

SENATE BILL

No. 39

Introduced by Senator Speier

February 8, 2001

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

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as introduced, 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 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 ensure that generation facilities located in California are operated by the persons or corporations who own or control them in a manner that assures 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 as it deems necessary and appropriate, after a hearing. The bill would authorize the commission to prevent the

exercise of market power 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) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electric corporations.

This bill would authorize the commission 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.

(4) 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

1 heat corporation, where the service is performed for, or the
2 commodity is delivered to, the public or any portion thereof.

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

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

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

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

37 (f) The ownership or operation of a facility that sells
38 compressed natural gas at retail to the public for use only as a
39 motor vehicle fuel, and the selling of compressed natural gas at
40 retail from that facility to the public for use only as a motor vehicle

1 fuel, does not make the corporation or person a public utility
2 within the meaning of this section solely because of that
3 ownership, operation, or sale.

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

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

19 SEC. 3. Section 362 of the Public Utilities Code is amended
20 to read:

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

31 (b) *The commission shall ensure that generation facilities*
32 *located in California are operated by the persons or corporations*
33 *who own or control them in a manner that ensures their availability*
34 *to maintain the reliability of the electric supply system. The*
35 *commission may accomplish this by issuing orders and directives*
36 *as it deems necessary and appropriate, after a hearing. The*
37 *commission may prevent the exercise of market power by*
38 *prohibiting economic or physical withholding of the output of a*
39 *divested generation facility from delivery to or for the benefit of*
40 *California end users.*

1 SEC. 4. Section 761.3 is added to the Public Utilities Code, to
2 read:

3 761.3. Notwithstanding Section 216, the commission may
4 prescribe inspection, maintenance, and operating practices and
5 procedures for any electric plant used to produce or generate
6 electric energy located in the State of California that is necessary
7 to ensure public health and safety and electric service reliability
8 and adequacy. Nothing in this section authorizes the commission
9 to regulate rates for wholesale electric energy transactions in
10 interstate commerce.

11 SEC. 5. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

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