

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

**M e m o r a n d u m**

**Date:** March 20, 2012

**To:** The Commission  
(Meeting of March 22, 2012)

**From:** Lynn Sadler, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **SB 1364 (Huff) – Water corporations.**  
**As introduced: February 24, 2012**

**LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE**

**SUMMARY OF BILL:**

SB 1364 would amend the Public Utilities Code by inserting water corporations into the list of utilities impacted by various sections of the Code (see e.g. §§ 314, 587,797, and 798). SB 1364 amends Section 454 to create an exception for rate changes by advice letter for water corporations only from the notice requirement exemption. Section 1756 is amended to remove subsection (f) that eliminates the sole appellate review path to the Supreme Court for decisions pertaining only to water corporations. Finally, Section 1802 is amended to include local public agencies in the definition of Customer for intervenor compensation eligibility.

**SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:**

The proposed amendments to the Public Utilities Code create additional work requirements for the California Public Utilities Commission (CPUC) and increase costs to consumers. SB 1364 expands the intervenor compensation program only for water utilities at a cost to water utility ratepayers. SB 1364 creates an exception for rate changes by advice letter for water corporations only from the notice requirement exemption without providing justification.

**SUMMARY OF SUGGESTED AMENDMENTS:**

None.

**DIVISION ANALYSIS (Division of Water and Audits):**

SB 1364 proposes to amend under Article 5, Intervenor's Fees and Expenses, Section 1802 to include in the definition of "Customer" local government agencies that are

customers of water corporations for purposes of participating in proceedings involving water corporations. By doing so, a special carve-out will be created for local governmental agencies only to seek intervenor compensation in water corporation proceedings only which come before the CPUC.

Since the codification of Article 5 in 1984, and as amended in 1992, the CPUC has interpreted and implemented Section 1802. In no instance has the CPUC allowed governmental agencies, whether federal, state or local, to be defined as a Customer under this statute. For eligibility for intervenor compensation, the CPUC applies a two-factor eligibility test: Is the intervenor a customer, and will participation present a significant financial hardship? Section 1802(b)(2) specifically excludes “any state, federal, or local government agency,” while 1803(b) requires the imposition of a significant financial hardship for participation or intervention without an award of fees or costs.

- Government agencies are welcome to participate in CPUC proceedings as parties. Nothing excludes these agencies from bringing forth relevant concerns of their constituents.
- Government agencies are funded with public monies and have the ability to increase taxes and/or fees to fund their activities. Not only does the existing statute specifically exclude them as customers, the “significant financial hardship” requirement further disqualifies them from consideration.
- Intervenor compensation awards are made from ratepayer dollars exclusively. Hence, if intervenor compensation awards were to be made available to a local government agency representing its constituents, the constituent and water utility ratepayer are one in the same, and they would be responsible for paying for a government agency to represent their interests, whether desired or not.
- Water corporations are singled out for intervenor compensation, while Article 5, 1801.3(a) broadly applies to all “electric, gas, water and telephone utilities.” If this was not the intent of the proposed legislation, then it should be expanded to apply to all utilities.
- The proposed legislation will result in a greater number of intervenor requests, a greater number of rehearing applications and appeals in water corporation matters if local government agencies are included a customers.

SB 1364 proposes to eliminate the provision contained in §1756(f) that only allows for review of decision pertaining to water corporations by petition for writ of review in the Supreme Court. §1756(a), however, allows for writ of reviews in the Court of Appeal or the Supreme Court for other utilities. This separate standard for water utilities arguably raises the hurdle for review of CPUC decisions pertaining to both water utility and water utility party and/ or intervenor alike. Under the assumption that appeal to the Court of Appeal is easier and less time consuming than appeal to the Supreme Court, this proposed revision would result in an increase of judicial appeals and more appeals for the CPUC’s Legal Division to defend, and therefore add unfunded costs to the CPUC’s operations.

