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AB-913 Electrical corporations: wildfire and undercollection. (2019-2020)

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Assembly Bill No. 913

CHAPTER 253

An act to amend Sections 850 and 3280 of the Public Utilities Code, relating to electricity.

[Approved by Governor September 29, 2020. Filed with Secretary of State September 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 913, Calderon. Electrical corporations: wildfire and undercollection.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law authorizes the commission to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law authorizes an electrical corporation to file an application requesting the commission to issue a financing order to authorize the recovery of costs and expenses related to a catastrophic wildfire through the issuance of bonds by the electrical corporation that are secured by a rate component, as provided.

This bill would authorize an electrical corporation to file an application requesting the commission to issue a financing order to authorize the recovery of certain incremental undercollection amounts for calendar year 2020 through the issuance of bonds by the electrical corporation that are secured by a rate component if the electrical corporation's annual true-up advice letter is accepted and verified and those incremental amounts are verified for calendar year 2020. The bill would prohibit the recovery of the incremental undercollection amounts that are subject to such a financing order through any other cost recovery application, mechanism, or request by the electrical corporation.

Existing law establishes the Wildfire Fund to pay eligible claims arising from a wildfire ignited on or after July 12, 2019, caused by an electrical corporation as determined by the governmental agency responsible for determining causation. Existing law defines "eligible claims" as claims for third-party damages against an electrical corporation resulting from covered wildfires exceeding the greater of \$1,000,000,000 in the aggregate in any calendar year, or the amount of the insurance coverage required to be in place for the electrical corporation, measured by the amount of that excess.

This bill would revise the definition of "eligible claim" to change "calendar year" to "year."

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because certain of the above provisions would require action by the commission, a violation of which would be a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The COVID-19 pandemic has caused devastating hardship for California's residents and businesses.

(2) As a result of the economic crisis brought on by COVID-19, many customers have been unable to pay their electrical utility bills.

(3) As a further result of the economic crisis brought on by COVID-19, electricity consumption has decreased, and the amount of revenue the electrical corporations, regulated by the Public Utilities Commission, will recover is thus expected to be below authorized forecasts.

(4) The electrical corporations would implement rate increases in the short term, to recover revenue shortfalls resulting from declining sales and unpaid bills, and such rate increases would come at a time of economic stress and uncertainty.

(5) Securitization is a proven method of stabilizing rates by smoothing rate increases over a longer period of time.

(b) It is the intent of the Legislature to authorize the Public Utilities Commission to approve the securitization of revenue shortfalls associated with the economic effects of the COVID-19 pandemic.

SEC. 2. Section 850 of the Public Utilities Code is amended to read:

850. (a) This article applies in any of the following circumstances:

(1) If an electrical corporation applies to the commission for recovery of costs and expenses related to a catastrophic wildfire and the commission finds some or all of the costs and expenses to be reasonable pursuant to Section 451.1, or for the amount of costs and expenses determined pursuant to subdivision (c) of Section 451.2, then the electrical corporation may file an application requesting the commission to issue a financing order to authorize these costs and expenses to be recovered through fixed recovery charges pursuant to this article.

(2) If an electrical corporation submits an application for recovery of costs and expenses related to catastrophic wildfires, including fire risk mitigation capital expenditures identified in subdivision (e) of Section 8386.3, in a proceeding to recover costs and expenses in rates and the commission finds that some or all of the costs and expenses identified in the electrical corporation's application are just and reasonable pursuant to Section 451, the electrical corporation may file an application requesting the commission to issue a financing order to authorize the recovery of those just and reasonable costs and expenses by means of a financing order, with those costs and expenses being recovered through a fixed charge pursuant to this article. This paragraph does not apply for costs and expenses incurred by the electrical corporation after December 31, 2035.

(3) (A) An electrical corporation may file an application requesting the commission to issue a financing order to authorize the recovery of verified incremental undercollection amounts for calendar year 2020 through fixed recovery charges pursuant to this article, if an electrical corporation's annual true-up advice letter is accepted and either or both of the following incremental undercollection amounts are verified for calendar year 2020:

(i) An incremental undercollection amount equal to the difference between the forecasted amount of billed revenues for that year, based on the authorized sales forecast, and the revenues actually billed by an electrical corporation with respect to all revenue balancing accounts, if the incremental amount as a percent of the forecasted amount of billed revenues for that year is at least 5 percent.

(ii) An incremental undercollection amount equal to the residential and small business customer bad debt expense recorded for that year that exceeds the bad debt expense for that year that was adopted by the commission in the general rate case, if the incremental undercollection amount is otherwise eligible for recovery in rates.

(B) The incremental undercollection amounts subject to a commission-approved financing order shall be prohibited from being recovered through any other cost recovery application, mechanism, or request by the electrical corporation.

(C) The commission shall ensure any costs included in incremental undercollections described in this paragraph and subject to a financing order are just and reasonable consistent with the requirements of subdivision (a) of Section 850.1.

