Date of Hearing: June 28, 2018

ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION
Adam Gray, Chair
SB 1088 (Dodd) – As Amended June 12, 2018

SENATE VOTE: 34-2

SUBJECT: Safety, reliability, and resiliency planning: general rate case cycle

SUMMARY: This bill requires each electrical corporation or gas corporation (IOU), to submit a safety, reliability, and resiliency plan to the California Public Utilities Commission (CPUC) every two years, requires the CPUC to approve the submitted plan within 18 months and authorize recovery of the costs of implementing the plan through rates. Additionally, this bill prohibits an electrical IOU from delegating, transferring, or contracting out any of its distribution safety or reliability performance obligations. This bill also requires the Governor's Office of Emergency Services (Cal OES) to adopt standards for reducing risks from a major event and requires the office to update the standards at least once every two years. Specifically, **this bill:**

1) Requires Cal OES, on or before September 30, 2019, and every two years thereafter, in consultation with the Department of Forestry and Fire Protection (CAL FIRE), the CPUC, and other appropriate state and local agencies, to adopt or update standards for reducing risk from a major event.

2) Establishes the Utility Infrastructure, Safety, Reliability, and Accountability Act which requires each IOU to submit an application to the CPUC by July 2019 to establish a safety, reliability, and resiliency plan (plan) for the distribution system to address fire risks. Starting in 2021, the IOU would file a plan every two years to address routine operations and all major events and every two years thereafter. The plan must include:

   a. Sufficient information for the public and the CPUC to determine the costs and benefits to ratepayers of the investments proposed;

   b. All rules, regulations, standards, and practices required by the CPUC and Cal OES with a corresponding program of compliance. and a program to comply with all rules and to manage compliance;

   c. Wildfire mitigation plan including protocols for disabling re-closers and de-energizing portions of the electrical distribution system that consider the impacts on public safety;

   d. Actions the utility will take to ensure that its system will achieve the highest level of safety, reliability, and resiliency, and to ensure that its system is prepared for and not vulnerable to widespread failure during a major event;

   e. Plans for vegetation management;

   f. For gas IOUs, a preemptive pipe replacement program to locate, mark and repair leaks, relight pilot lights, and all other activity needed to restore service following a major event;

g. For electrical IOUs, a program to evaluate and incorporate technological solutions, such as distributed energy resources and microgrids that can be islanded from the distribution grid for critical customers or critical facilities, such as schools, hospitals, critical care patients, water pumping and treatment facilities, telecommunication infrastructure, and government and other facilities that provide public safety or other critical functions;

h. Disaster and emergency preparedness plans required under current law to also include plants for service restoration and community outreach and public awareness before, during and after a major event;

i. Plans for distribution grid operation during a major event, including an incident command system;

j. Clear evidence that the utility has an adequately sized and trained workforce;

k. Activities to support customers during and after a major event, including outage reporting, billing, repair processing and timing access to utility representatives, emergency communications, and restoration plans; and

l. Forecasted costs of every element of the plan;

3) Requires the CPUC to review and approve the plans of all IOUs in a single consolidated proceeding to be concluded no later than 18 months after filing, accept comment from the public, ensure that cost impacts are just and reasonable, verify compliance with all applicable laws, and authorize recovery of reasonable revenue requirements,

4) Requires the IOUs to establish a memorandum account to track the costs of the plan and requires the CPUC to disallow recovery of those costs the commission deems unreasonable.

