every month for ten years! It's right on your bill. Your monthly financing charge (called "TTA" on your bill) is greater than the rate cut. It's not a genuine rate reduction. It's

a rip-off. Californians deserve better.

That's why taxpayers, consumer advocates, small businesses and environmentalists, along with nearly 500,000 California voters, have placed Proposition 9 on the ballot.

Prop. 9 will:

- Block the \$28 billion utility bailout tax on consumers and small businesses
- Provide an immediate rate cut of 20%
- Open California to real competition and consumer choice
- Allow a competitive market to set rates (which a California Energy Commission study estimates will drop as much as 32%!)
- Protect individual privacy by banning the sale of customer information without permission
- Make sure consumers have the information they need to choose the best electric supplier *while maintaining a safe and reliable electric system.*

Proposition 9 is a carefully and responsibly crafted initiative, written by utility experts and consumer advocates. *It has already passed a court challenge by the giant utilities and their allies.* They're spending millions to confuse and frighten voters. Don't be fooled. Get the facts. Read your electricity bill. Talk to your friends. Decide for yourself. Prop 9 deserves your support. Vote YES on Prop 9.

**HARVEY ROSENFELD**

*Co-Chair, Californians against Utility Taxes (CUT)*

**NETTIE HOGE**

*Executive Director, The Utility Reform Network (TURN)*

**HARRY M. SNYDER**

*Senior Advocate, Consumers Union, Publisher of Consumer Reports*

### Rebuttal to Argument in Favor of Proposition 9

Consumer representatives, leading environmental, taxpayer, public safety and school groups urge you to Vote NO on Proposition 9.

Vote NO! Give lower costs and the rate cuts provided by competition and choice in the electric industry a chance to work.

CONSUMER ADVOCATE DAVID HOROWITZ spends his career unmasking consumer rip-offs. He says Proposition 9 won't work:

"There is no bailout. Their promise of a rate cut is bogus. This measure will result in higher utility bills. The way to cut our electric bills is with competition and choice."

THE CALIFORNIA ORGANIZATION OF POLICE AND SHERIFFS says "Vote No":

"Proposition 9 wipes out financing for \$6 billion in previously sold bonds. Taxpayers will have to pick up the tab or we'll have to cut police, fire and other services."

THE CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION says kids will be hurt:

"Proposition 9 creates financial chaos that will undermine all the progress we've made in getting our schools back on track in recent years."

THE CALIFORNIA CHAMBER OF COMMERCE says Proposition 9 won't work:

"Proposition 9 sacrifices reliable electric service for an uncertain future. We have a program to create competition and lower prices. They're trying to fix something that's not broken."

THE ENVIRONMENTAL DEFENSE FUND and THE NATURAL RESOURCES DEFENSE COUNCIL are opposed to Proposition 9. They say, "It would lead to years of litigation and delay."

Vote NO in order to promote efficient, renewable and low-cost energy.

Join us. Vote NO on Proposition 9.

**DAVID HOROWITZ**

*Host of "Fight Back with David Horowitz"*

**DON BROWN**

*President, California Organization of Police and Sheriffs (COPS)*

**MS. RUSTY HEROD**

*President, California School Employees Association*

# Electric Utilities. Assessments. Bonds. Initiative Statute.



## Argument Against Proposition 9

Proposition 9 is bad for California—bad for consumers, for taxpayers, for our economy, for our schools, for our environment and for our communities.

Vote No on Proposition 9 because it would hit taxpayers with liability for over \$6 billion in bond payments.

Vote No on Proposition 9 because it would undermine California's stable, affordable competitive electric system, eliminating consumer choice and driving "clean energy" electric service providers out of California.

Vote No on Proposition 9 because it would ultimately force higher electric rates on consumers and businesses.

Vote No on Proposition 9 because it would cut funding for our schools by hundreds of millions of dollars.

Vote No on Proposition 9 because it would threaten California's economy by jeopardizing state and local bond ratings.

Proposition 9 can't deliver on its promises. Proponents focused on only part of a very complex program to bring new competition to California's electricity marketplace. Proposition 9 is so poorly written that it would cost taxpayers millions of dollars in useless bureaucratic red tape, attorney fees and lawsuits.

Many of your fellow Californians are voting No on Proposition 9 because it won't work and is too costly.

The California Schools Boards Association warns: "California schools can't afford a hit on the state budget. Kids and our schools will be hurt by this Proposition. Our kids deserve better."

Jerry Meral, Executive Director of The Planning and Conservation League, says: "Proposition 9 would deal a serious blow to clean, environmentally safe power and energy

conservation. Protect the California environment by voting NO."

The California Taxpayers Association says: "Proposition 9 would make taxpayers liable for \$6 billion in bond debts, creating a gaping hole in the state budget and raising the serious threat of tax increases. VOTE NO."

