
UNFINISHED BUSINESS

Bill No: SB 350
Author: Hill (D), et al.
Amended: 6/11/20
Vote: 21

PRIOR VOTES NOT RELEVANT

SENATE ENERGY, U. & C. COMMITTEE: 9-3, 6/29/20 (Pursuant to Senate Rule 29.10)

AYES: McGuire, Bradford, Dodd, Hertzberg, Hill, Rubio, Skinner, Stern, Wiener
NO: Moorlach, Chang, Dahle

ASSEMBLY FLOOR: 57-17, 6/15/20 - See last page for vote

SUBJECT: The Golden State Energy Act

SOURCE: Author

DIGEST: This bill authorizes the creation of a non-profit public benefit corporation, Golden State Energy (GSE), to acquire the Pacific Gas and Electric (PG&E) Corporation under specified circumstances, including in the event PG&E does not emerge from Chapter 11 bankruptcy. This bill provides specified actions should PG&E not emerge from bankruptcy or have its CPUC-issued license revoked.

Assembly Amendments gut the language in this bill related to resource adequacy and replace the language with the current provisions related to the establishment of GSE and the related provisions.

ANALYSIS:

Existing law:

- 1) Establishes that the California Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations and gas corporations. (California Constitution, Article XII)

- 2) Authorizes the CPUC to fix just and reasonable rates and charges for public utilities. (Public Utilities Code §451)
- 3) Prohibits electrical corporations and gas corporations from recovering fines and penalties through rates approved by the CPUC. (Public Utilities Code §748.1)
- 4) Authorizes electrical corporations and gas corporations to use eminent domain to acquire any property necessary for the construction and maintenance of their electric or gas plants. (Public Utilities Code §§612 and 613)
- 5) Provides mechanisms for electrical corporations subject of a bankruptcy proceeding to recover costs and expenses arising from covered wildfires, as defined, from the Wildfire Fund, if specified actions are taken by June 30, 2020, including that the bankruptcy has been resolved pursuant to a reorganization plan not subject to a stay, approved by the CPUC. (Public Utilities Code §3292)
- 6) Prohibits a person or corporation from merging, acquiring, or controlling, either directly or indirectly, any public utility organized and doing business in this state without first securing authorization to do so from the CPUC. (Public Utilities Code §§851, 854)
- 7) Subjects nonprofit public benefit corporations to an examination by the Attorney General to ascertain the condition of its affairs and to what extent it has departed from the purposes for which it is formed. (Corporations Code §5250)

This bill:

- 1) Authorizes the CPUC to petition a court to appoint a receiver to assume possession of PG&E's property and to operate its electrical and gas systems if the CPUC determines that the appointment of a receiver is warranted pursuant to the processes or procedures set forth in a specified CPUC investigation.
- 2) Authorizes the Governor, or the Governor's designee, to incorporate GSE as a nonprofit public benefit corporation for the purpose of owning, controlling, operating, or managing electrical and gas services for its ratepayers and for the benefit of all Californians. Establishes a nine-member board of directors for GSE and provides for the appointment of the initial board members, as

provided, and requires procedures for the transition to a board consisting of six board members who are elected by GSE's customers, as specified, and three board members who are appointed, as provided.

- 3) Provides, expressly, that GSE is a nonprofit public benefit corporation, subject to all statutory provision and regulatory authority of the CPUC as an electrical corporation and gas corporation, except as specified. Requires the CPUC, upon a specified event occurring, to initiate a proceeding to modify the rules and processes that apply to PG&E Company as necessary to reflect the differences in GSE's capital structure to ensure continued regulation of rates, electrical and gas safety, wildfire mitigation, climate change mitigation and adaption, public purpose programs, and any other CPUC requirements applicable to an electrical corporation or gas corporation.
- 4) Requires GSE, in each general rate case or attrition year adjustment application, to apply for a revenue requirement sufficient to pay for operations and maintenance costs, pay for administrative and general expenses, service debt, pay the costs of CPUC approved capital expenditures not funded from debt, and fund and maintain necessary financial and operating reserves.
- 5) Authorizes GSE to issue debt to facilitate the acquisition of the property, as defined, of PG&E, as specified.
- 6) Authorizes GSE to recover fines and penalties through rates approved by the CPUC, thereby, excluding GSE from the existing prohibition applicable to gas and electric utilities.
- 7) Authorizes GSE to commence an eminent domain action to acquire PG&E if the CPUC determines that PG&E Company's certificate of public convenience and necessity for the provision of electrical or gas service should be revoked pursuant to any processes or procedures adopted by the CPUC in a specified CPUC investigation. Authorizes GSE to take possession of PG&E Company upon deposit in court, and prompt release, of an amount determined by the court to be the probable amount of just compensation.
- 8) Authorizes GSE to participate in the Wildfire Fund which provides mechanisms for electrical corporations to recover costs and expenses arising from covered wildfires, as defined, following the closing of its acquisition of PG&E Company, as specified.

