

RESOLUTION NUMBER R- 294657

ADOPTED ON MAR 19 2001

BE IT RESOLVED, by the Council of the City of San Diego, that the Intergovernmental Relations Department Report # 01-02 (Revised), dated March 7, 2001, a copy of which is on file in the office of the City Clerk as Document No. RR- 294657, and attached hereto as Attachment A, is hereby accepted and the recommendations contained therein to support the following federal and state energy Legislation is hereby approved:

ABX 20, 29, 34, 43

SBX 9, 10, 11, 27, 32, 43

HR 238, 443

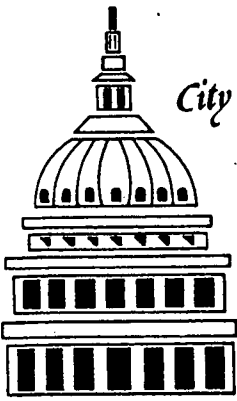
S 26, 80, 207, 287 and the proposed Amendments to S 295

APPROVED: CASEY GWINN, City Attorney

By Stuart H. Swett

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City of San Diego

# Intergovernmental Relations Department Report



#01-02 (Revised)  
March 7, 2001

TO: Honorable Mayor and Members of the Rules Committee  
RE: State and Federal Legislation relative to California's Energy Crisis

## BACKGROUND

On January 3, 2001, Governor Gray Davis issued a proclamation requiring the legislature to convene a special session to pass legislation addressing California's energy crisis. According to the guidelines of the proclamation, the session will focus on legislation that:

- Affects the availability, consumption, and use of energy;
- Governs the finances and organization of the California Independent System Operator (ISO) and the California Power Exchange (PX);
- Addresses the operation, maintenance, and finances of California power generators and utilities;
- Affects the wholesale and retail markets for energy supplies, capacity, and reliability; and
- Protects the health and safety of Californians with respect to power-generating facilities and transmission facilities.

During this Extraordinary Session, elected state officials of the San Diego Delegation have introduced a number of bills that may deserve the City of San Diego's attention.

In addition to the effort underway in Sacramento, members of San Diego's Congressional and Senate Delegation have introduced federal legislation designed to help California through the energy crisis. Congressman Filner's legislation, HR 268 was supported in an official action by the San Diego City Council on Monday, February 12, 2001.

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**ATTACHMENT A**

HR 268 is the "California Electricity Consumers Relief Act of 2001" which will require the Federal Energy Regulatory Commission ("FERC") to order refunds of unjust, unreasonable, unduly discriminatory or preferential rates and charges for electricity, to establish cost-based rates for electricity sold at wholesale in the Western Systems Coordinating Council. These refunds will be issued when the FERC has found, on its own motion or upon complaint, that any rate or charge for a transmission or sale of electric energy subject to the jurisdiction of the FERC, is unjust, unreasonable, unduly discriminatory or preferential, the FERC shall order a refund of the portion of such rate that was unjust. Such refund shall include interest from the date on which the rate or charge was paid and shall apply to any approved complaint filed after August 1, 2000.

## DISCUSSION

### State Legislation

#### ABX 20 Zettel      **Power plant siting**

Authorizes air pollution control districts, air quality management districts, and the State Energy Resources Conservation and Development Commission to issue a temporary, expedited, consolidated permit for a thermal power plant if specified conditions are met. ABX 20 would require the California Energy Commission ("CEC") to establish a process for the expedited review of applications to construct and operate power plants and thermal power plants and related facilities.

The bill would also establish a Clean Power Account in the Air Pollution Control Fund, with funds to be available upon appropriation by the Legislature for the purpose of mitigating or offsetting emissions from power plants. The bill would provide that these provisions would remain effective until January 1, 2003.

*Impact:* ABX 20 could expedite the permitting process for power plant construction if passed. Additionally, the bill calls for an appropriation by the Legislature to offset any the impact of emissions from these power plants.

*Recommendation:* **Support**

#### ABX 29 Kehoe      **Energy conservation**

Requires the State Energy Resources Conservation and Development Commission to administer and appropriate a \$375,000,000 grant program for the replacement of energy inefficient appliances. The bill also requires the commission to cooperate with state agencies and local community-based organizations to open exchange centers that will assist in the pickup of an old appliance and will certify to the commission that the energy

inefficient model was or will be destroyed or dismantled in an environmentally sound manner.

The bill will also establish a state-sponsored conservation effort to assist California's families to participate in a solution to the energy crisis by replacing energy inefficient models of appliances and by retrofitting homes and workplaces to reduce energy consumption.

