
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

Senator Ben Hueso, Chair

2019 - 2020 Regular

Bill No:	AB 1751	Hearing Date:	6/18/2019
Author:	Chiu		
Version:	6/10/2019 As Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Nidia Bautista		

SUBJECT: Water and sewer system corporations: consolidation of service

DIGEST: This bill would establish timeframes by which the California Public Utilities Commission (CPUC) is required to take action on a request for water system consolidation.

ANALYSIS:

Existing law:

- 1) Prohibits a public utility from changing any rate or rule as to result in any new rate, except upon a showing before the CPUC and a finding by the CPUC that the new rate is justified. Provides that the procedures for advice letters may include provision for notice to customers or subscribers on a case-by-case basis, as determined by the CPUC. Provides that the CPUC may adopt rules it considers reasonable and proper for each class of public utility providing for the nature of the showing required to be made in support of proposed rate changes. (Public Utilities Code §454)
- 2) Establishes The Public Utilities Act prohibits, with certain exemptions, any public utility from selling, leasing, assigning, mortgaging, or otherwise disposing of or encumbering specified property necessary or useful in the performance of the public utility's duties to the public without first, for qualified transactions valued above \$5,000,000, securing an order from the CPUC authorizing it to do so or, for qualified transactions valued at \$5,000,000 or less, filing an advice letter and obtaining approval from the CPUC. (Public Utilities Code §851)
- 3) States that no public utility, subsidiary, affiliate or corporation holding a controlling interest in, a public utility, shall purchase or acquire, take or hold any part of the capital stock of any other public utility without having been first authorized to do so by the Public Utilities Code. (Public Utilities Code §852)

- 4) States that no person or corporation shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the CPUC. Provides that any merger, acquisition, or control without that prior authorization from the CPUC shall be void and of no effect. (Public Utilities Code §854)
- 5) States the intent of the Legislature is that transactions with monetary values that materially impact a public utility's rate base should not qualify for expedited advice letter treatment. (Public Utilities Code §853 (d))
- 6) The Public Water System Investment and Consolidation Act of 1997, mandates the CPUC to use the standard of fair market value when establishing the rate base value for the distribution of a public water system acquired by a water corporation. (Public Utilities Code §2719 et seq.)
- 7) Requires the State Water Board (SWB), in administering Safe Drinking Water Act (SDWA) programs, to fund improvements and expansions of small community water systems, to encourage the consolidation of small community water systems that serve disadvantaged communities, and prioritize funding for construction projects that involve the physical restructuring of two or more community water systems, at least one of which is a small community water system that serves a disadvantaged community, into a single, consolidated system. (Health & Safety Code §116326)
- 8) Authorizes the SWB, where a public water system or a state small water system within a disadvantaged community, consistently fails to provide an adequate supply of safe drinking water, to order consolidation with a receiving water system. Provides that the consolidation may be physical or operational. (Health & Safety Code §116682 (a))
- 9) Makes legislative findings that regional solutions to water contamination problems are often more effective, efficient, and economical than solutions designed to address solely the problems of a single small public water system, and that it is in the interest of the people of the State of California to encourage the consolidation of the management and the facilities of small water systems to enable those systems to better address their water contamination problems. (Health & Safety Code §116760.10 (h))

This bill:

- 1) Establishes the Consolidation for Safe Drinking Water Act of 2019 and makes several findings and declarations concerning the right to safe, clean, affordable

water, and the benefits of consolidation of water systems to achieve an adequate supply of clean water, particularly for small water systems that have failing infrastructure and are unable to bear the cost of replacing and upgrading their systems.

- 2) Authorizes a water or sewer system corporation to file an application and obtain approval from the CPUC through an order authorizing consolidation with a public water system or state small water system, or to implement rates for the subsumed water system.
- 3) Requires the CPUC to approve or deny the application within eight months, unless the executive director of the CPUC makes a written determination that the deadline cannot be met and issues a letter extending the deadline by up to eight months. Authorizes the executive director to grant additional extensions of eight months or less.
- 4) Authorizes, for consolidations meeting certain criteria, a water or sewer system corporation to instead file an advice letter and obtain approval from the CPUC through a resolution authorizing consolidation with a public water system or state small water system, or to implement rates for the subsumed water system, under specified circumstances, including: a consolidation involving a state water system with fewer than 3,300 service connections, a consolidation of a water system serving disadvantaged community, a consolidation of a water system that is subject to a compliance order for failure to meet primary or secondary drinking water standards.
- 5) Authorizes the executive director of the CPUC or the director of the division of the CPUC having regulatory jurisdiction over the water or sewer system corporation to approve an uncontested advice letter and would require the CPUC to approve or deny the advice letter within four months, except as provided.
- 6) Authorizes the CPUC to designate a different procedure if it determines that the consolidation warrants a more comprehensive review than the advice letter procedure provides.

