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

Bill No:	SB 247	**Hearing Date:**	4/10/2019
Author:	Dodd		
Version:	3/14/2019 As Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Nidia Bautista		

SUBJECT: Wildland fire prevention: vegetation: management

DIGEST: This bill would require the Department of Forestry and Fire Protection (CalFIRE) to oversee the vegetation management of electrical corporations, including identifying the list of trees to trim. This bill would also require that all costs associated with the electrical corporation's vegetation management are recovered from ratepayers through a two-way balancing account.

ANALYSIS:

Existing law:

1) Establishes the CalFIRE is responsible for fire protection in state responsibility areas, as well as the administration of the state's private and public forests. (Public Resources Code §700 et seq.)

2) Establishes the California Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations. (California Constitution, Article 12, §§ 3 and 4)

3) Authorizes the CPUC to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. (Public Utilities §451)

4) Requires each electrical corporation, local publicly owned electric utility, and electrical cooperative to construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment. Requires each electrical corporation to annually prepare a wildfire mitigation plan and to submit its plan to the commission for review and approval, as specified. (Public Utilities Code §8386)

5) Requires the CPUC and CalFIRE to enter into a memorandum of understanding to cooperatively develop consistent approaches and share data related to fire prevention, safety, vegetation management, and energy distribution systems and to share results from various fire prevention activities, including relevant inspections and fire ignition data. (Public Utilities Code §8386.5)

This bill:

1) Requires, beginning January 1, 2021, CalFIRE to provide a "trim list" to each electrical corporation identifying all trees and other vegetation in the vicinity of electrical lines or equipment owned by the electrical corporation requiring removal or trimming, including the extent of trimming required.

2) Requires CalFIRE to provide an updated trim list to the electrical corporation no longer than one week after the identification of additional required vegetation management.

3) Requires the electrical corporation to notify CalFIRE after it has completed all or a substantial portion of the trimming or removal in the trim list. Upon receiving notice from the electrical corporation, this bill requires CalFIRE to promptly audit the work performed by, or on behalf of, the electrical corporation and to specify any failure of the electrical corporation to fully comply with the trim list.

4) Provides that an electrical corporation would have a reasonable time to correct and eliminate any deficiency specified in the audit.

5) Requires the CalFIRE, after the time to correct and eliminate any deficiency specified in the audit expires, and no less than annually, to report to the electrical corporation and the CPUC specifically describing any failure of the electrical corporation to substantially comply with the trim list and to make the report publicly available.

6) Requires each electrical corporation to reimburse the CalFIRE for its cost to carry out these functions with respect to that electrical corporation's electrical lines and other exposed energized overhead conductors and equipment. States that the willful or negligent failure to perform any of these electrical corporation obligations would be a misdemeanor.

7) Requires the CPUC to establish a two-way balancing account for each electrical corporation for all costs incurred by the electrical corporation for vegetation management, prohibit the electrical corporation from diverting any revenue

from the account to any activity other than vegetation management, and prohibits the electrical corporation from earning any profit on any revenue from the account.

8) Requires the CPUC to ensure that an electrical corporation fully recovers all costs incurred to comply with the trim list requirements that would be adopted pursuant to this bill and all other reasonable vegetation management activity.

Background

CPUC-regulated utilities - cost recovery of expenses. CPUC-regulated utilities routinely submit requests for recovery of costs related to their operations, including expanding their infrastructure, paying for operation expenses, etc. The primary vehicle for recovery of a utility's costs is through the general rate case (GRC). The GRC usually occurs every three years and authorizes a utility to collect a specified amount from its customers to cover the anticipated operational expenses during the three years of the authorized amount in the GRC. As required by statute in Public Utilities Code §451, the CPUC may only approve a utility's request for recovery of costs that is deemed "just and reasonable." The review of utility expenses to ensure they are just and reasonable is the primary purpose of the CPUC's existence and the main task of the agency as an economic regulator.

Balancing accounts. Balancing accounts are approved by the CPUC and established by utilities to serve various ratemaking purposes. The primary purpose of balancing accounts is to ensure that a utility recovers its CPUC authorized revenue requirement from ratepayers for a given program or function, but no more or less. Since rates are always forward-looking and based on forecasted sales, actual collections by the utility from ratepayers can be more or less than what the CPUC had authorized it to collect. A balancing account tracks actual sales and reconciles actual revenues against authorized revenues. These accounts record the surplus or deficit amount to be applied to a future collection period. To ensure the utility spends a certain authorized amount on specified activities, one- or two-way balancing accounts are established. A one-way cost balancing account ensures that if a utility spends less on a particular program than the amount authorized, it credits the remaining budget back to ratepayers. Two-way balancing accounts authorize a utility to collect more or less than the authorized revenue requirement for a given program depending on actual costs, and are intended to ensure that the utility does not make or lose money due to uncertainties in the scope of work. The net balance in a balancing account is typically recovered from or refunded to ratepayers on an annual basis, but in some cases, the amortization of the balance may be more frequent. A two-way balancing account is often used for ongoing expenses.

