

State of California

Public Utilities Commission  
San Francisco

## MEMORANDUM

Date : April 30, 1990  
To : The Commission  
(Meeting of May 4, 1990)  
From : Peter Arth, Jr.  
Interim Director  
Office of Governmental Affairs

File No.:

Subject : AB 2805 (Hauser), as amended on April 16, 1990:  
Energy and water utilities - CPUC investigation of out-of-service  
generation or production facilities.

**RECOMMENDATION:** Take neutral position if amended as discussed,  
otherwise continue to oppose the bill.

**FACTS:** The initial version of AB 2805 was reviewed at the  
Commission's meeting on March 14 (memo attached), and the  
Commission voted to oppose this measure due to the policy and  
drafting concerns discussed in the memo. In response to the  
CPUC's opposition, the bill's sponsor (SCE) incorporated  
amendments on April 16 to limit the desired exemption from the  
notice and OII requirements of Section 455.5 from a broad range  
of maintenance, repair, or modification activities to "...  
planned outages of predetermined duration scheduled in advance."

A copy of the amended bill is attached.

The amended version of AB 2805 was heard by the AU&C Committee on  
April 16, and passed out (11-0) after a brief discussion. There  
was no opposition to the bill other than the concerns expressed  
by the CPUC toward the initial version.

**DISCUSSION:** The amended bill is a significant improvement over  
the initial SCE proposal because it reduces the scope of the  
exemption to planned outages such as scheduled maintenance or  
refueling of electric generation facilities. This narrowed  
exemption helps to preserve the value of the notice and  
investigation procedure for unplanned outages of lengthy duration  
at major energy and water facilities, and also reduces the  
staff's earlier concerns toward having to determine what  
maintenance or repairs are "normal" or "necessary" for purposes  
of the exemption proposed by the initial version.

Even as amended, the CACD still questions the need for this bill, arguing that correction of design, construction, and operational errors may be arranged as "... planned outages of predetermined duration scheduled in advance." In this regard, the Commission may wish to seek further amendment to limit the effect of this exemption to the mandatory investigation procedure (Sec. 455.5(c)), but continue to require notice (pursuant to subsection (b)) for outages of more than 9 months even on a planned basis. Since the Commission can initiate a formal investigation on its own motion at any time, this would offer a reasonable compromise on revising existing law to deal with the scheduled maintenance issue.

PAJ:cdl

State of California

Public Utilities Commission  
San Francisco

## M E M O R A N D U M

Date : March 8, 1990  
To : The Commission  
(Meeting of March 14, 1990)  
From : Peter Arth, Jr.  
Assistant General Counsel

File No.:

Subject : AB 2805 (Hauser), as introduced: Energy and water utilities - CPUC investigation of out-of-service generation or production facilities

**RECOMMENDATION:** Oppose unless amended to clarify impact of proposed maintenance and repair amendment on P.U. Sec. 455.5.

**FACTS:** Legislation was enacted in 1986 (AB 2378 - Hauser) to assure that the Commission is periodically informed by electric, gas, heat, or water corporations regarding the status of out-of-service generation or production facilities. In the instance of a major facility which is out of service for nine consecutive months, a utility is required to give immediate notification to the Commission, which is then required to institute an investigation within 45 days of such notification which orders the rates associated with the facility subject to refund, and allows a determination of whether the circumstances of the outage should result in eliminating or reducing the costs associated with the outage for rate-setting purposes. (P.U. Code Sec. 455.5) This law was responsible for two recent OII's issued in response to SCE's notification of an outage of Palo Verde Units 1 and 3 (I.89-12-025), and PG&E's notification of an outage (and retirement) of its Geysers Unit 15 (I.90-02-043). With regard to the Palo Verde facilities, SCE's notification stated that the reasonable and common sense interpretation of Section 455.5 is to exclude the time for refueling in calculating when a nuclear plant has been "... out of service for nine or more consecutive months." The Commission included this issue within the scope of its investigation. (mimeo, pg. 2)

**AB 2805** attempts to resolve the maintenance/repair issue raised by amending Sec. 455.5(a) to include the following provision:

"For the purposes of this subdivision, the commission shall not include the period of time that normal maintenance activities are being conducted or necessary repairs or modifications are being made in determining the period of time that a facility is out of

service, if the corporation is actively pursuing the restoration of the facility to service, as determined by the commission."

The bill makes a similar change to the periodic notification provision in Section 455.5.

A copy of the bill is attached.

This measure is sponsored by Southern California Edison. It is tentatively set for hearing in the Assembly Utilities and Commerce Committee on March 26.

**DISCUSSION:** This bill raises two concerns. From a policy standpoint, it is not clear that an exception for routine repair and maintenance periods is necessary or appropriate. This issue was debated during the passage of the 1986 legislation, and resolved with the understanding that a service outage of nine consecutive months for a major facility was of sufficient importance to warrant a formal CPUC investigation, even though routine outages for maintenance or refueling may occupy part of that period. In addition, the statute does not imply imprudent utility behavior due to such outages, and the above-mentioned OII's specifically state that the Commission does not presume either reasonable or unreasonable behavior by the respondent utilities.

