

Assembly Bill No. 2501

CHAPTER 853

An act to amend Sections 216 and 228.5 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 23, 1996. Filed
with Secretary of State September 24, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2501, Kuykendall. Public utilities: exempt wholesale generators.

Existing state law defines "public utility" for purposes of state regulation. Existing state law authorizes the Public Utilities Commission to supervise and regulate every public utility in the state, and to do all things necessary and convenient in the exercise of its power and jurisdiction. Existing federal law defines an "exempt wholesale generator" as any person determined by the Federal Energy Regulatory Commission to be engaged in the business of owning and operating one or more eligible facilities and selling electric energy at wholesale, as specified.

This bill would define an "exempt wholesale generator" for purposes of state law, as it is defined in specified federal law. The bill would provide that the ownership or operation of an exempt wholesale generator, as specified, does not make a person or corporation a public utility, or subject to the general jurisdiction of the commission, solely due to the ownership or operation of that facility.

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

SECTION 1. Section 216 of the Public Utilities Code is amended to read:

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

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

common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.

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

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

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

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

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

SEC. 2. Section 228.5 of the Public Utilities Code is amended to read:

228.5. (a) The terms “qualifying small power producer,” “small power production facility,” and “qualifying small power production facility” have the same meaning as found in Section 796 of Title 16 of the United States Code and regulations enacted pursuant thereto.

(b) Notwithstanding any other provision of law, a qualifying small power producer owning or operating a small power production



facility is not a public utility subject to the general jurisdiction of the commission solely because of the ownership or operation of the facility.

(c) The term “exempt wholesale generator” has the same meaning as found in Section 79z-5a of Title 15 of the United States Code, and regulations enacted pursuant thereto.

(d) Notwithstanding any other provision of law, an exempt wholesale generator is not a public utility subject to the general jurisdiction of the commission solely due to the ownership or operation of the facility.