Vegetation management and electric utilities. Electric utility companies trim and remove trees near high voltage power line for public safety, fire prevention, and electric reliability. There are a number of laws and regulations governing vegetation management, including: California Public Resources Code Sections: 4293 Power Line Clearance Required; 4292 Power Line Hazard Reduction; 4291 Reduction of Fire Hazards around Buildings; and 4171 Public Nuisances. Additionally, there are a number of CPUC orders and California Code of Regulations, including General Order 95, California Code of Regulations Title 14, and others. Additionally, federal reliability rules require specified clearances between vegetation and transmission lines.

Cost recovery for vegetation management. Electric utilities generally receive authorization for funding for vegetation management in their GRCs with new authorization every three years. The GRCs approve spending for broad categories of funding and occasionally for specific projects. Generally, spending for vegetation management is tracked in a one-way balancing account, which means that if the utility does not spend all the authorized funds, the unused funds are returned to ratepayers. Additionally, utilities are generally prohibited from diverting funds to other spending areas or to profits.

This bill. This bill would expand CalFIRE's role and responsibilities to oversee vegetation management by electric investor-owned utilities. These new responsibilities include developing a "trim list" identifying all trees and other vegetation to be removed or trimmed, auditing each electrical corporation's vegetation management work and inform the electrical corporation of any failure to fully comply with CalFIRE's list, report to CPUC describing any failure of the electrical corporation. This bill also establishes requirements about the skills certification needed to conduct tree trimming. Lastly, this bill would require a two-way balancing account for each electrical corporation's vegetation management costs.

Areas of concern. Currently, electric utilities identify their trim list, in some cases, they also maintain an extensive inventory of the trees in or near their right-of-ways and inspect trees, prune and remove vegetation in close proximity to electric distribution or transmission lines. This bill proposes to have CalFIRE oversee and take on the tasks related to vegetation management in terms of scoping the work and auditing it after the vegetation has been trimmed by the utility. Although well-intentioned as an effort to improve the efforts of electric utilities to mitigate against wildfires, this bill also raises a number of concerns. Specifically, concerns raised by this bill, include: the potential for redundancy, capacity and expertise of CalFIRE, costs to ratepayers, interplay with current efforts (including wildfire mitigation plans), and the potential increased liability on CalFIRE. Although this bill proposes to have CalFIRE oversee the electric utility's vegetation management, many of these functions will need to continue to be executed by the electric corporation. As such, it is very possible there could be some unintended redundancy (and potential costs) between the utility and CalFIRE. Additionally, the California Farm Bureau Federation and Rural County Representatives of California raise concerns that these new responsibilities will distract CalFIRE from its other duties. However, the proponents of this bill have suggested CalFIRE can contract out for these functions, including with the contractors that the utilities currently use. The increase of responsibilities proposed for CalFIRE are likely to result in increased liability for the agency, as they would be the final arbiter of whether to trim a tree. As such, it is quite possible that should there be a fire caused by a tree making contact with an electric line then CalFIRE may be likely to share in the liability for the damages. Lastly, the requirement for a two-way balancing account could result in substantial increased costs to ratepayers. This provision merits further investigation to ensure a two-way balancing account is merited, when a one-way balancing account is generally authorized. *As such, the author and committee may wish to amend this bill to require the CPUC to determine whether a two-way balancing account is necessary.*

Double referral. Should this bill be approved by this committee, it will be re-referred to the Senate Committees on Natural Resources and Water for their consideration.

Prior/Related Legislation

SB 901 (Dodd, Chapter 626, Statutes of 2018) addressed numerous issues concerning wildfire prevention, response and recovery, including funding for mutual aid, fuel reduction and forestry policies, wildfire mitigation plans by electric utilities, and cost recovery by electric corporations of wildfire-related damages.

SB 1028 (Hill, Chapter 598, Statutes of 2016) required electric CPUC-regulated utilities to file annual wildfire mitigation plans and requires the CPUC to review and comment on those plans.

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

SUPPORT:

Coalition of California Utility Employees (Sponsor)

OPPOSITION:

Rural County Representatives of California

ARGUMENTS IN SUPPORT: According to the author:

> Part of Cal Fire's mission is to prevent fires. Cal Fire's fire prevention program includes wildland pre-fire engineering, vegetation management, fire planning, education and law enforcement. Instead of each electrical corporation deciding what trees should be trimmed, this bill would require CalFIRE to provide each electrical corporation with a list of all trees and other vegetation to be removed or trimmed, including the extent to which the vegetation must be trimmed, to ensure compliance with CPUC and any other legal requirements and reduce the level of wildfire risk from contact with the electrical corporation's electric lines and equipment. CalFIRE would audit each electrical corporation's vegetation management work to ensure compliance with CalFIRE's list. This bill ensures that an expert state agency rather than a utility with a profit motive decides what tree trimming should be done and verifies that the utility did it.

ARGUMENTS IN OPPOSITION: In opposition to this bill, the Rural County Representatives of California(RCRC) express concerns with the expansion of responsibilities this bill proposes to add to CalFIRE and the impact these changes would have on CalFIRE's existing responsibilities. RCRC notes their desire to have utilities continue to oversee their vegetation management responsibilities and narrow CalFIRE's scope of work and identify trees to trim only as part of their operations.

-- END --