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

**Senator Steven Bradford, Chair
2023 - 2024 Regular**

Bill No:	SB 938	Hearing Date:	4/16/2024
Author:	Min		
Version:	3/21/2024 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Nidia Bautista		

SUBJECT: Electrical and gas corporations: rate recovery: political activities and advertising

DIGEST: This bill expands the types of activities an electrical or gas corporation is prohibited from recovering in rates by expanding the definitions of political activities and advertising, and requires specified reporting of related activities. The bill would also require the California Public Utilities Commission (CPUC) to assess specified civil penalties for any violations of the proposed prohibition and require $\frac{3}{4}$ of the monies to be deposited in a new Zero-Emission Equity Fund within the State Treasury.

ANALYSIS:

Existing law:

- 1) Establishes and vests the CPUC with regulatory jurisdiction over public utilities, including electrical and gas corporations. (Article XII of the California Constitution)
- 2) Authorizes the CPUC to fix the rates and charges for public utilities and requires those rates and charges to be just and reasonable. (Public Utilities Code §451)
- 3) Prohibits a public utility 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 (d))
- 4) Provides the CPUC with general, broad authority to regulate every public utility in the state. (Public Utilities Code §701)

- 5) Prohibits an electrical or gas corporation, except for Golden State Energy, from recovering a fine or penalty through a rate approved by the CPUC. (Public Utilities Code §748.1)
- 6) Authorizes the CPUC to require a public utility to correct any rates, practices, equipment or behavior that is unjust, unreasonable, unsafe, improper, inadequate, or insufficient. (Public Utilities Code §761)
- 7) Prohibits the CPUC from prescribing a system of accounts and form of accounts, records, and memoranda for corporations subject to the regulatory authority of the United States that is inconsistent with that established and updated by or under the authority of the United States. (Public Utilities Code §793)
- 8) Requires the CPUC to disallow all expenses for advertising which encourage increased consumption in rates charged by electrical or gas corporations for the services or commodities furnished by the utility. Allows the CPUC to include in rates charges for services, expenses for advertising which encourage the more efficient operation of the electric, or gas plant, or for advertising which encourage the more efficient use of electricity or gas, or the conservation of energy or natural resources, or presents accurate information on the economical purchase, maintenance, or effective use of electrical or gas appliances and devices. (Public Utilities Code §796)
- 9) Provides the CPUC authority to levy fines against regulated entities for violation of law. Generally prevents the CPUC from distributing, expending, or encumbering any moneys received by the CPUC as a result of any CPUC proceeding or judicial action until the CPUC has notified the Director of Finance and the Director of Finance provides notice to the chairpersons of the appropriate legislative budget subcommittees, except where statute expressly provides how the monies are to be paid or used. Requires penalties to be deposited in the State's General Fund. (Public Utilities Code §2100 *et seq.*)
- 10) As it relates to Community Choice Aggregator (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))

- 11) 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))

This bill:

- 1) Finds and declares it is the policy of the state to protect ratepayers from funding the political influence activities of public utilities.
- 2) Defines “above-the-line account” as an account that contains expenses that an electrical or gas corporation recovers from ratepayers, including an account that contains expenses that the electrical or gas corporation used to calculate a revenue requirement request in its most recent general rate case (GRC).
- 3) Defines “advertising” as those actions described in Public Utilities Code §796, and public messages that tend primarily to build the public image of an electrical or gas corporation. Does not include public messages:
 - a) the electrical or gas corporation is directed to publish by a federal, state, or local agency.
 - b) providing information on safety measures, emergency conditions, or service interruptions.
- 4) Defines “below-the-line account” as an account that contains expenses that an electrical or gas corporation does not recover from ratepayers.
- 5) Provides that “expense” includes a payment to an external entity, a costs incurred by a parent company or corporate affiliate and invoiced to an electrical or gas corporation, and the salary paid to an employee of an electrical or gas corporation.
- 6) Defines “political influence activity” as any of the following:
 - a) An activity for the purpose of directly or indirectly influencing:
 - i) The possible adoption of federal, state, or local legislation, regulations, or ordinances.

