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

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Author: Holden
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SUBJECT: Public utilities: wildfires and employee protection

DIGEST: This bill includes numerous provisions related to addressing wildfires caused by electric utility infrastructure, including: bolstering safety oversight and processes, recasting recovery of costs from damages to third-parties, including the authorization for an electrical corporation and ratepayer jointly funded Wildfire Fund to address future damages, and changes to provisions concerning the workforce of a change of ownership of a full or portion of an electrical or gas corporation.

ANALYSIS:

Existing law:

- 1) Establishes that private property may be taken or damaged for a public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner. (California Constitution, Article I § 19) *This section includes requirements for the exercise of eminent domain; the taking of private property for public use. This section has been held by the California Supreme Court to require just compensation when a property has been damaged by a public improvement project, known as inverse condemnation. (Reardon v. San Francisco (1885) 66 Cal. 492, 501). The courts have further held that the section is applicable to privately-owned public utilities (Gay Law Students Association v. Pacific Telephone & Telegraph Co. (1979) 23 Cal.3d 458, 469), and (Barham v. Southern California Edison Company (1999) 74 Cal. App 4th 744).*
- 2) Establishes the California Public Utilities Commission (CPUC) and authorizes the CPUC to exercise ratemaking and rulemaking authority over all public utilities, as defined, subject to control by the Legislature. (California Constitution, Article XII §§1,2, 3, 5,6)

- 3) Authorizes, via the Public Utilities Act, the CPUC to supervise and regulate every public utility, including electrical corporations, and to do all things that are necessary and convenient in the exercise of such power and jurisdiction. (Public Utilities Code §701)
- 4) Authorizes the CPUC to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. (Public Utilities Code §451)
- 5) Existing law authorizes the CPUC, in a proceeding on an application by an electrical corporation to recover costs and expenses arising from a catastrophic wildfire occurring on or after January 1, 2019, to allow cost recovery if the costs and expenses are just and reasonable, after consideration of the conduct of the utility, including consideration of specified factors. (Public Utilities Code §451.1)
- 6) Authorizes an electrical corporation to file an application requesting the CPUC to issue a financing order to authorize the recovery of costs and expenses related to a catastrophic wildfire through the issuance of bonds by the electrical corporation that are secured by a rate component, as provided. (Public Utilities Code §§451.2, 850, 850.1, 850.2)
- 7) Establishes procedural requirements that are applicable to all CPUC hearings, investigations, and proceedings and provides that the technical rules of evidence are not applicable to those hearings, investigations, and proceedings, which are governed by the rules of practice and procedure adopted by the commission. (Public Utilities Code §1701 et seq.)
- 8) Requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the CPUC for review and approval and requires the CPUC to consider whether the cost of implementing an electrical corporation's plan is just and reasonable in the electrical corporation's general rate case. (Public Utilities Code §8386)
- 9) Requires each local publicly owned electric utility (electric POU) and electrical cooperative, by January 1, 2020, and annually thereafter, to prepare a wildfire mitigation plan. (Public Utilities Code §8387)
- 10) 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)

- 11) Requires a successor employer, in the context of a change of control of an electrical or gas corporation, to retain all covered employees, as defined, for at least 180 days immediately following the effective date of a change of control. Prohibits the successor employer from reducing the total compensation of a covered employee during that period. Prohibits, for two years after the 180-day period, a successor employer from reducing the total number of employees who would have been covered employees for succession purposes below the total number of those employees who were protected during that 180-day period, unless approved by the CPUC. Prohibits the CPUC from authorizing a successor employer to reduce the number of those employees unless the successor employer makes a specified showing. (Public Utilities Code §854)
- 12) Authorizes, until January 1, 2003, the Department of Water Resources (DWR) to enter into contracts for the purchase of electric power. Authorizes the DWR to sell power to retail end use customers and local electric POU under certain circumstances. Authorizes DWR to issue revenue bonds and entitles the department to recover, as a revenue requirement, amounts necessary to enable it to finance the bonds and purchase electric power pursuant to these provisions. (Water Code §§80000, et seq., 80100, et seq., 80130, et seq., 80200, 80260)

This bill:

- 1) Makes several findings and declarations concerning the increased risk of catastrophic wildfires, the exposure of financial liability resulting from wildfire caused by utility equipment, the need of electrical corporations to access capital to fund ongoing operations, the ability of a wildfire fund to support the credit worthiness of electrical corporations, among others.
- 2) Makes additional findings and declarations concerning the need to have electrical corporations invest in hardening of the state's electrical infrastructure and vegetation management to reduce the risk of catastrophic wildfires, including a finding that five billion dollars in safety investments in the aggregate by the large electrical corporations must be made without return on equity that would have otherwise been borne by ratepayers.
- 3) Establishes the California Wildfire Safety Advisory Board (CWSAB) consisting of seven members appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules, as provided, who would serve four-year staggered terms. Requires the board, among other actions, to advise and make recommendations related to wildfire safety to the Wildfire Safety Division (*or, on and after July 1, 2021, the Office of Energy Infrastructure Safety, as established pursuant to AB 111 or SB 111 of the 2019–20 Regular*

Session). Requires the CWSAB to review and provide comments and advisory opinions to each local publicly owned electric utility (POU) and electrical cooperative regarding the context and sufficiency of its wildfire mitigation plans.

