

Introduced by Senator HuffFebruary 24, 2012

An act to amend Sections 314, 454, 587, 797, 798, 1756, and 1802 of the Public Utilities Code, relating to water corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1364, as introduced, Huff. Water corporations.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, gas corporations, telephone corporations, and water corporations, as defined. The Public Utilities Act authorizes the PUC, each commissioner, and each officer and person employed by the PUC at any time to inspect the accounts, books, papers, and documents of any public utility. This authorization applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation.

This bill would make the authorization to inspect the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that hold a controlling interest in, a water corporation.

(2) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law, with certain exceptions, prohibits a public utility from changing any rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. With certain exceptions, whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate for the services or commodities furnished by it, existing

law requires that the corporation furnish its customers notice of its application to the PUC for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the PUC filed pursuant to PUC established procedures for advice letters.

This bill would make the above-described advice letter filing exception inapplicable to an advice letter filed by a water corporation.

(3) Existing law requires every electrical, gas, and telephone corporation to annually prepare and submit to the PUC a report describing all significant transactions between the corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation. Existing law requires that the report identify the nature of the transactions and the terms and conditions applying to them, including the basis upon which cost allocations and transfer pricing were established for the transactions. Existing law requires the PUC to periodically audit all significant transactions between an electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, that electrical, gas, or telephone corporation.

This bill would make these requirements applicable to water corporations.

(4) If the PUC finds and determines that any electrical, gas, or telephone corporation has willfully made an imprudent payment to, or received a less than reasonable payment from, any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation in violation of any rule or order of the PUC, and the corporation has sought to recover the payment in any proceeding before the PUC, existing law authorizes the PUC, following a hearing, to levy a penalty against the corporation not to exceed 3 times the required or prohibited payment if the PUC finds that the payment was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding corporation.

This bill would extend this authority to water corporations.

(5) Existing law authorizes any party to an action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected by an order or decision of the PUC, to apply for a rehearing with respect to any matter determined in the action or proceeding and specified in the application for rehearing. Existing law prohibits a cause of action arising out of any order or decision of the PUC from accruing in a court to a corporation or person unless the

corporation or person has filed an application to the PUC for a rehearing within a specified amount of time after the date of issuance of the order or decision. Existing law generally authorizes an aggrieved party to petition for a writ of review of an order or decision of the PUC within 30 days after the commission issues its decision denying an application for a rehearing, or, if the PUC grants the application, within 30 days after the PUC issues its decision on rehearing. Under existing law, a petition for a writ of review may be brought in a court of appeal or the Supreme Court, except with respect to certain decisions of the PUC pertaining to a water corporation, which are required to be brought in the Supreme Court.

This bill would eliminate the requirement that certain decisions of the PUC pertaining to a water corporation be brought in the Supreme Court.

(6) Existing law provides compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers, as defined, for participation or intervention in any proceeding of the PUC involving the public utility. The existing definition of a customer, for these purposes, excludes any state, federal, or local government agency.

This bill would include in the definition of a customer, for these purposes, a local government agency that is a customer of a water corporation when participating in a proceeding involving the water corporation.

(7) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and certain provisions of the bill would extend existing requirements to water corporations, the bill would impose a state-mandated local program by expanding the application of a crime.

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. Section 314 of the Public Utilities Code is
2 amended to read:

3 314. (a) The commission, each commissioner, and each officer
4 and person employed by the commission may, at any time, inspect
5 the accounts, books, papers, and documents of any public utility.
6 The commission, each commissioner, and any officer of the
7 commission or any employee authorized to administer oaths may
8 examine under oath any officer, agent, or employee of a public
9 utility in relation to its business and affairs. Any person, other than
10 a commissioner or an officer of the commission, demanding to
11 make any inspection shall produce, under the hand and seal of the
12 commission, authorization to make the inspection. A written record
13 of the testimony or statement so given under oath shall be made
14 and filed with the commission.

