SENATE COMMITTEE ON ENERGY, UTILITIES AND COMMUNICATIONS
Senator Ben Hueso, Chair
2019 - 2020 Regular

Bill No:	SB 378	**Hearing Date:**	1/15/2020
Author:	Wiener		
Version:	1/6/2020 As Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Nidia Bautista		

SUBJECT: Electrical corporations: deenergization events: procedures: allocation of costs: reports

DIGEST: This bill would require numerous provisions related to an electrical investor-owned utility's (IOU) decision to proactively shut off power, including require reimbursements of specified costs, specified penalties for shutting off power, and other reporting. This bill also requires the California Public Utilities Commission (CPUC) to establish a code of conduct to limit the electric IOUs, as specified, from engaging in efforts, funded by ratepayers, related to marketing against the formation of publicly-owned utilities, microgrids, distributed energy resources, and other interests.

ANALYSIS:

Existing law:

1) Establishes the CPUC's regulatory authority over public utilities, including electrical corporations. (California Constitution Article X11, §§3 and 4)

2) Requires every public utility to furnish such reports as the CPUC may require. (Public Utilities Code §584)

3) Requires the CPUC to institute a rulemaking proceeding by March 1, 2012, for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, as specified, to govern the conduct of an electrical corporation relative to the consideration, formation, and implementation of community choice aggregation programs and to implement the code of conduct, associated rules, and enforcement procedures by January 1, 2013. (Public Utilities Code §707)

4) Requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the CPUC for review and approval, as specified. Requires a wildfire mitigation plan of an electrical corporation to include, among other

things, protocols for de-energizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communications infrastructure. (Public Utilities Code §8386)

5) Establishes an independent Public Advocate's Office (PAO) *(formerly the Office of Ratepayer Advocates)* within the CPUC with the goal to obtain the lowest possible rate for service consistent with reliable and safe service levels. Existing law requires the director of the PAO to annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the office. (Public Utilities Code §309.5)

6) Authorizes the CPUC to impose fines and civil penalties for the violation of the California Constitution, statutes, or an order, decision, or requirement of the CPUC by a public utility. (Public Utilities Code §1701.6)

This bill:

1) Requires an electrical corporation to annually report to the CPUC, the Office of Emergency Services (CalOES), the Department of Forestry and Fire Protection (CalFIRE), the California Independent System Operator (CAISO), and county governments within its service territory on the age, useful life, and condition of the electrical corporation's equipment, including the date of most recent inspection and maintenance records, with an assessment of the current and future fire and safety risk posed by the equipment, as well as of the economic, environmental, and public safety impacts of de-energization events, as defined.

2) Requires the CPUC to institute a rulemaking for the purpose of considering and adopting a code of conduct and enforcement procedures, as specified, to govern the conduct of an electrical corporation relative to the consideration, formation, and implementation of community choice aggregation programs, new or expanded local publicly owned electric utilities, microgrid or distributed resource programs and policies, or other efforts to expand electrical service options available to consumers.

3) Requires, on or before June 1, 2020, the CPUC, in consultation with the Department of Consumer Affairs, to establish a procedure for customers, local governments, and others affected by a de-energization event to recover costs accrued during the de-energization event from an electrical corporation within two weeks of the end of the event. The bill would require an electrical corporation to create a fund, of an amount to be determined by the CPUC, for

the recovery of costs accrued by customers, local governments, and others during a de-energization event. This bill would require that money be paid into the fund exclusively by the electrical corporation's shareholders, would prohibit expenses paid by the fund from being recovered either directly or indirectly in rates, and would require those expenses be borne exclusively by the shareholders of the electrical corporation. This bill would prohibit an electrical corporation from billing customers for any non-fixed costs during a de-energization event or from charging customers increased amounts after a de-energization event, in order to offset losses accrued during a de-energization event. This bill would require that any profit accrued by an electrical corporation due to a de-energization event be remitted or credited to ratepayers, while any loss be borne by the electrical corporation's shareholders.

4) Requires PAO to produce an annual report on the economic, environmental, and public safety impacts of de-energization events, using information provided by electrical corporations as well as independent analysis.

5) Provides that an electrical corporation is subject to an unspecified civil penalty for every hour that a de-energization event is in place.