- 4) Requires the CPUC, when determining an application by an electrical corporation to recover costs and expenses arising from a covered wildfire, as defined, to allow cost recovery if the costs and expenses are determined just and reasonable based on reasonable conduct by the electrical corporation.
 - a) Requires the CPUC to find that an electrical corporation's conduct was reasonable if that conduct, related to the ignition, was consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances, at the relevant point in time, and based on the information available to the electrical corporation at the time, as provided.
 - b) Provides that costs and expenses in the application may be allocated for cost recovery in full or in part taking into account factors both within and beyond the utility's control, including humidity, temperature, and winds.
 - c) Provides that an electrical corporation bares the burden to demonstrate, based on a preponderance of the evidence, that its conduct was reasonable, unless it has a valid safety certification for the time period in which the covered wildfire that is the subject of the application ignited.
 - d) Provides, if the electrical corporation has that valid safety certification, the electrical corporation's conduct would be deemed reasonable unless a party to the proceeding creates a serious doubt as to the reasonableness of the electrical corporation's conduct.
 - e) Requires, once serious doubt has been raised, the electrical corporation to have the burden of dispelling the doubt and proving the conduct to have been reasonable.
- 5) Authorizes the CPUC to assess a penalty in an amount up to three times the penalty authorized by law for certain utility-related violations, if the CPUC finds that an electrical corporation has requested recovery of costs for which the CPUC had previously authorized cost recovery.
- 6) Authorizes an electrical corporation to file an application requesting the CPUC to issue a financing order to authorize the recovery of costs and expenses related to catastrophic wildfires under specified conditions, including fire risk

mitigation capital expenditures associated with the electrical corporation's proportionate share of the five billion dollars of safety improvements in aggregate by all three of the state's largest electrical corporations, through the issuance of bonds by the electrical corporation that are secured by a rate component. Prohibits costs and expenses incurred by the electrical corporation after December 31, 2035 from being included in a financing order per this bill.

- 7) Authorizes the CPUC to issue a financing order to allow recovery through fixed recovery charges if the CPUC makes specified determinations, including the costs are just and reasonable, consistent with the public interest, and reduce the rates on a present value basis that consumers within the electrical corporation's service territory would pay as compared to the use of traditional utility financing mechanisms. Requires that any successor to a financing entity is bound by the requirements of the article and is required to perform and satisfy all obligations of the financing entity.
- 8) Expands the definition of "change of control" for purposes of the bill: (1) the sale of all or a material portion of the assets of the electrical corporation or gas corporation, its parent company, or its holding company, or any merger, consolidation, or acquisition of the electrical corporation or gas corporation, its parent company, or its holding company with, by, or into another corporation, entity, or person, (2) the voluntary or involuntary change in ownership in assets of an electrical or gas corporation to ownership by a public entity, or (3) in the case of a combined electrical and gas corporation, the change in ownership of all or a substantial portion of either the gas or electric line of business of the combined corporation. Further requires:
 - a) Requires the predecessor employer, no later than 15 days before the effective date of a change of control, to post a notice of the change in a conspicuous place in a manner that is readily viewed by covered employees.
 - b) Requires the successor employer, for three years after the 180-days covered employee retention period, to provide to employees who would have qualified as covered employees during the 90-day period immediately before a change of control no less than the wages, hours, and other terms and conditions of employment provided before the change of control, including any previously negotiated increase in wages, and to maintain no less than the total number of employees who would have qualified as covered employees during that 90-day period, except with commission approval based on proof of certain criteria.

- c) Prohibits a person or corporation from merging, acquiring, or controlling, including a change in control as revised by this bill, either directly or indirectly, any public utility organized and doing business in this state without first securing authorization from the CPUC.
- 9) Requires the CPUC to determine whether a proceeding is a catastrophic wildfire proceeding, defined as a proceeding to determine whether an electrical corporation's costs and expenses relating to a covered wildfire, as defined, are just and reasonable, as specified:
- a) Establishes procedures and standards applicable to catastrophic wildfire proceedings, as specified, including specified ex parte rules, authorizes the CPUC to establish a quiet period during the three business days scheduled for a vote and may meet in closed session during that period.
 - b) Authorizes an electrical corporation to file an application to recover expenses that are just and reasonable at any time after it has paid, or entered into binding commitments to pay, all or substantially all third-party damage claims related to a covered wildfire.
 - c) Requires an electrical corporation, if it has received payments from the Wildfire Fund for a third-party damage claim for the covered wildfire, to file an application to recover the costs associated with the third-party claims of a covered wildfire by no earlier than: the date when it has resolved all third-party damage claims and exhausted all right to indemnification against any third parties, or the date that is 45 days after the date the administrator requests the electrical corporation to make such an application.
- 10) Establishes the Wildfire Fund to pay eligible claims arising from a covered wildfire, as provided. Continuously appropriates moneys in the fund to the Wildfire Fund Administrator for that purpose, thereby making an appropriation.
- a) Defines an eligible claim to mean claims for third-party damages against an electrical corporation resulting from covered wildfires exceeding the greater of one billion dollars in the aggregate in any calendar year or the amount of insurance coverage required to be in place for the electrical corporation.
 - b) Establishes a Wildfire Fund allocation metric as the calculation involving the land area of the electrical corporation in the high fire-threat district, and the electrical corporation's line miles of transmission and distribution lines in the high fire-threat districts as a proportion of all large electrical corporations' line miles, adjusted to account for risk mitigation efforts.

