

Introduced by Senator Costa

February 25, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as introduced, Costa. Public utilities: property.

Existing law requires a public utility other than a specified common carrier to secure authorization from the Public Utilities Commission before disposing of or encumbering certain property necessary or useful in the performance of its duties to the public, or any related franchise, permit, or right. Existing law states that the above provision shall not prevent the 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. Existing law authorizes the commission, by order or rule, to exempt any public utility or class of public utility from provisions governing the disposal of utility property, as prescribed.

This bill would modify those provisions relating to the disposal of public utility property to apply only to property necessary in the performance of duties of the public utility to the public, or any related franchise, permit, or right. The bill would require the commission, on or before July 1, 2000, to designate, by rule or order, categories of public utility property that a public utility may sell, lease, or otherwise

dispose of or encumber, as determined to be necessary by that public utility, without further approval.

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

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

1 SECTION 1. (a) The Legislature finds and declares
2 all of the following:

3 (1) In enacting electric industry restructuring
4 legislation in 1996 (Chapter 854 of the Statutes of 1996),
5 the Legislature found and declared that competition will
6 encourage innovation, efficiency, and better service in
7 certain electricity markets, and will permit the reduction
8 of costly regulatory oversight.

9 (2) The same state policies regarding the benefits of
10 competition that are applicable to electric power also
11 apply to certain natural gas utility services.

12 (3) The Public Utilities Commission needs to
13 implement reforms of its regulatory procedures to secure
14 to state consumers and businesses the full benefits of
15 competition in the sale and disposition of surplus utility
16 assets in light of electric and gas industry restructuring
17 and other changes in electric and gas utility services.

18 (b) It is the intent of the Legislature in enacting this
19 act to ensure that the Public Utilities Commission
20 streamlines its processes for the sale and disposition of
21 electric and gas utility assets that are no longer necessary
22 for utility service or that would be better utilized through
23 sale or disposition. It is the further intent of the
24 Legislature in enacting this act that the determination by
25 the Public Utilities Commission of new regulatory
26 procedures for the sale and disposition of those assets
27 should be expedited and implemented as soon as possible,
28 to benefit consumers and the marketplace.

29 SEC. 2. Section 851 of the Public Utilities Code is
30 amended to read:

31 851. (a) No public utility other than a common
32 carrier by railroad subject to Part I of the *federal*
33 Interstate Commerce Act (~~Title 49, U.S.C.~~ *U.S.C. Sec.*



1 10101 and following) shall sell, lease, assign, mortgage, or
2 otherwise dispose of or encumber the whole or any part
3 of its railroad, street railroad, line, plant, system, or other
4 property necessary ~~or useful~~ in the performance of its
5 duties to the public, or any franchise or permit or any
6 right thereunder, nor by any means whatsoever, directly
7 or indirectly, merge or consolidate its railroad, street
8 railroad, line, plant, system, or other property, or
9 franchises or permits or any part thereof, with any other
10 public utility, without first having secured from the
11 commission an order authorizing it so to do. Every ~~such~~
12 sale, lease, assignment, mortgage, disposition,
13 encumbrance, merger, or consolidation made other than
14 in accordance with the order of the commission
15 authorizing it is void. The permission and approval of the
16 commission to the exercise of a franchise or permit under
17 Article 1 (commencing with Section 1001) of Chapter 5
18 of this part, or the sale, lease, assignment, mortgage, or
19 other disposition or encumbrance of a franchise or permit
20 under this article shall not revive or validate any lapsed
21 or invalid franchise or permit, or enlarge or add to the
22 powers or privileges contained in the grant of any
23 franchise or permit, or waive any forfeiture.

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

38 SEC. 3. Section 853 of the Public Utilities Code is
39 amended to read:



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

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

28 (c) *On or before July 1, 2000, the commission, by rule*
 29 *or order, shall designate categories of public utility*
 30 *property that a public utility may sell, lease, or otherwise*
 31 *dispose of or encumber, as determined to be necessary by*
 32 *that public utility, without further approval pursuant to*
 33 *this article.*

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