5) Permits the CPUC to extend general rate cases (GRCs) to a four-year cycle from three-year cycles;

6) Prohibits an electric IOU from delegating, transferring, or contracting out any “distribution system safety or reliability performance obligation”:

   a. Which is defined as including, but is not limited to owning, controlling, operating, managing, maintaining, planning, engineering, designing, investing in, and constructing the distribution system in its service territory, distribution system reliability, emergency response and restoration, vegetation management, service connections, service turnons and turnoffs, and service inquiries relating to the operation of the distribution system;

   b. But excludes line clearance tree trimming under the supervision of an electric IOU, the purchase of materials or equipment, contracting for construction of infrastructure owned by the electrical IOU, contracting for pole test and treat services, contracting for bulk electricity capacity, energy, or storage that is not for purposes of distribution system safety and reliability, or contracting for information technology services; and

c. And permits the electric IOU to contract with the owner or operators of distributed energy resources so long as the owner or operator meets the insurance requirements set by the CPUC to cover direct damages caused by the failure of the resource.

7) Requires the CPUC to conduct an annual proceeding starting in 2021 to review IOU compliance with the plans.

8) Beginning in 2021, the CPUC shall establish a list of independent evaluators from which the IOUs shall choose to review and assess the IOU's compliance with its plan and determine whether any revenue authorized to implement the plan was diverted to other purposes.

9) Requires the CPUC to assess penalties if a utility fails to substantially comply with its plan and requires the CPUC to consider specific factors.

10) If the CPUC finds that the IOU is in substantial compliance with its plan, the CPUC shall find that the IOU's performance, operations, management, and investments addressed in the plan are reasonable and prudent for purposes of any subsequent commission proceeding.

11) Requires, as part of an IOUs general rate case, written notice to customers of the plan, with the regular bill for charges, for the two billing cycles before it submits the plan.

12) Requires the CPUC to permit any member of the public to testify at any hearing or proceeding authorized under the Utility Infrastructure, Safety, Reliability, and Accountability Act (Chapter 11 (commencing with Section 2899) of Part 2), except that the presiding officer need not allow repetitive or irrelevant testimony and may conduct the hearing in an efficient manner.

EXISTING LAW:

1) Establishes the California Emergency Services Act, among other things, establishes CalOES for the purpose of mitigating the effects of natural, man-made, or war-caused emergencies and makes findings and declarations relating to ensuring that preparation within the state will be adequate to deal with those emergencies. (Government Code § 8550, et seq.)

2) Requires the CPUC to develop formal procedures to incorporate safety in a rate case application by an electrical corporation or gas corporations. (Public Utilities Code § 750)

3) Authorizes the CPUC, after a hearing, to require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. (Public Utilities Code § 768)

4) Requires the CPUC to establish standards for disaster and emergency preparedness plans, as specified, and requires an electrical corporation to develop, adopt, and update an emergency and disaster preparedness plan, as specified. (Public Utilities Code § 768.6)

5) Requires each electrical corporation to annually prepare and submit a wildfire mitigation plan for the next compliance period to the CPUC for review, and requires specified elements to be included in the plans. (Public Utilities Code § 8386)

6) Sets for rules for the design, construction, operation, and maintenance of overhead utility facilities such as power lines, communications lines, utility poles, and pole-mounted antennas. (CPUC General Order 95)

7) Prescribes inspection cycles for electric IOU distribution facilities. (CPUC General Order 165)

8) Requires that every electric IOU annually prepare and submit a plan that sets forth the utility's anticipated responses to emergencies and major outages. (CPUC General Order 166)

FISCAL EFFECT: According to the Senate Appropriations Committee:

- The CPUC indicates that it would incur ongoing costs of $2.5 million to $3.5 million (ratepayer funds) to create, adopt, and update standards for reducing risk from fire danger, as well as review and evaluate safety, reliability, and resiliency plans filed by the utilities. These proceedings have the potential to be lengthy and require staff with specific expertise.

- CalOES would require up to $500,000 (General Fund) and two new positions to draft initial standards, and at least half a position ongoing to update the standards every two years. CalOES also indicates that the expertise required for this workload may difficult to find, requiring it to contract out instead.