Additionally, this measure will establish state-sponsored incentives in the form of grants and loans to small businesses, developers, and residential property owners for constructing and retrofitting buildings to be more energy efficient by using design elements, including, but not limited to, energy-efficient siding, higher rated insulation, and double-paned windows.

*Impact:* This legislation has been drafted to provide incentives for families and businesses to replace inefficient appliances and to make energy saving upgrades to their facilities.

*Recommendation:* **Support**

ABX 34 La Suer      **Power plant siting**

This bill makes several changes regarding power plant siting. It would require the Secretary of Resources to submit a report to the Legislature assessing any legislative or regulatory limitations regarding power plant siting. It also provides that the Public Utilities Commission ("PUC") would be included in the permit streamlining act, exempt for the California Environmental Quality Act (CEQA) any repowering project; and require each local jurisdiction to respond to the CEC on siting issues to do so within 30 days.

*Impact:* If passed, ABX 34 would require the Secretary of Resources to identify siting limitations and report them to the Legislature. It would then be up to the Legislature to make any necessary legislative changes to remove the limitations.

*Recommendation:* **Support**

ABX 43 Kehoe      **Energy**

This measure would enact the 2001 Schools Program for sunny schools and cool schools. ABX 43 authorizes the State Energy Resources Conservation and Development Commission to provide grants to school districts and to authorize the California Infrastructure and Economic Development Bank board to make no-interest loans to a school district, for prescribed energy conservation projects for school buildings and facilities.

ABX 43 also includes an appropriation in the amount of \$250,000,000 for these purposes. According to the provisions of this bill, any appropriation made for the purposes of this bill

shall not be deemed to be General Fund revenues appropriated to school districts under the requirements of Proposition 98. The bill also declares that appropriations made for the purposes of this bill for any fiscal year are not intended to increase the state's minimum funding obligation to school districts and community college districts under Section 8 of Article XVI of the California Constitution in any subsequent fiscal year.

*Impact:* If passed, ABX 43 would provide grant funds from this newly created program, or provide no-interest loans from the Infrastructure Bank to school districts that design and implement energy conservation projects.

*Recommendation:* **Support**

**SBX 9 Morrow      Electric bill: master-meter customers: rate ceiling**

Current law, known as the Public Utilities Act ("Act"), requires every master-meter customer to provide an itemized billing of charges for electricity or gas, or both, to each individual user in accordance with the form and content of bills of the corporation to its residential customers. The Act also requires the Public Utilities Commission ("PUC") to establish a ceiling of 6.5 cents per kilowatt hour on the energy component of electric bills for residential, small commercial, and lighting customers of SDG&E, through December 31, 2002, retroactive to June 1, 2000.

SBX 9 would require the billing to show a) any undercollection in the current billing cycle due to the ceiling; b) the total accumulated undercollection to that date, and c) the accumulated interest on the cumulative accumulated undercollection.

Additionally, the bill would allow sub-meter customers (such as tenants of a mobile home park, apartment complex, etc.) to elect to make inapplicable the electricity rate ceiling and to pay the full cost of electricity used plus an amount that equals the simple interest on any unpaid amounts, if the related master-meter customer and all other sub-meter customers elect to make inapplicable that electricity rate ceiling.

*Impact:* SBX 9 would direct SDG&E to include in their customer billing, an understandable breakdown of current electricity prices, and a detailed description of the customer's share of the balancing account and interest that was established by AB 265 of 2000. In the event an individual customer of a master-meter customer would like to pay the full amount of his/her bill, this legislation would allow for that provided all other customers and the related master-meter customer agreed in writing.

*Recommendation:* **Support**

**SBX 10 Morrow      Electrical restructuring: electric bills: rate ceiling**

SBX 10 would amend the Act to require the PUC to establish a billing procedure which has separate disclosure, on each retail bill, of any undercollection of costs from providing electric energy to the retail customer unrecovered in the current billing cycle due to the rate ceiling established by legislation. The bill shall include the total accumulated undercollection for the period from the date the rate ceiling was enacted, to the date of the bill plus a notice of accumulated interest on that undercollection.

*Impact:* SBX 10 is similar to SBX 9 in that the bill attempts to provide clarity to the retail customer on the electricity bill sent to the consumer by SDG&E.

*Recommendation:* **Support**

**SBX 11 Morrow      Electrical restructuring: electric bills: rate ceiling**

SBX 11 would authorize a customer of SDG&E to elect not to have the 6.5 cent ceiling apply to the customer's electric bill. The bill would require the customer, after making that election in writing to SDG&E, to pay the full cost of energy used by the customer.

