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

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

Bill No:	AB 2054	Hearing Date:	7/2/2024
Author:	Bauer-Kahan		
Version:	5/16/2024 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Nidia Bautista		

SUBJECT: Energy: employment, gifts, and rates

DIGEST: This bill authorizes the California Public Utilities Commission (CPUC) to allocate between ratepayers and shareholders any costs recorded in a balancing account above an authorized forecast. Additionally requires all proposed investor owned utility (IOU) wildfire spending to include a cost-benefit analysis with at least one credible alternative. Finally, prohibits leadership at the CPUC, Public Advocates Office (PAO), and California Energy Commission (CEC) from receiving gifts or employment (for at least one year) by any entity subject to regulation by their body.

ANALYSIS:

Existing law:

- 1) 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 Code §451)
- 2) Prohibits any CPUC commissioner from holding an official relation to or financial interest in any person or corporation subject to regulation by the CPUC. Further prohibits public utility executives from CPUC appointments for a period of two years following employment with the utility. (Public Utilities Code §303)
- 3) Establishes the PAO as an independent office within the CPUC to advocate for utility customers. Specifies that the PAO director is appointed by and serves at the pleasure of the Governor, subject to Senate confirmation. (Public Utilities Code §309.5)
- 4) Mandates the CPUC to require utilities to maintain balancing accounts reflecting the balance between the related costs and revenues whenever the CPUC authorizes a change in rates. Additionally requires the CPUC to take action on any balance remaining during a subsequent rate adjustment. (Public Utilities Code §792.5 (a))

- 5) Mandates the CPUC develop a risk-based approach for auditing utility balancing accounts, and to maintain an inventory of the balancing accounts. Permits the CPUC from auditing any balancing account an independent audit has reviewed in the preceding five years. (Public Utilities Code §792.5 (b)-(f))
- 6) Requires the CPUC to annually report on the status of its balancing account audit activities, and to share the report publicly, as specified. (Public Utilities Code §910.7)
- 7) Establishes revolving door policies for members of the Legislature, elected state officers, and designated executive branch employees, prohibiting employment that influences their former body for one year after leaving office. (Government Code §87406)

This bill:

- 1) Prohibits a member of the CEC from being employed by an entity subject to regulation by the CEC for a period of one year after ceasing to be a member of the CEC. This bill would prohibit a member of the CEC from accepting a gift from an entity subject to regulation by the CEC. By expanding the application of an existing crime, this bill would impose a state-mandated local program.
- 2) Prohibits a CPUC commissioner from being employed by an entity subject to regulation by the CPUC for a period of one year after the end of the commissioner's term of office. Prohibits a CPUC commissioner from accepting a gift from an entity subject to regulation by the CPUC.
- 3) Prohibits the director of the PAO from being employed by an entity subject to regulation by the CPUC for a period of one year after the end of the director's term of office. Prohibits the director from accepting a gift from an entity subject to regulation by the CPUC.
- 4) Authorizes any costs above the authorized forecast to be allocated between ratepayers and shareholders in any instance where the CPUC authorizes a forecast for a category of costs in a ratesetting proceeding and authorizes the recording of costs in an existing or new balancing account for potential rate recovery above the authorized forecast. Requires all proposed electrical corporation spending for wildfire expenses that is eligible for rate recovery to include a cost-benefit analysis of the proposed expenses and at least one credible alternative, as specified.

Background

This bill has two distinct provisions: first, related to IOU rate regulation at the CPUC; second, related to regulatory cooling-off periods and gift prohibitions.

IOU rate regulation. The main way the CPUC regulates IOU rates is the general rate case (GRC), an adversarial process occurring every four years (every three years in some cases) at which the IOU asserts all anticipated costs of doing business, as well as, uncompensated costs the IOU incurred prior to the immediate GRC. Various parties dispute the IOU's purported costs and the CPUC, having considered the evidence, authorizes an amount of money the IOU may collect from its ratepayers the CPUC deems sufficient to cover all the IOU's just and reasonable costs, plus a reasonable amount of return on investment.

