SENATE BILL No. 35

Introduced by Senators Morrow and Alpert

May 17, 2001

An act to amend Section 216 of, to add Sections 212.5 and 215.9 to, and to add Article 3.5 (commencing with Section 353) to Chapter 2.3 of Part 1 of Division 1 of, the Public Utilities Code, relating to public utilities, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 35, as introduced, Morrow. Public utilities: Omnibus Distributed Energy Resources and Clean Electricity Act of 2001.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and other specified entities.

This bill would enact the Omnibus Distributed Energy Resources and Clean Electricity Act of 2001. The act would provide a comprehensive framework for the use and management of distributed energy resources, as defined, in the public utilities system of the state. The bill would specify procedures for treatment of distributed energy resources on utility rate schedules.

The bill would require the commission to adopt simplified interconnection standards and an accelerated implementation process for distributed energy resources. The bill would require municipal utilities to adopt comparable interconnection standards to develop and provide public access to capacity extension plans, and adopt rules requiring compensation to customers for the value of distributed energy resources that provide grid benefits, thereby imposing a state-mandated local program.

The bill would require the State Energy Resources Conservation and Development Commission to adopt an interconnection certification program, with specified purposes, on or before May 1, 2001.

The bill would prohibit the Independent System Operator from requiring the metering, telemetry, or scheduling of a retail customer's consumption of electric energy that is satisfied by on-site or over-the-fence generation behind the point of interconnection.

The bill would require the State Air Resources Board to develop guidelines for air pollution control districts and air quality management districts to permit distributed generation installation, as specified.

(2) Because, under existing law, a violation of the above provisions with respect to regulation by the Public Utilities Commission would be a crime, this bill would impose a state-mandated local program by changing the definition of a crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $^2/_3$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) California energy customers will face a critical shortage of electricity in 2001 and the following years.

(b) A shortage of electric generation supply and inadequacies in the electric transmission and distribution systems is creating a severe detrimental impact on the economy.

(c) Electric customers require the ability to use all of the tools available to them to increase electricity reliability and manage prices without penalty.

(d) Distributed energy resources provide unique benefits to all consumers by immediately shifting demand away from the electric grid and increasing the supply of electric generation within the state while contributing to improved environmental quality and public health and safety.

(e) It is essential that the state allow the installation of clean distributed energy resources to increase the supply of electricity, increase self-sufficiency of consumers, improve system reliability, and encourage new generation to connect to the electric grid.

(f) Legislation is needed in order to comply with the Governor's Energy Plan, relevant executive orders, Chapter 329 of the Statutes of 2000, and other policies regarding loan reduction and new electric generation.

(g) Legislation is needed in order to eliminate restrictions that inhibit customer deployment of clean distributed energy resources.

(h) Clean distributed energy resources technologies are environmentally sensitive, help manage the cost of electricity, and improve reliability.

SEC. 2. Section 212.5 is added to the Public Utilities Code, to read:

212.5. ''Distributed energy resources'' means any electric generation, storage, or related ancillary technology designed primarily to serve nearby electric load. The commission shall treat the use of distributed energy resources under utility rate schedules as energy conservation customer demand-side management.

SEC. 3. Section 215.9 is added to the Public Utilities Code, to read:

215.9. ''Point of interconnection'' means any point where a cogenerator or self-generator's electrical conductors connect with a public utility owned system.

SEC. 4. Section 216 of the Public Utilities Code is amended to read:

216. (a) ‘‘Public utility’’ includes every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.

(b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(c) When any person or corporation performs any service for, or delivers any commodity to, any person, private corporation, municipality, or other political subdivision of the state, that in turn either directly or indirectly, mediately or immediately, performs that service for, or delivers that commodity to, the public or any portion thereof, that person or corporation is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

(d) Ownership or operation of a facility that employs cogeneration technology or produces power from other than a conventional power source or the ownership or operation of a facility which employs landfill gas technology does not make a corporation or person a public utility within the meaning of this section solely because of the ownership or operation of that facility.

