

AMENDED IN SENATE JANUARY 16, 2001

CALIFORNIA LEGISLATURE—2001–02 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 6

Introduced by Assembly Members Dutra and Pescetti
(Principal coauthor: Senator Bowen)

January 11, 2001

An act to amend Sections 216, 330, and 377 of the Public Utilities Code, relating to public utilities, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 6, as amended, Dutra. Electrical restructuring.

(1) Existing law requires generation assets owned by any public utility prior to June 1, 1997, and subject to rate regulation by the Public Utilities Commission, to continue to be subject to regulation by the commission until those assets have undergone market valuation, as specified.

~~This bill, in addition, would require those assets to continue to be subject to that regulation until the commission has authorized the disposition of those assets pursuant to prescribed provisions of law would delete those provisions.~~

(2) Existing law requires the commission to continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to regulation by the commission until those assets have been subject to market valuation, as prescribed.

~~This bill, in addition, would include nuclear facilities for the generation of electricity within those provisions.~~

The bill would require those ~~assets~~ facilities to continue to be subject to that regulation until the commission has authorized the disposition of those ~~assets~~ facilities pursuant to prescribed provisions of law. The bill would prohibit a facility for the generation of electricity owned by a public utility from being disposed of prior to January 1, 2006. The bill would require the commission to ensure that public utility assets remain dedicated to service for the benefit of the public.

Because, under existing law, a violation of the above provisions with regard to regulation by the 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.

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

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

Vote: ~~majority~~ ²/₃. 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 216 of the Public Utilities Code is
2 amended to read:

3 216. (a) “Public utility” includes every common carrier, toll
4 bridge corporation, pipeline corporation, gas corporation,
5 electrical corporation, telephone corporation, telegraph
6 corporation, water corporation, sewer system corporation, and
7 heat corporation, where the service is performed for, or the
8 commodity is delivered to, the public or any portion thereof.

9 (b) Whenever any common carrier, toll bridge corporation,
10 pipeline corporation, gas corporation, electrical corporation,
11 telephone corporation, telegraph corporation, water corporation,
12 sewer system corporation, or heat corporation performs a service
13 for, or delivers a commodity to, the public or any portion thereof
14 for which any compensation or payment whatsoever is received,
15 that common carrier, toll bridge corporation, pipeline corporation,
16 gas corporation, electrical corporation, telephone corporation,

1 telegraph corporation, water corporation, sewer system
2 corporation, or heat corporation, is a public utility subject to the
3 jurisdiction, control, and regulation of the commission and the
4 provisions of this part.

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

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

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

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

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

~~(h) Generation assets owned by any public utility prior to January 1, 1997, and subject to rate regulation by the commission, shall continue to be subject to regulation by the commission until the owner of those assets has applied to the commission, in accordance with procedures established by the commission under Section 851, to dispose of those assets and has been authorized by the commission to undertake that disposal.~~

~~(i)~~

(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.

SEC. 2. *Section 330 of the Public Utilities Code is amended to read:*

330. In order to provide guidance in carrying out this chapter, the Legislature finds and declares all of the following:

(a) It is the intent of the Legislature that a cumulative rate reduction of at least 20 percent be achieved not later than April 1, 2002, for residential and small commercial customers, from the rates in effect on June 10, 1996. In determining that the April 1, 2002, rate reduction has been met, the commission shall exclude the costs of the competitively procured electricity and the costs associated with the rate reduction bonds, as defined in Section 840.

(b) The people, businesses, and institutions of California spend nearly twenty-three billion dollars (\$23,000,000,000) annually on electricity, so that reductions in the price of electricity would significantly benefit the economy of the state and its residents.

(c) The Public Utilities Commission has opened rulemaking and investigation proceedings with regard to restructuring California's electric power industry and reforming utility regulation.

(d) The commission has found, after an extensive public review process, that the interests of ratepayers and the state as a whole will be best served by moving from the regulatory framework existing on January 1, 1997, in which retail electricity service is provided principally by electrical corporations subject

1 to an obligation to provide ultimate consumers in exclusive service
2 territories with reliable electric service at regulated rates, to a
3 framework under which competition would be allowed in the
4 supply of electric power and customers would be allowed to have
5 the right to choose their supplier of electric power.