States the expectation that the allocation metric is 64.2 percent for Pacific Gas & Electric, 31.5 percent for Southern California Edison, and 4.3 percent for San Diego Gas & Electric.

- c) Requires of a participating large electrical corporation, an initial contribution of an amount equal to 7.5 billion dollars (\$7,500,000,000) multiplied by the Wildfire Fund allocation metric and an annual contribution of 300 million dollars (\$300,000,000) multiplied by the Wildfire Fund allocation metric.
 - d) Requires of a regional electrical corporation an initial contribution of an amount equal to 625 dollars (\$625) multiplied by the number of customer accounts serviced by the electrical corporation within the state and an annual contribution amount equal to 25 dollars (\$25) multiplied by the number of customer accounts serviced by the electrical corporation within the state.
- 11) Requires the CPUC to initiate a rulemaking proceeding to consider using its existing authority to require large electrical corporations to collect a nonbypassable charge from its ratepayers to support the Wildfire Fund, and would require the CPUC to direct each electrical corporation to collect that charge if the CPUC determines that the imposition of the charge is just and reasonable and that it is an appropriate exercise of its authority, as specified.
 - 12) Specifies the funding sources for the fund, which include, among other sources, contributions from electrical corporations (not from ratepayers) and revenues generated from the charge on ratepayers.
 - 13) Requires the electrical corporation's wildfire mitigation plan, in calendar year 2020 and thereafter, to cover at least a three-year period. Authorizes the division to allow the annual submissions to be updates to the plan but would require the submission of a comprehensive wildfire mitigation plan at least once every three years. Authorizes the electrical corporation to recover the cost of implementing the plan in its general rate case, or to elect to recover the cost of implementation as accounted in a memorandum account at the conclusion of the time period covered by the plan, subject to a specified limit for a large electrical corporation.
 - 14) Requires the chief executive officer of an electrical corporation, in the electrical corporation's general rate case application, to certify that the electrical corporation has not received authorization from the CPUC to recover those costs in a previous proceeding.

- 15) Requires the executive director of the CPUC to issue a safety certification to an electrical corporation if it meets certain requirements.
- 16) Requires, after January 1, 2020, that each local publicly owned electric utility or electrical cooperative submit, by July 1st of each year, its wildfire mitigation plan to the CWSAB for review and comment, and to comprehensively revise its wildfire mitigation plan at least once every three years.
- 17) Requires the CWSAB to provide comments and an advisory opinion to each local publicly owned electric utility or electrical cooperative regarding the content and sufficiency of its plan and to make recommendations on how to mitigate wildfire risks.
- 18) Authorizes DWR to issue revenue bonds, on and after either the date on which DWR legally defeases all of its remaining bonds under the provisions stemming from the bonds issued during the 2000-2001 energy crisis, or the date on which it pays those obligations in full at maturity, whichever is earlier. Authorizes the DWR to recover, as a revenue requirement, amounts necessary to enable it to finance those bonds.
- 19) Requires the bond proceeds and revenues received by DWR to be deposited in the DWR Charge Fund, which this bill would establish. Continuously appropriates the moneys in the DWR Charge Fund to the DWR for specified purposes, including transfers to the Wildfire Fund and repayment of the bonds.
- 20) Transfers nine million dollars (\$9,000,000) from the General Fund to the DWR Charge Fund, thereby making an appropriation.
- 21) States the bill would become operative only if Assembly Bill 111 or Senate Bill 111 is enacted during the 2019–20 Regular Session and becomes effective before January 1, 2020.
- 22) Declares that it is to take effect immediately as an urgency statute.

Background

Wildfires in 2017 and 2018. In recent years, Californians have experienced several catastrophic wildfires. In the two most recent years, 2017 and 2018, there were particularly destructive wildfires which took 139 lives and destroyed communities in both Northern and Southern California. According to the California Department of Forestry and Fire Protection (Cal FIRE), fifteen of the twenty largest California

wildfires, as well as, fifteen of the twenty most destructive have occurred since 2000. Wildfires seem to be more frequent and more intense, due to a combination of recent drought, longer fire seasons, forest management practices, increasing development in the wildland urban interface (WUI), and ignition for electric utility infrastructure. About ten percent of fires are started by electric utility equipment, with many of those fires resulting in little or no property damage. However, some of the most damaging fires are ignited by utility infrastructure. According to an analysis by the Legislative Analyst's Office (LAO), electric utility powerlines caused at least eight of the twenty most destructive fires in Californian's history. The LAO further notes that seven of these utility-caused fires occurred since 2007, and six have occurred since 2015. These fires include: Atlas (2017) and Nunns Fires (2017), Thomas Fire (2017), and Camp Fire (2018) – the deadliest and most destructive wildfire in the state's history.

