

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 5, 2006

To: The Commission
(Meeting of April 13, 2006)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **SB 1727 (Kehoe) - Public Utilities: electrical corporations.**
As Introduced February 24, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

This bill proposes to modify Public Utilities Code Section 218 to create a new exception to the definition of what constitutes an “electrical corporation.” This new exception would allow an entity with a generation facility specifically employing cogeneration, landfill gas, or digester gas technology, to privately distribute the electricity across a public street or highway to an adjacent location, owned or controlled by the same entity, for its own use or use of its tenants, without becoming a public utility.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

This bill would have the effect of helping distributed generation expand its usefulness and application. Throughout the many decisions issued by the Commission relating to the subject of distributed generation, the Commission has consistently expressed its strong support for policies that encourage the development and use of distributed generation. However, the changes proposed by this bill may raise potentially troubling issues related to distribution competition and use of utility distribution systems. As a result, it is recommended that the Commission take a support if amended position on the bill and commit to work with the author to address these other issues and clarify the intent of Public Utilities Code Section 218.

SUMMARY OF SUGGESTED AMENDMENTS:

Staff recommends working with the author's office to emphasize the Commission's support for distributed generation and address the other issues raised by the bill (as previously stated) and clarify the intent of Public Utilities Code Section 218.

DIVISION ANALYSIS (Energy and Legal Divisions):Distributed Generation

In Rulemaking 99-10-025 and in Decision 99-10-065, the Commission described distributed generation as being small-scale generation, located at or near the load center, possibly indicating that distributed generation is limited in scope and not envisioned for use beyond certain parameters. In the Commission's most recent distribution generation-related decision, the Commission adopted the following definition of distributed generation: "Distributed Generation (DG) is a parallel or stand-alone electric generation unit generally located within the electric distribution system at or near the point of consumption." (R.04-03-017, mimeo at p. 6) However, there is nothing in the current Commission decisions that provide for DG providing energy to a facility across a public street or highway.

Exclusive Franchise

A utility has an exclusive distribution franchise with the cities located within the utility service territory. This arrangement precludes a non-utility from constructing a private distribution line that crosses public property, or across property not owned or under the control of the private line owner, to serve other locations.

The Commission has jurisdiction of investor-owned utility distribution companies. In Decision 99-10-065, the Commission indicated that PU Code Section 330(r) would limit distribution competition. According to section 330(r): "Transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations." This was echoed in Decision 03-02-068, which stated: "The utilities are responsible for the safety, reliability, and operation of the distribution system and therefore must have control over the planning and operation of the distribution system."

PROGRAM BACKGROUND:

See previous discussion.

LEGISLATIVE HISTORY:

Staff is unaware of any recent legislation action regarding Public Utilities Code Section 218.

FISCAL IMPACT:

Absent amendments, initial estimates put the fiscal impact of this bill at \$555,389. SB 1727 changes the definition of a regulated electric utility to allow an entity with generation facilities to privately distribute electricity to nearby company locations without becoming a private utility. This bill may have the effect of statutorily changing the exclusive distribution franchise that the cities have granted the regulated utilities. In order to implement these new statutory requirements, the Commission would need to establish rules through a formal rulemaking process, investigate any technical, safety, or reliability issues, ensure compliance with the new rules, and resolve and address issues associated with implementing this bill. It is estimated that to do this work the Commission would need five additional staff positions including one Administrative Law Judge, one legal counsel, and three analysts.

STATUS:

The bill is scheduled to be heard in the Senate EU&C Committee. A hearing date has not yet been scheduled.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

Sean Gallagher
Director - Energy Division

shg@cpuc.ca.gov
(415) 703-2159

Valerie Beck
Staff – Energy Division

vjb@cpuc.ca.gov
(415) 703-2125

Suzy Hong
Staff Counsel – Legal Division

suh@cpuc.ca.gov
(415) 703-2116

Tom Flynn
Office of Governmental Affairs

trf@cpuc.ca.gov
(916) 324-8689

BILL LANGUAGE:

BILL NUMBER: SB 1727 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Kehoe

FEBRUARY 24, 2006

An act to amend Section 218 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1727, as introduced, Kehoe Public Utilities: electrical corporations.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. An electrical corporation is defined as including every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others.

This bill would additionally create an exception from the definition of an "electrical corporation," where electricity is generated on private real property and privately distributed across a highway, as defined, to an immediately adjacent private real property owned or otherwise controlled by the corporation or person, solely for its own use or the use of its tenants and not for sale or transmission to others. The bill would make conforming changes to specific exceptions for certain persons or corporations using cogeneration, landfill gas technology, and digester gas technology for the generation of electricity.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 218 of the Public Utilities Code is amended to read:

218. (a) "Electrical corporation" includes every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated on or distributed by the producer through private property, or where electricity is generated on private real property and privately distributed across a highway to an immediately adjacent private real property owned or otherwise controlled by the corporation or person, solely for its own use or the use of its tenants and not for

sale or transmission to others. For purposes of this section, "highway" means any "highway" as defined in Section 360 of the Vehicle Code.

(b) "Electrical corporation" does not include a corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity solely for any one or more of the following purposes:

(1) Its own use or the use of its tenants.

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated or on real property immediately adjacent thereto, ~~unless there is an intervening public street constituting the boundary between the real property on which the electricity is generated and the immediately adjacent property~~ and one or more of the following applies:

(A) The real property on which the electricity is generated and the immediately adjacent real property is not under common ownership or control, or that common ownership or control was gained solely for purposes of sale of the electricity so generated and not for other business purposes.

(B) The useful thermal output of the facility generating the electricity is not used on the immediately adjacent property for petroleum production or refining.

(C) The electricity furnished to the immediately adjacent property is not utilized by a subsidiary or affiliate of the corporation or person generating the electricity.

(3) Sale or transmission to an electrical corporation or state or local public agency, but not for sale or transmission to others, unless the corporation or person is otherwise an electrical corporation.

(c) "Electrical corporation" does not include a corporation or person employing landfill gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated , or on immediately adjacent real property owned or otherwise control led by the corporation or person .

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated , or on immediately adjacent real property owned or otherwise control led by the corporation or person .

(3) Sale or transmission to an electrical corporation or state or local public agency.

(d) "Electrical corporation" does not include a corporation or person employing digester gas technology for the generation of electricity for any one or more of the following purposes:

(1) Its own use or the use of not more than two of its tenants located on the real property on which the electricity is generated , or on immediately adjacent real property owned or otherwise control led by the corporation or person .

(2) The use of or sale to not more than two other corporations or persons solely for use on the real property on which the electricity is generated , or on immediately adjacent real property owned or otherwise contro led by the

corporation or person .

(3) Sale or transmission to an electrical corporation or state or local public agency, provided, however, that the sale or transmission of the electricity service to a retail customer shall only be provided through the transmission system of the existing local publicly owned electric utility or electrical corporation of that retail customer.

(e) The amendments made to this section at the 1987 portion of the 1987-88 Regular Session of the Legislature do not apply to any corporation or person employing cogeneration technology or producing power from other than a conventional power source for the generation of electricity that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989.