

AMENDED IN SENATE JULY 7, 1999

**SENATE BILL**

**No. 1063**

**Introduced by Senator Bowen**

February 26, 1999

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An act to amend ~~Section 377 of~~ Sections 216 and 377 of, and to add Sections 367.5 and 851.5 to, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1063, as amended, Bowen. Electric restructuring: ~~hydroelectric generation.~~

(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.

(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 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.

*Because, under existing law, a violation of the above provisions with regard to regulations by the commission would be a crime, this bill would impose a state-mandated local program by creating a new crime.*

*(3) The bill would require the commission to assign an unspecified interim value to any hydroelectric generation asset whose value has not otherwise been determined on or before March 31, 2000. The bill would require the commission to make specified determinations prior to authorizing a public utility to sell, lease, assign, mortgage or otherwise dispose of any hydroelectric facility.*

*(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.*

~~(1) The Public Utilities Act requires the Public Utilities Commission to continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to commission regulation until those assets have been subject to market valuation in accordance with procedures established by the commission. The act requires a public utility, if, after market valuation, the public utility wishes to retain ownership of nonnuclear generation assets in the same corporation as the distribution utility, to demonstrate to the satisfaction of the commission, through a public hearing, that it would be consistent with the public interest and would not confer undue competitive advantage on the public utility to retain that ownership in the same corporation as the distribution utility.~~

~~This bill would amend the act to require that, notwithstanding the above provisions, or any other provision of law, the ownership of hydroelectric generation facilities owned and operated by a public utility regulated by the commission as of January 1, 2000, be retained, and would require those facilities to continue to be operated by that public utility, subject to the regulation of the commission. Because a violation of the act is a crime, this bill would impose a state-mandated local program by creating a new crime. The~~

~~bill would make a legislative finding and declaration relating to the ownership and operation of hydroelectric generation resources.~~

~~(2) 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:*

~~SECTION 1. Section 377 of the Public Utilities Code~~

*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,

1 private corporation, municipality, or other political  
2 subdivision of the state, that in turn either directly or  
3 indirectly, mediately or immediately, performs that  
4 service for, or delivers that commodity to, the public or  
5 any portion thereof, that person or corporation is a public  
6 utility subject to the jurisdiction, control, and regulation  
7 of the commission and the provisions of this part.

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

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

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

32 (g) Ownership or operation of a facility that has been  
33 certified by the Federal Energy Regulatory Commission  
34 as an exempt wholesale generator pursuant to Section 32  
35 of the Public Utility Holding Company Act of 1935  
36 (Chapter 2C (commencing with Section 79) of Title 15 of  
37 the United States Code) does not make a corporation or  
38 person a public utility within the meaning of this section,  
39 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 those assets have undergone market valuation in accordance with procedures established by the commission *and the commission has authorized the disposition of those assets pursuant to Section 851.*

(i) 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 367.5 is added to the Public Utilities Code, to read:*

*367.5. Notwithstanding subdivision (b) of Section 367, the commission shall assign an interim value equal to \_\_\_\_\_ to any hydroelectric generation asset whose value has not otherwise been determined on or before March 31, 2000.*

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

377. The commission shall continue to regulate the nonnuclear generation assets owned by any public utility prior to January 1, 1997, that are subject to commission regulation until those assets have been subject to market valuation in accordance with procedures established by the commission *and the commission has authorized the disposition of those assets pursuant to Section 851.* If, after market valuation, the public utility wishes to retain ownership of nonnuclear generation assets in the same corporation as the distribution utility, the public utility shall demonstrate to the satisfaction of the commission, through a public hearing, that it would be consistent with the public interest and would not confer undue competitive advantage on the public utility to retain that

1 ownership in the same corporation as the distribution  
2 utility.