Impacts of inverse condemnation. The California Constitution provides the basis for recovery against government entities and public utilities via the theory of inverse condemnation. Section 19 of Article 12, requires that just compensation be paid when private property is taken for public use. This is commonly understood as eminent domain. In the case where a property is damaged by a public improvement project, the application is known as inverse condemnation. The policy underlying the concept of inverse condemnation is that the costs of a public improvement benefiting the community should be spread among those receiving the benefit, as opposed to being allocated to a single person within a community. In the case of inverse condemnation, unlike in cases of negligence, the responsible entity is held strictly liable where a public improvement causes property damage. The California Supreme Court and appellate courts have held that inverse condemnation is applicable to privately-owned public utilities (*Gay Law Students Association v. Pacific Telephone & Telegraph Co.* (1979) 23 Cal.3d 458, 469), and (*Barham v. Southern California Edison Company* (1999) 74 Cal. App 4th 744). In the Barham decision, the court also held that the electric investor-owned utility (IOU) was akin to a government entity and could recover costs associated with the damages from its ratepayers (roughly \$150,000 for communications equipment damaged due to a short circuit after a large bird sat on the electric line).

Cost recovery by IOUs. CPUC-regulated utilities, including electric IOUs, routinely submit requests for cost recovery related to their operations, including expanding their infrastructure, paying for operation expenses, etc. As required by statute in Public Utilities Code §451, the CPUC may only approve a utility's request for cost recovery that is deemed just and reasonable. Review of utility expenses to ensure they are just and reasonable is the primary purpose for the CPUC's existence and the main task of the agency as an economic regulator. Expenses related to wildfire damages, just as other expenses related to the

operation of a utility, must be reviewed by the CPUC to ensure they meet the requirements that they are just and reasonable. As part of that review, the CPUC assesses whether the utility was a “prudent manager” of its infrastructure and operations – known as a prudency review or prudent management standard. Generally, the utility submits an application for cost recovery, and the burden of proof is on the utility to demonstrate it has behaved reasonably.

San Diego wildfires in 2007. With the backdrop of the deadly North Bay Fires (including Nunns, Atlas, and Tubbs Fires), in the fall of 2017, the CPUC adopted a decision denying a request by San Diego Gas & Electric (SDG&E) for cost recovery from ratepayers for \$379 million of uninsured expenses related to the 2007 San Diego wildfires (Application 15-09-010). The application addressed third-party damage claims arising from the Witch, Guejito and Rice wildfires which were ignited by utility infrastructure. The \$379 million represents the delta of a total \$2.4 billion in costs and legal fees incurred by SDG&E, minus commercial liability insurance coverage and third party payouts, and about \$40 million paid by the utility shareholders as a deductible of sorts. The CPUC’s decision included a concurrence by two commissioners, including President Picker, who called on the Legislature, the governor, and the courts to help address the issue of wildfire damages, the application of inverse condemnation by the courts, and financial impacts on utilities, including ratepayers.

Electric IOU credit ratings downgraded. With some exceptions, regulated utilities, those who are provided the opportunity to earn a rate of return through rates regulated by the CPUC, generally enjoy high investment grade credit ratings. The investment grade credit ratings allow the utility to access less expensive capital in the financial market than might otherwise be the case. The utilities’ business model is also heavily dependent on access to capital in order to finance its operations. Most investors have viewed utilities as secure investments, since the regulated utility business models, generally, affords a utility the opportunity to earn a rate of return. Generally, these more affordable rates for capital also benefit ratepayers whose pay for the operation of the utility through rates. However, the combination of increasing severity and frequency of wildfires, the application of inverse condemnation, and the CPUC decision denying SDG&E’s application for cost recovery, resulted in declining credit ratings for all three of the state’s largest electrical utilities and impacts to the ratings of smaller IOUs and also electric POUs. Credit ratings agencies, including Standard & Poor’s and Moody’s, raised concerns about the increased risks to investing in California electric utilities until changes to inverse condemnation were made.

SB 901 (Dodd, Chapter 626, Statutes of 2018). In 2018, the Legislature and governor responded to the threat of wildfires with the passage of several bills to reduce the risk of wildfires, including SB 901. The bill was heard through a

conference committee process encompassing five members from each house and four from the minority party. The bill addressed numerous issues concerning wildfire prevention, response and recovery, including funding for mutual aid, fuel reduction and forestry policies, bolstered the requirements of wildfire mitigation plans by electric utilities, and cost recovery by electric corporations of wildfire-related damages. SB 901 authorizes the CPUC to use a reasonable standard approach in determining whether the utility would be allowed to recover in rates expenses related to damages stemming from a wildfire caused by the utility's equipment. Specifically, SB 901 authorizes the CPUC to consider 12 factors to determine whether the expenses are allowed or disallowed for recovery for wildfires occurring after December 31, 2018, these include consideration of the conduct of the utility. SB 901 also specifies that for applications by an electrical corporation to recover costs and expenses arising from catastrophic wildfires ignited in 2017, the CPUC is required to determine just and reasonableness without specifying the 12 enumerated factors identified for the fires in 2019 and beyond. In the case of the 2017 wildfires, SB 901 requires the CPUC to consider the electric utility's financial status and determine the maximum amount the corporation can pay without harming ratepayers, also known as a financial stress test, and requires the CPUC to limit the disallowance from the 2017 wildfires to the threshold determined by the stress test.