(e) Any corporation or person engaged directly or indirectly in developing, producing, transmitting, distributing, delivering, or selling any form of heat derived from geothermal or solar resources or from cogeneration technology to any privately owned or publicly owned public utility, or to the public or any portion thereof, is not a public utility within the meaning of this section solely by reason of engaging in any of those activities.

(f) The ownership or operation of a facility that sells compressed natural gas at retail to the public for use only as a motor vehicle fuel, and the selling of compressed natural gas at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, operation, or sale.

(g) Ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 1935 (Chapter 2C (commencing with Section 79) of Title 15 of the United States Code) does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) The ownership, control, operation, or management of an electric plant used for direct transactions or participation directly or indirectly in direct transactions, as permitted by subdivision (b) of Section 365, sales into the Power Exchange referred to in Section 365, or the use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, participation, or sale.

(i) The ownership, control, operation, or management of a distributed energy resource, as defined in Section 212.5, that delivers energy or energy services to tenants within a building or buildings within an area of common ownership shall not make a corporation or person a public utility within the meaning of this section solely because of that ownership, control, operation, or management.

SEC. 5. Article 3.5 (commencing with Section 353) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 3.5. Omnibus Distributed Energy Resources And Clean Electricity Act of 2001

353. This article shall be known, and may be cited as, the Omnibus Distributed Energy Resources and Clean Electricity Act of 2001.

353.1. (a) The use of distributed energy resources shall be treated under utility rate schedules as a customer demand-side management measure.

(b) All customers, whether served by municipal utilities or investor-owned electrical corporations, shall be served by tariffs, rates, rules, and requirements as they had or would have had without distributed energy resources, and shall not be subject to the application of additional rates or tariffs. Existing tariffs, rates, rules, and requirements shall be amended to preclude the application of standby, departing load, exit, or other similar charges for distributed energy resources installations. Any provision in otherwise applicable tariffs to activate other tariffs, rates, rules other than interconnection rules, and requirements when distributed energy resources are installed will be withdrawn.

353.3. Where nonbypassable charges by public purpose programs are duplicated as a result of switching from electric to gas service, charges levied under gas rate schedules that support the same programs covered by the nonbypassable electric charges shall not be assessed on customers.

353.5. (a) On or before May 1, 2001, the commission shall adopt simplified interconnection standards and an accelerated implementation process for distributed energy resource interconnection applications that are not applicable to the simplified interconnection process or the supplemental review process as defined in Public Utilities Commission Decision 00-11-001. The simplified interconnection standards and process adopted by the commission under this section shall include, but not necessarily be limited to, provisions for both of the following:

(1) That the interconnection application process shall be completed within 45 days from the initial request date of application for interconnection.

(2) That the total cost charged to the distributed energy resources applicant by the utility to complete the application shall not exceed five dollars ($5.00) per installed kilowatt.

(b) On or before May 1, 2001, municipal utilities shall adopt simplified interconnection standards and an accelerated implementation process comparable to that required by the commission.

(c) On or before May 1, 2001, the State Energy Resources Conservation and Development Commission shall adopt an

interconnection certification program. The purpose of this program shall be to certify the safety of distributed energy resource technology for interconnection with the transmission and distribution system within California. Manufacturers of distributed energy resource technology may apply for certification under this program. Equipment that is certified as safe for interconnection under this program shall be deemed safe for interconnection and accepted by any transmission and distribution utility operating within the state.

(d) Distributed energy resource equipment that has been interconnected with a utility company on or after January 1, 1996, shall be deemed to have been certified as safe for interconnection within any utility system within the state.

(e) Interconnection agreements shall be between the owner of the distributed energy resources and the municipal utility or electric corporation as applicable. Where necessary, a new customer account shall be established with the owner of the distributed energy resources.

