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**SENATE COMMITTEE ON ENERGY, UTILITIES AND  
COMMUNICATIONS**  
**Senator Ben Hueso, Chair**  
**2021 - 2022 Regular**

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**Bill No:** AB 242 **Hearing Date:** 6/21/2021  
**Author:** Holden  
**Version:** 5/20/2021 Amended  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Nidia Bautista

**SUBJECT:** Public utilities

**DIGEST:** This bill expands the definition of a “covered wildfire” for the purpose of paying property damage claims through the Wildfire Fund where an electrical corporation is involved. Additionally, this bill consolidates required reports of the California Public Utilities Commission (CPUC), and makes other technical changes.

**ANALYSIS:**

Existing law:

- 1) Establishes the CPUC has regulatory authority over public utilities. (California Constitution Article XII)
- 2) Requires every entity that offers an electricity product for sale to retail consumers in California to disclose its electricity sources and the associated intensity of greenhouse gas (GHG) emissions for the previous calendar year. Requires that disclosure to be made by the end of the first complete billing cycle for the third quarter of each year. (Public Utilities Code §398.4)
- 3) Requires the CPUC to make various reports to the Legislature relating to energy efficiency. (Public Utilities Code §§ 913.5, 913.10, 913.11)
- 4) Requires the CPUC to annually report recommendations for a smart grid, the plans and deployment of smart grid technologies by the state’s electrical corporations, and the costs and benefits of smart grids to ratepayers. (Public Utilities Code §913.2)
- 5) Requires the CPUC, on or before February 1, 2010, and biennially thereafter, to report on the impacts of distributed energy generation on the state’s distribution and transmission grid, as specified. (Public Utilities Code §913.6)

- 6) Establishes the Wildfire Fund, which is a continuously appropriated fund, to provide funds to participating electrical corporations to satisfy eligible claims arising from covered wildfires, as specified. (Public Utilities Code §3284)
- 7) Authorizes electrical corporations to participate in the Wildfire Fund if they provide initial and annual contributions to the Wildfire Fund, as specified. (Public Utilities Code §3292)
- 8) Defines “covered wildfire” to mean a wildfire ignited on or after July 12, 2019, caused by an electrical corporation as determined by the governmental agency responsible for determining causation. (Public Utilities Code §1701.8)

This bill:

*Relevant to power content disclosure:*

- 1) Changes the date, from the end of the first billing cycle for the third quarter of each year to October 1 of each year, by when disclosure of electricity sources is made by every entity that offers an electricity product for sale to retail consumers in California.

*Relevant to energy efficiency reports:*

- 2) Consolidates three of the required energy efficiency reports of the CPUC into a single report and, in doing so, would increase the frequency with which certain energy efficiency information would be reported from every four years to every three years.

*Relevant to smart grid report:*

- 3) Repeals the reporting requirement on the CPUC to annually report recommendations for a smart grid, the plans and deployment of smart grid technologies by the state’s electrical corporations, and the costs and benefits of smart grids to ratepayers.
- 4) Requires the CPUC to instead, on or before February 1, 2023, and biennially thereafter, report on the progress made toward modernizing the state’s distribution and transmission grid and the impacts of distributed energy resources on the state’s distribution and transmission grid, as specified.

*Relevant to the Wildfire Fund:*

- 5) Expands the definition of “covered wildfires” to include those wildfires determined by a court of competent jurisdiction to be caused by an electrical corporation, and those wildfires asserted to have been caused by an electrical

corporation that result in a court-approved dismissal resulting from the settlement of third-party damage claims.

- 6) Specifies that the annual contribution of an electrical corporation be made of 10 installments.
- 7) Makes an appropriation by expanding the definition of “covered wildfire” for purposes for which the Wildfire Fund is continuously appropriated.

*Relevant to code clean-up:*

- 8) Makes additional clarifying, minor, and technical clean-up of the code.

## **Background**

*Report consolidation.* There are several reports required of the CPUC by the Legislature. Many of these reports were formerly scattered throughout the code until SB 697 (Hertzberg, Chapter 612, Statutes of 2015) and SB 1222 (Hertzberg, Chapter 842, Statutes of 2016) organized these reports into a single code section and consolidated overlapping reports, many of which had staggered or expired deadlines. This bill builds off the efforts of prior legislation. There are a few related reports remaining that the CPUC submits on staggered timelines, including three on the state’s energy efficiency efforts, including those established by SB 350 (De León, 2016), the Clean Energy and Pollution Reduction Act of 2015, which establishes targets to double the energy efficiency savings in electricity and natural gas end uses by 2030. This bill would maintain the existing reporting requirements, but consolidate them into one report every three years, instead of three separate reports, including two every four years.