Pacific Gas and Electric Company (PG&E) bankruptcy. Earlier this year, PG&E's credit ratings were further downgraded by the credit ratings agencies to a point characterized as "junk status." The credit ratings downgrade occurred following information that the CPUC was investigating PG&E concerning gas safety reporting violations, on the heels of the Camp Fire which was speculated (and since found to have been) caused by PG&E electric infrastructure, and in the midst of a criminal probation stemming from the San Bruno gas pipeline explosion. Such a downgrade would greatly diminish the utility's ability to access capital, a bedrock of the regulated utility business model. As such, nearly a week after the downgrade, PG&E notified its workforce (and the public) that it intended to file for Chapter 11 bankruptcy protection on or around January 29, 2019. The notice by the company was in compliance with a provision of SB 901, which required a minimum 15-day notice to the utility workforce of any such action. PG&E remains in bankruptcy process and is not likely to come out of bankruptcy until the company can resolve pending wildfire claims, which the company estimates to be 30 billion dollars (\$30, 000, 000,000).

Governor's Strike Force report. In April, Governor Newsom issued a report from his Strike Force regarding Wildfires and Climate Change: California's Energy Future. The strike force report sets out steps the state must take to reduce incidence and severity of wildfires. The report was structured into five parts,

including a section on responding and preventing wildfires, as well as, a section on allocating responsibility for wildfire costs, among others. As it relates to safety, the report included recommendations to bolster safety incentives, such as changes to the allowed return on equity based on wildfire performance, as well as, cost-effective financing for wildfire mitigation safety investments. In relation to allocating responsibility for wildfire costs, the report identified three concepts for allocating responsibility for wildfire costs: a liquidity-only fund coupled with modification of cost recovery standards, adopting a fault-based standard in-lieu of the strict liability standard, and creation of a catastrophic wildfire fund coupled with a revised cost recovery standard.

SB 901 Commission report. SB 901 also established a Commission on Catastrophic Wildfire Cost and Recovery and required the five-member commission to engage the public and provide recommendations to address changes to law that would ensure equitable distribution of costs among affected parties. The Commission held five public meetings this spring, including in communities affected by wildfires in recent years. The Commission issued their report in June detailing 15 recommendations, including: the strict liability interpretation of inverse condemnation should be replaced with a fault-based negligence standard, revise and clarify the prudent manager standard for utilities, consolidate and strengthen the standards for utility wildfire mitigation and response, establish a broadly sourced Wildfire Victims Fund, among other recommendations.

Comments

AB 1054. This bill encompasses some of the recommendations included in both the governor's strike force report and the SB 901 Commission recommendations. The key provisions include: establishing a new process for electric IOUs to recover costs related to catastrophic wildfires (changes to the prudency standard), authorizes financing of specified costs (including wildfire safety mitigation), bolstering and changes to electric utility wildfire safety oversight (including a Wildfire Safety Division), and establishment of a Wildfire Fund to address the property claims stemming from utility-caused wildfires (provides for either a liquidity-only fund or broader insurance fund). Additionally, this bill includes new triggers related to change of control of an IOU as an effort to protect the existing workforce of the electric IOUs.

IOU wildfire cost recovery process. AB 1054 proposes changes to the CPUC's current cost recovery process as explained above and only available to electric IOUs who participate in the Wildfire Fire Insurance Fund (more below). This bill would establish a new type of proceeding, known as the catastrophic wildfire proceeding and establishes specified processes for this proceeding category. This

bill would recast the considerations afforded to an application for cost recovery related to wildfire expenses by an electric IOU, including explicitly stating that the costs and expenses arising from a wildfire ignited by electric utility infrastructure (covered wildfire) are just and reasonable if the conduct of the electric IOU is “consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances, at the relevant point in time.” This bill also explicitly states that costs and expenses may be recovered in full or in part with consideration for factors outside the control of the utility “including humidity, temperature, and winds.” These changes and others replace much of the 12 points of criteria established in SB 901, but fundamentally are still largely consistent with the existing requirements of Public Utilities Code §451 which afford the CPUC broad authority to determine what is just and reasonable. However, a fundamental distinction is that AB 1054 proposes new language to provide the electrical utility the presumption that they acted reasonably if they have a valid safety certification at the time period of the covered wildfire. In this respect, the burden of proof would switch to other parties in the proceeding to raise “serious doubt” as to the electric IOU’s reasonableness. The Governor’s Office notes this is a presumption with similarity to what is afforded in the Federal Energy Regulatory Commission (FERC) process. Some have expressed concerns that the change in the presumption would disadvantage ratepayers who would have the burden to demonstrate that the electric IOU was not reasonable. The authors of this bill have attempted to address those concerns by requiring that presumption to shift back to the electric IOU once serious doubt has been raised. Nonetheless, this is a new approach to address the calls for more certainty in the cost recovery process in order to restore the regulatory compact. Time will tell just how effective this new approach will perform for ratepayers and for electric IOUs.