- ii) The possible repeal or modification of federal, state, or local legislation, regulations, or ordinances.
 - b) An activity for the purpose of directly or indirectly influencing elections or referenda, or appointments of public officials.
 - c) An activity for the purpose of directly or indirectly influencing the approval, modification, or revocation of franchises of electrical or gas corporations.
 - d) An activity for the purpose of directly or indirectly influencing public opinion with respect to any of the following: legislation, elections, referenda, or rate setting of the electrical or gas corporation.
 - e) An activity for the purposes of directly or indirectly influencing decisions of federal, state, or local government officials.
- 7) Defines “public official” to mean a decisionmaker within an administrative agency or legislative body at the local, state, or federal level, and the staff that support the decisionmaker’s policy development.
- 8) Prohibits, except as provided, an electrical or gas corporation from recording to accounts that contain expenses that the electrical or gas corporation recovers from ratepayers various expenses associated with political influence activities, with advertising, or expenses associated with membership dues, sponsorships, or other contributions to an industry trade association or group. Provides that fees for professional licenses necessary for employee job duties may be recorded to accounts that contain expenses to be recovered from ratepayers.
- 9) Requires an electrical or gas corporation, for each business unit of the corporation that performs work associated with political influence activities or advertising, to annually file with the CPUC a report containing specified information, including the list of employee job titles, job description, total compensation, number of hours booked to an account for expenses, percent of total annual compensation. Requires the CPUC to make the report publicly available.
- 10) Requires the CPUC to assess a civil penalty against an electrical or gas corporation that violates the prohibition described in this bill, or that fails or neglects to comply with any part or provision of any order, decision, decree, rule, direction, demand, or requirement of the CPUC related to implementing the prohibition. Provides that the civil penalty is not less than \$10,000 and not more than \$100,000 for each violation.

- 11) Requires three-quarters of the moneys collected pursuant to any settlement or penalties collected by the CPUC for a violation of the prohibition to be deposited into the Zero-Emission Equity Fund, which this bill would establish in the State Treasury.
- 12) Authorizes the moneys in the Zero-Emission Equity Fund, upon appropriation by the Legislature, to be allocated for purposes of assisting low-income households in transitioning to zero-emission appliances to mitigate air quality and public health impacts of using combustion appliances.
- 13) Requires the balance, one-quarter, of the moneys collected, upon appropriation by the Legislature, to be used by the CPUC to increase resources for enforcing this bill's requirements.

Background

Cost recovery of expenses by investor-owned utilities (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 principal 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 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 (now four) 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 IOUs from recovering from ratepayers certain expenses, including 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. Additionally, IOUs must abide by CPUC orders.

FERC accounting and financial reporting. Federal Energy Regulatory Commission (FERC) jurisdiction Account 426.4 of the Uniform System of Accounts (USofA) requires that utility shareholders pay for expenditures for the purpose of influencing public opinion or the decisions of public offices. FERC has established regulatory accounting and financial reporting requirements for its jurisdictional entities in the electric, natural gas, and oil pipeline industries. These requirements play a vital role in FERC's strategy of setting just and reasonable cost-of-service rates. The foundation of the FERC's accounting program is the USofA codified in the agency's regulations. In addition, FERC issues accounting rulings relating to specific transactions and applications through orders and Chief Accountant guidance letters. This body of accounting regulations, orders, and guidance letters comprises the FERC's accounting and financial reporting requirements which promote consistent, transparent, and decision-useful accounting information for the FERC and other stakeholders. These accounting and financial reporting requirements take into consideration the FERC's ratemaking policies, past FERC actions, industry trends, and external factors (e.g., economic, environmental, and technological changes, and mandates from other regulatory bodies) that impact the industries under the agency's jurisdiction. Electric Public Utilities & Licensees, Natural Gas, and Oil Pipeline companies within FERC jurisdiction are required to maintain their books and records in accordance with the USofA. The USofA provides basic account descriptions, instructions, and accounting definitions that are useful in understanding the information reported in the Annual Report.

Comments

Need for this bill. The supporters of this bill state Californians should only pay their utilities to provide them with safe and reliable service. They contend that alongside the costs to provide service, such as the costs of utility infrastructure, utilities have been including the costs of their political influence in customers' bills. The supporters cite recent news reports and CPUC actions that identified utilities booking some costs to ratepayers that should have been booked to shareholders. These costs include those in relation to paying speakers and funding organizations to advocate against energy efficiency codes and standards, after a CPUC order prohibited the utility from doing so, and which subsequently resulted in the CPUC taking enforcement action.

Moreover, the supporters of this bill argue that California law needs to be strengthened to better define the expenses that utilities must charge their shareholders and are not recoverable from their customers. They suggest that this bill simply incorporates into state law the FERC USofA accounting and reporting requirements for electric and natural gas utilities, along with additional clarifications on their applicability, in order to stop utilities from continuing to attempt to charge political influence expenses to their customers. The supporters cite the continual need for intervenors in utility GRC proceedings to invest significant time and resources ensuring customers are protected from bearing these costs. Supporters cite various incidents where Southern California Gas Company (SoCalGas) used or attempted to use ratepayer funds to influence regulatory and local ordinances that supporters of this bill contend are not directly related to the safe operation of the system. Specifically, they list SoCalGas' involvement in the development of air quality State Implementation Plans at the California Air Resources Board and South Coast Air Quality Management District's Indirect Source Rule where the utility argued for policies to support the use of natural gas vehicles. As well as, the utility's funding for legal expenses for the California Restaurant Association's challenge of the City of Berkeley's ban on natural gas hookups in new construction. Additionally, the supporters push to limit the ability of utilities to collect from ratepayers the memberships to trade associations where those associations are engaged in lobbying activity. They point to similar restrictions adopted by Colorado, New York, Connecticut, and Maine.