353.7. (a) The Independent System Operator shall not require the metering, telemetry, or scheduling of a retail customer's consumption of electric energy that is satisfied by on-site or over-the-fence generation behind the point of interconnection, nor shall the Independent System Operator assess any grid management or transmission charges on a retail customer's consumption of electric energy that is satisfied by on-site or over-the-fence generation behind the point of interconnection.

(b) The Independent System Operator shall establish and maintain an ongoing demand reduction tariff that allows for the participation of distributed energy resources equal to or less than one megawatt in size under the criteria established in subdivision (a).

353.9. (a) Nothing in this act shall be construed to conflict with any provision of Chapter 741 of the Statutes of 2000.

(b) Notwithstanding any air emissions laws and regulations currently in effect, distributed energy resources, other than diesel-fuel-fired back-up generation, that is installed prior to the implementation of State Air Resources Board standards and guidelines as required by Sections 41514.9 and 41514.10 of the Health and Safety Code, and meets current state board and local

air district requirements, shall be deemed to be in compliance with the state board and local district requirements for a period of five years from the date of initial operation.

(c) The Legislature finds and declares both of the following:

(1) Certain technologies and installations may not qualify for the certification of the state board as defined in Sections 41514.9 and 41514.10 either because of their size, complexity, uniqueness of technology, or for other reasons.

(2) For certain installations, while individual components may or may not be eligible for certification, in the aggregate the distributed energy resource system may provide substantial environmental benefits.

(d) The state board shall develop guidelines for local districts to permit distributed generation installation as described in this article. The guidelines that the state board develops shall take into account all of the following:

(1) The level of emissions attributable to the facility at the installation location prior to the installation of the distributed generation system shall be determined. The district shall consider the average annual electricity consumption at the facility, the average grid emissions level, as well as specific sources at the facility in determining the attributable emissions.

(2) The level of emissions attributable to the facility at the installation location after the installation of the distributed generation system shall be determined. The state board shall develop methodologies in accordance with which the districts shall consider all of the following:

(A) The effect on emissions of reduced line losses.

(B) The application of cogeneration, accompanying energy efficiency and optimization measures, and other factors such as, but not necessarily limited to, the installation of zero-or-near-zero emissions technologies.

(3) The state board shall use a volumetric methodology, taking into account grams of emission components per unit of useful energy produced or consumed in determining emission levels for distributed generation.

354. (a) Municipal utilities shall, and the commission shall require electric corporations to, develop and provide public access to capacity expansion plans and annual projections for each of the

five future years for inadequate and potentially inadequate transmission and distribution area.

(b) Municipal utilities shall, and the commission shall require electric corporations to, adopt rules requiring compensation to customers for the value of distributed energy resources that provide grid benefits.

354.3. (a) Whenever electrical corporations evaluate the need for grid enhancements, they shall be required, in a public process, to first seek to obtain or mitigate the need for those enhancements from existing and new customer-owned and other nonutility distributed energy resources before installing distributed energy resources that they own or lease. Distributed energy resources owned or leased by electric corporations shall not be placed in the rate base.

(b) When electric corporations obtain grid benefits from existing and new customer-owned and other nonutility distributed energy resources, the commission shall require electric corporations to share at least 50 percent of the realized cost savings with the customers and other nonutility owners of the distributed energy resources. The commission shall determine an appropriate method of ascertaining the level of grid benefits.

354.5. Combined gas and electric corporations shall provide customers that are switching loads from electric to gas with a level of service no less than the service provided a new customer seeking the equivalent gas service.

354.7. On or before May 1, 2001, the commission shall establish a new ''distributed generation'' gas rate. This rate shall place customer's taking service on this rate at a higher priority of service above all other noncore customers. The price charged to a customer taking service on this rate shall be equal to the lesser of the following:

(a) The price charged to any other comparable ''electric generation'' rate.

(b) The rate charged for a cogeneration customer, as applicable. This rate shall be available to serve a natural gas fueled distributed energy resource.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or

infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the rapid, unforeseen shortage of electric power and energy available in the state and rapid and substantial increases in wholesale energy costs and retail energy rates, it is necessary that this act take effect immediately.

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