

expressly committed to by the corporation, or any direct payment, fine, or penalty paid by the corporation, in a settlement agreement that is the result of a potential or actual criminal or civil prosecution.

Background

Settlements by investor-owned utilities (IOUs). Legal settlements are commonly entered into by a multitude of businesses, including utilities. While the CPUC has broad regulatory powers over IOUs, the CPUC is not always privy to legal settlements entered into by IOUs, unless the CPUC is a party to the settlement or the IOU requests explicit cost recovery for all, or a portion of, the settlement. Even in cases where the CPUC may be aware of a settlement, they may not be privy to the details of the settlement between the IOU and another party due to the lack of explicit request for cost recovery or the structure of the settlement and potential requirements limiting disclosure. Nonetheless, IOU settlements may often include more than strictly monetary requirements paid for by shareholders. In some instances, legal settlements between an IOU and another party may include provisions related to the operation of the utility. These include settlements with victims' families from the Pacific Gas & Electric (PG&E) San Bruno deadly natural gas pipeline explosion, which sought safety operational improvements to prevent similar incidents in the future. In other cases, district attorneys may wish to combine monetary requirements with operational improvements for their community. Given the broad, sometimes qualitative, amorphous, and/or duplicative nature of non-monetary requirements in settlements, IOUs may enter into settlements with the expectation that cost recovery from ratepayers for these agreements could be granted by the CPUC.

Wildfire mitigation plans (WMPs). After numerous wildfires, including several catastrophic and deadly wildfires, the state has passed numerous statutes to require electric utilities to mitigate wildfire risks of their equipment igniting wildfires. As a result of recent statutes, electric IOUs are required to file WMPs with guidance by the Office of Energy Infrastructure Safety (OEIS) at the Natural Resources Agency, specifically the Wildfire Safety Division (WSD). The WSD reviews and determines whether to approve these plans and ensures compliance with guidance and statute. The electric IOUs' WMPs detail, describe, and summarize electric IOU responsibilities, actions, and resources to mitigate wildfires. These actions include plans to harden their system and conduct vegetation management to prevent wildfire ignitions caused by utility infrastructure. Costs related to implementing WMPs are addressed at the CPUC via a cost recovery proceeding, including the utility's general rate case.

PG&E wildfire related settlements with district attorneys. On April 11th, Pacific Gas & Electric (PG&E) announced that it had reached settlements with the district attorneys in six counties to address the impacts of the Kincade Fire in 2019 and the Dixie Fire in 2021. According to PG&E:

As a result of these agreements, no criminal charges will be filed in the Dixie Fire, and the criminal complaint regarding the Kincade Fire will be dismissed. PG&E has also entered into long-term agreements with Butte, Lassen, Plumas, Shasta, Sonoma and Tehama counties to strengthen wildfire safety and response programs and to work with local organizations affected by the fires to help rebuild impacted communities.

The utility will pay civil penalties to the counties and additional cash payments to specified community and governmental organizations totaling \$55 million with a commitment that “PG&E will not seek recovery of these costs from customers.” However, separate from those specific costs the utility also committed to the six county district attorneys to:

...a five-year monitorship of its vegetation management and system inspection work in the six counties. The monitor will be independent of PG&E and will regularly report to the district attorneys on the company’s progress. This role will be filled by Filsinger Energy Partners, which also serves as the Independent Safety Monitor for the CPUC. PG&E will continue to provide the resources needed to enable the monitor to meet its commitments to the CPUC, as well as additional resources needed to focus on PG&E’s critical wildfire safety work in these six counties.

The “specified resources” committed to by the utility includes specified safety work by the utility which is normally included in its WMPs as approved by the WSD at the OEIS and reviewed by the CPUC for cost recovery from ratepayers. Some of the work the utility has committed to includes the hiring of “100 new positions headquartered in or serving Sonoma County” and 100 positions in the other five counties, undergrounding distribution and transmission lines, and operating the *Enhanced Powerline Safety Settings* program in those counties.

These commitments to safety work do not appear to have been approved by the CPUC or the OEIS. It is not clear how the funding and execution of this safety work in these six counties stacks up against the safety needs and priorities of those counties compared to the other counties in the PG&E territory.

Comments

AB 2083. This bill is intended to prevent electric and gas IOUs from entering into legal settlements with the expectation that the CPUC would approve cost recovery for the activities from IOU customers. As the sponsor of this bill, The Utility Reform Network (TURN), states “AB 2083 would prevent PG&E from even attempting to pass along the costs of monetary or non-monetary remedies to its ratepayers.” TURN contends this bill will help hold the utility accountable for its misdeeds, protect customers from these costs, and remove incentives for the IOU to simply offer work it had already planned on completing as part of a settlement.

