

AMENDED IN SENATE MARCH 1, 2004

AMENDED IN SENATE JULY 1, 2003

AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1169

Introduced by Assembly Member Bermudez

February 21, 2003

An act to amend Section ~~366.4~~ 851 of the Public Utilities Code, relating to ~~electric power~~ *public utilities*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1169, as amended, Bermudez. ~~Aggregation: Magnolia Power Project~~ *Public utilities: telephone corporations: disposition of property.*

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Under the existing Public Utilities Act, a public utility is required to seek commission approval prior to selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering any property necessary or useful in the performance of its duties to the public.

This bill would provide that a property or asset that is necessary or useful in the performance of a telephone corporation's duties to the public is a property or asset that is essential to the delivery of service to end users, on a wholesale or retail basis, when the property or asset is currently and actively being used to provide service to end users, the telephone corporation has a present intention to use the property or asset to provide service to end users, or the telephone corporation has

an obligation to make the property or asset available to wholesale telecommunications providers to provide service to end users. The bill would authorize a telephone corporation to designate certain property or asset as surplus and not necessary or useful in the performance of its duties to the public and the telephone corporation would not be required to obtain the commission’s approval to dispose of or encumber that surplus property or asset. The bill would authorize a telephone corporation to dispose of or encumber any property or asset with a fair market value of less than \$5 million if the telephone corporation has no present obligation to make the property or asset available to any wholesale telecommunications provider to provide service to end users. As to any property with a fair market value of \$5 million or more, the bill would require the commission to permit a telephone corporation to make a filing to dispose of the property or asset in accordance with the procedures adopted by the commission in the commission’s Rules of Practice and Procedure applicable to advice letter filings. The bill would require the commission to apply those procedures in issuing a resolution to the filing, including the procedures relating to protests. The bill would authorize the commission to treat an advice letter filing as an application filing in specific cases.

~~Under existing law, a city with rights and obligations to the Magnolia Power Project, as defined, may serve as a community aggregator on behalf of all retail end use customers within its jurisdiction, if the project has been constructed and is otherwise capable of beginning deliveries of electricity to the existing project participants, as defined.~~

~~This bill would make changes to reflect that the project is being constructed. The bill would modify the definition of the term “existing project participant” to mean the Magnolia Power Project B participant, as defined in lease revenue bonds issued for the project. The bill would specifically authorize an existing project participant to serve as a community aggregator on behalf of all electric service accounts of the ABC Unified School District.~~

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

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

- 1 SECTION 1. Section ~~366.1~~ 851 of the Public Utilities Code
- 2 is amended to read:
- 3 ~~366.1.~~ (a) As used in this section, the following terms have



1 851. (a) No public utility other than a common carrier by
2 railroad subject to Part 1 of the Interstate Commerce Act (Title 49,
3 U.S.C.) ~~shall~~ *may* sell, lease, assign, mortgage, or otherwise
4 dispose of or encumber the whole or any part of its railroad, street
5 railroad, line, plant, system, or other property necessary or useful
6 in the performance of its duties to the public, or any franchise or
7 permit or any right thereunder, nor by any means whatsoever,
8 directly or indirectly, merge or consolidate its railroad, street
9 railroad, line, plant, system, or other property, or franchises or
10 permits or any part thereof, with any other public utility, without
11 first having secured from the commission an order authorizing it
12 ~~so to do~~ *to do so*. Every ~~such~~ sale, lease, assignment, mortgage,
13 disposition, encumbrance, merger, or consolidation made other
14 than in accordance with the order of the commission authorizing
15 it is void. The permission and approval of the commission to the
16 exercise of a franchise or permit under Article 1 (commencing
17 with Section 1001) of Chapter 5 of this part, or the sale, lease,
18 assignment, mortgage, or other disposition or encumbrance of a
19 franchise or permit under this article ~~shall~~ *does* not revive or
20 validate any lapsed or invalid franchise or permit, or enlarge or add
21 to the powers or privileges contained in the grant of any franchise
22 or permit, or waive any forfeiture.

23 Nothing in this section ~~shall prevent~~ *prevents* the sale, lease,
24 encumbrance or other disposition by any public utility of property
25 ~~which~~ *that* is not necessary or useful in the performance of its
26 duties to the public, and any disposition of property by a public
27 utility shall be conclusively presumed to be of property ~~which~~ *that*
28 is not useful or necessary in the performance of its duties to the
29 public, as to any purchaser, lessee or encumbrancer dealing with
30 ~~such~~ *the* property in good faith for value; ~~provided, however, that~~
31 ~~nothing in this section shall~~. *This section does not* apply to the
32 interchange of equipment in the regular course of transportation
33 between connecting common carriers.

