

Date of Hearing: July 1, 2024

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Cottie Petrie-Norris, Chair

SB 284 (Wiener) – As Amended June 20, 2024

SENATE VOTE: 25-1

SUBJECT: Electricity: energization transparency and efficiency: wholesale distribution service

SUMMARY: Requires electrical corporations (investor-owned utilities, IOUs) to both make any and all distribution planning data publicly available, and to offer service under the federal Wholesale Distribution Tariff (WDT) at secondary voltage to serve customers of the state or any political subdivision at retail. Specifically, **this bill:**

- 1) Requires IOUs to provide distribution planning data – inclusive of all models, underlying load, retail and wholesale load, storage, facility data, detailed physical maps, and capacity projects, among other items – to development project applicants, energizing entities, and public entities in a timely and efficient manner.
- 2) Directs the California Public Utilities Commission (CPUC) to require IOUs to develop and make publicly available uniform technical standards and requirements (unspecified) for energization of electrical load on the distribution system, and to make publicly available information about distribution interconnection queues.
- 3) Requires each IOU that has filed a WDT at the Federal Energy Regulatory Commission (FERC) to offer service under that tariff to the State of California, or any political subdivision or instrumentality of the state, in order to transmit electricity that those public entities sell directly to an ultimate consumer or consume themselves. Requires that the service be offered over all distribution facilities of the IOU, and that an IOU cannot refuse to install any distribution facilities necessary to transmit electricity directly to the ultimate consumer.
- 4) Provides various findings relating to data sharing and promoting competition, defines relevant terms, and makes the provisions of the bill severable.

EXISTING LAW:

- 1) Establishes and vests the CPUC with jurisdiction over all public utilities in the state. (Article XII of the California Constitution)
- 2) Establishes that FERC has exclusive jurisdiction over the transmission of electric energy in interstate commerce. Also establishes the process and procedures for establishing transmission of electric energy in interstate commerce by public utilities, i.e., the rates, terms, and conditions of interstate electric transmission by public utilities. (Federal Power Act §§ 201, 205, 206 (16 USC 824, 824d, 824e))
- 3) Establishes that FERC has exclusive jurisdiction over sales of electric energy at wholesale in interstate commerce by public utilities, i.e., the rates, terms, and conditions

of wholesale electric sales by public utilities (Federal Power Act §§ 201, 205, 206 (16 USC 824, 824d, 824e))

- 4) Prohibits mandatory retail wheeling and sham wholesale transactions, where an entity financially trades electricity and obtains wheeling services without actually owning any facilities that distribute the electricity, from FERC rules. (Federal Power Act § 212 (h))
- 5) Provides two exceptions to the FERC prohibition on retail wheeling. The first is that the entity is a specified political subdivision of the state or federal government; the second is that the entity was either providing electric service at retail prior to October 24, 1992 or would utilize transmission or distribution facilities that it owns or controls. (16 USC § 824k(h))
- 6) Establishes and vests the California Public Utilities Commission (CPUC), with jurisdiction over all public utilities in the state. (Article XII of the California Constitution)
- 7) Defines “energization” and “energize” to mean connecting customers to the electrical distribution grid and establishing adequate electrical distribution capacity or upgrading electrical distribution or transmission capacity to provide electrical service for a new customer, or to provide upgraded electrical service to an existing customer. Explicitly excludes activities related to connecting electrical supply resources. (Public Utilities Code § 931)
- 8) Requires the CPUC to establish reasonable average and maximum target energization time periods for connecting customers, to determine criteria for timely service, and establish various reporting requirements of the IOUs. (Public Utilities Code §§ 930-939.5)

FISCAL EFFECT: Unknown. This bill has been significantly amended since passage in the Senate; this version of the measure is keyed fiscal, and will be referred to the Assembly Committee on Appropriations for its review.

COMMENTS:

- 1) *Author’s Statement.* According to the author, “Senate Bill 284 helps resolve systemic delays to the energization of customers served by the San Francisco Public Utilities Commission (SFPUC) by requiring investor-owned utilities (IOUs) with a wholesale distribution tariff to offer service to eligible publicly-owned utilities per the terms of such tariff without engaging in anticompetitive practices. Since 2018, these delays have affected 166 projects including over 2,000 units of affordable housing. The bill also requires IOUs to improve transparency for distribution planning, data, technical standards, and interconnection and energization queues.”
- 2) *State Intervention in a Federal Dispute.* The second article of this bill, though broadly written to include all IOU territories and all government entities therein, has its origins and motivations from a longstanding dispute between Pacific Gas & Electric Company (PG&E) and the City and County of San Francisco (SF). This dispute has persisted for decades, with FERC adjudicating various cases, the cases being appealed in federal courts, the courts remanding actions back to FERC, and so on. The core issue is SF’s