Background

About proactive power shutoffs. Proactive power shutoffs are efforts by electric utilities to de-energize an electrical line or circuit in order to prevent the line from igniting a fire during certain conditions, especially high wind forecasts in areas that experience a high wildfire threat. Recently coined "Public Safety Power Shutoffs (PSPS)," these shutoffs are intended to be temporary but potentially endure for up to a few days, as the power is not restored until the conditions that triggered the shutoff have subsided and the electric lines are visually inspected to ensure there is no damage to the line that can spark a fire. In some instances, customers are served by circuits that do not pose a fire risk, but they are fed by lines upstream that do pose a fire risk. These customers may also lose power. While the lines are de-energized, customers on the affected circuits will not have electricity from the grid. Although there is some history with these types of proactive power shutoffs, their use as a tool to prevent sparking fires is a more recent development that has expanded and grown in use due to California's recent experience with catastrophic wildfires.

San Diego Gas & Electric (SDG&E) de-energizes electric lines. After experiencing several catastrophic fires in 2007, which were ignited by electric utility infrastructure, SDG&E implemented several measures to reduce the risk of fire ignited by its infrastructure. In addition to installing steel poles and expanding ground and aerial inspections, SDG&E also adopted a policy to proactively de-energize electric circuits in communities that experienced a high fire risk under particularly dry and windy Santa Ana conditions. In subsequent applications, the CPUC acknowledged SDG&E's authority to de-energize lines in order to protect public safety, noting this authority in Public Utilities Code § 451 and § 399.2. In April 2012, the CPUC adopted a decision (D. 12-04-024) that required SDG&E to provide notice and mitigation, to the extent feasible and appropriate, whenever the utility shut off power. The CPUC noted it may conduct a post-event review to determine whether the utility was reasonable. The decision also included requirements for specified reporting by the utility after a power shutoff event.

CPUC adopts resolution to require notifications (ESRB-8). In July 2018, following the catastrophic fires in 2017, including Thomas and North Bay Fires, the CPUC adopted a staff resolution to extend the reasonableness, public notification, mitigation and reporting requirements in the SDG&E decision to all electric IOUs, including Pacific Gas and Electric (PG&E) and Southern California Edison (SCE). Under Resolution ESRB-8, the CPUC also requires utilities to meet with local communities before putting the power shutoff practice in effect in a particular area, requires feasible and appropriate customer notifications prior to a de-energization event, and requires notification to the Safety and Enforcement Division of the CPUC after a decision to de-energize facilities. In adopting the resolution, CPUC commissioners expressed a desire that the power shutoffs would only be used as a "last resort" by the utilities.

October 2018 PSPS events. Each of the three electric IOUs had at least one PSPS event in October 2018. The largest de-energization event was conducted by PG&E who notified about 100,000 customers in about a dozen counties in the Sierra foothills and North Bay areas and ultimately shutoff power from October 14-17, affecting about 60,000 customers, mostly in the North Bay. The multiple day event resulted in many customer complaints and media stories regarding the loss of power in several communities. After the October 2018 events, the CPUC, CalOES, and CalFIRE sent a joint agency letter to all three electric IOUs establishing expectations for potential PSPS events in light of "recent actions" by the three IOUs to de-energize power lines during high wildfire danger weather conditions. The letter covered several issues, including: notifications at several distinct stages of a PSPS event to the California State Warning Center, with specified information, including a point of contact, at least three briefings per day of the event, real-time data and maps, and Geographic Information Systems (GIS) datasets (including polygon of planned outage areas, customers affected, outage areas, impacted circuits, and impacted critical customers). Within a week, the three electric IOUs responded with a joint letter of their own in which they identified general areas that would benefit from additional discussion with the agencies, including implementation details, data needs, and customer information.

CPUC opens rulemaking proceeding. After the passage of SB 901 (Dodd, Chapter 626, Statutes of 2018), which included requirement to adopt protocols for de-energization events, in December 2018, the CPUC opened a rulemaking proceeding (R. 18-12-005) to delve more deeply into the use of proactive power shutoffs as a wildfire prevention tool, including further examining de-energization policies and guidelines. In May 2019, the CPUC made its decision on Phase 1 of the proceeding (D. 19-05-042), adopting communication and notification guidelines for the electric IOUs to expand on those required in the July 2018 resolution. In August 2019, the CPUC opened a second phase of the proceeding to address identification and communication with the access and functional needs populations, communication with customers while the power is turned off, communication during de-energization, mitigation measures, coordination with relevant agencies (including first responders), and transmission-level de-energization. The presiding commissioner has recently re-scoped this hearing with an expected decision adopted in May 2020.