COMMENTS:

Purpose of the bill: According to the Author, "Investment in reducing the risk of wildfires has a proven cost savings of at least 3:1, but the CPUC has not established adequate standards to reduce the risk of wildfires caused by utility equipment and to make electric and gas utility equipment more resilient and resistant to damage from major events. This bill would require the CalOES, along with other agencies, to establish standards for utilities to protect against damage from natural disasters. IOUs will file safety, reliability and resilience plans with the CPUC which provide for hardening the utility infrastructure. The plans would include all costs to implement the safety, reliability and resilience measures. The CPUC would review, modify and approve the plans, including the costs to implement the plans. Establishing a stand-alone rulemaking would require Investor Owned Utilities and the CPUC to give greater attention and care to safety and reliability, and the bill would establish strong accountability requirements."

Wildfires: California's 2017 wildfire season will go down as one of the worst in the state's history. From January 1, 2017, through December 31, 2017, over 9,000 fires burned more than 1.2 million acres, an increase from the previous year which brought 6,986 fires burning around 564,000 acres, according to Cal Fire. The total acreage in 2017 included nearly 300,000 acres burned solely by the Thomas Fire, which grew to the largest wildfire in state history in late December.

The Thomas Fire lasted over 40 days, burning 281,893 acres. The blaze began on December 4 in Ventura County and exploded in growth due to strong Santa Ana winds. It destroyed over 1,000 structures and claimed two lives. While the Thomas Fire became the largest California wildfire in recorded history, it was also the seventh-most destructive, in terms of number of structures destroyed. However, two months prior to the Thomas Fire, a new record was set for most destructive wildfire in state history.

In October, the Tubbs Fire, which burned over 36,000 acres in the state's wine country, destroyed 5,643 structures and claimed 22 lives in Sonoma and Napa counties. The number of structures destroyed from the Tubbs Fire alone is more than half of the 10,780 total structures lost to wildfire in 2017 statewide. The 22 deaths also make it the third deadliest wildfire on record in California. Along with the Tubbs Fire, multiple other destructive fires damaged critical infrastructure and forced evacuations from October 8 through October 31 across seven counties.

In the aftermath, CAL FIRE has begun investigating the cause of each 2017 wildfire. As of June 8, 2017, CAL FIRE has determined the causes of 16 wildfires in Mendocino, Humboldt, Butte, Nevada, Sonoma, Lake, and Napa Counties. According to press releases issued by CAL FIRE on May 25 and June 8, 2018, investigators have determined that 16 Northern California wildfires in the October 2017 Fire Siege were caused by trees coming into contact with power lines, distribution lines, conductors and the failure of power poles.

<u>Cal OES</u>: In 2009, the California Legislature merged the powers, purposes, and responsibilities of the former Cal OES with those of the Office of Homeland Security (OHS) into the newly-created California Emergency Management Agency (CalEMA).On July 1, 2013, Governor Edmund G. Brown Jr.'s Reorganization Plan #2 eliminated CalEMA and restored it to the Governor's Office, renaming it the California Governor's Office of Emergency Services (Cal OES), and merging it with the Office of Public Safety Communications. Today, Cal OES is responsible for overseeing and coordinating emergency preparedness, response, recovery and homeland security activities within the state.

This bill requires Cal OES, in consultation with the CAL FIRE, the CPUC, and other appropriate state and local agencies, to adopt or update standards for reducing risk from a major event, which is defined as *"a large storm, flood, mudslide, fire, earthquake, or other occurrence that significantly affects the safety and reliability of the electrical or gas distribution system".*

<u>Current Safety Requirements</u>: According to the Utilities and Energy Committee's analysis, previous wildfires – namely the 2007 fire season – have prompted a several year effort to address fire prevention. Most recently the CPUC focused on the development and adoption of a statewide fire-threat map and also the identification, evaluation, and adoption of fire-safety regulations. Work on this phase was completed in December 2017. The most significant regulations adopted by this Decision were:

- A new High Fire-Threat District ("HFTD") is added to General Order 95 ("GO 95"). 1 The HFTD consists of three areas:
    - Zone 1 consists of Tier 1 High Hazard Zones ("HHZs") on the map of Tree Mortality HHZs prepared jointly by the United States Forest Service and the California Department of Forestry and Fire Protection ("CAL FIRE"). Tier 1 HHZs are in direct proximity to communities, roads, and utility lines, and represent a direct threat to public safety.