SB 1364 amends §454 by adding a provision requiring customer notification for rate increases requiring proposed by a water corporation in an advice letter. Existing §454(a) requires utilities to “furnish its customers affected by the proposed rate change notice of its application to the commission for approval of the new rate.” This section goes on to exclude the notice requirement to “...any rate changes proposed by a corporation pursuant to an advice letter submitted to the commission in accordance with commission procedures for this means of submission.” The section goes on to state that “The procedures for advice letters may include provision for notice to customers or subscribers on a case-by-case basis, as determined by the commission.”

The CPUC, in its General Order 96-B sets forth the procedures for handling advice letter filings. Advice letter proposing rate increases already require prior customer notification. For example, Section 4.2, Customer Notices, states:

Unless no notice or a shorter notice period is authorized by statute or Industry Rule or other commission order, a utility **shall give affected customers at least 30 days' notice before the effective date of an advice letter requesting higher rates or charges, or more restrictive terms or conditions, than those currently in effect.** This notice requirement may be satisfied by one or a combination of the following: bill inserts; notices printed on bills; separate notices sent by first-class mail; or electronic mail (e-mail) when a customer has affirmatively consented to receive notice in this manner. Notice by first-class mail is complete when the document is deposited in the mail, and notice by e-mail is complete upon successful transmission. Where authorized by the appropriate Industry Rules, the notice requirement may also be satisfied by notices printed in a newspaper of general circulation.

Further notice requirements are found in Water Industry Rules, Section 3, of General Order 96-B.

The proposed amendment to §454 singling our water utilities is unnecessary as the CPUC already requires notification for advice letter proposed rate increases. Also, the simple act of filing an advice letter does not make a rate change effective. The CPUC routinely rejects advice letter filings and has the option to convert an advice letter to an application, as it frequently does with controversial and/or heavily protested advice letters. Therefore, no change is needed to §454. If amendments to §454 are made, they should be applicable to all types of utilities, not just water corporations.

The remaining amendments proposed by SB 1364 change the following four sections of the Public Utilities Code: 1) § 314(b) extends Commission authority to inspect the books and documents to affiliates and a holding company that has a controlling interest in a water corporation; 2) § 587 adds water corporations to the list of entities that are required to submit an annual report to the CPUC describing significant transactions between the water corporation and every subsidiary, affiliate, or holding company with a controlling interest in the water corporation; 3) § 797 adds water corporations to the list of entities that the CPUC shall periodically audit for affiliate transactions; and 4) § 798

adds water corporations to the list of entities subject to civil penalty for imprudent or unreasonable transactions with a subsidiary, affiliate, or a holding company with a controlling interest in a water corporation.

These amendments simply add “water” adjacent to where “electrical, gas, or telephone corporation” are listed. The proposed amendments attempt to make the code sections applicable to all types of utilities under the jurisdiction of the CPUC. The perception might be that the requirements imposed by these four code sections are not applicable to water utilities, they are in fact applicable to water utilities as the CPUC has adopted affiliate transactions rules for water utilities that cover all of the provisions required by these code sections.

The CPUC issued Decision 10-10-019 in October 2010, implementing affiliate transaction rules for Class A and B water and sewer utilities. The absence of water corporations in Public Utilities Code Sections 314, 587, and 797 did not prevent the CPUC from enacting affiliate transaction rules consistent with these code provisions. The CPUC relied on Public Utilities Code Section 701 for the authority to implement the provisions of Sections 314, 587, and 797 with respect to water corporations. The CPUC has current adequate authority to implement the provisions of Public Utilities Code Section 798 against water corporations without the proposed amendments.

We are not opposed to these unnecessary additions to the Public Utilities Code.

SB 1364 will add unfunded costs to the CPUC’s operations by potentially increasing the volume of judicial appeals (Legal Division), intervenor compensation requests (ALJ Division), and audits (Division of Water and Audits). SB 1364 will also increase customer rates by increase the volume of notices utilities have to provide and by broadening the intervenor compensation program that is paid for by utility ratepayers.

**PROGRAM BACKGROUND:**

The intervenor compensation program dates back over two decades to the Statutes of 1984, Chapter 297, Section 2 that added Article 5 to Division 1, Part 1, Chapter 9 of the Public Utilities Code.

The current CPUC’s policy and practice with respect to intervenor compensation is outlined in Article 5 of the Public Utilities Code.