6 (e) Competition in the electric generation market will
7 encourage innovation, efficiency, and better service from all
8 market participants, and will permit the reduction of costly
9 regulatory oversight.

10 (f) The delivery of electricity over transmission and
11 distribution systems is currently regulated, and will continue to be
12 regulated to ensure system safety, reliability, environmental
13 protection, and fair access for all market participants.

14 (g) Reliable electric service is of utmost importance to the
15 safety, health, and welfare of the state's citizenry and economy. It
16 is the intent of the Legislature that electric industry restructuring
17 should enhance the reliability of the interconnected regional
18 transmission systems, and provide strong coordination and
19 enforceable protocols for all users of the power grid.

20 (h) It is important that sufficient supplies of electric generation
21 will be available to maintain the reliable service to the citizens and
22 businesses of the state.

23 (i) Reliable electric service depends on conscientious
24 inspection and maintenance of transmission and distribution
25 systems. To continue and enhance the reliability of the delivery of
26 electricity, the Independent System Operator and the commission,
27 respectively, should set inspection, maintenance, repair, and
28 replacement standards.

29 (j) It is the intent of the Legislature that California enter into a
30 compact with western region states. That compact should require
31 the publicly and investor-owned utilities located in those states,
32 that sell energy to California retail customers, to adhere to
33 enforceable standards and protocols to protect the reliability of the
34 interconnected regional transmission and distribution systems.

35 (k) In order to achieve meaningful wholesale and retail
36 competition in the electric generation market, it is essential to do
37 all of the following:

38 (1) Separate monopoly utility transmission functions from
39 competitive generation functions, through development of

1 independent, third-party control of transmission access and
2 pricing.

3 (2) Permit all customers to choose from among competing
4 suppliers of electric power.

5 (3) Provide customers and suppliers with open,
6 nondiscriminatory, and comparable access to transmission and
7 distribution services.

8 (l) The commission has properly concluded that:

9 (1) This competition will best be introduced by the creation of
10 an Independent System Operator and an independent Power
11 Exchange.

12 (2) Generation of electricity should be open to competition and
13 ~~utility generation should be transitioned from regulated status to~~
14 ~~unregulated status through means of commission-approved~~
15 ~~market valuation mechanisms.~~

16 (3) There is a need to ensure that no participant in these new
17 market institutions has the ability to exercise significant market
18 power so that operation of the new market institutions would be
19 distorted.

20 (4) These new market institutions should commence
21 simultaneously with the phase-in of customer choice, and the
22 public will be best served if these institutions and the
23 nonbypassable transition cost recovery mechanism referred to in
24 subdivisions (s) to (w), inclusive, are in place simultaneously and
25 no later than January 1, 1998.

26 (m) It is the intention of the Legislature that California's
27 publicly owned electric utilities and investor-owned electric
28 utilities should commit control of their transmission facilities to
29 the Independent System Operator. These utilities should jointly
30 advocate to the Federal Energy Regulatory Commission a pricing
31 methodology for the Independent System Operator that results in
32 an equitable return on capital investment in transmission facilities
33 for all Independent System Operator participants.

34 (n) Opportunities to acquire electric power in the competitive
35 market must be available to California consumers as soon as
36 practicable, but no later than January 1, 1998, so that all customers
37 can share in the benefits of competition.

38 (o) Under the existing regulatory framework, California's
39 electrical corporations were granted franchise rights to provide
40 electricity to consumers in their service territories.

1 (p) Consistent with federal and state policies, California
2 electrical corporations invested in power plants and entered into
3 contractual obligations in order to provide reliable electrical
4 service on a nondiscriminatory basis to all consumers within their
5 service territories who requested service.

6 (q) The cost of these investments and contractual obligations
7 are currently being recovered in electricity rates charged by
8 electrical corporations to their consumers.

9 (r) Transmission and distribution of electric power remain
10 essential services imbued with the public interest that are provided
11 over facilities owned and maintained by the state's electrical
12 corporations.