The State Department of Finance warns: "Planning for a budget contingency of potentially [\$6] billion could directly affect every program in the state budget . . ."

Betty Jo Toccoli, Chair of the California Small Business Roundtable says: "Small businesses want to be able to lower their utility costs by choosing the lowest-cost electric company. Proposition 9 will force us back to monopoly suppliers and significantly higher electric bills."

The real savings for Californians will come when true competition reduces electric rates. But Proposition 9 would pull the plug on competition just as it is getting underway in California.

Proposition 9 promises too much, too fast and forces taxpayers to pay for its mistakes.

When something sounds too good to be true, it usually is. Proposition 9 was written to sound appealing, but it is a serious mistake we cannot afford.

Vote No on Proposition 9.

**LARRY McCARTHY**

*President, California Taxpayers Association*

**JERRY MERAL**

*Executive Director, Planning & Conservation League*

**ALLAN ZAREMBERG**

*President, California Chamber of Commerce*

## Rebuttal to Argument Against Proposition 9

California's biggest electric utilities have deceived consumers for decades.

They stuck Californians with some of the nation's highest electric rates. They made money-losing investments in nuclear power costing consumers \$50 billion. They claimed to support renewable energy like wind and solar but often worked behind the scenes against it. Their proposed rate hikes were inflated by billions of dollars in unjustified claims.

These utility companies and their special interest allies claim that Proposition 9 will cause a power system collapse, economic meltdown, school bankruptcies and taxpayer liability for utility bonds.

With their record of deception, who can believe them?

In fact, state law already prohibits taxpayer liability for the utilities' \$6 billion bond debt. Only Proposition 9 will protect consumers and small businesses from being saddled with the utilities' debt. Proposition 9 holds utility companies and their investors—not consumers or taxpayers—responsible for their debts.

A preliminary analysis by the California Energy Commission estimates that Proposition 9 will lower electric rates by as much as 32%, saving public agencies and school districts hundreds of millions. Proposition 9 benefits California's economy because it puts billions of dollars back in the hands of consumers who live and work in California.

It's time utility companies stopped playing games with California's energy future. Californians want fair rates. A 20% real rate reduction. Reliable and safe energy choices. No bailout of nuclear power. No corporate welfare. No deception. On November 3, vote YES on Proposition 9.

**RALPH NADER**

*Consumer Advocate*

**DAVID BROWER**

*Founder, Friends of the Earth*

**EUGENE P. COYLE, Ph.D.**

*Utility Economist*

## Text of Proposed Laws—Continued

Constitutions of the United States and California. Any provisions of this act held to be invalid shall be severed from the remaining provisions of this act, which shall be given full effect.

SEC. 17. Except where expressly provided otherwise, this act shall become operative for all school terms that commence

at least 60 days after the effective date of this act.

SEC. 18. The provisions of this act may be amended by a statute that becomes effective upon approval by the electorate or by a statute to further the act's purpose that is passed by a four-fifths vote of each house of the Legislature and signed by the Governor.

### Proposition 9: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure amends and adds sections to the Public Utilities Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

#### PROPOSED LAW

##### THE UTILITY RATE REDUCTION AND REFORM ACT

###### SECTION 1. Findings and Declarations.

The People of California find and declare as follows:

The cost and dependability of California's electric utility service are threatened by a new law that was intended to reduce regulation of electric utility companies in this state.

Any change in the way electricity is sold should benefit all electric utility customers, including residential and small business customers, and should result in a fair and competitive marketplace.

Instead of creating a fully competitive market for electricity, the new law unfairly favors existing electric utility monopolies by forcing customers to pay rates more than 40 percent higher than the market price in order to bail out utilities for their past bad investments.

As a result of this \$28 billion bailout for electric utility companies, the average California household will pay more than \$250 more per year for electricity than it would in a fully competitive market.

Residential and small business customers should not be required to bear the costs of bonds used by utility companies to pay for past bad investments.

It is against public policy for residential and small business customers to be required to pay for the imprudent and uneconomic decisions of electric utility companies to invest in nuclear power plants that the public did not want and that threaten the health and safety of this state.

Under the new law, deregulation of electric utility companies may result in marketing abuses that harm residential and small business customers. Such abuses may include the selling of information about these customers to other companies for profit.

Therefore, the People of California declare that it is necessary to protect residential and small business customers from unfair and unjustified taxes and surcharges that will force them to subsidize electric utility companies. It is also necessary to ensure that residential and small business customers directly benefit from deregulation of electric utility companies.

###### SEC. 2. Purpose.

The purpose of this chapter is to:

1. Reduce residential and small commercial electricity rates by 20 percent to assure that these customers receive a direct benefit from the transition to the competitive marketplace for electricity.

2. Prohibit taxes, surcharges, bond payments, or any other assessment from being added to electricity bills to pay off utility companies' past bad investments in nuclear power plants and other generation-related costs.