September/October 2019. With high-speed offshore warm Santa Ana winds in the southern part of the state and Diablo winds in the north, PG&E sent PSPS notifications at the end of September to a widespread region of its service territory and ultimately shutdown power in roughly two events to 76,000 customers in the North Bay and Sierra Foothill areas. This was the first back-to-back power shutoff event for PG&E in the same geographic area. These power shutoffs seemed to set the stage for continued PSPS activity throughout the month of October. There were multiple proactive power shutoff events in October within the service territories of each of the three large electric IOUs. In some cases, especially in the PG&E territory, these events bled into each other with customers experiencing extended days with loss of power, as the utility did not have enough time to complete inspections of the de-energized electric lines before the next PSPS event was triggered. In total, over two million California residents endured the loss of power in communities located in about 40 of the state's 58 counties. These incidents became even more challenging as wildfires in both northern California (including the Kincade Fire) and southern California (including Saddleridge and Maria Fires) also meant some evacuations needed to be executed with a lack of reliable communication services, traffic signal outages, schools closed, and hospitals struggling to keep the lights on even with their existing backup generators. Additionally, customer efforts to understand what infrastructure and which locations lost power were hampered as electric IOU websites were down – including those of PG&E and SCE. The increased attention and widespread nature of the outages meant significantly increased traffic to each of the utilities' websites, which they were not prepared to manage. There were also reports about unreliable maps and confusing information regarding geographic areas that would be affected. This confusion was especially acute in the PG&E territory. Customers who rely on electricity for medical devices struggled to find alternative sources of power or transportation to get to any of the limited community resource centers available to them, or to make contact with anyone who could help. The state agencies, including the California Health and Human Services Agency (CHHS) attempted to provide additional support. Local agencies, including counties, cities and special districts (including first responders to water utilities), struggled to provide support for their residents. Numerous K-12 schools, colleges, and universities across PG&E's service territory closed.

Post-event actions. In the midst of the October PSPS incidents, Governor Newsom sent a letter to the CPUC and to PG&E expressing his concerns and expectations regarding the use of PSPS. Governor Newsom stated the October 9th PSPS events by PG&E were unacceptable and he directed the utility to rebate all affected customers with $100 credit for residential customers and $250 credit for small businesses. The utility originally balked at the rebates, until a couple weeks later the utility agreed to rebates/credits for customers from the October 9th event. Additionally, the CPUC sent letters to the three electric IOUs. Notably, the CPUC held an emergency meeting on October 18th regarding the PSPS events in PG&E territory. PG&E's Chief Executive Officer Bill Johnson expressed his views that the company had areas to improve but that PSPS would be needed, potentially for as long as 10 years, until the utility could implement sufficient other measures, such as grid hardening, sectionalizing, and other measures that would reduce the need for PSPS. The CPUC also sent letters to the utilities directing them to share information with first responders about customers on a medical baseline program who require electricity to operate medical devices and sent another letter regarding the need to share information with the counties and tribal governments. Subsequently, the CPUC announced it would open an investigation into the conduct of the electric utilities to ensure they appropriately balanced the requirements to provide safe and reliable service when planning and executing their recent PSPS events. The CPUC has also opened a proceeding to investigate PG&E's actions and determine whether the utility should be sanctioned for violations regarding how it conducted the October 2019 power shutoffs. The proceeding is focused on the website failures, lack of proper customer notifications, lack of adequate call center staffing, and other concerns. Additionally, on November 18th this committee held an 8-hour oversight hearing to better understand the impacts, failures, and challenges of the October power shutoff events.