The legislation would also require the accounting procedure established by the PUC to identify and treat separately those retail customers who make the election, and to credit those customers' accounts with 100% of any payment made.

*Impact:* SBX 11 is a bill by Senator Morrow designed to let individuals customers decide if they want to accrue an undercollection balancing account or if they would rather pay the full cost of their electricity consumption as they consume it.

*Recommendation:* **Support**

**SBX 27 Bowen      Electric Power**

Existing law imposes various duties and responsibilities on the Department of Water Resources with respect to the sale of water and power. SBX 27 establishes a policy to govern the circumstances under which retail end use customers may choose to acquire service from energy providers other than the Department of Water Resources.

*Impact:* The goal of that policy is to provide retail end use customers with the greatest possible flexibility in procuring power while preventing any negative consequences for those customers who continue to be served by the Department of Water Resources.

*Recommendation:* **Support**

SBX 32 Alpert      **Electric bills: bill stabilization**

SBX 32 clarifies the intent of the Legislature that direct access customers in the SDG&E territory not be discriminated against in the implementation of the ceiling of 6.5 cents per kilowatt hour for electricity. Additionally, SDG&E would be required to provide the economic value of the rate cap imposed in this subdivision to direct access customers through a credit on their bills.

*Impact:* If passed, this legislation would allow customers of other independent energy providers (i.e.; Green Mountain) to realize the same retail cap that customers of SDG&E are afforded under AB 265.

*Recommendation:* **Support**

SBX 43 Alpert      **San Diego Gas and Electric Company: rates**

The Act requires the PUC to establish a ceiling of 6.5 cents per kilowatt hour on the energy component of electric bills for residential, small commercial, and lighting customers of SDG&E, through December 31, 2002, retroactive to June 1, 2000. The commission may choose to extend the ceiling through December 2003.

SBX 43 would require the commission to also establish a frozen rate of 6.5 cents per kilowatt hour on the energy component of electric bills for all customers of the San Diego Gas and Electric Company not just residential, small commercial and lighting customers. If enacted, these provisions would be effective through December 31, 2002, retroactive to February 7, 2001.

*Impact:* The intent of this legislation is to enact the 6.5 cent per kilowatt hour rate for ALL customers of SDG&E, thus allowing large commercial and municipal users to realize the retail price cap.

*Recommendation:* **Support**

Federal Legislation

HR 238 Hunter

HR 238 and S 26 are companion measures. The bills would amend the Department of Energy Authorization Act to authorize the Secretary of Energy to impose interim limitations on the cost of electric energy to protect consumers from unjust and unreasonable prices in the electric energy market.

This bill would provide the Secretary with the authority to impose, in any region of the United States, an interim regional price limitation, or cost-of-service based rate, on any sale of electric energy at wholesale in interstate commerce subject to the jurisdiction of the FERC whenever the Commission has determined that the rate, charge, or classification otherwise applicable to such sale is unjust, unreasonable, or unduly preferential or the Secretary determines that the rate, charge, or classification otherwise applicable to such sale exceeds the marginal cost of producing the electric energy by a significant amount or for a significant length of time. If the Secretary determines that the continued existence of such rate, charge, or classification threatens public health and safety or the economy of any State or region or that the FERC has otherwise failed to act to improve the situation, the Secretary may also impose an interim regional price limit.

*Impact:* If passed, this legislation would provide the Secretary of Energy with the authority to impose a wholesale price limit with the savings being passed on to consumers.

*Recommendation:* **Support**

HR 443 Filner

HR 443 would impose a 100% excise tax on the windfall profit from the sale of electricity at wholesale in the Western System Coordinating Council. This bill defines windfall profit as the profits from the sale attributable to the excess of the rate at which the electric energy is sold over the price for such energy based on the seller's costs, including a return of and on invested capital. These amendments will be applicable to electricity sold after June 1, 2000.

*Impact:* This measure would dramatically penalize any energy wholesaler that overcharges for its electricity.

*Recommendation:* **Support**

S 26 Feinstein

S 26 and HR 238 are companion measures. The bills would amend the Department of Energy Authorization Act to authorize the Secretary of Energy to impose interim limitations on the cost of electric energy to protect consumers from unjust and unreasonable prices in the electric energy market.

