AMENDED IN ASSEMBLY APRIL 2, 2009

california legislature—2009–10 regular session

ASSEMBLY BILL No. 698

Introduced by Assembly Member Skinner

February 26, 2009

An act to amend Sections 851 and 853 of the Public Utilities Code, relating to utility property.

legislative counsel's digest

AB 698, as amended, Skinner. Utility property.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities and can establish its own procedures, subject to statutory limitations or directions and constitutional requirements of due process. The existing Public Utilities Act prohibits, with certain exemptions, any public utility other than a common carrier by railroad, from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering the whole or any part of specified property necessary or useful in the performance of the public utility's duties to the public, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above $5,000,000, or for qualified transactions valued at $5,000,000 or less, having filed an advice letter and obtained a resolution from the commission authorizing it to do so. Existing law requires the commission to determine the types of transactions valued at $5,000,000 or less that qualify for advice letter handling. Existing law states the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would trigger the commission's review responsibilities under the California

Environmental Quality Act, should not qualify for expedited advice letter review.

This bill would ~~authorize for qualified transactions valued at $5,000,000 or less for which an advice letter is filed that is uncontested, the executive director of the commission or the director of the division of the commission having regulatory jurisdiction over the utility to approve the advice letter. The bill would~~ *require commission approval of an advice letter for qualified transactions valued at $5,000,000 or less where review of the transaction is necessary in the public interest and would* delete the requirement that the commission approve the advice letter by resolution. *The bill would authorize the executive director of the commission or the director of the division of the commission having regulatory jurisdiction over the utility to approve the advice letter for qualified transactions valued at $5,000,000 or less for which an advice letter is filed that is uncontested.* The bill would state the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base, or transactions that would trigger the commission's review responsibilities as lead agency under the California Environmental Quality Act, should not qualify for expedited advice letter review. The bill would authorize the filing of an advice letter for transactions by the public utility if the lead agency has completed the appropriate review under the California Environmental Quality Act for the transaction, and the commission is the responsible agency under the act *and approves the advice letter by resolution voted upon by the commission*.

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

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

SECTION 1. Section 851 of the Public Utilities Code is amended to read:

851. A public utility, other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street

railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars ($5,000,000), or for qualified transactions valued at five million dollars ($5,000,000) or less, filed an advice letter and, *where review of the transaction is necessary in the public interest,* obtained approval from the commission authorizing it to do so. If the advice letter is uncontested, approval may be given by the executive director or the director of the division of the commission having regulatory jurisdiction over the utility. The commission shall determine the types of transactions valued at five million dollars ($5,000,000) or less, that qualify for advice letter handling. For a qualified transaction valued at five million dollars ($5,000,000) or less, the commission may designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. The commission shall reject any advice letter that seeks to circumvent the five million dollars ($5,000,000) threshold by dividing a single asset with a value of more than five million dollars ($5,000,000), into component parts, each valued at less than five million dollars ($5,000,000). Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and approval from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

This section does not prevent the sale, lease, encumbrance or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with that property in good faith for value, provided that this section does not apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

SEC. 2. Section 853 of the Public Utilities Code is amended to read:

853. (a) This article does not apply to any person or corporation which transacts no business subject to regulation under this part, except performing services or delivering commodities for or to public utilities or municipal corporations or other public agencies primarily for resale or use in serving the public or any portion thereof, but shall apply to any public utility, and any subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, if the commission finds, in a proceeding to which the public utility is or may become a party, that the application of this article is required by the public interest.

(b) The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.

(c) The provisions of Sections 851 and 854 that prohibit any assignment, acquisition, or change of control without advance authorization from the commission, do not apply to the transfer of the ownership interest in a water utility, with 10,000 or fewer service connections, from a decedent to a member of the decedent's family in the manner provided in Section 240 of the Probate Code or by a will, trust, or other instrument.

(d) It is the intent of the Legislature that transactions with monetary values that materially impact a public utility's rate base should not qualify for expedited advice letter treatment pursuant to this article. It is the further intent of the Legislature that the commission maintain all of its oversight and review responsibilities subject to the California Environmental Quality Act, and that public utility transactions that jurisdictionally require a review by the commission, as the lead agency, under the act should not qualify for expedited advice letter treatment pursuant to this article. An advice letter may be filed for transactions by the public utility if the lead agency has completed the appropriate review under the California Environmental Quality Act for the transaction, and the commission is the responsible agency under the act. *The advice letter shall be subject to approval by resolution voted upon by the commission.*

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