34 (b) *For a telephone corporation, a property or asset that is*
35 *“necessary or useful in the performance of its duties to the public”*
36 *under subdivision (a), means an operational property or asset*
37 *owned by the telephone corporation that is essential to the delivery*
38 *of service to end users, on a wholesale or retail basis, and is any*
39 *of the following:*



- 1 (1) *The property or asset is currently and actively being used*
2 *by the telephone corporation to provide service to end users.*
- 3 (2) *The telephone corporation has a present intention to use the*
4 *property or asset to provide service to end users.*
- 5 (3) *The telephone corporation has a present obligation to make*
6 *the property or asset available to wholesale telecommunications*
7 *providers to provide service to end users.*
- 8 (c) *A telephone corporation may designate, wholly or partially,*
9 *any property or asset as surplus and not “necessary or useful in the*
10 *performance of its duties to the public” pursuant to subdivision*
11 *(a), if the property or asset is any of the following:*
- 12 (1) *The property or asset consists of vacant or unused office or*
13 *administrative space.*
- 14 (2) *The property or asset consists of vacant or unused space on*
15 *a utility pole or tower or in utility conduit, provided that the*
16 *telephone corporation complies with all other applicable statutory*
17 *provisions and commission general orders regarding pole, tower,*
18 *and conduit attachments.*
- 19 (3) *The property or asset consists of vacant or unimproved real*
20 *estate that the telephone corporation does not have a present*
21 *intention to use to provide service to end users, or does not have*
22 *a present obligation to make available to wholesale providers to*
23 *provide service to end users.*
- 24 (4) *The property or asset is accounted for as a nonoperating*
25 *asset on the books of the telephone corporation.*
- 26 (5) *The property or asset is no longer being actively used by the*
27 *telephone corporation or a wholesale telecommunications*
28 *provider to provide service to end users, and the telephone*
29 *corporation has no present intention to use the property or asset*
30 *to provide service to end users, or no present obligation to make*
31 *the property or asset available to wholesale telecommunications*
32 *providers to provide service to end users.*
- 33 (d) *A telephone corporation is not required to obtain*
34 *commission approval prior to disposing of or encumbering any*
35 *property or asset with a fair market value of less than five million*
36 *dollars (\$5,000,000), if the telephone corporation has no present*
37 *obligation to make the property or asset available to any wholesale*
38 *telecommunications provider to provide service to end users.*
- 39 (e) *The commission shall permit a telephone corporation to*
40 *make a filing to dispose of a property or asset with a fair market*



1 value in excess of five million dollars (\$5,000,000), as required in
2 subdivision (a), in accordance with the procedures adopted by the
3 commission in the commission's Rules of Practice and Procedure
4 applicable to advice letter filings. The commission shall apply
5 those procedures in issuing a resolution to a filing under this
6 subdivision, including the procedures relating to protests. The
7 commission retains authority to treat an advice letter filing as an
8 application filing in specific cases, and to eliminate the filing
9 requirement altogether for classes of filings under this section.

10 (f) A telephone corporation is not required to obtain
11 commission approval to dispose of or encumber property or assets
12 that are surplus under subdivision (c). ~~the following meanings:~~

13 ~~(1) "Department" means the Department of Water Resources~~
14 ~~with respect to its power program described in Chapter 2~~
15 ~~(commencing with Section 80100) of Division 27 of the Water~~
16 ~~Code.~~

17 ~~(2) "Existing project participant" means the Magnolia Power~~
18 ~~Project B participant, as defined in the Magnolia Power Project B~~
19 ~~lease revenue bonds, issued on March 15, 2003.~~

20 ~~(3) "Magnolia Power Project" means a natural gas-fired~~
21 ~~electric generating facility being constructed at an existing site in~~
22 ~~Burbank and for which an application for certification has been~~
23 ~~approved by the State Energy Resources Conservation and~~
24 ~~Development Commission and for which a certificate to construct~~
25 ~~and operate has been granted.~~

26 ~~(b) Notwithstanding Section 80110 of the Water Code or any~~
27 ~~commission decision ordering the suspension of direct access, if~~
28 ~~the Magnolia Power Project has been constructed and is otherwise~~
29 ~~capable of beginning deliveries of electricity to the existing project~~
30 ~~participants, an existing project participant may serve as a~~
31 ~~community aggregator on behalf of all retail end-use customers~~
32 ~~within its jurisdiction, including all electric service accounts of the~~
33 ~~ABC Unified School District. Nothing in this section may be~~
34 ~~construed to restrict the existing project participant to reliance~~
35 ~~solely on output from the Magnolia Power Project in its right to~~
36 ~~serve all retail end-use customers within its jurisdiction.~~