The CPUC first submitted their annual report on the progress towards achieving the state’s smart grid goals in 2006. Since then, distributed energy technologies and the accompanying terminology have evolved beyond the initial scope of the smart grid report. The report now offers a broad update on distributed energy resources, smart grid, and grid modernization, which is reflected in the updated title, *California’s Grid Modernization Report*. The most recent version released in February 2021 states that, “Given that the bulk of this report submitted in compliance with Section 913.2 centers on distributed energy resources and the grid, the report requirements could be refined and merged with the requirements of related Section 913.6, which focus on ‘the impacts of distributed energy generation on the state’s distribution and transmission grid.’”<sup>1</sup>

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<sup>1</sup> *California’s Grid Modernization Report to the Governor and Legislature*, February 2021, CPUC, p.3.

*Power source disclosure program.* The power source disclosure program was established in an effort to provide retail electricity consumers accurate and reliable information on the sources of energy used to provide electric services. The program requires electric retailers to annually disclose to customers their electricity sources and associated GHG emissions. Currently, disclosures must be made at the end of the third quarter of each year, e.g. as early as August 1 for a 30-day billing cycle starting July 1, with data reported for the preceding year. Existing law also authorizes the California Energy Commission (CEC) to verify claims filed by retail suppliers to ensure that data disclosed to customers are accurate. In this process, the CEC reviews and aggregates verified data from the retailers submitted by June 1 of each year, and provides each utility with the calculated GHG emissions-intensity associated with statewide retail electricity sales. Following this, each utility must either engage a third-party in auditing and verifying its data or commence a process to secure an attestation to the veracity of the data from its local governing body, and submit this verification to the CEC by October 1.<sup>2</sup>

*This bill would streamline implementation of Power Source Disclosure (PSD) Program.* Current implementation of the PSD program has retail electricity suppliers providing verified data to customers and the CEC by the end of the first complete billing cycle for the third quarter of each calendar year. This presents challenges for suppliers in disclosing the most accurate information as the disclosure date can be as early as August 1 for a 30-day billing cycle starting in July, but verification of their data is not due to the CEC until October 1<sup>st</sup>. This bill addresses this issue by changing the disclosure deadline to October 1<sup>st</sup>, which aligns with the deadline for data verification by electric retail suppliers. The Northern California Public Agency states its support for this change contending it can take 2-3 months for both the CEC's aggregation of the statewide data and a local publicly owned utility's process for obtaining governing body approvals and attestations. This change in this bill maintains all existing requirements of the program, but adjusts the reporting timeframe by when the information is ultimately disclosed to customers.

*Wildfire Fund.* The Wildfire Fund was established by AB 1054 (Holden, Chapter 79, Statutes of 2019) as a new process for electric investor-owned utilities (IOUs) to recover costs related to catastrophic wildfires, and ensure ratepayers are protected from wildfire cost recovery in the event that their utility causes a catastrophic or destructive fire. To be eligible for cost recovery, an electric IOU must be found at fault for the wildfire by a state agency or lead agency, usually CalFIRE or a county fire department. However, determination of causation and damage claims can occur through other avenues not specified in the code, e.g.

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<sup>2</sup> California Code of Regulations Title 20, Division 2, Chapter 3, Article 5. Electricity Generation Source Disclosure; § 1391-4

court-imposed judgments. Electric IOUs are currently restricted from utilizing the Wildfire Fund to cover court-approved settlements or judicial judgments in the instance that an agency fails to determine fault.

*Clarification around the Wildfire Fund.* According to the author, this bill clarifies the intent of AB 1054 to protect ratepayers from wildfire cost recovery by further clarifying that wildfires found to be caused by electric IOUs in court are also eligible for coverage through the Wildfire Fund. This bill also clarifies that electric IOUs contribute funds in 10 annual installments, which the author contends was erroneously left out of the language of AB 1054.

*Establishment of the Wildfire Fund.* AB 1054 established the Wildfire Fund jointly funded by both electric IOU ratepayers (via an existing charge on utility bills – the Department of Water Resources charge totaling \$10.5 billion) and the electric IOUs via non-ratepayers funds (totaling \$10.5 billion in the aggregate), combined the fund would total \$21 billion. Electric IOUs non-ratepayers funds require each large electrical corporation provides the initial contribution and the annual contributions are not recoverable from ratepayers (\$10.5 billion) in aggregate for all three large electrical IOUs. By participating in the Wildfire Fund, and having a safety certificate issued by the CPUC, the electric IOU may be afforded more certainty for recovery of utility-caused wildfires. The Wildfire Fund also includes a cap on costs for participating electric IOUs whereby expenses deemed just and reasonable would be recovered from the Wildfire 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 Pacific, Gas & Electric (PG&E), \$2.2 billion for Southern California Edison (SCE), and \$692 million for San Diego Gas & Electric (SDG&E). The Wildfire Fund would also limit subrogation claims from insurance companies on behalf of their affected customers to 40 percent, or more, should the administrator of the Wildfire Fund 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 to settle subrogation claims at 40 percent. The Wildfire Fund assumes about \$1 billion per electric IOU in annual commercial insurance requirements, a capitalization from non-ratepayer funds of \$7.5 billion in total from the three largest electric IOUs, and an additional contribution of \$3 billion over ten years. According to the governor's office, the capitalization of the Wildfire Fund, along with purchase of reinsurance and other related projects, is intended to provide between \$30-40 billion in claims-paying capacity for utility-caused wildfires.

