
THIRD READING

Bill No: SB 378
Author: Wiener (D), et al.
Amended: 1/21/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 10-1, 1/15/20
AYES: Hueso, Chang, Dodd, Hertzberg, Hill, McGuire, Rubio, Skinner, Stern,
Wiener
NOES: Moorlach
NO VOTE RECORDED: Bradford

SENATE APPROPRIATIONS COMMITTEE: 4-2, 1/23/20
AYES: Portantino, Durazo, Hill, Wieckowski
NOES: Bates, Jones
NO VOTE RECORDED: Bradford

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

SOURCE: City of San José

DIGEST: This bill requires numerous provisions related to an electrical investor-owned utility's (IOU) decision to proactively shut off power, including requiring reimbursements of specified costs, specified penalties for shutting off power, and other reporting.

ANALYSIS:

Existing law:

- 1) Establishes the California Public Utilities Commission's (CPUC) regulatory authority over public utilities, including electrical corporations. (California Constitution, Article XII, §§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 establish the Wildfire Safety Division within the commission to undertake specified tasks. (Public Utilities Code §726)
- 4) Transfers all function of the Wildfire Safety Division, effective July 1, 2021, to the Office of Energy Infrastructure Safety. (Government Code §15470)
- 5) 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)
- 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 each electrical corporation to annually submit a report to the Wildfire Safety Division and, after June 30, 2021, to the Office of Energy Infrastructure Safety, that includes the age, useful life, and condition of the electrical corporation's equipment, inspection dates, and maintenance records for its equipment, investments to maintain and improve the operation of its transmission and distribution facilities, and an assessment of the current and future fire and safety risk posed by the equipment.
- 2) Requires the CPUC, in consultation with Public Advocate's Office, on or before June 1, 2021, to establish a procedure for customers, local governments, and others affected by a deenergization event to recover costs accrued during the deenergization event from an electrical corporation, within specified time periods. This bill requires an electrical corporation, on or before June 1, 2021, to establish a memorandum account to track expenses paid to customers, local governments, and others for claims resulting from a deenergization event.
- 3) Requires the CPUC to establish rules to determine whether the expenses paid can be recovered from ratepayers.

- 4) Prohibits an electrical corporation from billing customers for any non-fixed costs during a deenergization event or from charging customers increased amounts after a deenergization event in order to offset losses accrued during a deenergization event.
- 5) Requires, on or before June 1, 2021, that any profit accrued by an electrical corporation, due to a deenergization event that is determined by the CPUC to have been undertaken in an unreasonable or imprudent manner, be remitted or credited to its ratepayers, and that any loss be borne by the electrical corporation's shareholders.
- 6) Requires an electrical corporation to provide notification of a pending deenergization event as early as possible to the cities and counties within its service territory and to other local governmental entities upon their request, and to share information relating to a deenergization event with local governmental entities, as specified.
- 7) Requires the CPUC to biennially produce a report on the economic, environmental, public health, and public safety impacts of deenergization events, using information provided by electrical corporations and independent analysis.
- 8) Provides that an electrical corporation is subject to a civil penalty of not less than \$250,000 per 50,000 affected customers for every hour that a deenergization event is in place, and requires that the penalty be borne exclusively by the electrical corporation's shareholders, if the CPUC determines that the electrical corporation failed to act in a reasonable and prudent manner in its implementation and execution of a deenergization event.

Background

About proactive power shutoffs. Proactive power shutoffs are efforts by electric utilities to deenergize 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 power shutoffs are intended to be temporary, but may endure for multiple days, as electricity 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 that can spark a fire. In some instances, customers who are served by circuits that do not pose a fire risk may also experience the loss of electricity if their electric lines are downstream from lines that do pose a fire risk.

Recent history with power shutoffs. Although there is some history with 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 ignited by utility infrastructure. The practice began by San Diego Gas & Electric (SDG&E) after several utility infrastructure ignited catastrophic fires in 2007. Proactive power shutoffs were one of the many measures SDG&E implemented to reduce the risk of fire ignited by its infrastructure (other measures included installing steel poles and expanding ground and aerial inspections). Although the use of proactive power shutoffs were met with opposition and concerns about its use, ultimately the CPUC acknowledged SDG&E's authority to deenergize 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 deenergized electric lines. Additionally, the CPUC required SDG&E to provide specified reporting after a proactive power shutoff event and noted the CPUC may conduct a post-event review to determine whether the utility was reasonable.

CPUC extends proactive power shutoffs protocol requirements to other utilities. Following the catastrophic fires in 2017 (including Thomas and North Bay Fires), in July 2018, the CPUC adopted a staff resolution (ESRB-8) 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 employing the power shutoff practice 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 deenergize 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. In October 2018, for the first time proactive power shutoffs were used by the three electric IOUs, with each having at least one PSPS event, including the largest conducted by PG&E who shutoff power to about 60,000 customers for a couple of days. 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, California Office of Emergency Services (CalOES), and the California Department of Forestry and Fire 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 deenergize power lines during high wildfire danger weather conditions. 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.

SB 901 requires power shutoff protocols. SB 901 (Dodd, Chapter 626, Statutes of 2018) included a requirement to adopt protocols for deenergization 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 access and functional needs populations, communication with customers while the power is turned off, communication during deenergization, mitigation measures, coordination with relevant agencies (including first responders), and transmission-level deenergization. CPUC President Batjer, the presiding commissioner to the proceeding, has recently re-scoped the proceeding with an expected decision adopted in May 2020.