15 (b) Subdivision (a) also applies to inspections of the accounts,
16 books, papers, and documents of any business ~~which~~ *that* is a
17 subsidiary or affiliate of, or a corporation ~~which~~ *that* holds a
18 controlling interest in, ~~an a water~~, electrical, gas, or telephone
19 corporation with respect to any transaction between the *water*,
20 electrical, gas, or telephone corporation and the subsidiary, affiliate,
21 or holding corporation on any matter that might adversely affect
22 the interests of the ratepayers of the *water*, electrical, gas, or
23 telephone corporation.

24 SEC. 2. Section 454 of the Public Utilities Code is amended
25 to read:

26 454. (a) Except as provided in Section 455, no public utility
27 shall change any rate or so alter any classification, contract,
28 practice, or rule as to result in any new rate, except upon a showing
29 before the commission and a finding by the commission that the
30 new rate is justified. Whenever any electrical, gas, heat, telephone,
31 water, or sewer system corporation files an application to change
32 any rate, other than a change reflecting and passing through to
33 customers only new costs to the corporation which do not result
34 in changes in revenue allocation, for the services or commodities
35 furnished by it, the corporation shall furnish to its customers
36 affected by the proposed rate change notice of its application to
37 the commission for approval of the new rate. This notice
38 requirement does not apply to any rate change proposed by a

1 corporation pursuant to an advice letter submitted to the
2 commission in accordance with commission procedures for this
3 means of submission, *but does apply to a rate increase proposed*
4 *by a water corporation in an advice letter.* The procedures for
5 advice letters may include provision for notice to customers or
6 subscribers on a case-by-case basis, as determined by the
7 commission. The corporation may include the notice with the
8 regular bill for charges transmitted to the customers within 45 days
9 if the corporation operates on a 30-day billing cycle, or within 75
10 days if the corporation operates on a 60-day billing cycle. If more
11 than one application to change any rate is filed within a single
12 billing cycle, the corporation may combine the notices into a single
13 notice if the applications are separately identified. The notice shall
14 state the amount of the proposed rate change expressed in both
15 dollar and percentage terms for the entire rate change as well as
16 for each customer classification, a brief statement of the reasons
17 the change is required or sought, and the mailing, and if available,
18 the e-mail address of the commission to which any customer
19 inquiries may be directed regarding how to participate in, or receive
20 further notices regarding the date, time, or place of, any hearing
21 on the application, and the mailing address of the corporation to
22 which any customer inquiries relative to the proposed rate change
23 may be directed.

24 (b) The commission may adopt rules it considers reasonable
25 and proper for each class of public utility providing for the nature
26 of the showing required to be made in support of proposed rate
27 changes, the form and manner of the presentation of the showing,
28 with or without a hearing, and the procedure to be followed in the
29 consideration thereof. Rules applicable to common carriers may
30 provide for the publication and filing of any proposed rate change
31 together with a written showing in support thereof, giving notice
32 of the filing and showing in support thereof to the public, granting
33 an opportunity for protests thereto, and to the consideration of,
34 and action on, the showing and any protests filed thereto by the
35 commission, with or without hearing. However, the proposed rate
36 change does not become effective until it has been approved by
37 the commission.

38 (c) The commission shall permit individual public utility
39 customers and subscribers affected by a proposed rate change, and
40 organizations formed to represent their interests, to testify at any

1 hearing on the proposed rate change, except that the presiding
2 officer need not allow repetitive or irrelevant testimony and may
3 conduct the hearing in an efficient manner.

4 SEC. 3. Section 587 of the Public Utilities Code is amended
5 to read:

6 587. Every *water*, electrical, gas, and telephone corporation
7 shall annually prepare and submit to the commission a report
8 describing all significant transactions, as specified by the
9 commission, between the corporation and every subsidiary or
10 affiliate of, or corporation holding a controlling interest in, the
11 *water*, electrical, gas, or telephone corporation. The report shall
12 identify the nature of the transactions and the terms and conditions
13 applying to them, including, but not limited to, the basis upon
14 which cost allocations and transfer pricing were established for
15 the transactions.

