

AMENDED IN ASSEMBLY JULY 8, 1999

AMENDED IN SENATE MAY 6, 1999

SENATE BILL

No. 1095

Introduced by Senator Bowen

February 26, 1999

An act to amend ~~Section 373~~ Sections 216 and 377 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1095, as amended, Bowen. Electrical restructuring.

(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 regulation by the commission would be a crime, this bill would impose a state-mandated local program by creating a new crime.

(3) 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.

~~Existing law governing electrical restructuring authorizes electrical corporations to apply to the Public Utilities Commission for an order determining that certain uneconomic costs not be collected from a particular class of customer or category of electricity consumption, as prescribed.~~

~~This bill would make technical, nonsubstantive changes in that provision. The bill would also state the intent of the Legislature to ensure that the commission conducts an accurate calculation of electrical restructuring transition costs to ensure an equitable and timely conclusion to the transition to the competitive generation of electricity in California.~~

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

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

1 ~~SECTION 1. It is the intent of the Legislature to~~
 2 *SECTION 1. Section 216 of the Public Utilities Code*
 3 *is amended to read:*
 4 216. (a) “Public utility” includes every common
 5 carrier, toll bridge corporation, pipeline corporation, gas
 6 corporation, electrical corporation, telephone
 7 corporation, telegraph corporation, water corporation,
 8 sewer system corporation, and heat corporation, where
 9 the service is performed for, or the commodity is
 10 delivered to, the public or any portion thereof.
 11 (b) Whenever any common carrier, toll bridge
 12 corporation, pipeline corporation, gas corporation,
 13 electrical corporation, telephone corporation, telegraph

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

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

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

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

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



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

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

13 (h) Generation assets owned by any public utility
14 prior to January 1, 1997, and subject to rate regulation by
15 the commission, shall continue to be subject to regulation
16 by the commission until those assets have undergone
17 market valuation in accordance with procedures
18 established by the commission *and the commission has*
19 *authorized the disposition of those assets pursuant to*
20 *Section 851.*

21 (i) The ownership, control, operation, or management
22 of an electric plant used for direct transactions or
23 participation directly or indirectly in direct transactions,
24 as permitted by subdivision (b) of Section 365, sales into
25 the Power Exchange referred to in Section 365, or the use
26 or sale as permitted under subdivisions (b) to (d),
27 inclusive, of Section 218, shall not make a corporation or
28 person a public utility within the meaning of this section
29 solely because of that ownership, participation, or sale.

30 *SEC. 2. Section 377 of the Public Utilities Code is*
31 *amended to read:*

32 377. The commission shall continue to regulate the
33 nonnuclear generation assets owned by any public utility
34 prior to January 1, 1997, that are subject to commission
35 regulation until those assets have been subject to market
36 valuation in accordance with procedures established by
37 the commission *and the commission has authorized the*
38 *disposition of those assets pursuant to Section 851.* If, after
39 market valuation, the public utility wishes to retain
40 ownership of nonnuclear generation assets in the same

1 corporation as the distribution utility, the public utility
2 shall demonstrate to the satisfaction of the commission,
3 through a public hearing, that it would be consistent with
4 the public interest and would not confer undue
5 competitive advantage on the public utility to retain that
6 ownership in the same corporation as the distribution
7 utility.

8 *SEC. 3. No reimbursement is required by this act*
9 *pursuant to Section 6 of Article XIII B of the California*
10 *Constitution because the only costs that may be incurred*
11 *by a local agency or school district will be incurred*
12 *because this act creates a new crime or infraction,*
13 *eliminates a crime or infraction, or changes the penalty*
14 *for a crime or infraction, within the meaning of Section*
15 *17556 of the Government Code, or changes the definition*
16 *of a crime within the meaning of Section 6 of Article*
17 *XIII B of the California Constitution.*

18 ~~ensure that the Public Utilities Commission conducts an~~
19 ~~accurate calculation of electrical restructuring transition~~
20 ~~costs to ensure an equitable and timely conclusion to the~~
21 ~~transition to the competitive generation of electricity in~~
22 ~~California.~~

23 ~~SEC. 2. Section 373 of the Public Utilities Code is~~
24 ~~amended to read:~~

25 ~~373. (a) Electrical corporations may apply to the~~
26 ~~commission for an order determining that the costs~~
27 ~~identified in Sections 367, 368, 375, and 376 not be~~
28 ~~collected from a particular class of customer or category~~
29 ~~of electricity consumption.~~

30 ~~(b) Subject to the fire wall specified in subdivision (c)~~
31 ~~of Section 367, this section and Sections 372 and 374 shall~~
32 ~~apply if the commission authorizes a nonbypassable~~
33 ~~charge prior to the implementation of an Independent~~
34 ~~System Operator and Power Exchange referred to in~~
35 ~~subdivision (a) of Section 365.~~