Questions raised of IOU legal settlements. Given the nature of legal settlements, the lack of transparency and universe of settlements, the need to protect ratepayers from additional costs and from implications to utility safety efforts seems reasonable. As noted above, it is unclear how the non-monetary commitments made by PG&E with the six district attorneys stack up to other safety efforts in the IOU’s WMP. These types of settlements can raise questions about how the IOU’s safety risks are being prioritized. This is especially true in relation to wildfire risk which is identified as a high threat in much of PG&E’s service territory – beyond just the counties represented in the settlement agreements. These concerns can be exacerbated when the settlements entail commitments in exchange for reducing or eliminating criminal prosecution. If the CPUC denies the recovery of settlement costs in rates, the IOU would either need to recover the costs using shareholder funds, or violate the settlement which could trigger additional legal actions. The proponents of this bill wish to discourage IOUs from including activities in any legal settlements that would burden ratepayers with the costs. IOUs express concerns that in many cases it is the prosecuting district attorney and other parties who seek non-monetary actions to be included in legal settlements.

There are more than gas and electric IOUs. This bill currently applies to electric and gas IOUs, however, the principles related to ensuring just and reasonableness of IOU legal settlements would seem to equally apply to water and telephone IOU-related legal settlements. The author may wish to consider whether they intend to exclude water and telephone IOUs from the application of this bill.

Takings Clause considerations. While it is reasonable to protect ratepayers against unjust costs stemming from commitments by IOUs in legal settlements, this bill goes further to include “potential or actual criminal or civil prosecution” without any explicit required review by the CPUC. As cited in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989), “the guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so “unjust” as to be confiscatory.” This principle is

cited as the Takings Clause stemming from the 5th Amendment to the U.S. Constitution that protects property from government without just compensation and extended to states under the 14th Amendment due process requirements. In seeking guidance from Legislative Counsel to ensure this bill does not run afoul of the Constitutional protections, Legislative Counsel advised to include an additional provision to explicitly state the CPUC's role in reviewing costs for just and reasonableness. Additionally, in conversations with the author, sponsor, and opponents, there is a shared interest to narrow the application of this bill. In discussions with the author and proponents, the priority is to address costs arising from circumstances where the IOU enters into legal settlement to resolve a civil or criminal prosecution in exchange for termination of the violation of law. *In this regard, the author and committee may wish to amend this bill to more narrowly address the circumstances where settlements are entered into by IOUs in exchange for termination of prosecution for the violation of law and add a provision to restate the CPUC's authority to approve those costs that are just and reasonable.*

SECTION 1.

Section 748.2 is added to the Public Utilities Code, to read:

748.2.

(a) Except as specified in subdivision (b), an electrical corporation or ~~a~~ gas corporation shall not recover, through a rate approved by the commission, ~~expenses for~~ costs arising directly from ~~an activity~~ new or additional activities expressly ~~committed~~ agreed to by the corporation, or any direct payment, fine, or penalty paid by the corporation, in a settlement agreement ~~made to avoid criminal charges.~~ that is the result of a potential or actual resolving a criminal or civil inquiry, investigation, or prosecution for a violation of law, conducted by the Attorney General or a district attorney, county counsel, city attorney, or city prosecutor in exchange for the inquiry, investigation, and/or prosecution to be terminated or concluded.

(b) Notwithstanding subdivision (a), the commission shall only approve an electrical corporation or gas corporation to recover, through a rate, costs described in subdivision (a) if the commission determines that those costs were just and reasonably incurred.

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

SUPPORT:

The Utility Reform Network (TURN), Sponsor

OPPOSITION:

Pacific Gas & Electric Company
San Diego Gas & Electric
Southern California Edison
Southern California Gas

ARGUMENTS IN SUPPORT: In support of this bill, TURN states this bill would “prevent PG&E from even attempting to pass along the costs of monetary or non-monetary remedies to its ratepayers.” TURN argues this bill is necessary to “hold the utility accountable for the consequences of its misdeeds” and “protect ratepayers from paying even more for the operational failure of the utility.”

ARGUMENTS IN OPPOSITION: The four investor-owned utilities opposed to this bill argue that this bill is “unnecessary and undermines the CPUC’s authority.” They argue that this bill is redundant of the CPUC’s existing and exclusive authority to review a utility’s costs and approve expenses that are just and reasonable for collection in rates.” They further contend that this bill’s inclusion of civil matters may result in an “overbroad application to matters...that are wholly unrelated to criminal prosecution and deal with every day utility matters.”

-- END --