37 ~~(e) Subdivision (b) may not become operative until both of the~~
38 ~~following occur:~~

39 ~~(1) The commission implements a cost-recovery mechanism,~~
40 ~~consistent with subdivision (d), that is applicable to customers that~~



1 ~~elected to purchase electricity from an alternate provider between~~
2 ~~February 1, 2001, and January 1, 2003.~~

3 ~~(2) The commission submits a report certifying its satisfaction~~
4 ~~of paragraph (1) to the Senate Energy, Utilities and~~
5 ~~Communications Committee, or its successor, and the Assembly~~
6 ~~Committee on Utilities and Commerce, or its successor.~~

7 ~~(d) (1) It is the intent of the Legislature that each retail end-use~~
8 ~~customer that has purchased power from an electrical corporation~~
9 ~~on or after February 1, 2001, should bear a fair share of the~~
10 ~~department's power purchase costs, as well as power purchase~~
11 ~~contract obligations incurred as of January 1, 2003, that are~~
12 ~~recoverable from electrical corporation customers in~~
13 ~~commission-approved rates. It is the further intent of the~~
14 ~~Legislature to prevent any shifting of recoverable costs between~~
15 ~~customers.~~

16 ~~(2) The Legislature finds and declares that this subdivision is~~
17 ~~consistent with the requirements of Section 360.5 and Division 27~~
18 ~~(commencing with Section 80000) of the Water Code, and is~~
19 ~~therefore declaratory of existing law.~~

20 ~~(e) A retail end-use customer purchasing power from a~~
21 ~~community aggregator pursuant to subdivision (b) shall reimburse~~
22 ~~the department for all of the following:~~

23 ~~(1) A charge equivalent to the charge that would otherwise be~~
24 ~~imposed on the customer by the commission to recover bond~~
25 ~~related costs pursuant to an agreement between the commission~~
26 ~~and the department pursuant to Section 80110 of the Water Code.~~
27 ~~That charge shall be payable until all obligations of the department~~
28 ~~pursuant to Division 27 (commencing with Section 80000) of the~~
29 ~~Water Code are fully paid or otherwise discharged.~~

30 ~~(2) The costs of the department, equal to the share of the~~
31 ~~department's estimated net unavoidable power purchase contract~~
32 ~~costs attributable to the customer, as determined by the~~
33 ~~commission, for the period commencing with the customer's~~
34 ~~purchases of electricity from a community aggregator, through the~~
35 ~~expiration of all then existing power purchase contracts entered~~
36 ~~into by the department.~~

37 ~~(f) A retail end-use customer purchasing power from a~~
38 ~~community aggregator pursuant to subdivision (b) shall reimburse~~
39 ~~the electrical corporation that previously served the customer for~~
40 ~~all of the following:~~



1 ~~(1) The electrical corporation's unrecovered past~~
2 ~~underecollections, including all financing costs attributable to that~~
3 ~~customer, that the commission lawfully determines may be~~
4 ~~recovered in rates.~~

5 ~~(2) The costs of the electrical corporation recoverable in~~
6 ~~commission-approved rates, equal to the share of the electrical~~
7 ~~corporation's estimated net unavoidable power purchase contract~~
8 ~~costs attributable to the customer, as determined by the~~
9 ~~commission, for the period commencing with the customer's~~
10 ~~purchases of electricity from the community aggregator, through~~
11 ~~the expiration of all then existing power purchase contracts entered~~
12 ~~into by the electrical corporation.~~

13 ~~(g) (1) A charge or cost imposed pursuant to subdivision (e),~~
14 ~~and all revenues received to pay the charge or cost, shall be the~~
15 ~~property of the department. A charge or cost imposed pursuant to~~
16 ~~subdivision (f), and all revenues received to pay the charge or cost,~~
17 ~~shall be the property of the particular electrical corporation. The~~
18 ~~commission shall establish mechanisms, including agreements~~
19 ~~with, or orders with respect to, electrical corporations necessary to~~
20 ~~ensure that the revenues received to pay a charge or cost payable~~
21 ~~pursuant to this section are promptly remitted to the party entitled~~
22 ~~to those revenues.~~

23 ~~(2) A charge or cost imposed pursuant to this section shall be~~
24 ~~nonbypassable.~~

