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

Bill No: AB 560 **Hearing Date:** 6/18/2019
Author: Santiago
Version: 3/7/2019 As Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Public utilities: unionization

DIGEST: This bill would require that any expense incurred by an investor-owned utility (IOU) in assisting or deterring union organizing, as defined, is not recoverable either directly or indirectly in the utility's rates and is required to be borne exclusively by the shareholders of the IOU.

ANALYSIS:

Existing law:

- 1) Provides under the National Labor Relations Act (NLRA), that the expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, does not constitute or is evidence of an unfair labor practice, if such expression contains no threat of reprisal or force or promise of benefit. (29 U.S.C.A. §158(c))
- 2) Provides under the NLRA, that it is an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. (29 U.S. Code §158 (a)(2))
- 3) Provides under the Public Utility Regulatory Policies Act, that no electric utility may recover from any person other than the shareholders (or other owners) of the utility any direct or indirect expenditure by such utility for political advertising. This is defined to include advertising intended to influence public opinion with respect to legislative, administrative, or electoral matters, or with respect to any controversial issue of public importance. (16 U.S. Code §2623(b)(5))
- 4) Establishes the California Public Utilities Commission (CPUC), with regulatory jurisdiction over all IOUs. (California Constitution, Article XII)

- 5) Authorizes the CPUC to fix the rates and charges for every IOU, and requires that those rates and charges be just and reasonable. (Public Utilities Code §451)
- 6) Requires that any expense resulting from a bonus paid to an executive officer, as defined, of an IOU that has ceased to pay its debts in the ordinary course of business, be borne by the shareholders of the IOU and prohibits any expense from being recovered in rates. (Public Utilities Code §451.5)
- 7) Prohibits an IOU from including any bill for services or commodities furnished by any customer or subscriber any advertising or literature designed or intended (1) to promote the passage or defeat of a measure appearing on the ballot at an election, (2) promote or defeat of a candidate to any public office, (3) to promote or defeat the appointment of any person to any administrative or executive positions in government, or (4) to promote or defeat any change in legislation or regulations. (Public Utilities Code §453)
- 8) Authorizes the CPUC to disallow expenses for whenever an IOU fails to prepare or maintain records sufficient to enable the CPUC to completely evaluate any relevant or potentially relevant issue related to the reasonableness and prudence of any expense relating to the planning, construction, or operation of the IOU's plant. (Public Utilities Code §463(b))
- 9) Provides that any salary, bonus, benefits or other consideration of any value, paid to an officer of an electrical or gas IOU not be recoverable from ratepayers and requires that the company officers' compensation to be paid solely by shareholders of the electrical or gas IOU. (Public Utilities Code §706).
- 10) Requires the CPUC to initiate a rulemaking to adopt, among other things, rules to govern the conduct of electrical corporations that ensure that an electrical corporation does not market against a Community Choice Aggregation (CCA) program, except through an independent marketing division that is funded exclusively by the electrical corporation's shareholders and that is functionally and physically separate from the electrical corporation's ratepayer-funded divisions. (Public Utilities Code §707)
- 11) As it relates to CCA programs, the CPUC has explicit authority over other matters they determine necessary or advisable to protect a ratepayer's right to be free from forced speech or to implement portions of the of the federal Public Utility Regulatory Policies Act of 1978 that establishes the federal standard that no electric utility may recover from any person other than the shareholders or other owners of the utility, any direct or indirect expenditure by the electric

utility for promotional or political advertising. (16 U.S.C. Sec. §2623(b)(5))
(Public Utilities Codes §707(a)(5))

This bill:

- 1) Defines “expense incurred by a public utility in assisting or deterring union organizing” means costs incurred in communicating with employees, or employees of the utility’s contractors, in an effort to persuade them to join or support, or to not join or support, a labor organization.
- 2) Prohibits any expense incurred by a public utility in assisting or deterring union organizing from being recoverable either directly or indirectly in the utility’s rates and requires the expense to be borne exclusively by the shareholders of the public utility.

Background

Cost recovery of expenses by IOUs. CPUC-regulated utilities 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 principle purpose of the CPUC’s existence and the main task of the agency as an economic regulator. Statutory authority also authorizes the CPUC to disallow expenses that are not deemed just and reasonable or prudent. The review of a utility’s expenses is largely, although not exclusively, conducted through the utility’s general rate case (GRC). Most utilities regulated by the CPUC are required to undergo a GRC whereby the utility requests funding for distribution, generation and operation costs associated with their service. The GRCs are major regulatory proceedings and provide the CPUC an opportunity to perform an exhaustive examination of a utility’s operations and costs with input from all stakeholders. Usually performed every three years and conducted over roughly 18 months, the GRC allows the CPUC to conduct a broad and detailed review of a utility’s revenues, expenses, and investments in plant and equipment to establish an approved revenue requirement.

Statute disallows recovery of certain expenses. Statute prohibits recovery from ratepayers of certain expenses by an IOU. These expenses include activities related to elections of candidates, legislation, bonuses paid to executives of the IOU under specified conditions, activities marketing against CCAs, as well as, any situation where the IOU has failed to sufficiently maintain records to enable the CPUC to completely evaluate any relevant issues related to the prudence of any

expense relating to the planning, construction, or operation of the IOU's plant. Under the requirements of the Federal Public Utility Regulatory Policies Act of 1978 and subsequent state statute, IOUs are also prohibited from recovering from any person other than shareholders direct and indirect expenditures for promotional or political advertising.

Comments

Need for bill. AB 560 would further disallow any expenses by an IOU from ratepayers to either assist or deter union organizing. The author cites a 2017 report by the Energy Policy Institute, "Paying for utility Politics: How Utility Ratepayers are Forced to Fund the Edison Electric Institute (EEI) and other political organizations," as an example of the need to disallow expenses related to union activities. As noted by the title, that report largely focuses on ratepayer expenses for EEI and other organizations, including the Chamber of Commerce, American Legislative Exchange Council (ALEC), and others. The scope of the report also looks at utilities nationwide, with some specific mentions in California, largely as models of efforts by The Utility Reform Network (TURN) to reduce the ratepayer recovery by electric IOUs to fund EEI dues. However, the report does not seem to note any explicit mention of union activities. Nonetheless, as currently drafted, the bill provides no unfair advantage to either pro or anti-union activities. In response to the committee requests, the CPUC notes it is not aware of any instance where an IOU sought to recover expenses related to union activities through rates.

Dual referral. Should this committee approve this bill, it will be re-referred to the Senate Committee on Labor, Public Employment and Retirement for their consideration.

Prior/Related Legislation

AB 874 (Williams, 2013) would have prohibited any expense incurred by an IOU in assisting or deterring union organizing to be recoverable either directly or indirectly in the utility's rates. The bill died in the Assembly.

SB 790 (Leno, Chapter 599, Statutes of 2012) revised and expanded the definition of CCA, requires the CPUC to initiate a Code of Conduct rulemaking, and allows CCAs to receive public purpose funds to administer energy efficiency programs.

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

SUPPORT:

California State Association of Electrical Workers (Co-sponsor)
Coalition of California Utility Employees (Co-sponsor)

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

Currently, the Federal Public Utility Regulatory Policies Act of 1978 permits states to adopt rules prohibiting electric utilities from recovering from any person other than shareholders direct and indirect expenditures for promotional or political advertising. AB 560 would simply ensure that ratepayer funds cannot be used to assist or deter union organizing. This proactive, commonsense measure is neutral on union representation campaigns and protects the use of taxpayer dollars.

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