Electric IOU wildfire safety. As noted above, AB 1054 includes several new provisions addressing electric IOU wildfire safety oversight and processes. The combination of the safety efforts attempt to mitigate the wildfire ignitions from electric utility infrastructure. The provisions include some to provide greater oversight, others to direct the utilities to make specified investments and others to bolster safety focus by the management of the utility. These include:

- Establishment of a CWSAB to provide recommendations to the Wildfire Safety Division (or, on and after July 1, 2021, the Office of Energy Infrastructure Safety, as established pursuant to AB 111 or SB 111 of the 2019–20 Regular Session). The bill requires the board to consist of seven members, five appointed by the Governor, and one each by the Speaker of the Assembly and the Senate Committee on Rules. This bill requires the advisory board to develop recommendations related to wildfire safety and mitigation performance metrics, including recommendations related to

wildfire mitigation plans developed by electric utilities, including advisory opinions of each local electric IOU's wildfire mitigation plan.

- Requires the Wildfire Safety Division (or, on and after July 1, 2021, the Office of Energy Infrastructure Safety, as established pursuant to AB 111 or SB 111 of the 2019–20 Regular Session) to approve or deny each wildfire mitigation plan from the electric IOU within three months. Provides specified requirements of the Wildfire Safety Division, including working with Cal FIRE to identify a list of qualified independent evaluators with experience in assessing the safe operation of electrical infrastructure.
- This bill also prohibits a large electrical corporation from including in its equity rate base its share of the first five billion dollars (\$5,000,000,000) in aggregate by large electrical corporations on fire risk mitigation capital expenditures. In doing so, the authors attempt to reduce the ratepayer costs of the return on equity (ROE) of the \$5 billion dollars. Based on the estimate provided by the Governor's strike force, the potential ratepayer benefits would be roughly two and half billion dollars (\$2.5 billion) in foregone profit, assuming a 20-year depreciable life.
- AB 1054 also requires changes at the electric IOU to foster a greater safety culture by the companies. Specifically, this bill requires as a prerequisite to attaining a safety certificate: to require the electric IOU to establish a safety committee of its board of directors, implement the findings of its most recent safety culture assessment, and a compensation structure structured to promote safety, among others.

Wildfire Fund. In addition to the provisions mentioned above, AB 1054 establishes a Wildfire Fund as a mechanism to address third-party damages against an electrical corporation from wildfires ignited by the utility, the costs of which exceed the greater of one billion dollars (\$1,000,000,000) or the amount of the insurance coverage required of the electric IOU. The Wildfire Fund would be overseen by an appointed administrator. The Fund would be capitalized, initially, with a loan from the state's Surplus Money Investment Fund, requiring a minimum of two billion dollars (\$2,000,000,000) of transfers in the 2019-20 fiscal year. The fund establishes two paths to address wildfire damages: a liquidity fund and an insurance fund.

- *Liquidity fund.* Within 14 days of the effective date of this bill, AB 1054 would require the CPUC to initiate a proceeding to collect a nonbypassable charge from ratepayers of the electric IOU to extend an existing charge. This option provides a line of credit (revolving liquidity fund) that will pay

eligible claims of third-party damages from wildfires ignited by electrical IOUs. Requires the electrical IOUs in order to participate in the fund to meet specified conditions by June 30, 2020, including: the electrical IOU is not in bankruptcy or criminal probation. This bill provides that if a utility (PG&E) that has been in bankruptcy may participate in the fund if it has resolved its insolvency proceeding including settlement of pre-bankruptcy claims, a CPUC approved reorganization plan that is both consistent with the state's climate goals and renewable portfolio standard and is determined to be neutral, on average, to the ratepayers of the electrical IOU. The liquidity fund allows the electrical IOU to receive payments from the fund for eligible claims. The electric IOU would then be allowed to recover in rates those expenses that are deemed to be just and reasonable.

- *Insurance fund.* Within 15 days of the effective date of this bill, each large electrical corporation not subject to insolvency (SDG&E and Southern California Edison (SCE)) notifies the CPUC of its commitment to provide the initial contribution and the annual contributions not recoverable from ratepayers (\$10,500,000,000) in aggregate for all three large electrical IOUs. By participating in the fund, and have a safety certificate, the electric IOU may be afforded clearer rules for recovery of utility-caused wildfires. This bill provides that if a utility (PG&E) that has been in bankruptcy has resolved its insolvency proceeding including settlement of pre-bankruptcy claims, a CPUC approved reorganization plan that is both consistent with the state's climate goals and renewable portfolio standard and is determined to be neutral, on average, to the ratepayers of the electrical IOU. The insurance fund would provide between \$30-40 billion in claims-paying capacity for utility caused wildfires. The fund would be jointly funded by both electric IOU ratepayers (via an existing charge on utility bills) and the electric IOUs via non-ratepayers funds. The insurance fund also includes a cap on costs for participating electric IOUs. Specifically, participating electrical IOUs expenses deemed just and reasonable would be recovered from the fund, while costs not deemed just and reasonable would be capped up to an amount equivalent to a cap on 20 percent of the IOU's transmission and distribution equity rate base over three calendar years. According to the CPUC, on average from 2016-18, 20 percent of transmission and distribution equity rate base for each large electric IOUs was approximately \$2.1 billion for PG&E, \$2.2 billion for SCE, and \$692 million for SDG&E. The insurance fund would also limit subrogation claims from insurance companies to 40 percent, or more, should the administrator approve. According to some reports, the 40 percent may be less than the average of existing subrogation claims. However, the time value of more expeditiously receiving a payment for the claim may increase the appeal for insurance

companies. In all the Insurance Fund options assumes \$1 billion per utility in annual commercial insurance requirements, a capitalization from non-ratepayer funds of \$7.5 billion (\$7,500,000,000) in total from the three largest electric IOUs, and an additional contribution of \$3 billion over ten years.