13 (s) It is proper to allow electrical corporations an opportunity
14 to continue to recover, over a reasonable transition period, those
15 costs and categories of costs for generation-related assets and
16 obligations, including costs associated with any subsequent
17 renegotiation or buyout of existing generation-related contracts,
18 that the commission, prior to December 20, 1995, had authorized
19 for collection in rates and that may not be recoverable in market
20 prices in a competitive generation market, and appropriate
21 additions incurred after December 20, 1995, for capital additions
22 to generating facilities existing as of December 20, 1995, that the
23 commission determines are reasonable and should be recovered,
24 provided that the costs are necessary to maintain those facilities
25 through December 31, 2001. In determining the costs to be
26 recovered, it is appropriate to net the negative value of above
27 market assets against the positive value of below market assets.

28 (t) The transition to a competitive generation market should be
29 orderly, protect electric system reliability, provide the investors in
30 these electrical corporations with a fair opportunity to fully
31 recover the costs associated with commission approved
32 generation-related assets and obligations, and be completed as
33 expeditiously as possible.

34 (u) The transition to expanded customer choice, competitive
35 markets, and performance based ratemaking as described in
36 Decision 95-12-063, as modified by Decision 96-01-009, of the
37 Public Utilities Commission, can produce hardships for
38 employees who have dedicated their working lives to utility
39 employment. It is preferable that any necessary reductions in the
40 utility work force directly caused by electrical restructuring, be

1 accomplished through offers of voluntary severance, retraining,
2 early retirement, outplacement, and related benefits. Whether
3 work force reductions are voluntary or involuntary, reasonable
4 costs associated with these sorts of benefits should be included in
5 the competition transition charge.

6 (v) Charges associated with the transition should be collected
7 over a specific period of time on a nonbypassable basis and in a
8 manner that does not result in an increase in rates to customers of
9 electrical corporations. In order to insulate the policy of
10 nonbypassability against incursions, if exemptions from the
11 competition transition charge are granted, a fire wall shall be
12 created that segregates recovery of the cost of exemptions as
13 follows:

14 (1) The cost of the competition transition charge exemptions
15 granted to members of the combined class of residential and small
16 commercial customers shall be recovered only from those
17 customers.

18 (2) The cost of the competition transition charge exemptions
19 granted to members of the combined class of customers other than
20 residential and small commercial customers shall be recovered
21 only from those customers. The commission shall retain existing
22 cost allocation authority provided that the fire wall and rate freeze
23 principles are not violated.

24 (w) It is the intent of the Legislature to require and enable
25 electrical corporations to monetize a portion of the competition
26 transition charge for residential and small commercial consumers
27 so that these customers will receive rate reductions of no less than
28 10 percent for 1998 continuing through 2002. Electrical
29 corporations shall, by June 1, 1997, or earlier, secure the means to
30 finance the competition transition charge by applying
31 concurrently for financing orders from the Public Utilities
32 Commission and for rate reduction bonds from the California
33 Infrastructure and Economic Development Bank.

34 (x) California's public utility electrical corporations provide
35 substantial benefits to all Californians, including employment and
36 support of the state's economy. Restructuring the electric services
37 industry pursuant to the act that added this chapter will continue
38 these benefits, and will also offer meaningful and immediate rate
39 reductions for residential and small commercial customers, and
40 facilitate competition in the supply of electric power.

SEC. 3. Section 377 of the Public Utilities Code is amended to read:

377. The commission shall continue to regulate the ~~nonnuclear generation assets~~ *facilities for the generation of electricity* owned by any public utility prior to January 1, 1997, that are subject to commission regulation until the owner of those ~~assets~~ *facilities* has applied to the commission to dispose of those ~~assets under Section 851 and has received approval from the commission~~ *facilities and has been authorized by the commission under Section 851 to undertake that disposal. Notwithstanding any other provision of law, no facility for the generation of electricity owned by a public utility may be disposed of prior to January 1, 2006. The commission shall ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers.*

~~SEC. 3.~~

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

SEC. 5. *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 ensure that public utility generation assets remain dedicated to service for the benefit of California ratepayers, and are not deregulated as a consequence of market valuation, without appropriate review and authorization of the Public Utilities Commission pursuant to Section 851 of the Public Utilities Code, it is necessary that this act take effect immediately.

O