Definitions of political influence activity clarified and expanded. This bill attempts to clarify and expand the definitions of political influence activities that would not be recoverable from ratepayers to include: an activity to influence rate-setting by the utility; the portion of a utility employee's salary/bonus/benefits that supports political influence activity; membership dues or other contributions to an industry trade association, group, or related entity incorporated under Section 501 of the IRS Code; costs directly related to appearing before governmental bodies to influence vehicle, appliance, or other equipment spending programs, incentives, or procurement requirements that would increase consumption of electricity or gas, or rules related to greenhouse gas emissions, or where the utility is not the applicant or respondent in a proceeding, or CPUC codes and standards/energy efficiency programs. This bill would require specified accounting and reporting of these activities, delineated as below-the-line activities.

Utilities argue that the proposals in this bill are too far reaching and could hurt customers. They argue that the limitations imposed by this bill go beyond those in the FERC USofA accounting and reporting and could conflict. They suggest that the current law already protects ratepayers from funding political influence, including advertising of a political nature. They, generally, point to the GRC

proceedings as the venues where these issues should be appropriately resolved and where dozens of intervenors can review, along with the CPUC. They believe the limitations imposed by the bill, particularly those in relation to limiting participation in regulatory proceedings unless they are a respondent or have been requested to participate, limits the ability of the utility to represent ratepayer interests. They note the need to participate in FERC proceedings on behalf of their customers, as well as, other proceedings where they are not the respondent. San Diego Gas & Electric notes their involvement in proceedings related to San Onofre Nuclear Generation Station (SONGS) which is jointly-owned with Southern California Edison (SCE), but where expense are booked to SCE's GRC.

CPUC General Order (GO) 77 requires specified annual reporting by IOUs. Specifically, GO-77 requires electric and gas IOUs annually report by May 31 list of officers and employees (with employee names are not disclosed in the public report) with the amount paid directly or indirectly to each employee and the proportion paid by ratepayers. The general order also requires electric and gas IOUs to each IOU to report by March 31 the total dues, donations, subscriptions, contributions, payments to attorneys. In this regard, much of the required reporting in SB 938 is required by GO-77. However, SB 938 requires specified accounting for these expenses and prohibits some that would otherwise be authorized, including those to fund associations where a portion of funds may contribute towards political influencing activities.

First Amendment Constitutional issues? In 2019 the Sierra Club alleged that an association, known as California for Balanced Energy Solutions (C4BES), which moved to obtain party status within a building decarbonization proceeding was actually funded by SoCalGas. Subsequently the Public Advocates Office (PAO) began investigating the allegation which culminated in efforts to compel discovery by the utility, including of contracts funded by shareholders. Ultimately, the CPUC sided with PAO and rejected the utility's claim to First Amendment infringement on freedom of speech. SoCalGas then appealed to the court. The court sided with SoCalGas, *Southern California Gas Co. v. Public Utilities Com. (2023) 87 Cal. App. 5th 324*. SoCalGas was successful in its argument to the court that the Public Advocates Office's inquiries were an infringement on the utility's First Amendment rights. The decision distinguished between the statutory authority of PAO, as more narrow, to that of the CPUC, while also acknowledging that SoCalGas has shown that disclosure of contracts funded by shareholders would impact its First Amendment rights. Furthermore, the court was convinced that disclosure of such information could result in a chilling effect on SoCalGas' ability to contract for services and that impact outweighs the interest to view the contracts paid by shareholders. However, it is unclear whether the courts would find a

similar decision if the CPUC compels this information directly, as opposed to PAO, but a challenge by the utilities could be likely.

Need for amendments. The author and committee may wish to make amendments to:

- *Preserve the ability of the CPUC to determine the appropriate penalty amount for violations in connection to the requirements proposed in this bill.*
- *Authorize a grace period that provides if an IOU adjusts the line-item the expense is booked to there would be no penalty of such an adjustment.*
- *Require that any moneys collected by fines and penalties are deposited into the state's General Fund, consistent with other CPUC fines and penalties.*
- *Additional clarifying changes.*

Prior/Related Legislation

AB 562 (Santiago, Chapter 429, Statutes of 2019) required that any expense incurred by an 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.

