

RESOLUTION 07-08-2017

DIGEST

Public Utilities Code: Definition of "Public Utility"

Amends Public Utility Code section 216 to include internet providers in the definition of a "public utility."

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Public Utility Code section 216 to include internet providers in the definition of a "public utility." This resolution should be approved in principle because it updates, and brings consistency to, existing public utilities laws by applying them to internet providers as well as telephone providers, gas companies, and electric companies.

Internet services have become as ubiquitous as telephone services, with modern smartphones, internet and phone services are often provided simultaneously to customers. Further, in many instances customers use internet services in place of the services previously provided by telephone services, e.g. looking up contact information for a business or individual, daily communication for personal or business reasons, making travel reservations, and even ordering food. As such, because the services rendered by internet providers are equivalent to those of currently defined "public utilities," there is little reason to except them from equivalent laws and regulations.

While some may disagree with the general proposition for regulating public utilities, so long as such laws and regulations exist, it benefits the public to have them applied consistently to all services that are provided as utilities to the public.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Public Utility Code section 216 to read as follows:

- 1 § 216
- 2 (a) "Public utility" includes every common carrier, toll bridge corporation, pipeline
- 3 corporation, gas corporation, electrical corporation, telephone corporation, internet or broadband
- 4 provider or corporation, telegraph corporation, water corporation, sewer system corporation, and
- 5 heat corporation, where the service is performed for, or the commodity is delivered to, the public
- 6 or any portion thereof.
- 7 (b) Whenever any common carrier, toll bridge corporation, pipeline corporation, gas
- 8 corporation, electrical corporation, telephone corporation, telegraph corporation, internet or
- 9 broadband provider or corporation, water corporation, sewer system corporation, or heat

10 corporation performs a service for, or delivers a commodity to, the public or any portion thereof
11 for which any compensation or payment whatsoever is received, that common carrier, toll bridge
12 corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, ,
13 internet or broadband provider or corporation, telegraph corporation, water corporation, sewer
14 system corporation, or heat corporation, is a public utility subject to the jurisdiction, control, and
15 regulation of the commission and the provisions of this part.

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

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

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

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

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

42 (h) The ownership, control, operation, or management of an electric plant used for direct
43 transactions or participation directly or indirectly in direct transactions, as permitted by
44 subdivision (b) of Section 365, sales into the Power Exchange referred to in Section 365, or the
45 use or sale as permitted under subdivisions (b) to (d), inclusive, of Section 218, shall not make a
46 corporation or person a public utility within the meaning of this section solely because of that
47 ownership, participation, or sale.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

The Problem: California law does not currently regulate internet and broadband providers as a public utility. Recent decisions by the FCC imply California may regulate internet providers as a public utility. If broadband and internet providers are regulated as a public utility, California can ensure net neutrality rules for all Californians and possibly allow Google Fiber to access public utility poles.

The Solution: This amendment adds broadband and internet service providers to the definition of a public utility.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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