utilization of PG&E grid services through a WDT subject to FERC jurisdiction. The latest iteration of this long-simmering dispute is a trial in the United States Court of Appeals for the District of Columbia, currently on remand since January 2024 following FERC's review of previous orders.¹ This bill asks the Legislature to adjudicate the dispute in favor of SF. The appropriateness of such a legislative intervention – regardless of the merits – in a federal dispute is unclear. Moreover, it is uncertain whether such an action of the Legislature would be preempted federally, once FERC issues an order or the Courts of Appeal offer their ruling.

- 3) *Prohibition of FERC orders of Retail Wheeling and Sham Transactions.* The Federal Power Act (FPA) § 212(h)(1) precludes FERC from issuing any order under the FPA that requires the transmission of energy directly to an ultimate consumer (direct retail wheeling). Section 212(h)(2) prohibits sham transactions that are intended to evade the ban on direct retail wheeling. The FPA § 212(h)(2) "sham" prohibition precludes FERC from issuing any order under the FPA that is conditioned upon or requires the transmission of electric energy to, or for the benefit of, an entity if such electric energy would be sold by that entity directly to an ultimate consumer, unless certain conditions are met.

First, the entity must fall into one of the following categories. It must be a Federal power marketing agency, the Tennessee Valley Authority, a State or any political subdivision of a State, a corporation or association that has ever received a loan from the Rural Electrification Administration for purposes of providing electric service, a person having an obligation arising under State or local law to provide electric service to the public, or any corporation or association wholly owned by one of the foregoing. In addition, the entity seeking transmission must also meet one of two criteria: 1) It was providing electric service to the ultimate consumer on October 24, 1992, or 2) it would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to the electric consumer.

As noted in a 1997 legal analysis of FERC Open Access Rules, "It is clear in the legislative history of the FPA that the fundamental goal of the "sham" prohibition is to preclude a wholesale sale that is actually a subterfuge intended to circumvent the ban on the Commission's ability to order retail wheeling directly to an end user. In particular, Congress was concerned that retail customers would create paper intermediaries that could obtain wholesale wheeling and thereby pirate retail customers whom the wheeling utility has a legal obligation to serve. The FPA and its legislative history make clear that state law determines retail marketing areas of electric utilities and that neither the newly amended §§ 211 and 212, nor any other provision of the FPA is to interfere with this state decision. This is also enforced in § 212(g) of the FPA, which precludes the Commission from issuing any order that is inconsistent with State laws governing retail marketing areas."²

¹ FERC Case # 23-1041 and 23-1127, filed January 30, 2024; Document # 2037998

² Pg. 136, Cynthia A. Marlette; "FERC Open Access Transmission Rule and Utility Bypass Cases," *Natural Resources Journal*, 125 Vol. 37, Issue 1 (1997).

- 4) *SF vs. PG&E*. The SF-PG&E dispute centers around the level of service SF is entitled to receive under PG&E's Tariff and SF's grandfathering under FPA §212, noted above. SF and PG&E have disagreed about the extent to which PG&E's FERC-jurisdictional WDT permits SF to continue to receive service without having to own or control intervening distribution facilities between PG&E's facilities and SF's end-use customers. (What is known as primary [transmission] versus secondary [distribution] voltage.) As noted in FERC's recent brief in the Federal Court of Appeal (acronyms used for brevity where appropriate) case on the matter:

“SF ‘does not have its own comprehensive...system to serve’ its customers; therefore, since 1945 it has ‘purchased wholesale...services under a series of interconnection agreements with PG&E.’ The 1987 Interconnection Agreement, the most recent of these agreements, governed interconnection of PG&E and SF's systems to serve SF's customers. Under the 1987 Interconnection Agreement, PG&E provided service to SF's customers without SF having to own or control distribution facilities at each point of delivery. The 1987 Interconnection Agreement expired in July 2015.

While the 1987 Interconnection Agreement between PG&E and SF was in effect, FERC approved a settlement that amended the Tariff, including a Tariff provision at issue here [at the Court of Appeal]. As explained by this Court, PG&E Tariff requires customers to demonstrate ownership or control of distribution facilities except where a customer meets the §212 FPA criteria for grandfathering.