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:

Earthjustice, Co-sponsor

The Utility Reform Network, Co-sponsor

350: Bay Area Action, Conejo, So Cal, San Diego, South Bay LA, Southland

Legislative Alliance, and Ventura County Climate Hub

Acterra Action for A Healthy Planet

All Rise Alameda

Ballona Institute

Ban SUP

Building the Base Face to Face

California Alliance for Community Energy
California Climate Voters
California Environmental Justice Alliance Action
California Environmental Voters
California Solar & Storage Association
California State Council of Laborers
Californians for Energy Choice
California Public Interest Research Group
Center for Community Action & Environmental Justice
Central Valley Air Quality Coalition
Change Begins With Me
Clean Coalition
CleanEarth4Kids.org
Coastal Lands Action Network
Contra Costa MoveOn
Courageous Resistance
Custom Power Solar
Defend Ballona Wetlands
Democrats of Rossmoor
East Yard Communities for Environmental Justice
El Cerrito Progressives
Evergreen Action
Extinction Rebellion
Feminists in Action Los Angeles
Glendale Environmental Coalition
Hammond Climate Solutions
Hang Out Do Good
Indivisibles: 30/Keep Sherman Accountable, 36, 41, Alta-Pasadena, Auburn CA, Beach Cities, CA-7, CA-39, CA-43, CA-45, CA: StateStrong, CA-25 Simi Valley-Porter Ranch, California Green Team, Claremont/Inland Valley, Cloverdale, Colusa County, East Bay, East Valley, El Dorado Hills, Elmwood, Euclid, Hillcrest, Indian Valley, Livermore, Lorin, Los Angeles, Manteca, Marin, Media City Burbank, Mendocino, Normal Heights, North Oakland Resistance, North San Diego County, OC 46, OC 48, Orchard City, Petaluma, Resisters Walnut Creek, Ross Valley, Sacramento, San Bernardino, San Diego Central, San Jose, San Pedro, Santa Barbara, Santa Cruz County, Sausalito, Sebastopol, SF, SF Peninsula and CA-14, SFV, Sherman Oaks, Sonoma County, South Bay LA, Stanislaus, Suffragist, Tehama, TWW-Los Gatos, Vallejo-Benicia, Ventura, Westside LA, Windsor, Yalla, and Yolo
Local Clean Energy Alliance
Long Beach Alliance for Clean Energy
Long Beach Environmental Alliance

Mill Valley Community Action Network
Mountain Progressives
Nothing Rhymes with Orange
Orinda Progressive Action Alliance
Our Revolution Long Beach
Progressive Democrats of America, California
Progressive Democrats of Santa Monica Mountains
Récolte Energy
RiseUp
Rooted in Resistance
San Joaquin Valley Democratic Club
San Jose Community Energy Advocates
San Lorenzo Valley Women's Club Environmental Committee
San Luis Obispo Mothers for Peace
Silicon Valley Youth Climate Action
Sonoma County Democratic Party
Sustainable Rossmoor
Sustainable Systems Research Foundation
The Climate Alliance of Santa Cruz County
The Climate Reality Project: California Coalition
The Climate Reality Project: Silicon Valley
The Resistance Northridge
Together We Will Contra Costa
Union of Concerned Scientists
Venice Resistance
Women's Energy Matters
Women's Alliance Los Angeles
An Individual

OPPOSITION:

California Chamber of Commerce
California State Association of Electrical Workers
Coalition of California Utility Employees
Institute of Governmental Advocates
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Edison
Southern California Gas Company

ARGUMENTS IN SUPPORT: In support of this bill, Earthjustice and TURN state utilities:

...have been lobbying against the state's climate and clean air goals and improperly passing the costs of doing so onto their customers. SB 938 addresses these abuses by clearly defining the political and advertising activities which utility shareholders – and not ratepayers – are responsible for funding, creating strong transparency and penalty provisions to deter non-compliance, and prohibiting utilities from charging ratepayers for costly memberships to trade groups engaged in political influence activities.

ARGUMENTS IN OPPOSITION: Many of the organizations opposed to this bill state that SB 938's provisions are not needed as the CPUC already has the ability to enforce and assess penalties for any violation of its order. Many of the utilities opposed also state that SB 938 is duplicative to existing FERC accounting guidance and CPUC oversight. They contend that the CPUC can, has, and does order modifications to update their guidelines. The opponents also raise concerns that this bill hurts ratepayers by prohibiting utilities from engaging in activities that increase consumption of electricity, even if those policies would help the state achieve its clean energy and greenhouse gas reduction goals.

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