3 *SEC. 4. Section 851.5 is added to the Public Utilities*  
4 *Code, to read:*

5 *851.5. Prior to authorizing a public utility to sell, lease,*  
6 *assign, mortgage, or otherwise dispose of any*  
7 *hydroelectric facility, the commission shall determine all*  
8 *of the following:*

9 (a) *For any hydroelectric facility that does not comply*  
10 *with state water quality standards, as determined by the*  
11 *State Water Resources Control Board, an enforceable*  
12 *agreement to achieve and maintain compliance with*  
13 *state water quality standards by December 31, 2001, has*  
14 *been entered into by the public utility, any prospective*  
15 *new owner, and the State Water Resources Control*  
16 *Board.*

17 (b) *Any owner of a hydroelectric facility who controls*  
18 *more than \_\_\_\_ percent of the existing hydroelectric*  
19 *generation portfolio, or a comparable index when any*  
20 *non-hydroelectric generation portfolio is factored in, will*  
21 *be subject to market power mitigation measures,*  
22 *including withholding and bidding restrictions to be*  
23 *administered by the Independent System Operator,*  
24 *when that owner is a pivotal supplier of energy or*  
25 *ancillary services, as determined by the Independent*  
26 *System Operator.*

27 (c) *Hydroelectric facilities located on the same river*  
28 *will not be divided among different owners.*

29 (d) *The new operator of any hydroelectric facility*  
30 *shall continue to honor any existing rights, contracts,*  
31 *licenses, and permits associated with that facility*  
32 *according to their existing terms.*

33 *SEC. 5. No reimbursement is required by this act*  
34 *pursuant to Section 6 of Article XIII B of the California*  
35 *Constitution because the only costs that may be incurred*  
36 *by a local agency or school district will be incurred*  
37 *because this act creates a new crime or infraction,*  
38 *eliminates a crime or infraction, or changes the penalty*  
39 *for a crime or infraction, within the meaning of Section*  
40 *17556 of the Government Code, or changes the definition*

1 *of a crime within the meaning of Section 6 of Article*  
2 *XIII B of the California Constitution.*

3 ~~is amended to read:~~

4 ~~377. (a) Except as specified in subdivision (b), the~~  
5 ~~commission shall continue to regulate the nonnuclear~~  
6 ~~generation assets owned by any public utility prior to~~  
7 ~~January 1, 1997, that are subject to commission regulation~~  
8 ~~until those assets have been subject to market valuation~~  
9 ~~in accordance with procedures established by the~~  
10 ~~commission. If, after market valuation, the public utility~~  
11 ~~wishes to retain ownership of nonnuclear generation~~  
12 ~~assets in the same corporation as the distribution utility,~~  
13 ~~the public utility shall demonstrate to the satisfaction of~~  
14 ~~the commission, through a public hearing, that it would~~  
15 ~~be consistent with the public interest and would not~~  
16 ~~confer undue competitive advantage on the public utility~~  
17 ~~to retain that ownership in the same corporation as the~~  
18 ~~distribution utility.~~

19 ~~(b) (1) The Legislature finds and declares that the~~  
20 ~~ownership and operation of hydroelectric generation~~  
21 ~~resources by public utilities regulated by the commission~~  
22 ~~is in the public interest, for reasons including, but not~~  
23 ~~limited to, environmental, water, and market power~~  
24 ~~concerns.~~

25 ~~(2) Notwithstanding subdivision (a), or any other~~  
26 ~~provision of law, the ownership of hydroelectric~~  
27 ~~generation facilities owned and operated by a public~~  
28 ~~utility regulated by the commission as of January 1, 2000,~~  
29 ~~shall be retained, and those facilities shall continue to be~~  
30 ~~operated, by that public utility, subject to the regulation~~  
31 ~~of the commission.~~

32 ~~SEC. 2. No reimbursement is required by this act~~  
33 ~~pursuant to Section 6 of Article XIII B of the California~~  
34 ~~Constitution because the only costs that may be incurred~~  
35 ~~by a local agency or school district will be incurred~~  
36 ~~because this act creates a new crime or infraction,~~  
37 ~~eliminates a crime or infraction, or changes the penalty~~  
38 ~~for a crime or infraction, within the meaning of Section~~  
39 ~~17556 of the Government Code, or changes the definition~~

1 ~~of a crime within the meaning of Section 6 of Article~~  
2 ~~XIII B of the California Constitution.~~

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