- Tier 2 consists of areas on the California Public Utilities Commission's Fire-Threat Map ("CPUC Fire-Threat Map") where there is an elevated risk for destructive utility-associated wildfires. The CPUC Fire-Threat Map is currently in an advanced stage of development.

- Tier 3 consists of areas on the CPUC Fire-Threat Map where there is an extreme risk for destructive utility-associated wildfires.

- Amendments to GO 95, Rule 18, to require utilities to (i) prioritize correction of safety hazards based, in part, on whether the safety hazard is located in the HFTD; (ii) correct within six months a Priority Level 2 fire risk that is located in Tier 3 of the HFTD; and (iii) correct within 12 months a Priority Level 2 fire risk that is located in Tier 2 of the HFTD.

- Amendments to GO 95, Rule 35, Table 1, to require utilities to maintain the stricter Case 14 vegetation clearances in the HFTD.

- Amendments to GO 95, Rule 38, to increase the effective minimum clearance between wires for new and reconstructed facilities in Tier 3 of the HFTD.

- Amendments to GO 95, Rule 80.1-A, to require minimum patrol and detailed inspection cycles for overhead communication lines in Tier 2 and Tier 3 of the HFTD. Inspections must be conducted twice as often in Tier 3 compared to Tier 2.

- Amendments to GO 95, Rule 80.1-B, to require a minimum intrusive inspection cycle for overhead communication lines in Tier 3 of the HFTD.

- Amendments to GO 95, Appendix E, to increase the recommended time-of-trim clearances between power lines and vegetation in the HFTD.

- Amendments to GO 165, Table 1, to require annual patrol inspections of overhead electric utility distribution facilities in rural Tier 2 and Tier 3 areas of the HFTD.

- Amendments to GO 166, Standard 1, Part E, to require every electric investor-owned utility ("Electric IOU") with overhead power lines in the HFTD to prepare a fire-prevention plan.

- Amendments to Electric Tariff Rule 11 to allow Electric IOUs to disconnect electric service to a customer in the HFTD when:

  - There is a breach of the minimum vegetation clearances required by California Public Resources Code §§ 4292 and 4293 for State Responsibility Areas.

  - The Electric IOU has obtained from an arborist a written determination that a dead, rotten, diseased, leaning, or overhanging tree (or parts thereof) poses an imminent or immediate risk for falling onto a power line.

This bill seeks to establish a new and separate safety framework, in which a "Safety, Reliability, and Resiliency Plan" is submitted by IOUs in July 2019. The author and sponsor argue that a new framework is needed because the current laws and CPUC regulations are inadequate and do not reduce the risk of wildfires caused by utility equipment and do not make electric and gas utility equipment more resilient and resistant to damage from major events.

Support: The Coalition of California Utility Employees (CCUE) and California State Association of Electrical Workers (IBEW) write in support, “SB 1088 takes long overdue steps to significantly reform the CPUC process for planning and approving critical investments into the State's aging utility infrastructure…In So Cal Edison's last general rate case (GRC) the CPUC approved a spending plan for the replacement of rotting power poles. The rate of change out ultimately approved would take over 200 years in order to replace all wood poles. Needless to say, there is yet to be invented a wood utility pole with a 200 year life. In short, the CPUC regularly adopts investment plans for utilities that they know are woefully inadequate. SB 1088 takes a pro-active approach to planning for future natural disasters and takes bold steps to force the CPUC and IOUs to re-align their primary focus to their core responsibility - protecting the public’s health and safety through prudent management and oversight of the State's utility infrastructure.”

