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

**Senator Ben Hueso, Chair
2019 - 2020 Regular**

Bill No: SB 199 **Hearing Date:** 4/24/2019
Author: Hill
Version: 4/8/2019 As Amended
Urgency: No **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Public Utilities Commission: Office of the Safety Advocate

DIGEST: This bill re-establishes the California Public Utilities Commission (CPUC) Office of the Safety Advocate (OSA) as an independent office within the CPUC and requires the CPUC to adopt a timeline for evaluating and adopting OSA recommendations regarding safety management policies and procedures.

ANALYSIS:

Existing law:

- 1) Requires the CPUC to establish rules for a public utility and revise those requirements through an order or rule whenever the CPUC, after a hearing, finds that existing rules, practices, equipment, appliances, facilities or service of any public utility or manufacturing, distribution, transmission, storage or supply methods employed by the public utility are unjust, unreasonable, unsafe, improper, inadequate, or insufficient. (Public Utilities Code §761)
- 2) Establishes the OSA within the CPUC to support continuous, cost-effective improvement of the safety management and safety performance of public utilities. (Public Utilities Code §309.8(a))
- 3) Requires the OSA to do the following:
 - a) Advocate at CPUC in proceedings on behalf of public utility customers to support effective utility safety management and infrastructure upgrades and enhance safety information transparency.
 - b) Make recommendations for improving the CPUC's safety management policies and procedures and the CPUC's safety culture.
 - c) Provide information for CPUC proceeding official records on safety-related risks and support the CPUC in holding public utilities accountable for safe operations. (Public Utilities Code §309.8(b))

- 4) Requires the OSA to annually report the following information to the Chair of the relevant legislative policy committees:
 - a) OSA recommendations made to improve CPUC safety management policies and procedures and safety culture.
 - b) OSA recommendations to improve public utility safety management policies and procedures and safety culture.
 - c) Proceedings in which OSA participated and a description of OSA's testimony in those proceedings. (Public Utilities Code §309.8(c))
- 5) Sunsets the OSA on January 1, 2020. (Public Utilities Code §309.8(d))
- 6) Requires the CPUC to appoint a chief internal auditor and requires the auditor to perform the following duties:
 - a) Plan, initiate, and conduct audits of key financial, management, operational, and information technology functions within the CPUC to improve accountability and transparency.
 - b) Report the audit findings and recommendations to a CPUC audit subcommittee.
 - c) Comply with requirements for internal audits of public agencies. (Public Utilities Code §307.6)

This bill:

- 1) Re-establishes the OSA as an independent office within the CPUC and specifies that the OSA's director will be appointed by the Governor, subject to confirmation by the Senate.
- 2) Requires the director of OSA to annually appear before the relevant legislative policy committees and report on the OSA's activities.
- 3) Requires the CPUC to adopt timelines for evaluating and implementing OSA recommendations.
- 4) Requires the OSA to work with the CPUC's internal auditor to ensure that the CPUC complies with requirements regarding timelines for evaluating and adopting OSA recommendations.
- 5) Eliminates the January 1, 2020, sunset date for the OSA.

Background

A brief history of CPUC safety management. On September 9, 2010, a Pacific Gas and Electric Company (PG&E) natural gas transmission pipeline ruptured in San Bruno. Gas from the rupture ignited, resulting in eight deaths, injuries to 58 people, destruction of 38 homes, and damage to 70 additional homes. The San Bruno explosion led to multiple investigations and reports on safety issues associated with California's natural gas infrastructure and oversight of the utilities that own and operate that infrastructure. A National Transportation Safety Board (NTSB) report stated that the probable cause of the explosion was a lack of quality assurance and pipeline integrity management from PG&E; however, the NTSB report also cited CPUC's lack of effective oversight over natural gas utility operations as a contributing factor.