16 SEC. 4. Section 797 of the Public Utilities Code is amended
17 to read:

18 797. The commission shall periodically audit all significant
19 transactions, as specified by the commission, between ~~an~~ a *water*,
20 electrical, gas, or telephone corporation and every subsidiary or
21 affiliate of, or corporation holding a controlling interest in, that
22 *water*, electrical, gas, or telephone corporation. The commission
23 may, in this connection, utilize the services of an independent
24 auditor, who shall be selected and supervised by the commission.
25 Nothing in this section prohibits the commission from auditing
26 any transaction between ~~an~~ a *water*, electrical, gas, or telephone
27 corporation and any subsidiary or affiliate of, or corporation
28 holding a controlling interest in, the *water*, electrical, gas, or
29 telephone corporation, as otherwise permitted or required by law.

30 SEC. 5. Section 798 of the Public Utilities Code is amended
31 to read:

32 798. (a) Whenever the commission finds and determines that
33 any *water*, electrical, gas, or telephone corporation has willfully
34 made an imprudent payment to, or received a less than reasonable
35 payment from, any subsidiary or affiliate of, or corporation holding
36 a controlling interest in, the *water*, electrical, gas, or telephone
37 corporation in violation of any rule or order of the commission,
38 adopted and published by the commission prior to the transaction
39 but after notice to, and an opportunity to comment by, the affected
40 corporation, and the corporation has sought to recover the payment

1 in any proceeding before the commission, the commission may ,
2 following a hearing, levy a penalty against the corporation not to
3 exceed three times the required or prohibited payment, as the case
4 may be, if the commission finds that the payment, in whole or part,
5 was made or received by the corporation for the purpose of
6 benefiting its subsidiary, affiliate, or holding corporation. This
7 penalty is in addition to any criminal penalties which may apply.

8 (b) In determining whether to impose a civil penalty under this
9 section, the commission may take into consideration multistate
10 public utility diversification activities involving cross-subsidization
11 which are permissible in other states or under federal jurisdiction
12 although in violation of the commission's rules and orders.

13 SEC. 6. Section 1756 of the Public Utilities Code is amended
14 to read:

15 1756. (a) Within 30 days after the commission issues its
16 decision denying the application for a rehearing, or, if the
17 application was granted, then within 30 days after the commission
18 issues its decision on rehearing, or at least 120 days after the
19 application is granted if no decision on rehearing has been issued,
20 any aggrieved party may petition for a writ of review in the court
21 of appeal or the Supreme Court for the purpose of having the
22 lawfulness of the original order or decision or of the order or
23 decision on rehearing inquired into and determined. If the writ
24 issues, it shall be made returnable at a time and place specified by
25 court order and shall direct the commission to certify its record in
26 the case to the court within the time specified.

27 (b) The petition for review shall be served upon the executive
28 director and the general counsel of the commission either
29 personally or by service at the office of the commission.

30 (c) For purposes of this section, the issuance of a decision or
31 the granting of an application shall be construed to have occurred
32 on the date of issuance, as defined in paragraph (4) of subdivision
33 (b) of Section 1731.

34 (d) The venue of a petition filed in the court of appeal pursuant
35 to this section shall be in the judicial district in which the petitioner
36 resides. If the petitioner is a business, venue shall be in the judicial
37 district in which the petitioner has its principal place of business
38 in California.

1 (e) Any party may seek from the Supreme Court, pursuant to
2 California Rules of Court, an order transferring related actions to
3 a single appellate district.

