

1 **Public Utilities Code Section 454.5**

2 (a) The commission shall specify the allocation of electricity, including quantity, characteristics,
3 and duration of electricity delivery, that the Department of Water Resources shall provide under
4 its power purchase agreements to the customers of each electrical corporation, which shall be
5 reflected in the electrical corporation's proposed procurement plan. Each electrical corporation
6 shall file a proposed procurement plan with the commission not later than 60 days after the
7 commission specifies the allocation of electricity. The proposed procurement plan shall specify
8 the date that the electrical corporation intends to resume procurement of electricity for its retail
9 customers, consistent with its obligation to serve. After the commission's adoption of a
10 procurement plan, the commission shall allow not less than 60 days before the electrical
11 corporation resumes procurement pursuant to this section.

12 (b) An electrical corporation's proposed procurement plan shall include, but not be limited to,
13 all of the following:

14 (1) An assessment of the price risk associated with the electrical corporation's portfolio,
15 including any utility-retained generation, existing power purchase and exchange contracts, and
16 proposed contracts or purchases under which an electrical corporation will procure electricity,
17 electricity demand reductions, and electricity-related products and the remaining open position to
18 be served by spot market transactions.

19 (2) A definition of each electricity product, electricity-related product, and procurement related
20 financial product, including support and justification for the product type and amount to be
21 procured under the plan.

22 (3) The duration of the plan.

23 (4) The duration, timing, and range of quantities of each product to be procured.

24 (5) A competitive procurement process under which the electrical corporation may request bids
25 for procurement-related services, including the format and criteria of that procurement process.

26 (6) An incentive mechanism, if any incentive mechanism is proposed, including the type of
27 transactions to be covered by that mechanism, their respective procurement benchmarks, and
28 other parameters needed to determine the sharing of risks and benefits.

29 (7) The upfront standards and criteria by which the acceptability and eligibility for rate
30 recovery of a proposed procurement transaction will be known by the electrical corporation prior
31 to execution of the transaction. This shall include an expedited approval process for the
32 commission's review of proposed contracts and subsequent approval or rejection thereof. The
33 electrical corporation shall propose alternative procurement choices in the event a contract is
34 rejected.

35 (8) Procedures for updating the procurement plan.

36 (9) A showing that the procurement plan will achieve the following:

37 (A) The electrical corporation, in order to fulfill its unmet resource needs, shall procure
38 resources from eligible renewable energy resources in an amount sufficient to meet its
39 procurement requirements pursuant to the California Renewables Portfolio Standard Program
40 (Article 16 (commencing with Section 399.11) of Chapter 2.3).

41 (B) The electrical corporation shall create or maintain a diversified procurement portfolio
42 consisting of both short-term and long-term electricity and electricity-related and demand
43 reduction products.

44 (C) The electrical corporation shall first meet its unmet resource needs through all available
45 energy efficiency and demand reduction resources that are cost effective, reliable, and feasible.

46 (10) The electrical corporation's risk management policy, strategy, and practices, including
47 specific measures of price stability.

48 (11) A plan to achieve appropriate increases in diversity of ownership and diversity of fuel
49 supply of nonutility electrical generation.

50 (12) A mechanism for recovery of reasonable administrative costs related to procurement in the
51 generation component of rates.

52 (c) The commission shall review and accept, modify, or reject each electrical corporation's
53 procurement plan. The commission's review shall consider each electrical corporation's
54 individual procurement situation, and shall give strong consideration to that situation in
55 determining which one or more of the features set forth in this subdivision shall apply to that
56 electrical corporation. A procurement plan approved by the commission shall contain one or
57 more of the following features, provided that the commission may not approve a feature or
58 mechanism for an electrical corporation if it finds that the feature or mechanism would impair
59 the restoration of an electrical corporation's creditworthiness or would lead to a deterioration of
60 an electrical corporation's creditworthiness:

61 (1) A competitive procurement process under which the electrical corporation may request bids
62 for procurement-related services. The commission shall specify the format of that procurement
63 process, as well as criteria to ensure that the auction process is open and adequately subscribed.
64 Any purchases made in compliance with the commission-authorized process shall be recovered
65 in the generation component of rates.

66 (2) An incentive mechanism that establishes a procurement benchmark or benchmarks and
67 authorizes the electrical corporation to procure from the market, subject to comparing the
68 electrical corporation's performance to the commission-authorized benchmark or benchmarks.
69 The incentive mechanism shall be clear, achievable, and contain quantifiable objectives and
70 standards. The incentive mechanism shall contain balanced risk and reward incentives that limit
71 the risk and reward of an electrical corporation.

