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

Bill No: SB 603 **Hearing Date:** 4/24/2019
Author: Borgeas
Version: 3/28/2019 As Amended
Urgency: No **Fiscal:** Yes
Consultant: Sarah Smith

SUBJECT: Small independent telephone corporations: rates

DIGEST: This bill establishes deadlines for the California Public Utilities Commission (CPUC) to complete rate cases for small independent telephone corporations, allows these corporations to conduct rate cases through an advice letter or general rate case process, and allows the corporations to recover reasonable rate case expenses.

ANALYSIS:

Existing law:

- 1) Authorizes the CPUC to fix the rates and charges for every public utility, including telephone corporations, and requires that those rates and charges be just and reasonable. (California Constitution Article XII §6 and Public Utilities Code §451)
- 2) Requires the CPUC to maintain the California High Cost Fund-A (CHCF-A) program, which provides support to small independent telephone companies in rural, high-cost areas of the state to ensure residents' access to affordable telecommunications services in these communities. Existing law sunsets the CHCF-A program on January 1, 2023. (Public Utilities Code §275.6)
- 3) Authorizes the CPUC to on its own order, whenever it determines it to be necessary, conduct financial audits, of the revenues required to be collected and submitted to universal service funds, including the CHCF-A fund. (Public Utilities Code §274)
- 4) Requires the CPUC to resolve ratesetting or quasi-legislative cases within 18 months of the date the proceeding is initiated. The CPUC may make a written determination that the deadline cannot be met, it must specify the reasons why the deadline cannot be met, and must issue an order extending the deadline. (Public Utilities Code §1701.5)

- 5) Gives the Federal Communications Commission (FCC) the authority to administer federal universal service programs to ensure that consumers in rural areas have access to telecommunications and information services at rates that are reasonably comparable to similar services provided in urban areas. (47 U.S.C. §254)

This bill:

- 1) Authorizes small independent telephone corporations to initiate a rate case through an advice letter process or an application for a general rate case.
- 2) Applies the following deadlines for the CPUC to complete advice letter rate cases for small independent telephone corporations:
 - a) The CPUC must complete the advice letter process within 10 months of the letter's submission
 - b) Any rate or revenue requirement changes resulting from the advice letter submission must be implemented within 12 months of the letter's submission.
- 3) Applies the following deadlines for the CPUC to complete general rate cases initiated by an application from a small independent telephone corporation:
 - a) The CPUC must complete the general rate case process within 12 months of the application's submission.
 - b) Any rate or revenue requirement changes resulting from the application's submission must be implemented within 14 months of its submission.
- 4) Authorizes small independent telephone corporations to recover reasonable expenses resulting from participation in any rate case. The reasonableness of rate case expenses must be determined without regard to the telephone corporations other expenses.

Background

Small wireline telephone companies and the High Cost Fund. This bill clarifies requirements for cost recovery proceedings related to small independent telephone corporations, which receive a portion of their total revenue requirements from the CHCF-A program.

The CPUC established California's High Cost Fund in 1988 pursuant to AB 1466 (N. Waters, Chapter 755, Statutes of 1987), which required the CPUC to develop a program to reduce telephone rate disparities between small independent telephone

companies serving rural areas and companies serving urban areas. California's High Cost Fund includes two separate programs that subsidize telephone service in mostly rural, high cost areas of the state: the CHCF-A fund and the CHCF-B fund.

While the CHCF-B program provides subsidies to larger carriers, the CHCF-A program provides rate support to small independent telephone corporations. These corporations are frequently carriers of last resort (COLRs) that have a duty to serve customers. The CHCF-A rate assistance is intended to ensure that residents in rural communities can access telecommunications services, including broadband services, at rates comparable to those for similar services in urban areas. Rural telecommunications rates can significantly exceed urban rates due to higher infrastructure costs and a lack of economies of scale. The CHCF-A program is funded by a surcharge on in-state telecommunications services applied to all consumers' bills. This surcharge is collected by carriers and deposited into an account administered by the CPUC.

Formal and informal proceedings. This bill establishes deadlines for the CPUC to complete rate case proceedings for small independent telephone corporations. Under this bill, the CPUC would be required to implement a small independent telephone corporation's rate change approved through an advice letter process within 12 months of the letter's submission. The CPUC would be required to implement a rate change approved through a general rate case process within 14 months of an application's submission by a small independent telephone corporation.

Unlike the larger carriers, the small independent telephone corporations in the CHCF-A program are rate-regulated by the CPUC. Existing law generally authorizes a rate-regulated utility to recover just and reasonable expenses through rates. The CPUC generally authorizes utilities to complete rate cases through a formal general rate case or an informal advice letter process. CPUC General Order (GO) 96-B outlines rules governing the advice letter process. GO 96-B notes that the advice letter process is intended to provide a faster mechanism for addressing non-controversial issues without an evidentiary hearing, which would require the assignment of an administrative law judge. GO 96-B states: "The primary use of the advice letter process is to review a utility's request to change its tariffs in a manner previously authorized by statute or Commission order, to conform the tariffs to the requirements of a statute or Commission order, or to get Commission authorization to deviate from its tariffs."