Southern California Edison (SCE) writes in support, “SCE supports clear and comprehensive policy solutions for wildfire mitigation and response. As wildfires increase in frequency and intensity, it is imperative that a holistic policy response is crafted to help address this major threat affecting the state’s economy and the communities we serve…In SCE’s 50,000 square-mile service territory alone, roughly 9 million acres are considered high fire-risk areas. To protect the customers we serve, SCE has developed a comprehensive electric sector approach to identifying wildfire risks, reducing these risks, and responding to wildfire events as they occur. This bill would complement the efforts SCE and the other IOUs have already begun, and we value the author’s leadership in ensuring that wildfire solutions remain a priority for the state.”

Opposition: A coalition comprising of agriculture producers, retailers and manufacturers and petroleum trade associations write in opposition, “While we support the stated objectives of strengthening the safety, reliability and resiliency of the state’s electric and gas transmission and distribution systems, SB 1088 is more likely to result in significant rate increases for all California ratepayers without guarantee. Utility rates in California are already amongst the highest in the nation. The average industrial electricity rate in California, as of February 2018, was 12.96 cents/kWh, 95.5% higher than the US average of 6.63 cents/kWh for all states other than California. California’s industrial prices were the 6th highest in the nation. These dramatically higher electricity prices translated into commercial and industrial ratepayers paying $9.7 billion more than ratepayers in other states in the US using the same amount of energy. This bill exposes ratepayers to substantial utility expenses by providing a blank check for cost recovery on all utility expenses related to the IOU plans if the commission determines that the utility was in “substantial compliance” with their own approved plan.”

The Utility Reform Network (TURN) writes in opposition, “Rather than enhancing safety, SB 1088 would reduce current energy utility incentives to operate their systems safely and prudently and would effectively grant the utilities a blank check to burden ratepayers with unnecessary and excessive costs, without the opportunity for meaningful review of utility requests for steep rate hikes. The bill would negate years of nation-leading efforts by the CPUC and parties such as TURN to improve the utilities’ prioritization of safety risks and to implement better and more cost-effective mitigation measures for those risks, including the all-important wildfire risk.”

Policy Discussion: It is clear the majority of the opposition to this bill focuses on the new safety, reliability, and resiliency plans and the process by which they are approved leading to rate increases for rate payers. While most stakeholders agree and support the stated objectives of the bill to harden infrastructure to mitigate further disasters, they fear unequitable rates will be applied to achieve such a goal. Should the committee agree that a new and more focused process and standards are needed to harden infrastructure around the state to mitigate a repeat of the 2017 wildfires, the questions that follow are: 1) How can the plans be paid for in an equitable way?; and 2) Are there ways to offset the inevitable rate increases that will result from the plans? *The committee and author may wish to consider whether it is appropriate to ensure that the rate increases tied to the plans are dispersed among all rate classes and to the regions that stand to benefit the most from the improved infrastructure. Furthermore, the committee and author may wish to consider ways to offset the rate increases by further considering other energy resources, such as hydroelectric generation, as eligible renewable energy resources for the purposes of the California Renewables Portfolio Standard (RPS).*

Author's Amendments: The Author has offered and will accept the following amendments in committee:

1. Provide that the CPUC shall consider allocating costs in proportion to the benefits to each rate class, and climate region in which the approved investments will be made.

   Sec 2899.2(c)(4)**(C)When allocating the costs of a plan, the commission shall consider allocating costs (i) in proportion to the benefits to each rate class, and (ii) based on the climate zone in which the approved investments will be made.**

2. Clarify that a CPUC finding that a utility complied with its safety, reliability and resilience plan, shall not in any way be construed to obligate ratepayers to pay for a utility's negligence or anything not addressed in the plan.