Code of Conduct Rules. SB 790 (Leno, Chapter 599, Statutes of 2011) required the CPUC to establish rules associated with electric IOU marketing against the formation of Community Choice Aggregators (CCAs), entities created by local governments to procure energy for their community. The new rules and procedures were intended to provide CCAs with the opportunity to compete on a fair and equal basis with other energy load-serving entities, and to prevent the IOUs from using their position or market power to undermine the development or operation of aggregators. The Code of Conduct established a complaint procedure and requires the electric IOUs to form independent marketing entities, with costs borne by shareholders, to convince a government agency not to participate in a CCA program. As a result of these rules, electric IOUs have formed an independent marketing entity to lobby against the formation of a CCA in only a few occasions, including SDG&E's activities concerning the formation of the City of San Diego's efforts to form a CCA.

Comments

Financial incentives of electric utilities. In recent years, catastrophic fires have taken a toll in terms of lost lives and damage to property. In California, electric IOUs are treated as quasi-governmental entities with many of the same powers and responsibilities, including being subject to inverse condemnation. As a result, when utility equipment is found to have caused fires, the electric utilities bear the liability of the associated financial impacts on the property damages. In the case of SDG&E, the 2007 fires resulted in a $400 million cost not recovered from their insurance or third-parties which their shareholders have had to bear. SCE's financial liability from fires started by its infrastructure totals in the hundreds of millions. In the case of PG&E, the costs associated with some of the wildfires have resulted in tens of billions of dollars in financial liability that have prompted the utility to enter into bankruptcy proceedings. While the decision to shut off power is not likely to be driven by the financial impacts, they should also not be ignored, as utilities must operate the risk of their business.

Balancing the public safety pendulum. Power shutoffs are one of the tools in the electric utility's toolbox to help mitigate against fires. However, the use of power shutoffs can also result in public safety harm, as the loss of power can have wide-ranging impacts. The notion that the electric utility, itself, would proactively shutoff power to multiple circuits is a cultural shift for electric utilities and the customers they serve. Yet, as a reaction to the increased risks, impacts, and costs of wildfires, California's electric utilities have sought and have been authorized to proactively shutoff power as a tool to reduce igniting wildfires. However, the use of power shutoffs can be a very blunt tool in communities that lose power – further exacerbated by the existing threat of wildfire – as the loss of power can severely challenge even the best evacuation plans. Public safety risks exist even in cases where there isn't a looming wildfire threat as the loss of power can render a community paralyzed as businesses close, vehicles can't be fueled, communications services can be disabled, and hospitals can be inundated with nonemergency and emergency visits for those seeking electricity. The risks can grow with the duration of the power shutoff. Therefore, power shutoffs, even when planned, create issues that are imperative to address to ensure the decision to shutoff power is balanced with the risks posed to public safety and costs borne by others from the loss of power. These issues include ensuring utilities are being reasonable and judicious in deciding whether to shutoff power, ensuring adequate notification and mitigation, the need for the state to provide adequate oversight and coordination, if needed, in response to these events, and ensuring that the utilities are considering all risks, not just those to their systems.

This bill. SB 378 is an attempt to address the need to better balance the pendulum. The bill attempts to address some of the financial costs associated with the loss of power, including prescribing compensation to customers, businesses, and local governments. After a November 2019 marathon informational hearing by this committee, it would seem reasonable for the legislature to further weigh-in the use and consequences of unreasonably executed power shutoffs. The Governor and CPUC have also expressed a desire to not repeat the events of October 2019. As noted above, the CPUC is in the midst of two active proceedings concerning the use of power shutoffs, including expanding protocols about their use and execution by electric utilities. Nonetheless, the members of the Legislature may wish to provide additional direction to the CPUC as Californians, particularly those in PG&E's service territory, are not likely to see an end to the use of power shutoffs in the near-term. However, there are elements of the bill that could distract from the efforts to hone in on the power shutoffs and that could result in more fires and harm to public safety. *In order to stay focused on the goal, as shared by the author, "to create some incentive for IOUs to use planned blackouts more judiciously and in a more targeted fashion," the author and committee may wish to amend and recast some of the elements as follows:*

- *Remove provisions concerning establishing Code of Conduct Rules associated with marketing against the formation of local public owned utilities, microgrids, and distributed energy resources.* Although the author argues these issues are related to the power shutoffs, they may actually work against some of the utilities' efforts to mitigate fires. As an example, PG&E has stated its desires to deploy microgrids in order to reduce wildfire risks in certain communities or help substations maintain power when upstream electric lines are de-energized. Additionally, the elements related to the formation of a public utility may be better suited for a separate legislative vehicle more directly relating to that issue.

