

AMENDED IN ASSEMBLY JUNE 6, 2001

CALIFORNIA LEGISLATURE—2001-02 SECOND EXTRAORDINARY SESSION

SENATE BILL

No. 39

Introduced by Senator Speier

May 17, 2001

An act to amend Sections 216, 228.5, 362, and 431 of, and to add Section 761.3 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Speier. Public Utilities.

(1) Under existing law, ownership or operation of a facility that has been certified by the Federal Energy Regulatory Commission as an exempt wholesale generator is not sufficient to make a corporation or person a public utility under the Public Utilities Act, a violation of which is a crime.

This bill would delete this provision. To the extent that this change would expand the class of utilities subject to the act, this bill would impose a state-mandated local program by changing the definition of an existing crime.

(2) Existing law requires the Public Utilities Commission, in proceedings, to ensure that facilities needed to maintain the reliability of the electric supply remain available and operational, consistent with maintaining open competition and avoiding an overconcentration of market power.

This bill would require the commission to require that generation facilities located in California that have been disposed of pursuant to specified existing law are operated by the persons or corporations who own or control them in a manner that ensures their availability to

maintain the reliability of the electric supply system. The bill would authorize the commission to accomplish this by issuing orders and directives that it determines to be necessary and appropriate, after a hearing. The bill would authorize the commission to ensure electric service reliability by prohibiting economic or physical withholding of the output of a divested generation facility from delivery to or for the benefit of California end users.

(3) Existing law requires the commission to annually determine a fee to be paid by public utilities, except as specified, to produce a total amount equal to that amount established in the authorized commission budget for the same year.

This bill would require the commission to annually determine a fee to be paid by certain generation facilities subject to the jurisdiction of the commission, or upon which the commission imposes requirements, as prescribed. Because a violation of a requirement of the commission is a crime, this bill would impose a state-mandated local program by creating a new crime.

(4) Under existing law, the commission has regulatory authority over public utilities, including electric corporations.

This bill would authorize the commission, in consultation with the applicable control area operator, to prescribe inspection, maintenance, and operating practices and procedures for any electric plant used to produce or generate electric energy located in the State of California that is necessary to ensure public health and safety and electric service reliability and adequacy. The bill would exempt from this provision, ~~facilities that generate electric energy from other than a conventional power source, as defined, when the owner is a private energy producer, as defined~~ *an electric plant that produces or generates electricity using cogeneration, a local publicly owned electric utility, and a city and county operating as a public utility, furnishing electricity.*

(5) 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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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



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

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

3 (a) Electric generating facilities and powerplants in California
4 are essential facilities for maintaining and protecting the public
5 health and safety of California residents and businesses.

6 (b) It is in the public interest to ensure that electric generating
7 facilities and powerplants located in California are effectively and
8 appropriately maintained and efficiently operated.

9 (c) Owners and operators of electric generating facilities and
10 powerplants are public utilities subject to the control of the
11 Legislature.

12 SEC. 2. Section 216 of the Public Utilities Code is amended
13 to read:

14 216. (a) “Public utility” includes every common carrier, toll
15 bridge corporation, pipeline corporation, gas corporation,
16 electrical corporation, telephone corporation, telegraph
17 corporation, water corporation, sewer system corporation, and
18 heat corporation, where the service is performed for, or the
19 commodity is delivered to, the public or any portion thereof.

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

32 (c) When any person or corporation performs any service for,
33 or delivers any commodity to, any person, private corporation,
34 municipality, or other political subdivision of the state, that in turn
35 either directly or indirectly, mediately or immediately, performs
36 that service for, or delivers that commodity to, the public or any
37 portion thereof, that person or corporation is a public utility subject



1 to the jurisdiction, control, and regulation of the commission and
2 the provisions of this part.

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

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

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

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

32 SEC. 3. *Section 228.5 of the Public Utilities Code is amended*
33 *to read:*

34 228.5. (a) The terms “qualifying small power producer,”
35 “small power production facility,” and “qualifying small power
36 production facility” have the same meaning as found in Section
37 796 of Title 16 of the United States Code and regulations enacted
38 pursuant thereto.

39 (b) Notwithstanding any other provision of law, a qualifying
40 small power producer owning or operating a small power



1 production facility is not a public utility subject to the general
2 jurisdiction of the commission solely because of the ownership or
3 operation of the facility.