Section 1756(f) that is proposed to be eliminated was added by the 1996 Statutes, Chapter 855, Section 6. Before this, all judicial review was only by means of a writ of review to the Supreme Court.

**LEGISLATIVE HISTORY:**

None.

**FISCAL IMPACT:**

None.

**STATUS:**

SB 1364 is pending hearing in the Senate Energy, Utilities and Communications Committee.

**SUPPORT/OPPOSITION:**

None on file.

**STAFF CONTACTS:**

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**BILL LANGUAGE:**

BILL NUMBER: SB 1364 INTRODUCED  
BILL TEXT

INTRODUCED BY Senator Huff

FEBRUARY 24, 2012

An act to amend Sections 314, 454, 587, 797, 798, 1756, and 1802 of the Public Utilities Code, relating to water corporations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1364, as introduced, Huff. Water corporations.

(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, gas corporations, telephone corporations, and water corporations, as defined. The Public Utilities Act authorizes the PUC, each commissioner, and each officer and person employed by the PUC at any time to inspect the accounts, books, papers, and documents of any public utility. This authorization applies to inspections of the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that holds a controlling interest in, an electrical, gas, or telephone corporation.

This bill would make the authorization to inspect the accounts, books, papers, and documents of any business that is a subsidiary or affiliate of, or a corporation that hold a controlling interest in, a water corporation.

(2) Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law, with certain exceptions, prohibits a public utility from changing any rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. With certain exceptions, whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate for the services or commodities furnished by it, existing law requires that the corporation furnish its customers notice of its application to the PUC for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the PUC filed pursuant to PUC established procedures for advice letters.

This bill would make the above-described advice letter filing exception inapplicable to an advice letter filed by a water corporation.

(3) Existing law requires every electrical, gas, and telephone corporation to annually prepare and submit to the PUC a report describing all significant transactions between the corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation. Existing law requires that the report identify the nature of the transactions and the terms and conditions applying to

them, including the basis upon which cost allocations and transfer pricing were established for the transactions. Existing law requires the PUC to periodically audit all significant transactions between an electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, that electrical, gas, or telephone corporation.

This bill would make these requirements applicable to water corporations.

(4) If the PUC finds and determines that any electrical, gas, or telephone corporation has willfully made an imprudent payment to, or received a less than reasonable payment from, any subsidiary or affiliate of, or corporation holding a controlling interest in, the electrical, gas, or telephone corporation in violation of any rule or order of the PUC, and the corporation has sought to recover the payment in any proceeding before the PUC, existing law authorizes the PUC, following a hearing, to levy a penalty against the corporation not to exceed 3 times the required or prohibited payment if the PUC finds that the payment was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding corporation.

This bill would extend this authority to water corporations.

(5) Existing law authorizes any party to an action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected by an order or decision of the PUC, to apply for a rehearing with respect to any matter determined in the action or proceeding and specified in the application for rehearing. Existing law prohibits a cause of action arising out of any order or decision of the PUC from accruing in a court to a corporation or person unless the corporation or person has filed an application to the PUC for a rehearing within a specified amount of time after the date of issuance of the order or decision. Existing law generally authorizes an aggrieved party to petition for a writ of review of an order or decision of the PUC within 30 days after the commission issues its decision denying an application for a rehearing, or, if the PUC grants the application, within 30 days after the PUC issues its decision on rehearing. Under existing law, a petition for a writ of review may be brought in a court of appeal or the Supreme Court, except with respect to certain decisions of the PUC pertaining to a water corporation, which are required to be brought in the Supreme Court.

This bill would eliminate the requirement that certain decisions of the PUC pertaining to a water corporation be brought in the Supreme Court.

(6) Existing law provides compensation for reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs to public utility customers, as defined, for participation or intervention in any proceeding of the PUC involving the public utility. The existing definition of a customer, for these purposes, excludes any state, federal, or local government agency.

This bill would include in the definition of a customer, for these purposes, a local government agency that is a customer of a water corporation when participating in a proceeding involving the water corporation.

(7) Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and

certain provisions of the bill would extend existing requirements to water corporations, the bill would impose a state-mandated local program by expanding the application of a crime.