Concerns about natural gas safety oversight continued to surface following the 2015 natural gas leak at the Southern California Gas Company's Aliso Canyon Natural Gas Storage Facility. Following the Aliso Canyon leak, the CPUC submitted a budget change proposal (BCP) for the 2016-17 state fiscal year to establish an independent Division of Safety Advocates within the CPUC, which would advocate for the prioritization and protection of Californians' safety as a party to CPUC hearings. This BCP specifically cited the Aliso Canyon leak an example of a utility safety issue for which there was an absence of stakeholder groups advocating to prioritize Californians' safety. The BCP stated the following:

“The leak at the Aliso Canyon Storage Facility cannot be considered an isolated incident. Rather, it highlights the much larger issue that much of California's gas and electric utility infrastructure was installed prior to 1970, and this aging infrastructure needs to be constantly monitored, inspected, and evaluated for potential threats. In 2015 alone, the CPUC investigated 522 separate gas and electric incidents resulting from this aging infrastructure. Utility requests for infrastructure upgrades and related maintenance, inspection, and monitoring are increasing rapidly. Such requests are considered in General Rate Case applications... There are no stakeholder groups that are solely dedicated to public safety that are willing to appear before the Commission and actively participate in relevant proceedings. The lack of such groups and the increasing number of incidents due to aging utility infrastructure compel the Commission to create a new Division of Safety Advocates within its own body to highlight safety.”

In 2017, the Legislature passed SB 62 (Hill, Chapter 421, Statutes of 2017), which established the OSA and provided the CPUC with funding to support the safety advocacy goals outlined in the CPUC's 2016-17 BCP. Under existing law, the OSA is scheduled to sunset on January 1, 2020. This bill would clarify certain OSA duties and eliminate the existing sunset date for OSA.

How many independent offices are needed? Existing law does not explicitly establish the OSA as an independent office of the CPUC. This bill would re-establish the OSA as an independent office with a director appointed by the Governor and confirmed by the Senate. This bill also requires the director of OSA to appear annually before the relevant policy committees of the Legislature to report on OSA's activities. This reporting requirement is similar to requirements established for the Office of the Ratepayer Advocate (ORA). The CPUC's 2016-17 BCP envisioned that the Division of Safety Advocates would function in a manner similar to the ORA, which was established to advocate for "...the lowest possible rate for service consistent with reliable and safe service levels." However, since the creation of the OSA, legislation has renamed the ORA as the Public Advocate's Office (PAO). While existing law continues to require the PAO to advocate for lower rates, the renaming raises the question of whether the PAO will expand its mission to encompass advocacy beyond ratepayer savings, including utility safety. To the extent that PAO also advocates for utility safety, PAO and OSA may have overlapping advocacy roles.

Catastrophic wildfires and SB 901. Utility infrastructure has been associated with catastrophic fires in the past; however, catastrophic wildfires enhanced concerns related to electric infrastructure. In 2017, California experienced some of the largest and most destructive wildfires in its modern history. California Department of Fire and Forestry Protection (Cal FIRE) reports indicated that at least 18 of the 170 fires that formed the 2017 North Bay Fire Siege were caused by utility equipment. The 2017 Thomas Fire in Ventura and Santa Barbara Counties burned over 281,000 acres, destroying over 1,000 buildings and killing two people. The Thomas Fire also indirectly resulted in the deaths of 21 people who died in a debris flow created by heavy rains fell on the area burned by the fire. Cal FIRE reports also indicated that utility infrastructure was associated with the ignition of the Thomas Fire.

While the 2017 fires occurred, the CPUC issued a decision denying cost recovery for uninsured utility costs associated with 2007 fires in San Diego. As part of its decision, the CPUC urged the Legislature to consider issues of utility fault for wildfires associated with utility ignitions. In 2018, the Legislature passed SB 901 (Dodd, Chapter 626, Statutes of 2018), which established a number of wildfire

prevention and mitigation requirements, including safety requirements that must be included in wildfire mitigation plans (WMPs).

