

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: May 23, 2011

To: The Commission
(Meeting of May 26, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 631 (Ma) – Public Utilities: Electric Vehicle Charging Stations.**
As introduced: February 16, 2011.

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT WITH AMENDMENTS

SUMMARY OF BILL:

AB 631 (Ma) would specify that the ownership, operation, or management of a facility that supplies electricity to the public only for use to charge a light-duty Plug-in Electric Vehicle (PEV) does not make the person or corporation a public utility as defined under Public Utilities Code (PU Code) Section 216.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

AB 631 codifies the summary conclusion of the July 2010, Phase 1 Decision (D. 10-07-044) in the Alternative-fueled Vehicle Rulemaking (R. 09-08-009). In that decision, the California Public Utilities Commission (CPUC) concluded that based on current law providers of electric vehicle charging services were not public utilities pursuant to Public Utilities Codes S 216 & S 218.

By specifically codifying the CPUC decision, this bill will allow charging providers further regulatory certainty to attract investment and install charging infrastructure to meet the potential large market demand for PEVs.

However, the CPUC is concerned that without additional language expressly acknowledging CPUC authority through PU Code Sections 454 and 740.2 to address potential impacts of electric vehicle charging services through the rate-setting of public utilities, AB 631 could create ambiguity in the future as to the extent of CPUC authority over charging station owners.

SUMMARY OF SUGGESTED AMENDMENTS:

Consistent with PU Code Section 740.2, AB 631 should expressly declare that its provisions do not affect the commission's authority under any other applicable statute to address potential impacts of electric vehicle charging services through public utilities' rate-setting process or through other Legislative authorized means.

DIVISION ANALYSIS (Energy Division):

1. This bill would codify the conclusion of Phase I of the CPUC's Electric Vehicle (EV) Rulemaking (D. 10-07-044). That Decision concluded that the legislature did not intend that the CPUC regulate providers of electric vehicle charging services as public utilities pursuant to Public Utilities Code Section 216 & Section 218. However, while the decision provide that the electric vehicle charging stations would not be public utilities, the CPUC did have some level of oversight of the stations and how they could impact the electricity grid based on Public Utilities Code Sections 454 and 740.2.
2. Several parties to EV rulemaking filed applications for rehearing to this decision. These parties suggest that the plain language of the current definition of a public utility includes providers of charging services. They argue that the CPUC should consider exercising its authority to whatever degree is required to ensure customers of PEV charging service providers receive safe and reliable service at reasonable rates.
3. The immediate impact of codifying the CPUC's decision would be to terminate the application for rehearing. .
4. Codification of the decision will also provide charging service providers additional regulatory certainty by incorporating the CPUC's decision in statute, thus enabling service providers to attract investment and install charging infrastructure to meet market demand. Adequate availability of charging infrastructure at the customer premise, worksite, and public facility is a key factor that will influence the pace of plug-in electric vehicle adoption in California, particularly for range-limited battery electric vehicles. Regulatory certainty would allow providers of charging services to redirect funding from potential regulatory or legal actions to providing charging infrastructure services.
5. Because D.10-07-044 and AB 631 preclude the CPUC from choosing in the future to regulate non-utility providers of charging services, the CPUC will rely solely on its rate-setting authority over public utilities (PU Code Section 454) to fulfill the responsibilities required by PU Code Section 740.2, including development of rules to address the impact of plug-in electric vehicles on grid stability. PU Code Section 454 gives the CPUC authority to set the terms and conditions over an investor-owned utility's service to any utility customer, which can include PEV charging

service providers. To maximize the regulatory certainty AB 631 provides the electric vehicle community, it should be amended to expressly acknowledge CPUC authority through PU Code Section 454 to address potential impacts of electric vehicle charging services through the rate-setting of public utilities, or provide for another source of authority to accomplish the same.

PROGRAM BACKGROUND:

1. SB 626 (Kehoe) of 2009 granted specific authority to the CPUC to adopt rules by July 2011, to address the impacts upon electrical infrastructure. The authority directed CPUC consideration of issues related to 1) infrastructure upgrades necessary for widespread use of plug-in hybrid and electric vehicles, including the role and development of public charging infrastructure; and 2) the impact of plug-in hybrid and electric vehicles on grid stability and the integration of renewable energy resources. In the CPUC proceeding implementing SB 626, it was determined that first issue that must be settled was the CPUC's regulatory authority over providers of charging services. .
2. A Proposed Decision on Phase 2 has been issued. This Proposed Decision addresses the following issues:
 - a. Residential electric vehicle rates and rates for charging in non-residential settings
 - b. Qualifying rates for Electric Vehicle Service Providers (as defined as non-utilities by this bill) in residential and non-residential settings
 - c. Metering arrangements;
 - d. Utility notification programs and customer education programs
 - e. Other issues required to comply with SB 626.

LEGISLATIVE HISTORY:

This bill was previously introduced as SB 1435 (Padilla), in the 2009-2010 legislative session. In addition to the currently proposed language, SB 1435 granted the CPUC authority to place additional requirements on charging provider entities determined not to be public utilities as a means to achieve specified results. Senator Padilla withdrew the bill in August, 2010.

FISCAL IMPACT:

None.

STATUS:

AB 631 is awaiting consideration on the Assembly floor.

SUPPORT/OPPOSITION:

Support:

Alliance of Automobile Manufacturers
Better Place
California Apartment Association (CAA)
California Business Properties Association
California Manufacturers and Technology Association (CMTA)
California Retailers Association (CRA)
Coulomb Technologies, Inc.
ECOtality, Inc.
Environmental Defense Fund
Plug In America
Western States Petroleum Association (WSPA)

Opposition:

California Electric Transportation Coalition (CaETC)
Pacific Gas and Electric (PG&E)
Southern California Edison (SCE)

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BILL LANGUAGE:

BILL NUMBER: AB 631 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Ma

FEBRUARY 16, 2011

An act to amend Section 216 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 631, as introduced, Ma. Public utilities: electric vehicle charging stations.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, as defined. The existing Public Utilities Act requires every public utility to furnish and maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

This bill would provide that the ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles, as defined, does not make the corporation or person a public utility for purposes of the act.

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

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

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

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

(g) Ownership or operation of a facility that is an exempt wholesale generator, as defined in the Public Utility Holding Company Act of 2005 (42 U.S.C. Sec. 16451(6)), does not make a corporation or person a public utility within the meaning of this section, solely due to the ownership or operation of that facility.

(h) 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 a market established and operated by the Independent System Operator or any other wholesale electricity market, 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.

(i) The ownership, control, operation, or management of a facility that supplies electricity to the public only for use to charge light duty plug-in electric vehicles does not make the corporation or person a public utility within the meaning of this section solely because of that ownership, control, operation, or management. For purposes of this subdivision, "light duty plug-in electric vehicles" includes light duty battery electric and plug-in hybrid electric vehicles.