

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 4, 2006

To: The Commission
(Meeting of May 11, 2006)

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

Subject: **SB 1753 (Dunn) – Public Utility Holding Company Act of 1935:
report on the likely negative impacts of its repeal.**
As Introduced February 24, 2006

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Oppose unless amended.

SUMMARY OF BILL:

This bill would require the Commission, by July 1, 2007, to report to the Legislature on how the repeal of the Public Utility Holding Company Act of 1935 (PUHCA) could hurt California consumers and any steps the state should undertake to mitigate these likely impacts.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Commission already initiated Rulemaking 05-10-030 in October of last year to assess current and projected uses of utility profits by holding companies due to its concern about future infrastructure development in California. This rulemaking was instituted in part due to the repeal of PUHCA. The report required by SB 1753 is unnecessary in light of this rulemaking and premature because it is too soon to accurately assess the many effects of the repeal of PUHCA. Also, it would encumber Commission resources that are needed for other legislatively mandated programs like energy efficiency, resource adequacy, demand response, and the Renewable Portfolio Standards.

SUMMARY OF FISCAL IMPACT OF BILL:

This bill would require the Commission to analyze the potential negative impacts on California energy customers of the recent repeal of PUHCA, and report its findings to the Legislature by July 1, 2007. The Commission estimates that this bill will cost approximately \$110,000 for two analysts, and the attendant management time, to complete such an ambitious report within a six month time frame.

SUMMARY OF SUGGESTED AMENDMENTS (if any):

The Legislature should appropriate the necessary funds to the Commission to cover its costs for doing the report because current staffing levels are inadequate to meet existing legislative mandates. While the estimated cost for this bill may seem minor and absorbable standing alone, the cumulative effect of the various reports mandated by the Legislature has become major and unabsorbable.

Additionally, the author should extend the deadline for submission of the report to July 1, 2008, at the earliest, for two reasons: first, six months is not an adequate amount of time for producing a quality analysis and report; and secondly, an 18-month time period since the repeal of PUHCA does not allow for nearly enough experience for an accurate assessment of the effects of the repeal.

DIVISION ANALYSIS (Energy Division):

- On October 27, 2005, the Commission issued R.05-10-030, which will review the actions of energy holding companies, specifically Sempra Energy, Edison International, and PG&E Corporation, in an effort to assess current and projected uses of utility profits by the holding companies.
- One impetus to R.05-10-030 was the recent repeal of PUHCA, which, among other things, limited the use of utility resources by the holding companies. PUHCA also limited the ability of holding companies to merge or acquire other utilities, especially those outside of their own state.
- The Energy Policy Act of 2005, which repealed PUHCA, grants the FERC new authority to review the acquisition or merger of generating facilities, along with the responsibility to more explicitly address cross-subsidy issues. It is expected that there will be more mergers and acquisitions as a result of the repeal of PUHCA.
- However, under PU Code Sec. 851, the Commission still has authority over the disposition of California public utility assets, and under PU Code Sec. 854, the Commission has authority over mergers and acquisitions involving California public utilities. Both of these code sections require that the Commission find that the proposed actions of the utilities are in the public interest.

- Another impetus to R.05-10-030 was the circumvention of Commission imposed conditions, like the “first priority condition,” which became apparent during the bankruptcy proceedings for PG&E. (See “Program Background” for more information.) The Commission’s OIR anticipates that these conditions should be strengthened and clarified.
- Furthermore, it is another goal of the OIR that the Commission’s rules governing transactions of the utilities with their unregulated affiliates be made more effective and efficient.

PROGRAM BACKGROUND:

- Each of California’s investor owned utilities, PG&E, SCE, and SDG&E, are part of holding companies, which are comprised of a parent company and affiliates in the energy business. When the Commission authorized the creation of the holding companies in the 1980s and 1990s, the Commission imposed conditions, including the requirement that the holding companies make the capital requirements of the utilities their first priority (the “first priority condition”).
- The first priority condition did not prevent money flowing from the utility to the parent holding company (i.e. through dividends), and the parent holding company could invest the money in projects outside of California, provided that the utility’s capital requirements could always be met.
- The Commission’s holding company decisions, and its decision authorizing the merger between SoCalGas and SDG&E, had other conditions as well, including a condition that the utilities and affiliates abide by the Commission’s affiliate transaction rules.
- The energy holding companies in California were exempt from many of the requirements of PUHCA. However, the Commission always had the power to ask the SEC to lift these exemptions if it was concerned that the holding companies were acting in a way that was counter to Commission policy. The threat of going to the SEC was a helpful tool to the Commission in securing holding company cooperation with Commission requirements and requests.

LEGISLATIVE HISTORY:

Unknown.

STATUS:

This bill passed the Senate Energy, Utilities and Communications Committee 6-2, and will be heard by the Senate Appropriations Committee on May 8, 2006.

SUPPORT/OPPOSITION:

Support: The Utility Reform Network (sponsor)

Opposition: None.

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Date: May 4, 2006.

BILL LANGUAGE:

BILL NUMBER: SB 1753

INTRODUCED BY Senator Dunn

FEBRUARY 24, 2006

An act relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1753, as introduced, Dunn Public Utilities.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. The existing Public Utilities Act, prohibits any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, without first securing authorization to do so from the commission. The act additionally prohibits any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, without first securing authorization to do so from the commission.

This bill would require the commission, by July 1, 2007, to report to the Legislature on how repeal of the Public Utility Holding Company Act of 1935 could adversely impact California consumers and any steps the state should undertake to mitigate negative impacts.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The federal Public Utility Holding Company Act of 1935 (15 U.S.C. Sec. 79 and following) was enacted to provide certain protections to customers of public utility companies and provided substantial protections for approximately 70 years.

(b) The federal Energy Policy Act of 2005 (P.L. 109-58) repealed the Public Utility Holding Company Act of 1935, creating the possibility of adverse impacts on California consumers.

(c) It is the intention of the Legislature to examine the extent to which the loss of the protections of the Public Utility Holding Company Act of 1935 may put California consumers at risk, and to enact statutory protections that mitigate any negative impacts.

SEC. 2. The commission shall, on or before July 1, 2007, report to the Legislature on how repeal of the Public Utility Holding Company Act of 1935 (15 U.S.C. Sec. 79 and following) could adversely impact California consumers and any steps the state should undertake to mitigate negative impacts.