3. Prohibit bonds from being used to force residential and

small business customers to pay for past bad investments by electric utility companies.

4. Provide for fair and public review of California Public Utilities Commission decisions related to electricity price and services.

5. Protect the privacy of utility customers and provide the information consumers need to obtain low cost and high quality electric service.

SEC. 3. Section 368.1 is added to the Public Utilities Code, to read:

368.1. (a) *No later than January 1, 1999, electricity rates for residential and small commercial customers shall be reduced so that these customers receive rate reductions of at least 20 percent on their total electricity bill as compared to the rate schedules in effect for these customers on June 10, 1996.*

(b) *The rate reductions described in subdivision (a) shall be achieved through cutting payments to electric corporations for their nuclear and other uneconomic generation costs as described in Sections 367.1 and 367.2.*

(c) *No utility tax, bond payment, surcharge, or other assessment in any form may be levied against any electric utility customer to pay for the rate reductions described in subdivisions (a) and (b).*

SEC. 4. Section 367.1 is added to the Public Utilities Code, to read:

367.1. (a) *Effective immediately, costs for nuclear generation plants and related assets and obligations shall not be paid for by electric utility customers, except to the extent that these costs are recovered by the sale of electricity at competitive market prices, as reflected in independent Power Exchange revenues or in contracts with the Independent System Operator.*

(b) *No utility tax, bond payment, surcharge, or other assessment in any form may be levied against any electric utility customer for the recovery of nuclear costs described in subdivision (a).*

(c) *This section does not apply to reasonable nuclear decommissioning costs as referenced in Section 379.*

SEC. 5. Section 367.2 is added to the Public Utilities Code, to read:

367.2. (a) *Effective immediately, costs for non-nuclear generation plants and related assets and obligations may not be recovered from electric utility customers under the cost recovery mechanism provided for by Sections 367 to 376, inclusive, except to the extent that those costs are recovered by the sale of electricity at competitive market rates from independent Power Exchange revenues or from contracts with the Independent System Operator, unless the electric utility first demonstrates to the satisfaction of the commission at a public hearing that failure to recover those costs would deprive it of the opportunity to earn a fair rate of return.*

(b) *This section does not apply to costs associated with renewable non-nuclear electricity generation facilities described in paragraph (3) of subdivision (c) of Section 381, or to costs associated with power purchases from qualifying facilities pursuant to the federal Public Utility Regulatory Policies Act of 1978 and related commission decisions.*

SEC. 6. Section 840.1 is added to the Public Utilities Code, to read:

840.1. *Notwithstanding current Sections 840 to 847, inclusive:*

(a) *No electric corporation, affiliate of an electric corporation,*

or any other financing entity may assess or collect any utility tax, bond payment, surcharge, or any other assessment authorized by a Public Utilities Commission financing order issued pursuant to Sections 840 to 847, inclusive, for the purpose of paying principal, interest, or other costs of any bonds authorized by those sections.

(b) The Public Utilities Commission may not issue any financing order pursuant to Sections 840 to 847, inclusive, after the effective date of this section.

(c) Any electric corporation, affiliate of an electric corporation, or other financing entity that is subject to a financing order issued under Section 841 that is determined by a court of competent jurisdiction to be enforceable notwithstanding subdivision (a) of this section, shall offset any utility tax, bond payment, surcharge, or other assessment described in subdivision (a) collected from any customer with an equal credit to be applied concurrently with the collection of the utility tax, bond payment, surcharge, or other assessment.

SEC. 7. Section 841.1 is added to the Public Utilities Code, to read:

841.1. Any underwriter or bond purchaser who purchases rate reduction bonds after November 24, 1997, issued pursuant to current Sections 840 to 847, inclusive, shall be deemed to have notice of the provisions of Sections 367.1, 367.2, 368.1, and 840.1.

SEC. 8. Section 1701.5 is added to the Public Utilities Code, to read:

1701.5. (a) Any action or proceeding of the Public Utilities Commission pursuant to Sections 367.1, 367.2, 368.1, and 840.1 shall require a public hearing where evidence is taken by, and discretion is vested in, the Public Utilities Commission.

(b) Any change to the amount of above-market costs for non-nuclear generation plants and related assets and obligations being recovered from utility customers shall be made only after the electrical corporation has provided notice to the public pursuant to Section 454.

(c) Any action or proceeding to attack, review, set aside, void, or annul a determination, finding, or decision of the Public Utilities Commission relating to electric restructuring under Chapter 2.3 (commencing with Section 330) and financing of transition costs as described in Article 5.5 (commencing with Section 840) of Chapter 4 shall be in accordance with Section 1094.5 of the Code of Civil Procedure. In any such action, the writ of mandate shall lie from the court of appeals to the Public Utilities Commission. The court may not exercise its independent judgment, but shall determine only whether the determination, finding, or decision of the Public Utilities Commission is supported by substantial evidence in light of the whole record.