DWR charge. In the case of both approaches, liquidity fund and insurance fund, ratepayers would contribute with the extension of the existing DWR charge that is scheduled to end after 2021. The existing DWR charge is roughly \$0.005 per kilowatt hour (kWh) for most customers of all three of the large electrical IOUs, except qualifying low-income customers and customers needing electricity for medical necessity are exempted. The charge adds roughly a few dollars to the average residential customer monthly utility bill. The DWR charge was adopted as part of the state's efforts to address the energy crisis in 2000-01. DWR was used to procure electricity and a nonbypassable charge on customer's bills was issued to collect roughly \$12 billion to cover the costs of electricity purchased on behalf of electric IOU customers (plus interest). In 2019, the DWR bond surcharge is \$0.00503/kWh (each year changes slightly due to sales forecast and bond service amount changes). This bill would allow for the continued collection of the DWR charge and allows the CPUC to move the rate up in order to meet the revenue requirement, with the goal of collecting up to \$10.5 billion (\$10,500,000,000).

Effects on ratepayers. The current efforts to address wildfire liability from utility ignited wildfires have the potential to straddle ratepayers with billions in wildfire liability expenses. The amount of electricity a customer uses has little bearing on whether a wildfire will be ignited. On the other hand, utility management and operations can have a significant amount of influence over whether a wildfire will be ignited by the utility's equipment. Additionally, the level of destruction of a wildfire may be the result of multiple factors including wind speeds, the volume of and location of properties to the ignition source, and others. Yet, the application of strict liability on electrical utilities could result in ratepayers bearing a significant amount of the costs. It seems any option may still impact ratepayers, as forgoing action can also increase the costs of capital which could then be passed on to ratepayers. According to an analysis by the LAO, the effects of credit downgrades of electric utilities increase the costs of borrowing by the utilities as illustrated in the table below.

The LAO used credit ratings as a proxy for perceived utility financial risk from the investment community—which can affect both interest rates for bonds and shareholder ROE. As a result, the table includes estimated costs related to debt and equity. For context, SCE is currently rated BBB- and SDG&E is rated BBB+.

(PG&E is currently in bankruptcy.) In 2017, the three major utilities had credit ratings ranging from BBB+ to A.

Estimated Impact of Different Credit Ratings On IOU Electric Ratepayers		
<i>Based on S&P and Fitch Scale</i>		
<u>Impacts</u>	<u>A to BBB</u>	<u>A to BB</u>
Percent increase in electricity rates	1 percent to 4 percent	4 percent to 11 percent
Increase in monthly bill for residential customer	\$1 to \$4 per month	\$3 to \$12 per month
Increase in total annual ratepayer costs	\$500 million to \$750 million	\$1.5 billion to \$2.3 billion
Total ratepayer costs over a 10-year period	\$5 billion to \$11 billion	\$17 billion to \$35 billion

Nonetheless, the costs to ratepayers of any option are not insignificant. However, the continued downgrade of the utilities credit ratings will likely result in increased costs to ratepayers. The credit ratings agencies have all commented on the likelihood of further downgrading the electric utilities credit ratings if no meaningful action is taken by July 12, 2019.

Durability. Any solution should be considered in terms of its durability. Unfortunately, unless the severity and frequency of wildfires, particularly those caused by utility infrastructure, are significantly reduced no solution will provide long-term durability. The Wildfire Insurance Fund itself could be exhausted rapidly if wildfires continue at their recent pace and severity. However, the increased investments in electric utility grid hardening, situational awareness, and in the near-term, the use of public safety power shutoffs, may help to significantly reduce the risk of utility-caused catastrophic wildfires. Unfortunately, none of these options come without significant costs. After destructive fires in 2003 and 2007, SDG&E ratepayers, per the direction of the utility’s management and with CPUC approval, invested about one billion dollars in grid hardening and situational awareness to better address the risk of wildfires. Although their service territory is the smallest of the three large electrical IOUs, one can expect that similar investments in SCE and PG&E service territory will likely require significantly more resources. This bill attempts to fast-track and front-load some of these investments by requiring five billion dollars in the aggregate for utility wildfire safety investments with no return on equity for the utility. Assuming these investments are targeted to the best use and greatest bang for the buck, Californians should have some reassurance that utility-ignited wildfires would be reduced.

Utility-ignited wildfires. This bill would restrict eligible claims to those stemming from fires that were found to be ignited by utility infrastructure by a fire agency (presumably Cal FIRE or another local fire investigating agency). This bill does

not speak to wildfires where the courts may find the utility to be at fault or strictly liable.