- 9) Specifies that the financing of energy and project costs on behalf of GSE is in the public interest and eligible for financing by the I-Bank or by a special purpose trust, as specified. Authorizes the I-Bank to issue bonds and loan the proceeds to GSE, as specified. Specifies that bonds or other indebtedness issued pursuant to this financing do not constitute a debt or liability of the state or of any political subdivision of the state other than the I-Bank or the special purpose trust, and are payable solely from the funds of, and any security provided by, GSE.
- 10) Provides that any, and all, GSE indebtedness, their transfer, and the payments or income therefrom are at all times free from income taxation of every kind by the state.

Background

PG&E bankruptcy. On January 29, 2019, PG&E Corporation, the holding company of the state's largest energy utility, voluntarily filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. PG&E filed their case in the Northern California District Court San Francisco Division (Case No. 19-30088-DM). According to the company's first day filings, PG&E's decision to seek relief under Chapter 11 "were necessitated by a confluence of factors resulting from the catastrophic and tragic wildfires that occurred in Northern California in 2017 and 2018, and PG&E's potential liabilities arising therefrom." The company noted its potential liability related to the fires could exceed \$30 billion, including liabilities from the deadly Camp Fire. The Chapter 11 filing provides a company with the opportunity to develop a "reorganization plan" that addresses their debt. The preparation, confirmation, and implementation of a reorganization plan is at the heart of a Chapter 11 case and is usually proposed by the debtor to keep its business alive and pay creditors over time and, potentially, at a reduced settled amount. The confirmation of a plan discharges a debtor from any debt that arose before the date of confirmation. After the plan is confirmed, the debtor is required to make plan payments and is bound by its provisions. The confirmed plan creates new contractual rights, replacing or superseding pre-bankruptcy contracts. A key requirement of PG&E reorganization is to provide compensation to wildfire victims as part of any plan in the Chapter 11 case to allow the utility to exit bankruptcy. This is PG&E's second Chapter 11 bankruptcy in less than twenty years. The previous bankruptcy was filed in 2001 as a response to the restructuring of the energy markets towards deregulated markets, authorized by the CPUC and the Legislature in 1996, which resulted in an energy crisis involving market manipulation of participants such as Enron.

PG&E Plan of Reorganization. PG&E's plan (dated March 16th) can generally be broken down into categories of safety-related, financial, and other issues.

According to PG&E, its plan has the four main components: wildfire claims, other claims, non-tax claims, contributions for participation in the Wildfire Fund, and assumption of agreements (see Senate Committee on Energy, Utilities and Communication's policy analysis for more detail).

CPUC approval. AB 1054 (Holden, Chapter 79, Statutes of 2019) required the CPUC to determine whether the plan, including the resulting governance structure, is acceptable. The criteria that AB 1054 requires the CPUC to consider in making that determination are PG&E's safety history, criminal probation, recent financial condition, and other factors. In addition, AB 1054 required the CPUC to determine if the plan is (1) consistent with the state's climate goals (pursuant to the California Renewable Portfolio Standard), (2) is neutral, on average, to PG&E ratepayers, and (3) recognizes the contribution of ratepayers. These express approvals required under AB 1054 are in addition to the CPUC's general ratemaking authority, as the Bankruptcy Code explicitly recognizes, any rate change proposed in a plan must be approved by the governmental regulatory commission with proper jurisdiction. AB 1054 also set a very short deadline for PG&E to participate in the Wildfire Fund – the bankruptcy court and the CPUC must approve the plan and other documents resolving the insolvency proceeding by June 30, 2020.

CPUC approves Reorganization Plan. On Thursday, May 28th, the CPUC approved PG&E's plan, with conditions and modifications (D.20-05-053). In addition to approving the financial plan to pay debts, which includes a trust valued at \$13.5 billion to pay wildfire victims, the decision requires PG&E to modify its governance structure, submit to an enhanced oversight and enforcement process if it fails to improve safety, and create local operating regions. These new oversight tools and changes to PG&E's board of directors and management are designed to ensure PG&E will emerge from bankruptcy as a transformed company that has a commitment and ability to provide safe and reliable service and can simultaneously continue needed improvements to mitigate wildfire risk and achieve the state's climate goals.

Receivership. Under its authority, the CPUC issues licenses to operate as a regulated utility, known as a certificate of public convenience and necessity (CPCN). CPCN licenses are issued to privately-owned companies afforded the privilege and responsibility to provide monopoly utility service. In exchange for the license to operate, the company providing the utility service is subject to all CPUC oversight and regulation to ensure safe, reliable, and affordable service.