There are methods, however, by which an IOU may recover costs beyond that which the CPUC approved in the GRC. One such method – the subject of this bill – is the use of balancing accounts. Generally, the CPUC authorizes an IOU to use a balancing account to track costs for a defined scope of work that are foreseeable but difficult to estimate accurately (fuel costs, for example) and authorizes the IOU to collect those costs from ratepayers. However, if the actual costs the IOU records in the balancing account differs from the amount the CPUC approved the IOU to collect, then the CPUC will adjust the IOU's rates to reflect the difference. It is important to note that the CPUC generally does not review an IOU's balancing account expenditures for reasonableness, though the CPUC may periodically audit such an account.

An advantage of the use of balancing accounts is they allow an IOU to undertake work with uncertain costs without waiting for approval through the CPUC's GRC. A disadvantage of the use of such accounts is the CPUC may scrutinize costs recorded in them less closely than it does costs asserted in the IOU's GRC. This bill permits the CPUC to establish cost-sharing arrangements for balancing account overruns, where a portion of the costs may be paid by the IOU shareholders. Such arrangements have happened historically at the CPUC – such as Pacific Gas & Electric's (PG&E) smart-meter deployment – and provide an "incentive to minimize and mitigate [project] overruns."

Regulator cooling-off period. It is common to restrict the prospective employment opportunities of public sector policy makers. For example, existing law restricts, for one year from leaving office, the ability of a member of the California Legislature, a statewide elected official or anyone in certain executive branch positions from taking employment to influence the body they served. Similarly, existing law generally

restricts, for two years, a person who worked for a regulated utility or related industries from serving on either the CEC or the CPUC.

This bill mirrors these other cooling-off period policies by prohibiting a commissioner of the CEC or the CPUC or the director of the PAO from being employed by an entity subject to regulation by the CEC or the CPUC, respectively, within one year following the end of the commissioner's or director's term in office with the CEC or CPUC, as relevant. However, in the case of the CEC, existing statute requires a 2 year cooling-off period.

Comments

Need for bill. The proponents of this bill contend: AB 2054 takes a two-pronged approach to prevent regulatory capture by regulated entities. First, it prohibits commissioners at the CPUC, CEC and the PAO from working at regulated entities for one year. This cooling-off period will better insulate regulators from conflicts-of-interest, and reduce the pressure to acquiesce to unnecessary rate increases. The second element of AB 2054 directly addresses utility spending. An increasing portion of utility costs are being tracked in and requested via applications for recovery of balancing accounts. This bill aims to address challenges with ensuring utilities are spending appropriately within the forecasts included in the GRC proceeding for the balancing accounts. This bill would require review of amounts above the forecasts and explicitly require the CPUC to determine particular accounts where the utility has made a showing in a GRC proceeding and the CPUC has weighed the evidence to determine a just and reasonable forecast for a program. Over recent years the utilities have requested billions of dollars via balancing accounts.

Impacts to ratepayers. Energy utility rates have been rising and affordability continues to be a central concern for the Legislature and Californians. In the 2023 State Auditor report on the CPUC and the PAO reports that as of December 2022, the large energy IOUs maintained over 300 balancing accounts tracking \$16.8 billion in balances. This represents a third of IOU authorized revenue. In some scenarios a balancing account is a helpful tool that allows the utility to track costs that are otherwise difficult to forecast in advance. In other scenarios, the opportunity to track costs in a balancing account may undermine or even removes the incentives for the utility to assert spending discipline. The proponents of this bill attempt to address this issue by authorizing the CPUC to split costs between ratepayers and shareholders for the amounts above the forecasts. While such an arrangement may create incentives to stymie spending beyond the forecasts, safety considerations could be undermined.

Amendments needed. Instead the author and committee may wish to amend this bill to require the CPUC, as the economic regulator, to report on its review of these accounts. Specifically, *the author and committee may wish to amend this bill to:*

- *Delete language referencing shareholders, as the CPUC cost review necessarily determines whether utility costs are recoverable from ratepayers.*
- *Narrow the requirements of the application of the cost-benefit analysis to wildfire mitigation capital costs.*
- *Require annually reporting by the CPUC to the Legislature as to the status of balancing accounts, including that have costs over forecasts, the reviews the CPUC has conducted of these costs, totals (including in reference to the annual revenue requirement) and the costs by utility the CPUC has approved and denied.*
- *Delete first section of the bill regarding CEC commissioners, as existing law already provides these protections, including a two-year cooling-off period.*

Prior/Related Legislation

AB 3256 (Irwin, 2024) requires the CPUC, before July 1, 2025, to conduct a comprehensive audit of each wildfire- or emergency-related memorandum or balancing account of each electrical corporation. The bill is pending in this committee.