SEC. 9. Section 394.15 is added to the Public Utilities Code, to read:

394.15. The confidentiality of residential and small commercial customer information shall be fully protected as provided by law. No entity providing electricity services, including an electric corporation, may provide information about a residential or small commercial customer to any third party without the express written consent of the customer.

SEC. 10. Section 393 is added to the Public Utilities Code, to read:

393. The Public Utilities Commission shall require each electric utility or electric service provider to provide information or materials with each utility bill issued to residential and small commercial customers as the commission determines are necessary to assist consumers in obtaining low-cost, high-quality electric service options, including electric service options that reduce environmental impacts such as those that rely on renewable energy sources, and to protect the consumers' interest in all matters concerning safe and dependable delivery of electric service.

SEC. 11. Section 330.1 is added to the Public Utilities Code, to read:

330.1. (a) "Utility tax," "bond payments," "surcharge," "assessment," or "involuntary payment" mean any charge that serves to permit an electric corporation to recover the value of uneconomic assets from ratepayers, and includes, but is not limited to, a "fixed transition amount," as defined by subdivision (d) of Section 840, and the "competition transition charge" that is the nonbypassable charge referred to in Sections 367 to 376, inclusive.

(b) For purposes of this section and Sections 367.1, 367.2, 368.1, 393, and 840.1, the terms "electric utility," "electric utility company," and "electric corporation" have the same meaning as the term "electrical corporation" as defined in Section 218.

SEC. 12. Section 367 of the Public Utilities Code is amended to read:

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 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:

(1) 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

## Text of Proposed Laws—Continued

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.

(e)

(b) 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 the 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 powerplants 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)

(c) 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)

(d) (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 firewall 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 firewall and rate freeze principles are not violated.

SEC. 13. Section 368 of the Public Utilities Code is amended to read:

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 if 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 for 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, that 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 subdivision. 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 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 that 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)

(e) 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.

(g) ~~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.~~

SEC. 14. Initiative Integrity.

(a) This act shall be broadly construed and applied in order to fully promote its underlying purposes, and to be consistent with the United States Constitution and the California Constitution. If any provision of this act conflicts directly or indirectly with any other provision of law, including but not limited to the cost recovery mechanism provided for by Sections 367 through 376 of the Public Utilities Code, or any other statute previously enacted by the Legislature, it is the intent of the voters that those other provisions shall be null and void to the extent that they are inconsistent with this act, and are hereby repealed.

(b) No provision of this act may be amended by the Legislature except (1) to further the purpose of that provision, by a statute passed in each house by rollcall vote entered in the journal, two thirds of the membership concurring, or (2) by a statute that becomes effective only when approved by the electorate. No amendment by the Legislature may be deemed to further the purposes of this act unless it furthers the purpose of the specific provision of this act that is being amended. In any judicial action with respect to any legislative amendment, the court shall exercise its independent judgment as to whether or not the amendment satisfies the requirements of this subdivision.

(c) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect in the absence of the invalid provision or application. To this end, the provisions of this act are severable.

(d) It is the will of the People that any legal challenges to the validity of any provision of this act be acted upon by the courts on an expedited basis.

### Proposition 10: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the California Constitution.

This initiative measure expressly amends the California Constitution by adding sections thereto, and adds sections to the Health and Safety Code and the Revenue and Taxation Code. New provisions proposed to be added are printed in *italic type* to indicate they are new.

#### PROPOSED LAW

#### CALIFORNIA CHILDREN AND FAMILIES FIRST INITIATIVE

SECTION 1. Title. This measure shall be known and may be cited as the "California Children and Families First Act of 1998."

SEC. 2. Findings and Declarations. The people find and declare as follows:

(a) There is a compelling need in California to create and implement a comprehensive, collaborative, and integrated system of information and services to promote, support, and

optimize early childhood development from the prenatal stage to five years of age.

(b) There is a further compelling need in California to ensure that early childhood development programs and services are universally and continuously available for children until the beginning of kindergarten. Proper parenting, nurturing, and health care during these early years will provide the means for California's children to enter school in good health, ready and able to learn, and emotionally well developed.

(c) It has been determined that a child's first three years are the most critical in brain development, yet these crucial years have inadvertently been neglected. Experiences that fill the child's first three years have a direct and substantial impact not only on brain development but on subsequent intellectual, social, emotional, and physical growth.

(d) The seminal Starting Points report by the Carnegie Corporation of New York concludes that "how children function from the preschool years all the way through adolescence, and even adulthood, hinges in large part on their experiences before the age of three."

(e) New research from many sources, including the Carnegie Corporation, the Baylor College of Medicine, and the White House Conference on Early Childhood Development,