Current law authorizes the CPUC to petition the local superior court to appoint a receiver for a water corporation, after notice and hearing, when the water corporation is unable or unwilling to adequately serve its ratepayers or is unresponsive to CPUC rules or order, or is abandoned. The receivership provides the ability to protect assets and property interest pending the outcome of litigation or other legal dispute, generally with the goal of transferring ownership to a more able owner. According to the CPUC, the authority to petition the court to appoint a receiver has only occurred for a handful of Class D water corporations, those with fewer than 500 service connections. The CPUC's efforts in these cases has been varied as in the rare occasion establishing a receivership took less than 30 days, but most efforts to establish a receivership take several months or years to have processed through the courts.

Comments

SB 350. This bill establishes the GSE as a nonprofit public benefit corporation for the purpose of owning, controlling, operating, or managing electrical and gas services for the current customers of PG&E. This bill establishes several areas of operation related to GSE, including governance, regulation, and financing. This bill establishes GSE as an electrical corporation subject the regulatory authority of the CPUC. This bill requires the governor to appoint five members, the Senate Committee on Rules two members, and the Assembly Speaker two members to form the initial board of GSE, with staggered terms. Future boards would consist of three members appointed (one each by each appointing entity) and the remaining six members elected by GSE customers. This bill provides GSE with the power commence eminent domain action to acquire PG&E if the CPUC determines that PG&E's CPCN for the provision of electrical or gas service should be revoked, as specified.

Plan B. This bill effectuates the acquisition of PG&E by GSE under three scenarios: (1) failure to get reorganization plan confirmation by June 30, 2020 in the bankruptcy court or, fails to secure financing and subsequent exit from bankruptcy by September 30, 2020; (2) if PG&E attempts to sell the utility to a third party before it exits bankruptcy; and (3) after exit from bankruptcy, if at some future date PG&E fails in its safety obligations (reflected in the CPUC's decision), the CPUC could ultimately revoke PG&E's CPCN which would trigger the sale of the PG&E to GSE. However, PG&E's plan has since been confirmed by the court on Saturday, June 20th. Therefore, the failure to secure financing and exit from bankruptcy by September 30, 2020 may prove to be the more salient current lever. PG&E has agreed, as part of its plan, that it will sell the utility to GSE.

Fire victims' settlement claims. This bill attempts to provide a safety net to allow the state and GSE to step-in and try to gain control of PG&E, settle all debt, particularly that of fire victims, and get a new utility out of bankruptcy as soon as possible. This bill incorporates language that states the intent of the Legislature for GSE to compensate fire victims.

Governance. This bill establishes a board of directors for GSE similar to that of an IOU. To initially stand up GSE, the governor would appoint five members to staggered terms and an additional two members each by the Speaker of the Assembly and the Senate Committee on Rules. The board would serve staggered terms and transition to a board composed of six members elected by the customers of GSE, and one appointment by each of the three appointing entities, for a total of nine members. The election procedures of the directors adopted by the board would be required to include nomination of members for election with specified skills, expertise, and experience. These include: wildfire safety, workforce safety, leadership in utility or energy industry, risk management, and climate change mitigation, and others. Some of the parties that “support, if amended”, would like to see environmental justice expertise/representation included among the list of skills and expertise noted in this bill. It is unclear whether a nine-member board with six elected members from the large terrain served by PG&E will be sufficiently be responsive to the interests of its customers. Nonetheless, this is an effort to incorporate more customer voice into the decision-making of the utility should GSE come to be as specified by this bill.

Preserving CPUC safety orders. Amendments taken in the Assembly appropriately preserve the safety reorganization measures so carefully crafted through the CPUC's investigatory proceeding for the approval of PG&E's plan, if GSE were to successfully bid for PG&E before it exits bankruptcy. These include measures to: establish and executive-level Chief Risk Officer and Chief Safety Officer, appoint an Independent Safety Advisor, appoint regional executive officers to manage specified regions of the utility, and continue Safety and Nuclear Oversight Committees, among others.

Regulatory oversight. This bill includes provisions that exempt GSE from some provisions of nonprofit corporation statutes that require oversight by the Attorney General. Many of these provisions are areas would be presumed to be handled by the CPUC which has broad authority over regulated utilities, including electrical corporations. These include: notices typically provided to the Attorney General, issues related to sales or mergers or dissolution of the public benefit corporation, examination by the Attorney General, and others.