This bill would provide the Secretary with the authority to impose, in any region of the United States, an interim regional price limitation, or cost-of-service based rate, on any sale of electric energy at wholesale in interstate commerce subject to the jurisdiction of the FERC whenever the Commission has determined that the rate, charge, or classification otherwise applicable to such sale is unjust, unreasonable, or unduly preferential or the Secretary



determines that the rate, charge, or classification otherwise applicable to such sale exceeds the marginal cost of producing the electric energy by a significant amount or for a significant length of time. If the Secretary determines that the continued existence of such rate, charge, or classification threatens public health and safety or the economy of any State or region or that the FERC has otherwise failed to act to improve the situation, the Secretary may also impose an interim regional price limit.

*Impact:* If passed, this legislation would provide the Secretary of Energy with the authority to impose a wholesale price limit with the savings being passed on to consumers.

*Recommendation:* **Support**

S 80 Boxer

S 80 is the Senate version of Mr. Filner's HR 268. S 80 is the "California Electricity Consumers Relief Act of 2001" which will require the Federal Energy Regulatory Commission ("FERC") to order refunds of unjust, unreasonable, unduly discriminatory or preferential rates and charges for electricity, to establish cost-based rates for electricity sold at wholesale in the Western Systems Coordinating Council. These refunds will be issued when the FERC has found, on its own motion or upon complaint, that any rate or charge for a transmission or sale of electric energy subject to the jurisdiction of FERC, is unjust, unreasonable, unduly discriminatory or preferential, the FERC shall order a refund of the portion of such rate that was unjust. Such refund shall include interest from the date on which the rate or charge was paid and shall apply to any approved complaint filed after August 1, 2000.

*Recommendation:* **Support**

S 207 Feinstein

S 207 creates the Energy Efficient Building Incentives Act. The legislation will provide tax incentives to encourage the production and sale of technologically advanced, energy-efficient buildings and equipment. Additionally, it will promote the creation of competitive markets for new technologies and designs that are not widely available but will be cost effective for the consumer.

The incentives will apply to efficient residential, commercial and public buildings which save 30 percent to 50 percent of energy costs compared to national model codes. With buildings accounting for 35 percent of air pollution emissions nationwide, and cost over \$300 billion a year in energy costs, and contributing to over half of peak electric power demands, the incentives in this bill would begin to lessen electric peak reliability problems by the summer of 2002.

*Impact:* S 207 will provide tax incentives to public and private entities which will encourage the implementation of technologies that help reduce energy consumption. Also, by stimulating the use of such technologies, the bill will help reduce air pollution emissions nationwide.

*Recommendation:* **Support**

S 287 Feinstein

S 287 has been introduced to direct the FERC to impose cost-of-service based rates on sales of electric energy at wholesale by public utilities in the western energy market. The FERC, in an order issued November 1, 2000, found that prices in California and the western energy market are unjust and unreasonable.

The FERC would be required to impose these rates no later than 60 days after the date of enactment of this bill. The cost-of-service energy rate would remain in effect until the market for electric energy in the western energy market reflects just and reasonable rates, as determined by the FERC.

*Impact:* S 287 would require the FERC to impose reasonable and just rates for electric energy in the western market.

*Recommendation:* **Support**

S 295 Amendments Feinstein and Boxer

Introduced by Senator Kerry (MA), S 295 will create the Small Business Energy Emergency Relief Act of 2001. Specifically, the current legislation establishes a Small Business Energy Emergency Disaster Loan program to provide relief for small businesses affected by significant increases in the prices of heating oil, natural gas, propane, and kerosene. In order for the Administration to make a loan under this Act, a declaration of a disaster area must be made by the President or the Governor of a State may certify to the Administration that small businesses have suffered economic injury as a result of energy increases and are in need of financial assistance which is not available in that State.

Ms. Feinstein and Ms. Boxer are sponsoring amendments to S 295 to include electric energy in the scope of the bill. If adopted, the amendments would allow small businesses in California to apply for low-interest loans once the Governor has certified that businesses have been hurt by the electricity crisis.

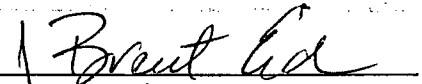
*Impact:* These amendments are critical as they include the electricity price emergency as qualifying for low-interest loans established by Mr. Kerry's legislation.

*Recommendation: Support*

**RECOMMENDATION**

Approve the Intergovernmental Relations Department's recommended positions of support on ABX 20, ABX 29, ABX 34, ABX 43, SBX 9, SBX 10, SBX 11, SBX 27, SBX 32, SBX 43, HR 238, HR 443, S 26, S 80, S 207, S 287, and the proposed amendments to S 295.

Respectfully submitted,

  
J. Brent Eidson, Acting Director