4 ~~(e) The term “exempt wholesale generator” has the same
5 meaning as found in Section 79z-5a of Title 15 of the United States
6 Code, and regulations enacted pursuant thereto.~~

7 ~~(d) Notwithstanding any other provision of law, an exempt
8 wholesale generator is not a public utility subject to the general
9 jurisdiction of the commission solely due to the ownership or
10 operation of the facility.~~

11 *SEC. 4.* Section 362 of the Public Utilities Code is amended
12 to read:

13 362. (a) In proceedings pursuant to Section 455.5, 851, or
14 854, the commission shall ensure that facilities needed to maintain
15 the reliability of the electric supply remain available and
16 operational, consistent with maintaining open competition and
17 avoiding an overconcentration of market power. In order to
18 determine whether the facility needs to remain available and
19 operational, the commission shall utilize standards that are no less
20 stringent than the Western Systems Coordinating Council and
21 North American Electric Reliability Council standards for
22 planning reserve criteria.

23 (b) The commission shall require that generation facilities
24 located in California that have been disposed of in proceedings
25 pursuant to Section 851 are operated by the persons or
26 corporations who own or control them in a manner that ensures
27 their availability to maintain the reliability of the electric supply
28 system. The commission may accomplish this by issuing orders
29 and directives that it determines to be necessary and appropriate,
30 after a hearing. The commission may prevent an
31 overconcentration of market power and ensure electric service
32 reliability by prohibiting economic or physical withholding of the
33 output of a divested generation facility from delivery to or for the
34 benefit of California end users.

35 ~~*SEC. 4.*~~

36 *SEC. 5.* Section 431 of the Public Utilities Code is amended
37 to read:

38 431. (a) The commission shall annually determine a fee to be
39 paid by every electrical, gas, telephone, telegraph, water, sewer
40 system, and heat corporation and every other public utility



1 providing service directly to customers or subscribers and subject
2 to the jurisdiction of the commission other than a railroad, except
3 as otherwise provided in Article 2 (commencing with Section
4 421). The commission shall also annually determine a fee to be
5 paid by every generation facility subject to the jurisdiction of the
6 commission pursuant to subdivision (b) of Section 362 or upon
7 which the commission imposes requirements pursuant to Section
8 761.3.

9 (b) The commission shall establish the annual fee to produce a
10 total amount equal to that amount established in the authorized
11 commission budget for the same year, including adjustments for
12 increases in employee compensation, other increases appropriated
13 by the Legislature, and an appropriate reserve to regulate public
14 utilities less the amount to be paid from special accounts or funds
15 pursuant to Section 402, reimbursements, federal funds, and any
16 other revenues, and the amount of unencumbered funds from the
17 preceding year.

18 (c) This article does not apply to any electrical cooperative as
19 defined in Chapter 5 (commencing with Section 2776) of Part 2.

20 (d) This article applies to radiotelephone utilities as defined in
21 Section 4902 as those provisions read on December 31, 1984.

22 ~~SEC. 5.—~~

23 *SEC. 6.* Section 761.3 is added to the Public Utilities Code, to
24 read:

25 761.3. (a) Notwithstanding Section 216, *and except as*
26 *provided in subdivision (b)*, the commission, in consultation with
27 the applicable control area operator, may prescribe inspection,
28 maintenance, and operating practices and procedures for any
29 electric plant used to produce or generate electric energy located
30 in the State of California that is necessary to ensure public health
31 and safety and electric service reliability and adequacy. Nothing
32 in this section authorizes the commission to regulate rates for
33 wholesale electric energy transactions in interstate commerce.

34 ~~(b) Subdivision (a) does not apply to facilities that generate~~
35 ~~electric energy from other than a conventional power source, as~~
36 ~~defined in Section 2805, when the owner is a private energy~~
37 ~~producer, as defined in Section 2802.~~

38 ~~SEC. 6.—~~

39 (b) *This section does not apply to any of the following:*



1 (1) *An electric plant that produces or generates electricity*
2 *using cogeneration, as defined in Section 218.5.*

3 (2) *A local publicly owned electric utility, as defined in*
4 *subdivision (d) of Section 9604.*

5 (3) *A city and county operating as a public utility, furnishing*
6 *electric service as provided in Section 10001.*

7 SEC. 7. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.

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