Impacts to ratepayers. In the event GSE acquires ownership of PG&E gas and electrical service (and associated assets), the cost to transition is expected to be significant. However, as a public benefit corporation, GSE will have the advantage of not paying state or income taxes, and, significantly, not paying shareholders. Nonetheless, the costs to transition, particularly in the initial years, may require an overall increase in rates for utility customers of an unknown amount. This bill appropriately carries over all revenue requirements and rates in place at the time of acquisition of PG&E to GSE. However, this bill ensures continued oversight by the CPUC to ensure the rates are just and reasonable to what will be necessary to operate GSE and ensure safe, reliable, and affordable service. This bill authorizes GSE to provide rate covenants to all of its debt holders and prohibits the CPUC from setting the revenue requirements below the amount necessary to satisfy the rate covenants' requirements. This provision limits the CPUC's ability to reduce these costs for ratepayers. However, amendments taken in the Assembly ensure that the CPUC is required to only approve just and reasonable rates, while requiring specified expedited timeframes by which the CPUC must approve applications submitted by GSE concerning issued debt. Additionally, GSE must apply to the CPUC in each general rate case or attrition year adjustment application for a revenue requirement sufficient to pay for all operations, debt service, CPUC-approved capital expenditures funded from debt, fund and operating reserves, and others. The culmination of these costs is the unknown, but likely significant, costs that would need to be recovered to fund the transition to GSE. Additionally, this bill allows the continued participation, and collection of funds, to participate in the Wildfire Fund established by AB 1054 (Holden, 2019). In the event PG&E does not exit bankruptcy and make its initial required and committed contributions to the fund, GSE could notify the CPUC of its commitment to make the initial and annual contributions which would be funded by ratepayers.

Fines and penalties. In the event there are fines and penalties imposed on GSE, those costs would be recoverable in rates. Currently, statute prohibits electrical corporations from recovering fines and penalties in rates. However, GSE, similar to a municipal utility, would not have any shareholders from whom to collect the funds to pay the fines.

Related/Prior Legislation

AB 89 (Committee on Budget, 2020) authorizes the director of the Office of Emergency Services to contract with an operational observer to monitor the efforts of PG&E to prepare for the 2020 wildfire season. The bill has been sent to the Governor.

SB 917 (Wiener, 2020) would have established the Northern California Energy Utility District as a municipal utility to provide electric and gas service within the territories currently served by PG&E, among other provisions. The bill was held by the author in the Senate Committee on Energy, Utilities, and Communications.

AB 1054 (Holden, Chapter 79, Statutes of 2019) established requirements for the participation of PG&E to participate in the Wildfire Fund, in order to recover costs associated with wildfires, as specified.

SB 901 (Dodd, Chapter 626, Statutes of 2018) established the requirement that the wildfire mitigation plans of each electrical corporation meet a number of specified requirements, among other provisions.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

- 1) No direct state costs. This is because the bill's requirements are contingent upon any one of several events, including PG&E's failure to win approval of its bankruptcy plan or to put the plan into effect, PG&E's decision to sell its assets and stock, or the CPUC's decision to revoke PG&E's license to operate. Should any one of these events, or other related events, occur, the CPUC and, likely, other state entities will face considerable workload. This bill prescribes and directs that workload; however, the bill does not create that workload.
- 2) Potential reduction in property tax revenue of an unknown, but likely significant, amount, as a result of the bill's exemption GSE indebtedness from all state taxation. Property tax revenue generally goes to local governments.

SUPPORT: (Verified 6/29/20)

350 Bay Area Action
California Environmental Justice Alliance
Reclaim Our Power: Utility Justice Campaign
The Utility Reform Network

OPPOSITION: (Verified 6/29/20)

None received

ARGUMENTS IN SUPPORT: According to the author:

SB 350 provides the statutory authorization for the California Public Utilities Commission to enhance its oversight and enforcement, in the event that PG&E does not comply with the terms of its bankruptcy restructuring. SB 350 additionally enables the State to swiftly take the necessary steps for PG&E to transform into GSE, a nonprofit public benefit corporation, should the CPUC determine the enhanced oversight and enforcement actions have not led to the necessary changes at PG&E.

The processes put forward in SB 350 are ones I hope we never need. I hope PG&E never starts another wildfire or causes another pipeline explosion. I hope the Company improves its safety record and public image. But the State cannot rely on hope alone. We require overdue reforms and accountability, and will have a contingency plan – SB 350 – ready, should the need arise.

ASSEMBLY FLOOR: 57-17, 6/15/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chiu, Chu, Cooley, Cooper, Daly, Eggman, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Obernolte, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Chen, Choi, Cunningham, Megan Dahle, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Mathis, O'Donnell, Patterson, Voepel, Waldron

NO VOTE RECORDED: Cervantes, Diep, Nazarian, Ramos, Salas

Prepared by: Nidia Bautista / E., U., & C. / (916) 651-4107
6/29/20 13:31:44

**** **END** ****