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

Bill No: SB 550 **Hearing Date:** 4/24/2019
Author: Hill
Version: 4/2/2019 As Amended
Urgency: No **Fiscal:** Yes
Consultant: Nidia Bautista

SUBJECT: Public utilities: merger, acquisition, or control of electrical or gas corporations

DIGEST: This bill would require specified safety-related actions before the California Public Utilities Commission (CPUC) authorizes a merger or sale of an investor-owned utility.

ANALYSIS:

Existing law:

- 1) Establishes the CPUC has regulatory authority over public utilities, including electrical corporations and gas corporations.(California Constitution, Article XII)
- 2) Prohibits a person or corporation from merging, acquiring, or controlling either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the CPUC. Requires that any merger, acquisition, or control without that prior authorization is void and of no effect. Requires the CPUC to consider specified criteria and to find that the merger, acquisition, or control proposal meets certain requirements and is in the public interest, as specified, before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized and doing business in this state, where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding \$500,000,000, existing law. (Public Utilities Code §854)

This bill:

- 1) Requires the CPUC, before authorizing a merger, acquisition, or change in control of an electrical or gas corporation, to additionally ensure the proposal includes specified-elements, including a non-punitive system for reporting potential safety incidents to the commission, and find, on balance, that the

proposal improves the safety of the utility service provided by the electrical or gas corporation.

- 2) Prohibits subjecting an employee of, or the employee of a contractor performing work for, the electrical or gas corporation to demotion, discharge, or any other form of retaliation or discrimination for participating in the non-punitive system for reporting potential safety incidents.

Background

Pacific Gas & Electric (PG&E) files for Chapter 11 Bankruptcy protection. On January 29, 2019, PG&E Corp., the holding company of the state's largest utility, voluntarily filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. PG&E filed their case in the Northern California District Court San Francisco Division (Case No. 19-30088-DM). The case has been assigned to the same judge, Honorable Dennis Montali, who handled PG&E's previous reorganization bankruptcy case in connection with the 2001 energy crisis. According to PG&E's first day filings, in a declaration filed by PG&E's Senior Vice President and Chief Financial Officer Jason Wells, PG&E's decision to seek relief under Chapter 11 "were necessitated by a confluence of factors resulting from the catastrophic and tragic wildfires that occurred in Northern California in 2017 and 2018, and PG&E's potential liabilities arising therefrom." The declaration specifically cites PG&E's potential liability related to the fires could exceed \$30 billion. PG&E's decision to voluntarily file for bankruptcy protection has raised numerous questions about the process entailed under a Chapter 11 reorganization and the potential implications for the numerous stakeholders that could be affected, including wildfire victims, ratepayers, the utility workforce, energy and other suppliers, local governments, and many others.

CPUC review of mergers and sales of utilities. Section 854 of the Public Utilities Code establishes the criteria by which the CPUC must review any investor-owned utility (IOU) merger, acquisition, or sale. Among the criteria are a CPUC determination that the merger or acquisition will provide long-term economic benefits to ratepayers, does not adversely affect competition, be beneficial on an overall basis to the state and local economies, and others. Interestingly, the criteria in Section 854 (b) and (c) were added in 1989 by the State Legislature (Statutes of 1989, Chapter 390). According to a CPUC staff analysis for a bill, SB 1389 (Padilla) dated April 24, 2008, at that time, Southern California Edison (SCE) was attempting to purchase San Diego Gas & Electric (SDG&E), and several other utility-related mergers were being contemplated. The Senate Committee on Energy, Utilities & Communications (SEUC) and the Assembly Committee on Utilities and Commerce (U&C) held a joint hearing titled "Utility Merger Mania:

Benefits and Risks to Ratepayers and Shareholders” (October 24, 1988). Then-CPUC President Mitch Wilk testified at the hearing. When he was asked by committee members what criteria the CPUC might use in reviewing a merger, he ran through a list of criteria. Those criteria were subsequently put into proposed legislation by members of the Legislature.

Need for safety. This bill would expand on the list of items the CPUC must review as part of any merger, acquisition, or change in control of any electrical or gas corporation, including PG&E. The need to ensure safety has continued to remain very high on the list of concerns related to PG&E dating back to the 2008 San Bruno natural gas pipeline explosion through the recent fires ignited by their electrical lines. CPUC President Picker has also suggested the CPUC could revoke PG&E’s license to operate in the state – its certificate of public convenience and necessity (CPCN) – if the selection of PG&E’s board does not demonstrate the company’s commitment to safety. As such, the provisions included in the Section 854 by this bill seem largely consistent with the calls for increased safety. Nonetheless, there may be specific items that may result in an unnecessary delay of a potential reorganization of PG&E which may not be included in a reorganization plan, such as: a comprehensive safety plan that includes a system-wise strategic approach for safety and active audits for safety controls. As such, *the author may wish to assess which of the requirements could be reasonably included in the reorganization plan and in advance of any merger, acquisition, or change of control.*

Prior/Related Legislation

SB 549 (Hill, 2019) would require the Legislature to approve a capital change structure or increase in rates for the energy utility, PG&E Company. The bill is pending consideration before this committee.

SB 52 (Rosenthal, Chapter 484, Statutes of 1989) established criteria that the CPUC must consider in reviewing a merger, acquisition, or change of control related to an IOU.

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

SUPPORT:

None received

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

“SB 550 requires the CPUC to ensure safe utility service results from any merger, acquisition, or change of control of an electrical or gas corporation. These times of corporate change provide an important opportunity to evaluate the safety processes at a corporation, and ensure the successor entity has the proper safeguards in place for both their employee safety and public safety. The change of ownership at the Gill Ranch Storage facility located in Fresno and Madera Counties provides an example of a successful safety review during such corporate change. Gill Ranch agreed to designating a Chief Safety Officer, creating a Pipeline Safety Management System, and creating a Safety Council to propose risk mitigation as part of their change in ownership. SB 550 seeks to expand the important changes at Gill Ranch to any gas or electric utility undergoing a merger, acquisition, or change of control.”

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