4 ~~(f) For purposes of this section, review of decisions pertaining~~
5 ~~solely to water corporations shall only be by petition for writ of~~
6 ~~review in the Supreme Court, except that review of complaint or~~
7 ~~enforcement proceedings may be in the court of appeal or the~~
8 ~~Supreme Court.~~

9 ~~(g)~~
10 (f) No order or decision arising out of a commission proceeding
11 under Section 854 shall be reviewable in the court of appeal
12 pursuant to subdivision (a) if the application for commission
13 authority to complete the merger or acquisition was filed on or
14 before December 31, 1998, by two telecommunications-related
15 corporations including at least one which provides local
16 telecommunications service to over one million California
17 customers. These orders or decisions shall be reviewed pursuant
18 to the Public Utilities Code in existence on December 31, 1998.

19 SEC. 7. Section 1802 of the Public Utilities Code is amended
20 to read:

21 1802. As used in this article:

22 (a) "Compensation" means payment for all or part, as determined
23 by the commission, of reasonable advocate's fees, reasonable
24 expert witness fees, and other reasonable costs of preparation for
25 and participation in a proceeding, and includes the fees and costs
26 of obtaining an award under this article and of obtaining judicial
27 review, if any.

28 (b) (1) "Customer" means any of the following:

29 (A) A participant representing consumers, customers, or
30 subscribers of any electrical, gas, telephone, telegraph, or water
31 corporation that is subject to the jurisdiction of the commission.

32 (B) A representative who has been authorized by a customer.

33 (C) A representative of a group or organization authorized
34 pursuant to its articles of incorporation or bylaws to represent the
35 interests of residential customers, or to represent small commercial
36 customers who receive bundled electric service from an electrical
37 corporation.

38 (2) "Customer" does not include any state, federal, or local
39 government agency, any publicly owned public utility, or any
40 entity that, in the commission's opinion, was established or formed

1 by a local government entity for the purpose of participating in a
2 commission proceeding, *except that a local government agency*
3 *that is a customer of a water corporation may be a customer for*
4 *purposes of participating in a proceeding involving the water*
5 *corporation.*

6 (c) “Expert witness fees” means recorded or billed costs incurred
7 by a customer for an expert witness.

8 (d) “Other reasonable costs” means reasonable out-of-pocket
9 expenses directly incurred by a customer that are directly related
10 to the contentions or recommendations made by the customer that
11 resulted in a substantial contribution.

12 (e) “Party” means any interested party, respondent public utility,
13 or commission staff in a hearing or proceeding.

14 (f) “Proceeding” means an application, complaint, or
15 investigation, rulemaking, alternative dispute resolution procedures
16 in lieu of formal proceedings as may be sponsored or endorsed by
17 the commission, or other formal proceeding before the commission.

18 (g) “Significant financial hardship” means either that the
19 customer cannot afford, without undue hardship, to pay the costs
20 of effective participation, including advocate’s fees, expert witness
21 fees, and other reasonable costs of participation, or that, in the case
22 of a group or organization, the economic interest of the individual
23 members of the group or organization is small in comparison to
24 the costs of effective participation in the proceeding.

25 (h) “Small commercial customer” means any nonresidential
26 customer with a maximum peak demand of less than 50 kilowatts.
27 The commission may establish rules to modify or change the
28 definition of “small commercial customer,” including use of criteria
29 other than a peak demand threshold, if the commission determines
30 that the modification or change will promote participation in
31 proceedings at the commission by organizations representing small
32 businesses, without incorporating large commercial and industrial
33 customers.

34 (i) “Substantial contribution” means that, in the judgment of
35 the commission, the customer’s presentation has substantially
36 assisted the commission in the making of its order or decision
37 because the order or decision has adopted in whole or in part one
38 or more factual contentions, legal contentions, or specific policy
39 or procedural recommendations presented by the customer. Where
40 the customer’s participation has resulted in a substantial

1 contribution, even if the decision adopts that customer's contention
2 or recommendations only in part, the commission may award the
3 customer compensation for all reasonable advocate's fees,
4 reasonable expert fees, and other reasonable costs incurred by the
5 customer in preparing or presenting that contention or
6 recommendation.

7 SEC. 8. 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.