Background

CPUC regulated water utilities. The CPUC is responsible for ensuring that California's investor-owned water utilities deliver clean, safe, and reliable water to their customers at reasonable rates. While the CPUC Water Division regulates over a 100 investor-owned water and sewer utilities under the CPUC's jurisdiction

providing water service to about 16 percent of California's residents. Approximately 95 percent of that total is served by nine large water utilities each serving more than 10,000 connections. Annual water and wastewater revenues under the CPUC's regulation total \$1.4 billion.

Publicly owned water utilities. The majority of California's water customers are served by cities, water districts, and mutual water companies, which are governed by local boards. These utilities are not regulated by the CPUC. These entities provide service to about 85 percent of California's residents.

State Water Resources Control Board (SWRCB). SWRCB has general authority with regard to water quality and drinking water functions of the state government. Under the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116270) of Part 12 of Division 104 of the Health and Safety Code), SWRCB administers provisions relating to public water systems and regulates drinking water to protect public health, including, among other things, adopting primary drinking water standards and maximum contaminant levels for contaminants in drinking water and permitting public water systems.

CPUC v. SWRCB. Under existing law, the CPUC generally has authority over the regulation of services and utilities and assures that California residents have access to safe and reliable utility infrastructure and services. In comparison, the SWRCB has regulatory authority over the quality of the state's water resources and drinking water. The SWRCB is involved with the quality of the water, especially drinking water, whereas the CPUC is involved with the supply and access to that water. As discussed above, there are investor owned water utilities that are regulated by the CPUC and publicly owned utilities that are not regulated by the CPUC but by their own boards.

Consolidations. Per statute, the CPUC must approve all water system consolidations that involve investor-owned utility (IOU) water utilities. This review is consistent with the CPUC's role as a rate regulator of IOU utilities and ensures rates and costs are just and reasonable. The CPUC utilizes two approaches to review water consolidations involving IOU water utilities: applications and advice letters. Applications are submitted by the CPUC-regulated utility. These applications undergo a formal CPUC proceeding involving an administrative law judge (ALJ), other parties, and can take about 18 months. Advice letters, on the other hand, are documents prepared by a utility to request action by the CPUC, including: approval, authorization, or other relief. Statute has largely deferred to the CPUC to adopt rules and procedures for addressing advice letters. Advice letters are intended to address issues that are not expected to be controversial or raise important policy questions. As such, advice letters are procedurally less

formal than other proceedings at the CPUC that require more judicial-type elements of an evidentiary hearing. Advice letters are classified into three tiers, ranging from Tier 1 to Tier 3. Tier 1 advice letters generally become effective upon filing of the letter. However, Tier 3 advice letters require commissioners to hear the item and take a vote of a resolution of the item at a publicly noticed meeting. In the case of water consolidations, these are often Tier 3 advice letters that can be processed and approved by the CPUC in less time than a formal proceeding of an application – sometimes in fewer than four months.

Need for consolidation. According to the CPUC, the majority of troubled water systems have fewer than 500 service connections. These water systems are generally, but not always, publicly owned systems or mutual water companies, which often lack the rate base to fund the necessary infrastructure improvements to provide clean drinking water. In recent years, there has been a push at the state level to encourage consolidation of these smaller water systems as an approach to provide a larger rate base to fund the necessary improvements. The need to consolidate can provide benefits to the residents served by the failing water system, but also likely comes at increased costs to the systems (and corresponding ratepayers) subsuming the failing system. As such, it seems appropriate to ensure there is adequate review of implications of the costs associated with the consolidation. In the case of IOU water utilities, the costs associated with consolidation are largely borne by the ratepayers of the utility, not the shareholders/owners. For this reason, the CPUC review can be beneficial to ensure all ratepayers are well-protected.

Consolidation of small water systems with health and safety violations. Current statute provides a process to help expedite the consolidation of small water utilities that have failing water systems, referred to as “Inadequately Maintained and Operated Small Water Systems (IMOSWS).” Per CPUC decision to implement the Public Water System Investment and Consolidation Act of 1997, an advice letter process can be used to transfer assets of IMOSWS. The IMOSWS is defined as any water system serving fewer than 2,000 customers that is subject to compliance order or citation related to drinking water standards. Per the CPUC, this process has been utilized as recently as this year with the consolidation of the Rolling Hills Water System with the Bakman Water Company in Madera.