- *Recast the section of the bill concerning compensation for affected customers and local governments.* Some of the elements included in the legislation in Section 4 can better align with cost recovery processes at the CPUC, while ensuring legislative direction.
- *Adjust the penalty amounts.* The bill proposes a penalty of not less than $500,000 for every hour of a power shutoff multiplied by every 50,000 customers. As a result, the October 2019 events would result in several billions of dollars in penalties for PG&E. Even if not paid directly by ratepayers, these costs would likely result in increased capital costs and potentially other impacts that could be indirectly born by ratepayers. Additionally, the utilities should be sanctioned only if found to be unreasonable in their use and execution of power shutoffs, not solely for having a power shutoff.
- *Apply provisions to all electric utilities*. As currently drafted, this bill would apply most provisions to only PG&E and SCE, the only utilities with more than 2.5 million service connections. However, power shutoffs are utilized by more than PG&E and SCE and should be reviewed in all cases. The author may be correct in noting that SDG&E use of power shutoffs is likely to remain more limited. Nonetheless, the Legislature may wish to have all electric utilities subject to the review and determinations regarding reasonableness.
- *Additional minor changes.* Additionally, consistent with recent legislative efforts to establish a Wildfire Safety Division, the bill should require reporting to the new division responsible for oversight of electric IOU wildfire mitigation plans.

Prior/Related Legislation

SB 790 (Leno, Chapter 599, Statutes of 2011) revised and expanded the definition of Community Choice Aggregation (CCA) and required the California Public Utilities Commission (PUC) to initiate a Code of Conduct rulemaking

SB 901 (Dodd, Chapter 626, Statutes of 2018) addressed numerous issues concerning wildfire prevention, response and recovery, including funding for mutual aid, fuel reduction and forestry policies, wildfire mitigation plans by electric utilities, which included a requirement for protocols for power shutoffs, and cost recovery by electric corporations of wildfire-related damages.

AB 1054 (Holden, Chapter 79, Statutes of 2019) creates additional safety oversight and processes for utility infrastructure, recast recovery of costs from wildfire damages to third-parties, and authorize an electrical corporation and ratepayer jointly funded Wildfire Fund to address future related wildfire liabilities.

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

SUPPORT:

City of San José (Sponsor)
Berkeley City Council
California Association of Food Banks
City of Dublin
City of Livermore
City of Oakland
City of Pleasanton
City of San Ramon
County of Alameda
Oakland City Council
San Francisco Public Utilities Commission
Town of Danville

OPPOSITION:

California Chamber of Commerce
Coalition of California Utility Employees
Pacificorp, Oppose unless amended
San Diego Gas & Electric Company

ARGUMENTS IN SUPPORT: According to the author:

> SB 378 addresses the root cause of [blackout addiction] by:
>
> - Requiring that large IOUs compensate customers, businesses, and local governments for costs incurred during a planned blackout.
> - Levelling modest hourly fees on large IOUs during planned blackouts to ensure that they are as brief and circumscribed as is reasonably possible.
> - Preventing large IOUs from making money off of planned blackouts (through changing electricity prices, arbitrage, and the like) and from charging customers for electricity use during a blackout.
> - Improving data collection and reporting on both the potential for and consequences of planned blackouts.
>
> Taken together, these measures will ensure that planned blackouts are used only when truly necessary, protecting our communities, businesses, and local governments in the process.

ARGUMENTS IN OPPOSITION: Those opposed to the bill express concerns regarding penalizing the utilities for using power shutoffs to prevent wildfires, provisions related to the Code of Conduct rules, and unintended impacts to ratepayers. SDG&E, Pacific Power, Coalition of California Utility Employees (CCUE), and the California Chamber of Commerce (CalChamber) oppose provisions in the bill that could limit the ability of utilities to inform decisions that could impact ratepayers – including the formation of publicly owned utilities and deployment of distributed energy resources, including microgrids. Many of these entities argue that the provisions included in the bill are too broad and vague to discern what activities could be sanctioned and which activities could be penalized. CCUE and CalChamber express concerns with penalizing utilities for preventing wildfires and believe the bill could result in more fires, property damage, and potentially loss of life.

-- END --