72 (3) Upfront achievable standards and criteria by which the acceptability and eligibility for rate
73 recovery of a proposed procurement transaction will be known by the electrical corporation prior
74 to the execution of the bilateral contract for the transaction. The commission shall provide for
75 expedited review and either approve or reject the individual contracts submitted by the electrical
76 corporation to ensure compliance with its procurement plan. To the extent the commission
77 rejects a proposed contract pursuant to this criteria, the commission shall designate alternative
78 procurement choices obtained in the procurement plan that will be recoverable for ratemaking
79 purposes.

80 (d) A procurement plan approved by the commission shall accomplish each of the following
81 objectives:

82 (1) Enable the electrical corporation to fulfill its obligation to serve its customers at just and
83 reasonable rates.

84 (2) Eliminate the need for after-the-fact reasonableness reviews of an electrical corporation's
85 actions in compliance with an approved procurement plan, including resulting electricity
86 procurement contracts, practices, and related expenses. However, the commission may establish
87 a regulatory process to verify and ensure that each contract was administered in accordance with
88 the terms of the contract, and contract disputes that may arise are reasonably resolved.

89 (3) Ensure timely recovery of prospective procurement costs incurred pursuant to an approved
90 procurement plan. The commission shall establish rates based on forecasts of procurement costs
91 adopted by the commission, actual procurement costs incurred, or combination thereof, as
92 determined by the commission. The commission shall establish power procurement balancing
93 accounts to track the differences between recorded revenues and costs incurred pursuant to an
94 approved procurement plan. The commission shall review the power procurement balancing
95 accounts, not less than semiannually, and shall adjust rates or order refunds, as necessary, to
96 promptly amortize a balancing account, according to a schedule determined by the commission.
97 Until January 1, 2006, the commission shall ensure that any overcollection or undercollection in
98 the power procurement balancing account does not exceed 5 percent of the electrical
99 corporation's actual recorded generation revenues for the prior calendar year excluding revenues
100 collected for the Department of Water Resources. The commission shall determine the schedule
101 for amortizing the overcollection or undercollection in the balancing account to ensure that the 5
102 percent threshold is not exceeded. After January 1, 2006, this adjustment shall occur when
103 deemed appropriate by the commission consistent with the objectives of this section.

104 (4) Moderate the price risk associated with serving its retail customers, including the price risk
105 embedded in its long-term supply contracts, by authorizing an electrical corporation to enter into
106 financial and other electricity-related product contracts.

107 (5) Provide for just and reasonable rates, with an appropriate balancing of price stability and
108 price level in the electrical corporation's procurement plan.

109 (e) The commission shall provide for the periodic review and prospective modification of an
110 electrical corporation's procurement plan.

111 (f) The commission may engage an independent consultant or advisory service to evaluate risk
112 management and strategy. The reasonable costs of any consultant or advisory service is a
113 reimbursable expense and eligible for funding pursuant to Section 631.

114 (g) The commission shall adopt appropriate procedures to ensure the confidentiality of any
115 market sensitive information submitted in an electrical corporation's proposed procurement plan
116 or resulting from or related to its approved procurement plan, including, but not limited to,
117 proposed or executed power purchase agreements, data request responses, or consultant reports,
118 or any combination, provided that the Office of Ratepayer Advocates and other consumer groups
119 that are nonmarket participants shall be provided access to this information under confidentiality
120 procedures authorized by the commission.

121 (h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate
122 transactions under its rules and decisions or the commission's existing authority to investigate
123 and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred
124 as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section

125 expands, modifies, or limits the State Energy Resources Conservation and Development
126 Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and
127 25323 of the Public Resources Code.

128 (i) An electrical corporation that serves less than 500,000 electric retail customers within the
129 state may file with the commission a request for exemption from this section, which the
130 commission shall grant upon a showing of good cause.

131 (j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets
132 owned by an electrical corporation on or after the date of enactment of the act adding this
133 section, the commission shall determine the impact of the proposed divestiture on the electrical
134 corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking
135 into account the effect of the divestiture on procurement rates, that the divestiture is in the public
136 interest and will result in net ratepayer benefits.

137 (2) Any electrical corporation's procurement necessitated as a result of the divestiture of
138 generation assets on or after the effective date of the act adding this subdivision shall be subject
139 to the mechanisms and procedures set forth in this section only if its actual cost is less than the
140 recent historical cost of the divested generation assets.

141 (3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible
142 to use the procedures in this section upon its approval of asset divestiture pursuant to Section
143 851.