In October 2014, SF filed a complaint against PG&E alleging that, upon expiration of the 1987 Interconnection Agreement, PG&E would unreasonably deny service to SF under the Tariff. In December 2014, PG&E filed the Replacement Agreements to continue to provide service to SF. In the 2019 and 2020 Orders, FERC denied SF's complaint and approved PG&E's Replacement Agreements. FERC concluded that SF had not shown, based on the record, that PG&E would unreasonably deny service upon expiration of the 1987 Interconnection Agreement and concluded that PG&E's Replacement Agreements were appropriate. ... [Specifically] FERC concluded that PG&E's ‘point of delivery approach to determining which SF customers qualify for service under the [Tariff]’ was appropriate.

SF appealed the 2019 and 2020 Orders. This Court rejected FERC's reasoning...the Court found the [FERC] orders arbitrary and capricious. In October 2022, FERC issued the Remand Order [finding in favor of SF]. PG&E sought rehearing. In March 2023, FERC denied rehearing... and declined to overturn its [decision]. In the Remand Order, FERC found that PG&E must extend Tariff service to: (1) all end-use customers served by SF as of October 24, 1992, and (2) all customers that belong to that same class of customers, even at points of service that were initiated after October 24, 1992.”

FERC concluded the brief requesting the Court deny PG&E's petitions for review.

- 5) *Far Reaching Implications*. This bill not only asks the Legislature to settle this longstanding dispute between SF and PG&E, but it expands the eligibility under the FERC WDT to the State of California or any instrumentality of the state or political subdivision. It is unclear to committee how such an expansion is permissible under the

Federal Powers Act, except perhaps under a liberal interpretation that these provisions amend state law governing retail markets, even if they do so through a wholesale federal tariff. If the expansion permitted under this bill is not federally preempted, the opposition raises concerns that this bill could permit similar SF-PG&E relationships statewide. They note that the bill would “encourage sham wholesale electric transactions, where municipal utilities ‘offer’ electric services to customers but rely exclusively upon the IOUs to build and operate the facilities necessary to serve retail municipal customers.” This option might be available to municipal utilities, joint powers authorities, or community choice aggregators. The concern with allowing such relationships to emerge is that receiving power at wholesale (on paper) may allow transactions where these entities avoid appropriate grid costs.

SF, as sponsor of this bill, notes these statutory changes are necessary due to the historic delays they have experienced from PG&E. They emphasize the bill would “facilitate the timely energization of new development projects [especially affordable housing] while promoting least cost energization.” Despite recent legislative and regulatory work in this space – through the passage of AB 50 (Wood, Chapter 317, Statutes of 2023) and SB 410 (Becker, Chapter 394, Statutes of 2023) – to ensure timely energization, SF notes those efforts are too narrow, focused on retail, not wholesale issues. The first article in this bill, however, which seeks more information on distribution planning, is likely too broad in its scope. It requires the IOUs to provide all manner of grid data to whomever seeks it. Given security concerns present around such critical infrastructure, like the Metcalf substation attack in 2013, caution should be exercised. The author acknowledges the broad nature of many of the provisions of the bill, and has indicated an openness to keeping the topic specific to SF-PG&E. However, as noted above, the committee may wish consider the appropriateness of such action.

6) *Previous Legislation.*

AB 50 (Wood) requires the CPUC, to determine the criteria for customers to receive timely electricity service when requesting new service connections or upgraded service, known as "energization." Proposes several policies to address delays in connecting customers to the electrical grid, including improved information sharing with local governments, reporting by electric investor-owned utilities (IOUs), and other measures. Status: Chapter 317, Statutes of 2023.

SB 410 (Becker) requires the CPUC to establish by September 30, 2024, reasonable average and maximum target energization time periods in order to connect new customers and upgrade the service of existing customers to the electrical grid. This bill also requires reporting by electrical corporations and authorizes specified annual cost-recovery, subject to a cap. Status: Chapter 394, Statutes of 2023.

AB 2700 (McCarty) requires the CEC, in collaboration with CARB and the CPUC, to annually gather from state agencies specified entities’ fleet data on medium- and heavy-duty vehicles and share that data with electrical corporations and POUs to help inform electrical grid planning efforts to support the state’s anticipated demand for electric vehicle charging. Status: Chapter 354, Statutes of 2022.

REGISTERED SUPPORT / OPPOSITION:

Support

Housing Action Coalition
Nor Cal Carpenters Union
San Francisco Public Utilities Commission – *sponsor*

Opposition

California State Association of Electrical Workers
Coalition of California Utility Employees
Engineers and Scientists of California, Ifpte Local 20
IBEW
IBEW Local Union 569
Pacific Gas and Electric Company
San Diego Gas & Electric
Southern California Edison
Southern California Gas Company
Western Electrical Contractors Association
Western Line Constructors Chapter, INC.

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