September/October 2019. At the end of September 2019, under high-speed Diablo wind conditions, PG&E sent PSPS notifications 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 set the stage for continued PSPS activity throughout the month of October, as there were additional multiple proactive power shutoff events throughout the month 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 deenergized 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 Web sites were down – including those of PG&E and SCE – due to the increased traffic

to each of the utilities' Web sites, 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. State agencies and local agencies, including the California Health and Human Services Agency, county offices of emergency services, cities, and special districts (including first responders and water utilities) all struggled to respond to challenges created by the power shutoffs.

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 noting that the PSPS as executed were "unacceptable." He directed PG&E 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 when the utility agreed to rebates/credits for customers affected by the October 9th event. Additionally, the CPUC sent letters to the three largest electric IOUs and held an emergency meeting on October 18, 2019, 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 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 Web site failures, lack of proper customer notifications, lack of adequate call center staffing, and other concerns. Additionally, on November 18, 2019, the State Senate through the Senate Energy, Utilities, and Communications Committee held an eight-hour long oversight hearing to better understand the impacts, failures, and challenges of the October power shutoff events and to identify actions to prevent similar incidents in the future.

Comments

Balancing the public safety pendulum. Power shutoffs are one of the tools in the electric utility's toolbox to help mitigate against fires. However, as the October 2019 events illustrate, 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 would proactively shutoff power to multiple circuits due to fire risk 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 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 public safety risks can grow with the duration of the power shutoff event and inadequate communication and notification. 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.

SB 378. This bill is an attempt to address the need to better balance the pendulum. This 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 on 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. The author has stated his goal with this bill is "to create some incentive for IOUs to use planned blackouts more judiciously and in a more

targeted fashion.” In light of the events that transpired in October 2019, there would seem to be merit to address these issues.

Need for further refinement. In light of the parallel efforts by the CPUC and Governor’s Office, as well as, the continued discussions in the Legislature regarding the use of power shutoffs, this bill, as currently drafted, is a continued work-in-progress. The CPUC, working with Boston Consulting Group, has recently proposed a substantial revision of the framework for electric utility wildfire mitigation plans that encompass specified metrics (roughly 50 metrics) to standardize the determinations and reviews of whether a utility is taking active steps to reduce its wildfire risk and reduce the need for widespread proactive power shutoffs. These metrics would help to create a dashboard-styled format to better judge the performance of each electric IOU’s wildfire mitigation plans, which include the power shutoff protocols. Additionally, the Governor’s Office and CalOES are working closely with each electric IOU to better prepare for the upcoming wildfire season in order to reduce the widespread nature and duration of proactive power shutoffs. As this bill moves forward, the author and legislature may wish to further refine this bill to ensure that the measures in this bill adjust the public safety pendulum in a manner that will improve public safety by ensuring electric IOUs utilize proactive power shutoffs judiciously. If the pendulum is too far to one side, electric IOUs may be reluctant to utilize proactive power shutoffs which could result in more catastrophic wildfires. Conversely, the use of widespread proactive power shutoffs for extended durations could result in additional public safety harm. Furthermore, the financial implications of using or not using proactive power shutoffs must also be balanced to ensure they appropriately incent judicious actions by electric utilities, but don’t result in overburdening utilities with costs that could unfairly affect ratepayers. The areas in this bill that merit continued refinement include: scope and timing of any required compensation related to the use of proactive power shutoffs, appropriate metrics to calculate penalty amounts, and ensure required reporting is not unnecessarily duplicative.

Related/Prior Legislation

SB 167 (Dodd, Chapter 403, Statutes of 2019) required electrical corporations to include impacts on customers enrolled in specified programs as part of the protocols for deenergizing portions of their electric distribution system within their wildfire mitigation plans.

AB 1054 (Holden, Chapter 79, Statutes of 2019) created additional safety oversight and processes for utility infrastructure, recast recovery of costs from wildfire

damages to third-parties, and authorized an electrical corporation and ratepayer jointly funded Wildfire Fund to address future related wildfire liabilities.

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 includes a requirement for protocols for power shutoffs, and cost recovery by electric corporations of wildfire-related damages.

SB 1028 (Hill, Chapter 598, Statutes of 2016) required electric CPUC-regulated utilities to file annual wildfire mitigation plans and requires the CPUC to review and comment on those plans.

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

According to the Senate Appropriations Committee:

- The CPUC estimates costs of \$1.7 million annually (special fund) and nine positions to (1) establish a procedure for recovery of costs due to de-energization events, (2) conduct enforcement proceedings to penalize electric corporations, (3) perform audits, and (4) produce a biannual report on the economic, environmental, and public health and safety impacts of de-energization events.
- Unknown but potentially significant fee revenue, possibly in the hundreds of millions of dollars annually, for penalties levied on IOUs by the CPUC due to de-energization events that it determines were not justified.

SUPPORT: (Verified 1/23/20)

City of San José (source)

Berkeley City Council

California Association of Food Banks

Cities of Dublin, Livermore, Oakland, Pleasanton, and San Ramon

County of Alameda

County of Yolo

Food Bank of Contra Costa and Solano

Oakland City Council

Rural County Representatives of California

San Francisco Public Utilities Commission

Town of Danville

Valley Clean Energy

OPPOSITION: (Verified 1/23/20)

California Chamber of Commerce
Coalition of California Utility Employees
Pacific Gas & Electric
PacifiCorp
San Diego Gas & Electric Company
Southern California Edison

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 this bill express concerns regarding penalizing electric utilities for using an authorized safety measure – power shutoffs – to prevent wildfires. The Coalition of California Utility Employees, California Chamber of Commerce, and the electric utilities opposed to this bill express concerns with penalizing utilities for preventing wildfires and believe this bill could result in more fires, property damage, and loss of life. They generally argue that this bill's financial impacts – including the proposed required compensation and the penalties – would result in more fires by limiting electric utilities from using a proactive power shutoff when the conditions merit its use or force electric utilities to re-energizing electric lines prematurely before fire-threat conditions have subsided.

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