   2899.6**(c) Nothing in this section is intended to create any ratepayer obligation to pay for any of the following:**
   (1) Any charge that is not just and reasonable pursuant to section 451;
   (2) Any negligence by the utility;
   (3) Any charge based on utility activity that is not addressed in the plan;
   (4) Any charge based on utility performance, operation, management or investment not addressed in the plan;
   (5) Any money diverted from the activity approved in the plan to activity outside the plan.

3. Clarify that nothing in the bill alters the responsibilities or authority of community choice aggregators.

   2899.7 Nothing in this chapter alters the responsibilities or authority of community choice aggregators.

Double Referral: SB 1088 was heard by Assembly Committee on Utilities and Energy on June 20, 2018, and passed on an 8-2 vote.

Prior/Related Legislation: SB 819 (Hill) of 2017-2018 Legislative Session. Would prohibit an electrical corporation from recovering a fine or penalty through a rate approved by the CPUC.

This bill would also prohibit an electrical corporation or gas corporation from recovering through a rate approved by the CPUC an uninsured expense from damages caused by the utility's electric facilities or gas facilities, if the CPUC determines that the electrical corporation did not reasonably construct, maintain, manage, control, or operate the facility. (Pending in Assembly Appropriations Committee)

SB 901 (Dodd) of 2017-2018 Legislative Session. Would require a wildfire mitigation plan prepared by an electrical corporation, and wildfire mitigation measures prepared by a local publicly owned electric utility or electrical cooperative, to include protocols the utility or cooperative may use to determine when it may be necessary to deenergize its electrical lines and deactivate its reclosers. (Pending in Assembly Committee on Utilities and Energy)

SB 549 (Bradford), Chapter 284, Statutes of 2016. Requires an electrical or gas corporation to annually notify the CPUC of each time that capital or expense revenue authorized by the CPUC for maintenance, safety, or reliability was redirected by the electrical or gas corporation to other purposes.

SB 900 (Hill), Chapter 552, Statutes of 2014. Requires the CPUC to develop formal procedures, as specified, to consider safety in a rate case application by an electrical corporation or gas corporation.

AB 56 (Hill), Chapter 519, Statutes of 2011. Requires the CPUC, in any ratemaking proceeding in which the CPUC authorizes a gas corporation to recover expenses for a federal transmission pipeline integrity management program, or for related capital expenditures for the maintenance and repair of transmission pipelines, to require the gas corporation to establish and maintain a balancing account for the recovery of those expenses.

SB 879 (Padilla), Chapter 523, Statutes of 2011. Among its provisions, included the same provision related to maintaining a balancing account for gas pipeline safety maintenance and repair as in AB 56.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Electrical Workers (Co-Sponsor)
Coalition of California Utility Employees (Co-Sponsor)
California Building Industry Association
California Labor Federation, AFL-CIO
California State Association of Counties
California State Pipe Trades Council
Congress of California Seniors
Engineers and Scientists of California
Napa County Legislative Subcommittee
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Santa Barbara County Board of Supervisors
Sierra Business Council
Sonoma County Board of Supervisors
Southern California Edison

State Building and Construction Trades Council
Utility Workers Union of America

Opposition

Agricultural Energy Consumers Association
American Pistachio Growers
Asian Pacific Environmental Network
California Association of Winegrape Growers
California Community Choice Association
California Cotton Ginners and Growers Association Inc.
California Environmental Justice Alliance
California Farm Bureau Federation
California Fresh Fruit Association
California Large Energy Consumers Association
California League of Food Producers
California Manufacturers & Technology Association
California Natural Gas Producers Association
California Retailers Association
Center for Community Action & Environmental Justice
Central Coast Alliance United For A Sustainable Economy
Communities For A Better Environment
Consumer Federation of California
Far West Equipment Dealers Association
Frontier Communications
Office of Ratepayer Advocates
People Organizing To Demand Environmental & Economic Rights
Physicians For Social Responsibility, Los Angeles
The Utility Reform Network
Western Agricultural Processors Association
Western Growers Association
Western States Petroleum Association

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