Despite the authorization to conduct telephone corporation rate cases through an advice letter or general rate case process, there is no clear criteria for determining when a small independent telephone corporation's rate case should be conducted as

an informal or formal proceeding. Over the past 20 years, the CPUC switched from conducting almost all of these cases through an advice letter to process to conducting all of these cases through a formal rate proceeding. This switch coincided with significant delays in completing rate cases. Between 2001 and 2009, only one small independent telephone corporation rate proceeding occurred through a general rate case process. The remaining 19 rate cases that occurred during that period were conducted through an advice letter process. During that same period, only two of the rate cases exceeded 420 days (approximately 14 months) in duration. Since 2009, the CPUC has conducted all wireline rate proceedings as general rate cases. Approximately eight of the 12 rate cases conducted since 2009 have exceeded 420 days in duration. In a number of cases, the CPUC significantly exceeded the existing statutory deadline to complete a ratesetting case within 18 months of its initiation.

Prior legislation and the rate case plan. This bill codifies deadlines for rate case completion that are consistent with deadlines the CPUC has already adopted in its general rate case plan for small independent telephone corporations. To the extent that codifying these deadlines makes the deadlines more enforceable, this bill could increase accountability at the CPUC for the timeliness of these cases. Concerns regarding the CPUC's timeliness and process for resolving small independent telephone corporation rate cases are not new. In 2014, the Legislature passed AB 1693 (Perea, 2014), which would have established deadlines for the CPUC to complete these rate cases and implementing interim rates in the event that the CPUC failed to complete the case in a timely manner. The governor vetoed the bill stating that the deadlines and interim rate requirements were inflexible. In his veto message, the governor directed the CPUC to adopt a rate case plan for the small wireline telephone corporations to encourage timely completion of these cases. In June 2015, the CPUC adopted a general rate case plan through Decision 15-06-04. The CPUC's plan established a 420-day (approximately 14 month) deadline for implementing rates resulting from a small independent telephone corporation's rate case. However, since the adoption of this rate case plan, the timeliness of these rate cases has not improved. With the exception of two cases, all small independent telephone corporation rate cases conducted since the adoption of the rate case plan have exceeded the 420-day completion deadline.

The lack of timeliness of these cases may stem from a number of issues, including disputes between parties in the proceeding, extensive information gathering and fact-finding associated with proceeding, and administrative law assignments. However, the use of an entirely formal process for these rate cases is likely a significant factor in the duration of cases. Formal rate cases are required for requests in which the corporation seeks to change underlying CPUC rules and policies. The CPUC generally establishes program policies through separate

proceedings and applies the policies from these proceeding to ratesetting in subsequent decisions. CPUC rules provide a process for parties to object during the advice letter process and for the CPUC to convert an informal proceeding to a formal proceeding if significant policies issues arise. However, the CPUC's decision to switch all small independent telephone corporation rate cases from an informal to formal process while it also conducts a proceeding to modify rules for companies participating in the CHCF-A program leads to a lack of clarity about the criteria for converting an advice letter to a formal rate case. The use of a formal rate case does not necessarily result in lower costs for ratepayers. In recent small independent telephone corporation cases, the CPUC has approved rate increases above those initially requested by the companies in their applications to the CPUC.

Parity between small utilities. As currently drafted, this bill does not establish the criteria by which the CPUC would determine whether a rate case for a small independent telephone corporation should be conducted formally or informally; however, it clarifies that these companies may conduct rate cases through a general rate case or an advice letter process. It also allows the companies to recover reasonable expenses associated with participating in a rate case proceeding. While concerns about timeliness of decisions exists across a number of CPUC proceedings, the lack of clarity about criteria for informal and formal proceeding and ability to recover expenses associated with formal proceedings appears to be especially acute for the small independent telephone corporation cases.

The CPUC establishes clear criteria for identifying the process through which other utilities conduct rate proceedings. Both electric and water utilities have criteria to ensure that smaller utilities within those sectors have a less costly, more expeditious option for conducting rate cases in which existing policy is applied to approve rate changes. For example, the CPUC oversees 98 regulated water utilities, which it classifies on the basis of size. It regulates nine Class A water utilities with more than 10,000 connections, five Class B water utilities with between 2,000 and 10,000 connections, 22 Class C water utilities with between 500 and 2,000 connections, and 62 Class D water utilities with less than 500 connections. Class A companies are the only class of water utilities required to complete rate cases through a formal proceeding. All other classes of water utilities complete rate cases through an advice letter process. Less than 15 small independent telephone corporations exist in California, and only one of these companies has more than 10,000 connections. To the extent that small independent telephone corporations have complex ownerships and affiliations, they are not unique. Small water companies also include companies with complex utility ownerships, including Southern California Edison (SCE), which is a small water utility for the purposes of water services its provides on Catalina Island.