Comments

AB 1751. This bill would establish timelines for the CPUC to act and authorize the broader use of the advice letter process in relation to water system consolidations. AB 1751 seeks to address delays in the processing of consolidations of water systems involving CPUC-regulated water utilities. The author and sponsors note

the desire to speed up the process in order to provide residents with the clean and safe drinking water they deserve. In this regard, it seems reasonable for the state to ensure that residents in disadvantaged communities who are served by failing water systems receive resolution to a consolidation request within a reasonable timeframe. However, as noted above, these cases can at times involve increased costs to ratepayers which warrant a thorough review. Additionally, as noted by the Public Advocates Office (formerly Office of Ratepayer Advocates), consolidations can be complex matters involving legal question and require more time. *In order to balance the need to help expedite review of consolidations for water systems that are failing, the author and committee may wish to amend this bill to narrow its application to those cases involving these systems located in disadvantaged communities, replace the executive director with the ALJ in deciding to extend the proceeding for an application, include additional technical amendments to clarify the timeline and shift the section to an existing section of the code addressing consolidation of water systems.*

Dual referral. Should this committee approve this bill, it will be re-referred to the Senate Committee on Environmental Quality for their consideration.

Prior/Related Legislation

SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 27, Statutes of 2015) authorized the SWRCB, when a public water system or state small water system serving a disadvantaged community consistently fails to provide an adequate supply of safe drinking water, to order that system (referred to as a subsumed water system) to consolidate with, or receive an extension of service from, a compliant public water system (referred to as the receiving system). While for many years the state's drinking water program had encouraged voluntary consolidation of public water systems, the authority granted by SB 88 allows the state to mandate the consolidation of water systems where appropriate.

SB 552 (Wolk, Chapter 773, Statutes of 2016) expanded the SWB's authority by enabling it to, in order to provide affordable, safe drinking water to disadvantaged communities and to prevent fraud, waste, and abuse, contract with a competent administrator to provide managerial and technical expertise to that system, if sufficient funding is available. The bill also authorized the SWB to order the designated public water system to accept administrative and managerial services, including full management and control, from an administrator selected by the SWB.

AB 2339 (Gipson, Chapter 866, Statues of 2018) authorized the City of El Monte, the City of Montebello, and the City of Willows to sell its public water utility

through an alternative simplified procedure for the purpose of consolidating with another public water system.

AB 2501 (Chu, Chapter 871, Statutes of 2018) provided additional authority to the SWB to both order consolidations and appoint administrators and include domestic wells. Specific to the CPUC, the bill requires the CPUC upon issuance of a consolidation order, to open a proceeding to determine cost allocation, ratemaking, and CPUC public participation requirements for the consolidation process.

AB 508 (Chu, 2019) further implement the provisions from AB 2501 regarding domestic wells and fees imposed on new and existing customers for increase groundwater use following a consolidation or extension of service. The bill is pending consideration in the Senate Committee on Environmental Quality.

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

SUPPORT:

California Water Association (Sponsor)
California American Water Company
City of Bellflower
City of Perris
Liberty Utilities
Sierra Club California

OPPOSITION:

Public Advocates Office (formerly Office of Ratepayer Advocates)

ARGUMENTS IN SUPPORT: According to the author:

In many areas in the state, small water systems have a serious deficiency in technical, managerial or financial capacity, deferred maintenance and repair problems, failing operations, or contaminated drinking water and other serious health and safety issues. Fortunately, these systems are often contiguous with or near larger water systems that can extend their services or accommodate the addition of a new water district in their system operations, either physically or managerially. Consolidation of water systems is normally the solution to making sure Californians in geographically adjoining areas all receive clean drinking water. For those water systems regulated by the CPUC, the approval process can be unduly time-consuming. This bill imposes flexible deadlines on the CPUC for

approval and thereby ensures the CPUC is able to help implement the State's policy to provide clean drinking water to all Californians.

ARGUMENTS IN OPPOSITION: The Public Advocates Office (formerly Office of Ratepayer Advocates (ORA)), also known as Cal Advocates in CPUC proceedings) opposes this bill stating:

We strongly support the state's goals to ensure that all Californians have access to safe, clean and affordable water. Unfortunately, this bill may not advance these goals because the proposed expedited approval process does not provide ample time to carefully examine these acquisitions which are often controversial, raise legal and policy issues, and can substantially increase customer's monthly water bills. Importantly, this bill may not be necessary to address water quality issues because there is already an expedited process in place that the CPUC uses to approve acquisitions ordered by the State Water Resource Control Board, in instances where water system improvements (e.g., water quality compliance) are necessary. This expedited approval process can take less than 120 days.

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