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 314 of the Public Utilities Code is amended to read:

314. (a) The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business ~~which~~ *that* is a subsidiary or affiliate of, or a corporation ~~which~~ *that* holds a controlling interest in, ~~an~~ a water, electrical, gas, or telephone corporation with respect to any transaction between the water, electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the water, electrical, gas, or telephone corporation.

SEC. 2. Section 454 of the Public Utilities Code is amended to read:

454. (a) Except as provided in Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified. Whenever any electrical, gas, heat, telephone, water, or sewer system corporation files an application to change any rate, other than a change reflecting and passing through to customers only new costs to the corporation which do not result in changes in revenue allocation, for the services or commodities furnished by it, the corporation shall furnish to its customers affected by the proposed rate change notice of its application to the commission for approval of the new rate. This notice requirement does not apply to any rate change proposed by a corporation pursuant to an advice letter submitted to the commission in accordance with commission procedures for this means of submission, *but does apply to a rate increase proposed by a water corporation in an advice letter*. The procedures for advice letters may include

provision for notice to customers or subscribers on a case-by-case basis, as determined by the commission. The corporation may include the notice with the regular bill for charges transmitted to the customers within 45 days if the corporation operates on a 30-day billing cycle, or within 75 days if the corporation operates on a 60-day billing cycle. If more than one application to change any rate is filed within a single billing cycle, the corporation may combine the notices into a single notice if the applications are separately identified. The notice shall state the amount of the proposed rate change expressed in both dollar and percentage terms for the entire rate change as well as for each customer classification, a brief statement of the reasons the change is required or sought, and the mailing, and if available, the e-mail address of the commission to which any customer inquiries may be directed regarding how to participate in, or receive further notices regarding the date, time, or place of, any hearing on the application, and the mailing address of the corporation to which any customer inquiries relative to the proposed rate change may be directed.

(b) The commission may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes, the form and manner of the presentation of the showing, with or without a hearing, and the procedure to be followed in the consideration thereof. Rules applicable to common carriers may provide for the publication and filing of any proposed rate change together with a written showing in support thereof, giving notice of the filing and showing in support thereof to the public, granting an opportunity for protests thereto, and to the consideration of, and action on, the showing and any protests filed thereto by the commission, with or without hearing. However, the proposed rate change does not become effective until it has been approved by the commission.

(c) The commission shall permit individual public utility customers and subscribers affected by a proposed rate change, and organizations formed to represent their interests, to testify at any hearing on the proposed rate change, except that the presiding officer need not allow repetitive or irrelevant testimony and may conduct the hearing in an efficient manner.

SEC. 3. Section 587 of the Public Utilities Code is amended to read:

587. Every *water*, electrical, gas, and telephone corporation shall annually prepare and submit to the commission a report describing all significant transactions, as specified by the commission, between the corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, the *water*, electrical, gas, or telephone corporation. The report shall identify the nature of the transactions and the terms and conditions applying to them, including, but not limited to, the basis upon which cost allocations and transfer pricing were established for the transactions.

SEC. 4. Section 797 of the Public Utilities Code is amended to read:

797. The commission shall periodically audit all significant transactions, as specified by the commission, between ~~an~~  
a *water*, electrical, gas, or telephone corporation and every subsidiary or affiliate of, or corporation holding a controlling interest in, that *water*, electrical,

gas, or telephone corporation. The commission may, in this connection, utilize the services of an independent auditor, who shall be selected and supervised by the commission. Nothing in this section prohibits the commission from auditing any transaction between ~~an~~ a water, electrical, gas, or telephone corporation and any subsidiary or affiliate of, or corporation holding a controlling interest in, the water, electrical, gas, or telephone corporation, as otherwise permitted or required by law.

SEC. 5. Section 798 of the Public Utilities Code is amended to read:

798. (a) Whenever the commission finds and determines that any water, electrical, gas, or telephone corporation has willfully made an imprudent payment to, or received a less than reasonable payment from, any subsidiary or affiliate of, or corporation holding a controlling interest in, the water, electrical, gas, or telephone corporation in violation of any rule or order of the commission, adopted and published by the commission prior to the transaction but after notice to, and an opportunity to comment by, the affected corporation, and the corporation has sought to recover the payment in any proceeding before the commission, the commission may, following a hearing, levy a penalty against the corporation not to exceed three times the required or prohibited payment, as the case may be, if the commission finds that the payment, in whole or part, was made or received by the corporation for the purpose of benefiting its subsidiary, affiliate, or holding corporation. This penalty is in addition to any criminal penalties which may apply.