If the above-mentioned clarification is desirable on a policy basis, the Commission should oppose this measure until it is re-drafted to more clearly amend the existing procedure. For example, tolling the nine month period for "necessary repairs or modifications" other than routine maintenance may exempt the types of outage events which are most likely to require investigation for unreasonable or imprudent utility actions. Although the proposed language gives the Commission some control in exercising this provision, it also would introduce a good deal of uncertainty into the process of issuing an OII under the existing law.

As such, the Commission should oppose this measure unless revised to deal with routine outages in a clearer fashion.

PAJ:afm

Attachment

A - CACO  
DRA

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2805**

Introduced by Assembly Member Hauser

February 7, 1990

An act to amend Section 455.5 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2805, as introduced, Hauser. Rates: out of service facilities.

Existing law permits the Public Utilities Commission, in establishing rates for any electrical, gas, heat, or water corporation, to eliminate consideration of the value of any portion of any electric, gas, heat, or water generation or production facility which, after having been placed in service, remains out of service for 9 or more consecutive months, and to disallow any expenses related to that facility.

This bill would provide that, for the purposes of this provision, the commission shall not include the period of time that normal maintenance activities are being conducted or necessary repairs or modifications are being made in determining the period of time that a facility is out of service, if the corporation is actively pursuing the restoration of the facility to service, as determined by the commission.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 455.5 of the Public Utilities Code  
2 is amended to read:

3 455.5. (a) In establishing rates for any electrical, gas,  
4 heat, or water corporation, the commission may  
5 eliminate consideration of the value of any portion of any  
6 electric, gas, heat, or water generation or production  
7 facility which, after having been placed in service,  
8 remains out of service for nine or more consecutive  
9 months, and may disallow any expenses related to that  
10 facility. Upon eliminating consideration of any portion of  
11 a facility or disallowing any expenses related thereto  
12 under this section, the commission shall reduce the rates  
13 of the corporation accordingly and shall, for accounting  
14 purposes, record the value of that portion of the facility  
15 in a deferred debit account and shall treat this amount  
16 similar to the treatment of the allowance for funds used  
17 during construction. When that portion of the facility is  
18 returned to useful service, as provided in subdivision (c),  
19 the corporation may apply to the commission for the  
20 inclusion of its value and expenses related to its operation  
21 for purposes of the establishment of the corporation's  
22 rates.

23 *For the purposes of this subdivision, the commission*  
24 *shall not include the period of time that normal*  
25 *maintenance activities are being conducted or necessary*  
26 *repairs or modifications are being made in determining*  
27 *the period of time that a facility is out of service, if the*  
28 *corporation is actively pursuing the restoration of the*  
29 *facility to service, as determined by the commission.*

30 (b) Every electrical, gas, heat, and water corporation  
31 shall periodically, as required by the commission, report  
32 to the commission on the status of any portion of any  
33 electric, gas, heat, or water generation or production  
34 facility which is out of service, including any period of  
35 time a facility is out of service for normal maintenance  
36 activities or necessary repairs or modifications, and shall  
37 immediately notify the commission when any portion of  
38 the facility has been out of service for nine consecutive

1 months.

2 (c) Within 45 days of receiving the notification  
3 specified in subdivision (b), the commission shall  
4 institute an investigation to determine whether to reduce  
5 the rates of the corporation to reflect the portion of the  
6 electric, gas, heat, or water generation or production  
7 facility which is out of service.

8 The commission's order shall require that rates  
9 associated with that facility are subject to refund from the  
10 date the order instituting the investigation was issued.  
11 The commission shall consolidate the hearing on the  
12 investigation with the next general rate proceeding  
13 instituted for the corporation.

14 (d) Upon being informed by the corporation that any  
15 portion of its electric, gas, heat, or water generation or  
16 production facility which was eliminated from  
17 consideration by the commission in establishing rates for  
18 being out of service for nine or more consecutive  
19 months, pursuant to subdivision (a) or (b), has been  
20 restored to service and has achieved at least 100  
21 continuous hours of operation, the commission may again  
22 consider that portion of the facility for purposes of  
23 establishing rates, and may adjust the corporation's rates  
24 accordingly without a hearing, except that a hearing is  
25 required on whether to include, for purposes of  
26 establishing rates, any additional plant value added.

27 (e) Nothing in this section prohibits the commission  
28 from reviewing the effects of any electric, gas, heat, or  
29 water generation or production facility which has been  
30 out of service for less than nine consecutive months.

31 (f) For purposes of this section, an electric, gas, heat,  
32 or water generation or production facility includes only  
33 such a facility that the commission determines to be a  
34 major facility of the corporation, and does not include any  
35 facility determined by the commission to constitute a  
36 plant held for future use.

AMENDED IN ASSEMBLY APRIL 16, 1990

CALIFORNIA LEGISLATURE—1989-90 REGULAR SESSION

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37 (g) *For purposes of this section, out-of-service periods*  
38 *shall not include planned outages of predetermined*  
39 *duration scheduled in advance.*

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