Change of control. Additional provisions of this bill address the desire for protections for the existing workforce of the electric IOUs. Most significantly, the language provides additional protection should the ownership of the utility change. Specifically, the language extends by one year (to three years) the language in SB 901 that provides for a period where employees who would have qualified as covered employees had they been employed during the 90-day period immediately before a change of control and requires the successor to maintain the number and wages of covered employees. Additionally, the language includes provisions that require a change of control to be triggered by a voluntary or involuntary change in ownership of assets from and electrical or gas corporation to ownership by a public utility. It is unclear whether that language materially changes the review the CPUC would otherwise perform to approve any change in assets by the IOU.

Prior/Related Legislation

AB 111(Committee on Budget, 2019) would create the California Catastrophe Response Council, with seven members, to oversee the California Earthquake Authority (CEA) and the Wildfire Fund Administrator. The bill would also require the CPUC to establish the Wildfire Safety Division, and provide that on and after July 1, 2021, establish Office of Energy Infrastructure Safety within the Natural Resources Agency as the successor to the WSD. The bill would also appropriate \$47,600,000 from the Public Utilities Commission Utilities Reimbursement Account and \$2,500,000 from the Public Utilities Commission Public Advocate's Office Account to the CPUC for the purpose of fulfilling its duties.

SB 111 (Committee on Budget and Fiscal Review, 2019) is duplicative of AB 111, except the bill would repeal Section 326.1 of the Public Utilities Code as added by AB 1054 of the 2019–20 Regular Session. The bill would become operative only if AB 1054 of the 2019–20 Regular Session becomes effective before January 1, 2020.

AB 235 (Mayes, 2019) would authorize the CPUC, when determining recovery by an electrical corporation for costs and expenses arising from a catastrophic wildfire, occurring on or after January 1, 2019, to consider the IOU's financial status and determine the maximum amount the IOU can pay without harming ratepayers or materially impacting the IOU's ability to provide adequate and safe service.

AB 740 (Burke, 2019) would have created a catastrophic wildfire cost sharing mechanism that will reimburse wildfire victims, as defined, for losses related to

utility caused wildfires. The bill has been amended to remove the provisions related to a catastrophic wildfire fund.

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, and cost recovery by electric corporations of wildfire-related damages.

SB 1028 (Hill, Chapter 598, Statutes of 2016) requires IOU electric utilities to file annual wildfire mitigation plans and requires the CPUC to review and comment on those plans. The bill also requires POU and electrical cooperatives to determine their risk of catastrophic wildfire that can be caused by their electric lines and equipment and, if a risk exists, submit wildfire mitigation plans to their governing board for its approval.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: Yes

SUPPORT:

California State Association of Counties
Engineers and Scientists of California, Local 20 IFPTE AFL-CIO
Natural Resources Defense Counsel
Up from the Ashes – a Coalition of Wildfire Victims

OPPOSITION:

Desert Water Agency (*)
El Dorado Irrigation District (*)
Palmdale Water District (*)
Rowland Water District (*)
Valley County Water District (*)
Walnut Valley Water District (*)
Individuals

() previous version of the bill*

ARGUMENTS IN SUPPORT: According to the author:

This bill is the culmination of extensive hearings, reports and debates over the last year and a half including the Governor's Strike Force Report and the recent 901 Commission Report. All efforts conclude that we must take the necessary steps to ensure that we have fiscally stable electric utilities in this

state which can keep the lights on in order to protect ratepayers and our economy. We must have them; they are the backbone of our economy and the backbone of our daily lives. Unfortunately climate change has created a new reality in California – wildfires are increasingly more dangerous and destructive. In many instances the utilities have failed to act responsibly in maintaining their infrastructure; in other instances the utility is responsible for the damage caused by the infrastructure under inverse condemnation even if they did nothing wrong.

The two factors though have caused the credit rating agencies to downgrade our utilities; one went to junk bond status and then bankruptcy; another faces the same plight this summer if we do nothing. Other utilities – public and private will likely be close behind as the market actions have a cascading effect. The consequence of those market actions is that the utility costs of borrowing will increase to such a degree that they cannot operate without billions of dollars in rate increases to cover increased borrowing costs, or not operate at all and go into bankruptcy.

We have no good choices but this bill presents a unique opportunity to get our utilities back to investment grade status, with no increase in electric rates. This bill will also double-down on safety by establishing a new comprehensive oversight division and advisory council for all utilities in the state – investor and publicly owned. The investor owned utilities will also be held to account by tying executive compensation to safety; investing a minimum of \$5 billion in their lines and poles, without profit; complying with wildfire mitigation plans; and pass a safety culture assessment; all as conditions of participating in the insurance fund established by this bill.

ARGUMENTS IN OPPOSITION: The water districts listed in opposition to this bill raise concerns about language that was in the previous version of this bill which has since been removed, concerning oversight of water district's wildfire mitigation efforts. It is unclear if the water districts remain opposed in light of the new amendments.

Some of the individuals that submitted comments opposed to this bill, include two attorneys representing ratepayers in court cases dealing with IOU recovery of wildfire-related expenses from ratepayers. They raise multiple concerns with the bill, including: the change in the burden of proof for cost recovery which they believe would make it difficult for ratepayers to prevent IOUs from passing unjust and unreasonable wildfire costs. They also take issues with the use of a revenues bonds funded by ratepayers, concerns about access to public records and public

meetings, and changes to the development of IOU wildfire mitigation plans from every year to every three years.

-- END --