CPUC's 2019-20 OSA budget request. Following the passage of SB 901, the CPUC submitted a BCP to support utility safety and wildfire mitigation duties codified by the legislation. This BCP includes a request for four staff positions for the OSA. The CPUC's BCP states that SB 901 significantly increases the OSA's duties. In the BCP, the CPUC says the following. "SB 901 creates substantial new work for OSA. OSA staffing levels are currently insufficient to fulfill the duties required to participate in the WMP processes established by the bill. OSA requires additional staff to fulfill these new duties."

The BCP indicates that eight of the 11 OSA positions approved by the Legislature in 2017 have been filled. The 2019-20 BCP also requests four positions in addition to the 11 positions previously authorized. The additional four positions are intended to support SB 901 implementation.

The CPUC can act on its own motion, but timeliness and consistency is an issue. The CPUC's role in regulating utilities has evolved over time. Since its establishment as the railroad commission in 1911, the statutory and constitutional role of the CPUC as an active regulator has been affirmed. In 1940, the California Supreme Court noted that the CPUC has the authority to take action on its own accord in *Sale v. Railroad Commission*. In its decision, the Court stated, "...the railroad commission, unlike a court, may act sua sponte and is not dependent upon the appearance of a party to 'invoke' its jurisdiction."

While an independent office can advocate for utility safety on behalf of Californians, this advocacy does not supplant the duty of the CPUC to exercise its authority to ensure that policies and procedures for utilities are safe. Existing law requires the CPUC to exercise its utility regulatory powers to adjust utility requirements whenever it finds existing utility practices to be unsafe. However, some CPUC decisions regarding utility safety indicate that the CPUC has taken a reactive approach in the past and focused on establishing requirements specific to individual utilities instead of establishing consistent requirements across utilities. For example, following San Diego's Witch, Rice and Guejito fires, the CPUC adopted new vegetation management, clearance, ignition prevention, and facility inspection requirements for locations in southern. However, until recently, similar requirements did not apply to PG&E territory. Even as these requirements are applied to PG&E, they are adopted piecemeal through multiple decisions and resolutions at later dates.

This bill requires the CPUC to establish timelines for the evaluation and implementation of OSA recommendations. This bill also requires the OSA to work with the CPUC's internal auditor to ensure that the CPUC complies with requirements regarding the timelines. These requirements can help build accountability for the timely adoption of appropriate recommendations from OSA.

Prior/Related Legislation

SB 901 (Dodd, Chapter 626, Statutes of 2018) established a number of utility safety requirements, including requirements for electric utilities to create and submit wildfire mitigation plans that identify mechanisms for preventing, combatting, and responding to wildfires within each utility service territory.

SB 19 (Hill, Chapter 421, Statutes of 2017) required the CPUC to appoint a chief internal auditor and specified the duties of the auditor.

SB 62 (Hill, Chapter 806, Statutes of 2016) codified the OSA within the CPUC until January 1, 2020, to advocate for the continuous, cost-effective improvement of the safety management and safety performance of public utilities.

SB 900 (Hill, Chapter 552, Statutes of 2014) required the CPUC to consider safety in electrical and gas general rate cases.

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

SUPPORT:

Rural County Representatives of California

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

“SB 199 clarifies the role of the OSA at the CPUC, and removes the program sunset currently in statute. The Legislature created OSA in 2016 under SB 62 (Hill). Since its creation in January 2017, OSA has provided valuable contributions at the CPUC advocating for improved utility safety and stronger CPUC safety oversight. During this time, California has experienced devastating loss through wildfire and mudslides, with utility infrastructure largely suspected to be a factor

or cause. Extensive focus on utility safety and accountability has understandably resulted. The extension of OSA's expertise, as proposed by SB 199, provides enormous value to these efforts to ensure its mission of improving "the safety management and safety performance of public utilities to prevent accidents, injuries, and to save lives" persists."

-- END --