*What fire?* This bill would expand the definition of covered wildfire to include those fires where the electric utility has been found at fault by a court or via a court-approved settlement for third-party damage claims from a wildfire that occurs after July 11, 2019. In communication with the electric IOUs and the author's office, there does not seem to be a current identified fire that may be eligible under this new definition. Rather, electric IOUs speak of the hypothetical situation where a court may find the utility at fault. The Tubbs Fire of 2017 is an example that would not qualify under the new language but exemplifies the issue. The cause of the Tubbs Fire from the Cal FIRE report was found to be electric equipment on private property not operated by the electric IOU - PG&E. However, there were still claims against PG&E stemming from the Tubbs Fire which the utility settled as part of their bankruptcy settlement. Presumably, the electric utilities contend there may be other situations where the a court or court-approved settlement results in the utility required to pay costs for property damages.

*Impact to ratepayers.* Electric IOUs believe such situations could easily arise in the future from other fires where the cause may not have been determined to be the electric IOU's equipment, but a court judgement or settlement could still render the utility responsible for paying the claims. The utilities contend that such determinations could result in additional costs to ratepayers in order to recover the costs of damage claims, presuming the CPUC would find such recovery to be just and reasonable. In this regard, the electric utilities may be correct. However, it is also possible that those costs would have to be borne exclusively by the electric IOU's shareholders in a situation where the CPUC does not approve the utility's request for recovery from ratepayers. Unfortunately, collecting from shareholders can also affect costs to ratepayers, with increased costs to borrowing from the impact to the credit rating of the utility. Such a scenario was the genesis for the desire for a Wildfire Fund in the first place. The electric IOU may also have a business incentive to settle cases, especially as many would likely prefer to avoid a long and expensive trial or jury trial where they may be less likely to be successful, depending on their public reputation. Electric IOUs also note that existing statute provides some safeguards against unreasonable claims, as the Wildfire Fund Administrator must evaluate all settlements to determine whether they were made in the "reasonable business judgement of the utility" (Public Utilities Code §3292 (f)(1)). Understandably, the electric utility and, perhaps ratepayer organizations as they have not weighed in on this bill, may prefer the use of the Wildfire Fund to recover these costs. By expanding the definition of covered wildfire, the Wildfire Fund could be depleted more quickly. However, the impact on ratepayers could be significant or limited to the existing charge funding the Wildfire Fund, assuming the Wildfire Fund is not depleted.

**Prior/Related Legislation**

AB 2945 (Holden, 2020) would have made similar report consolidation and code clean up proposed in this bill. The bill died in Assembly Committee on Utilities & Energy due to COVID-related legislative priorities.

SB 756 (Hueso) defines “low-income customers” for the purposes of eligibility for the ESA program to mean low-income persons or families with household income at or below 250 percent of federal poverty level, instead of the current 200 percent of federal poverty. The bill is pending in the Assembly Committee on Appropriations.

AB 1054 (Holden, Chapter 79, Statutes of 2019) among its many provisions, establishes the Wildfire Fund (outside of the State Treasury) to pay eligible claims arising from a covered wildfire, where a lead government agency has found an electrical corporation’s equipment caused the fire, and continuously appropriates moneys in the fund to the Wildfire Fund Administrator for that purpose.

SB 1222 (Hertzberg, Chapter 842, Statutes of 2016) combined reporting requirements in the CPUC code and aligned staggered reporting timelines into one annual deadline.

SB 350 (De León, Chapter 547, Statutes of 2016) enacts the "Clean Energy and Pollution Reduction Act of 2015," which establishes targets to increase retail sales of renewable electricity to 50 percent by 2030 and double the energy efficiency savings in electricity and natural gas end uses by 2030.

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

**SUPPORT:**

California Municipal Utilities Association  
Northern California Power Agency  
Pacific Gas and Electric  
San Diego Gas and Electric  
Southern California Edison  
Southern California Public Power Authority

**OPPOSITION:**

None received

**ARGUMENTS IN SUPPORT:** According to the author:

AB 242 is the annual code clean-up bill to make technical changes and clarifications to the Public Utilities Code. Our goal with this bill is to minimize duplicative efforts at the CPUC by consolidating multiple, related reports on energy efficiency and the state's grid modernization efforts. In doing so, AB 242 maintains necessary and important reporting requirements while streamlining and improving efficiency at the CPUC. This bill also streamlines implementation of the Power Source Disclosure Program by adjusting disclosure timelines to align with current practice, and ensures that ratepayers are provided accurate information about their power source. Finally, AB 242 adds clarification to damages costs that are eligible for recovery by the Wildfire Fund. This bill acknowledges that a utility may be found at fault for a wildfire through various entities, and protects ratepayers from taking on cost burden should a utility be found at fault for a catastrophic wildfire by either a judicial judgement or a state agency.

**-- END --**