SB 1003 (Dodd, 2024) requires electrical corporations to take into account both the amount of wildfire risk reduction for the cost-effectiveness and time value of the proposed mitigation measure within the utility's wildfire mitigation plan. The bill is pending in the Assembly.

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

SUPPORT:

The Utility Reform Network, Sponsor
 350 Bay Area Action and 350 Sacramento
 Active San Gabriel Valley
 Ban Single Use Plastics
 California Alliance for Community Energy
 California Environmental Justice Alliance
 California Interfaith Power and Light
 California Solar & Storage Association
 California Trade Justice Coalition
 Center for Biological Diversity
 Center for Community Energy

CleanEarth4Kids.org
Climate Action California
Consumer Watchdog
Contra Costa MoveOn
East Bay Clean Power Alliance
Environmental Working Group
Friends of the River
Hammond Climate Solutions Foundation
Indivisibles: CA: StateStrong, Cloverdale, Livermore, Sacramento, San Jose,
Santa Cruz Mountains, and South Bay LA
Local Clean Energy Alliance
Media Alliance
Peninsula Clean Energy
Physicians for Social Responsibility, San Francisco Bay
Reclaim Our Power
Récolte Energy
Santa Cruz Climate Action Network
San Diego Energy District
San Francisco Public Utilities Commission
San José Community Energy Advocates
SLO Climate Coalition
Solano County Democratic Central Committee
Sonoma County Democratic Party
Stand.earth
Sustainable Rossmoor
Sustainable Systems Research Foundation
The Climate Center
The Climate Reality Project: San Diego Chapter, San Francisco Bay Area Chapter,
and Silicon Valley Chapter
Vote Solar
West L.A. Democratic Club

OPPOSITION:

California State Association of Electrical Workers
California Water Association
Coalition of California Utility Employees
Pacific Gas and Electric Company
San Diego Gas & Electric
Southern California Edison
Southern California Gas Company

ARGUMENTS IN SUPPORT: The Utility Reform Network (TURN), the sponsor of the bill, states:

When the CPUC approves a utility forecast it is balancing the ability of the ratepayers to bear additional costs in rates with the budget needed to operate a safe and reliable system. Allowing the utilities to track and request additional costs when the CPUC has already adopted a forecast budget reduces the ability of the CPUC to manage rate increases. AB 2054 should limit the additional requests for ratepayer costs to only what is strictly necessary. AB 2054 also better ensures that the CPUC have before it a range of options, by requiring cost-benefit information not only about the utility's proposed program, but also of an alternative mitigation approach. If the CPUC is going to achieve success in reining in the current pattern of ever-increasing rates, it needs to consider not only a utility's proposed approach, but also the options the utility considered but chose not to put forward. ...Not only is greater spending discipline needed now to ensure that there is room in rates to absorb these additional costs, but strong regulatory mechanisms are required to ensure that utilities don't overspend future ratepayer dollars.

ARGUMENTS IN OPPOSITION: The energy investor-owned utilities, PG&E, SCE, SDG&E, and SoCalGas state:

AB 2054 would allow the PUC to deny rate recovery of costs that are deemed just and reasonable, including safety related costs, which creates uncertainty for crucial infrastructure investments. This is contrary to the United States Constitution and long-standing United States Supreme Court precedent. Utility balancing accounts are utilized to record authorized revenues and incurred costs for a particular activity. These accounts track costs that are subject to uncertainty and difficult to forecast and provide an opportunity for a utility to seek recovery of prudently incurred costs through mechanisms authorized by the PUC. Depending on the activity, the PUC sets different requirements for each balancing account.

AB 2054 requires consideration of potential "alternatives" and "cost-benefit" analyses that are not always feasible for utility wildfire mitigation investments and the use of the term expenses is too broad. The PUC already analyzes proposed wildfire mitigation investments in the Risk Assessment and Mitigation Program which feeds into the GRC. This risk-based decision-making framework in combination with the Safety Model Assessment Proceeding is used to identify, rank and develop mitigations for top operational safety risks while continuing to carry out the PUC's mandate to ensure that rates are just and reasonable.

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