(b) In determining whether to impose a civil penalty under this section, the commission may take into consideration multistate public utility diversification activities involving cross-subsidization which are permissible in other states or under federal jurisdiction although in violation of the commission's rules and orders.

SEC. 6. Section 1756 of the Public Utilities Code is amended to read:

1756. (a) Within 30 days after the commission issues its decision denying the application for a rehearing, or, if the application was granted, then within 30 days after the commission issues its decision on rehearing, or at least 120 days after the application is granted if no decision on rehearing has been issued, any aggrieved party may petition for a writ of review in the court of appeal or the Supreme Court for the purpose of having the lawfulness of the original order or decision or of the order or decision on rehearing inquired into and determined. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the commission to certify its record in the case to the court within the time specified.

(b) The petition for review shall be served upon the executive director and the general counsel of the commission either personally or by service at the office of the commission.

(c) For purposes of this section, the issuance of a decision or the granting of an application shall be construed to have occurred on the date of issuance, as defined in paragraph (4) of subdivision (b) of Section 1731.

(d) The venue of a petition filed in the court of appeal pursuant to this section shall be in the judicial district in which the petitioner resides. If the petitioner is a business, venue shall be

in the judicial district in which the petitioner has its principal place of business in California.

(e) Any party may seek from the Supreme Court, pursuant to California Rules of Court, an order transferring related actions to a single appellate district.

~~(f) For purposes of this section, review of decisions pertaining solely to water corporations shall only be by petition for writ of review in the Supreme Court, except that review of complaint or enforcement proceedings may be in the court of appeal or the Supreme Court.~~

~~(g)~~

(f) No order or decision arising out of a commission proceeding under Section 854 shall be reviewable in the court of appeal pursuant to subdivision (a) if the application for commission authority to complete the merger or acquisition was filed on or before December 31, 1998, by two telecommunications-related corporations including at least one which provides local telecommunications service to over one million California customers. These orders or decisions shall be reviewed pursuant to the Public Utilities Code in existence on December 31, 1998.

SEC. 7. Section 1802 of the Public Utilities Code is amended to read:

1802. As used in this article:

(a) "Compensation" means payment for all or part, as determined by the commission, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award under this article and of obtaining judicial review, if any.

(b) (1) "Customer" means any of the following:

(A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.

(B) A representative who has been authorized by a customer.

(C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electrical corporation.

(2) "Customer" does not include any state, federal, or local government agency, any publicly owned public utility, or any entity that, in the commission's opinion, was established or formed by a local government entity for the purpose of participating in a commission proceeding, *except that a local government agency that is a customer of a water corporation may be a customer for purposes of participating in a proceeding involving the water corporation.*

(c) "Expert witness fees" means recorded or billed costs incurred by a customer for an expert witness.

(d) "Other reasonable costs" means reasonable out-of-pocket expenses directly incurred by a customer that are directly related to the contentions or recommendations made by the customer that resulted in a substantial contribution.

(e) "Party" means any interested party, respondent public utility, or commission staff in a hearing or proceeding.

(f) "Proceeding" means an application, complaint, or investigation, rulemaking, alternative dispute resolution procedures

in lieu of formal proceedings as may be sponsored or endorsed by the commission, or other formal proceeding before the commission.

(g) "Significant financial hardship" means either that the customer cannot afford, without undue hardship, to pay the costs of effective participation, including advocate's fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

(h) "Small commercial customer" means any nonresidential customer with a maximum peak demand of less than 50 kilowatts. The commission may establish rules to modify or change the definition of "small commercial customer," including use of criteria other than a peak demand threshold, if the commission determines that the modification or change will promote participation in proceedings at the commission by organizations representing small businesses, without incorporating large commercial and industrial customers.

(i) "Substantial contribution" means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

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