While statute is not explicit on the issue of cost-recovery associated with expenses incurred during rate case proceedings, existing law has generally allowed utilities to recover reasonable costs associated with rate proceedings. In its decision for *Driscoll v. Edison Light and Power Company* (1939), the United States Supreme Court stated, “Even where the rates in effect are excessive, on a proceeding by a commission to determine reasonableness, we are of the view that the utility should be allowed its fair and proper expenses for presenting its side to the commission.” The CPUC’s advice letter process for small water companies demonstrates that the advice letter process does not limit CPUC staff’s ability to prohibit unreasonable rate increases or cost recovery, and it does not limit CPUC’s staff from requiring a general rate case process when a request do not comply with established policies. In response to a 2009 advice letter from SCE to increase water rates on Catalina Island, the CPUC denied the request and determined that the request in the letter did not meet the criteria for consideration through the advice letter process. The CPUC directed SCE to initiate a general rate case to consider the request.

Need for amendments. As currently written, this bill’s language specifying the implementation date for rate and revenue requirement changes could be interpreted to require the CPUC to implement any rate and revenue requirement change submitted in an advice letter or an application instead of an interim rate or a rate resulting from the advice letter or general rate case process. This interpretation does not appear to be the intent of the author. *As a result, the committee and the author may wish to amend this bill to clarify that the implementation deadline applies to rate and revenue requirement changes resulting from the CPUC’s disposition of an advice letter or general rate case.*

Prior/Related Legislation

AB 1959 (Wood, Chapter 256, Statutes of 2018) extended the sunset dates for the CHCF programs A and B from January 1, 2019, to January 1, 2023.

SB 1122 (Canella, 2016) would have required the CPUC to issue a final decision for a small independent telephone corporation rate case no later than 390 days after the corporation files its application or advice letter initiating the case. The bill also would have authorized the small independent telephone corporations to file tariffs implementing interim rates if CPUC failed to issue a final decision by the 390th day. The bill died in the Assembly.

AB 1693 (Perea, 2014) would have required the CPUC to issue a final decision for a small independent telephone corporation rate case no later than 390 days after the corporation files its application or advice letter initiating the case. The bill also

would have established a process for implementing an interim rate proposed by the corporations if the CPUC failed to meet the deadline. The bill was vetoed.

AB 1466 (N. Waters, Chapter 755, Statutes of 1987) required the CPUC to develop a program to reduce rate disparities between small independent telephone companies serving rural areas and those companies serving urban areas.

AB 1348 (Moore, Chapter 1143, Statutes of 1983) created the Universal Telephone Service Fund and established the goal of providing access to basic telephone service at affordable rates to all California residents.

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

SUPPORT:

California Communications Association (Sponsor)

Cal-Ore Telephone Company

Calaveras Telephone Company

Ducor Telephone Company

Foresthill Telephone Company

Kerman Telephone Company

Pinnacles Telephone Company

Ponderosa Telephone Company

Sierra Telephone Company, Inc.

Siskiyou Telephone Company

Volcano Telephone Company

OPPOSITION:

Public Advocates Office

ARGUMENTS IN SUPPORT: According to the author:

“This bill is a procedural fix for the small rural telephone companies who serve rural California. These small telephone companies are able to serve these hard to reach and remote areas and keep costs affordable because of assistance from the federal government and from the CHCF-A fund, administered by CPUC, whose programs help to keep citizens connected and costs affordable. Because costs for basic service could be as high in some areas as \$200 per month for the ability to call 911, these companies must file rate cases every five years.

For over 20 years, these small rural telephone companies, some as small as 360 lines, were able to file informal rate cases. However, since 2015, these companies have had to file formal rate cases. The difference between the two – one is costly and burdensome and the other is less costly. However, what both processes have in common is that the same information for transparency and accountability are provided to the CPUC.

These companies are providing a needed service throughout rural California. My district has four of these small telephone companies and I know I want my constituents to be able to connect to the rest of California and the rest of the world. This is about efficiency and less cost at the CPUC while providing relief for these small telephone companies in time, cost and burden.”

ARGUMENTS IN OPPOSITION: The Public Advocate’s Office of the CPUC opposes this bill because it believes that this bill’s deadlines are too strict and may incentivize delays on the part of the small independent telephone corporations. The Public Advocate’s Office argues that this bill will allow small independent telephone corporations to expenses associated with participating in their rate case proceedings. In opposition, the Public Advocate’s Office says the following:

“We respectfully oppose SB 603 because it would increase litigation costs and subsidize the legal, regulatory, and rate case expenses of non-regulated affiliates of small telephone companies participating in the CHCF-A program. The bill’s strict time limits incentivizes utilities to “run down the clock” and employ delay tactics during the review process, since their request would be deemed approved if the CPUC fails to issue a decision within the prescribed time limits.”

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