(D) In resolving a request for the issuance of a financing order, the commission may assign cost recovery to each customer class based on their contribution to the incremental undercollection described in this paragraph.

(b) For the purposes of this article, the following terms shall have the following meanings:

(1) "Ancillary agreement" means a bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement, or other similar agreement or arrangement entered into in connection with the issuance of recovery bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

(2) "Catastrophic wildfire amounts" means the portion of costs and expenses the commission finds to be just and reasonable pursuant to Section 451.1 or the amount determined pursuant to subdivision (c) of Section 451.2.

(3) "Consumer" means any individual, governmental body, trust, business entity, or nonprofit organization that consumes electricity that has been transmitted or distributed by means of electric transmission or distribution facilities, whether those electric transmission or distribution facilities are owned by the consumer, the electrical corporation, or any other party.

(4) "Financing costs" means the costs to issue, service, repay, or refinance recovery bonds, whether incurred or paid upon issuance of the recovery bonds or over the life of the recovery bonds, if they are approved for recovery by the commission in a financing order. "Financing costs" may include any of the following:

(A) Principal, interest, and redemption premiums that are payable on recovery bonds.

(B) A payment required under an ancillary agreement.

(C) An amount required to fund or replenish reserve accounts or other accounts established under an indenture, ancillary agreement, or other financing document relating to the recovery bonds.

(D) Taxes, franchise fees, or license fees imposed on fixed recovery charges.

(E) Costs related to issuing and servicing recovery bonds or the application for a financing order, including, without limitation, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees, administrative fees, underwriting and placement fees, financial advisory fees, original issue discount, capitalized interest, rating agency fees, and any other related costs that are approved for recovery in the financing order.

(F) Other costs as specifically authorized by a financing order.

(5) "Financing entity" means the electrical corporation or any subsidiary or affiliate of the electrical corporation that is authorized by the commission to issue recovery bonds or acquire recovery property, or both.

(6) "Financing order" means an order of the commission adopted in accordance with this article, which shall include, without limitation, a procedure to require the expeditious approval by the commission of periodic adjustments to fixed recovery charges and to any associated fixed recovery tax amounts included in that financing order to ensure recovery of all recovery costs and the costs associated with the proposed recovery, financing, or refinancing thereof, including the costs of servicing and retiring the recovery bonds contemplated by the financing order.

(7) "Fixed recovery charges" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are authorized by the commission in a financing order to recover both of the following:

(A) Recovery costs specified in the financing order.

(B) The costs of recovering, financing, or refinancing those recovery costs through a plan approved by the commission in the financing order, including the costs of servicing and retiring recovery bonds.

(8) "Fixed recovery tax amounts" means those nonbypassable rates and other charges, including, but not limited to, distribution, connection, disconnection, and termination rates and charges, that are needed to recover federal and State of California income and franchise taxes associated with fixed recovery charges authorized by the commission in a financing order, but are not approved as financing costs financed from proceeds of recovery bonds.

(9) "Recovery bonds" means bonds, notes, certificates of participation or beneficial interest, or other evidences of indebtedness or ownership, issued pursuant to an executed indenture or other agreement of a financing entity, the proceeds of which are used, directly or indirectly, to recover, finance, or refinance recovery costs, and that are directly or indirectly secured by, or payable from, recovery property.

(10) "Recovery costs" means any of the following:

(A) The catastrophic wildfire amounts or costs pursuant to paragraph (2) of subdivision (a) authorized by the commission in a financing order for recovery.

(B) The incremental undercollection amounts that the commission authorizes for recovery in a financing order pursuant to paragraph (3) of subdivision (a).

(C) Federal and State of California income and franchise taxes associated with recovery of the amounts pursuant to subparagraph (A) or (B).

(D) Financing costs.

(E) Professional fees, consultant fees, redemption premiums, tender premiums, and other costs incurred by the electrical corporation in using proceeds of recovery bonds to acquire outstanding securities of the electrical corporation, as authorized by the commission in a financing order.

(11) (A) "Recovery property" means the property right created pursuant to this article, including, without limitation, the right, title, and interest of the electrical corporation or its transferee:

(i) In and to the fixed recovery charges established pursuant to a financing order, including all rights to obtain adjustments to the fixed recovery charges in accordance with Section 850.1 and the financing order.

(ii) To be paid the amount that is determined in a financing order to be the amount that the electrical corporation or its transferee is lawfully entitled to receive pursuant to the provisions of this article and the proceeds thereof, and in and to all revenues, collections, claims, payments, moneys, or proceeds of or arising from the fixed recovery charges that are the subject of a financing order.

(B) "Recovery property" shall not include a right to be paid fixed recovery tax amounts.

(C) "Recovery property" shall constitute a current property right, notwithstanding the fact that the value of the property right will depend on consumers using electricity or, in those instances where consumers are customers of the electrical corporation, the electrical corporation performing certain services.

(12) (A) "Revenue balancing account" means a balancing account reflecting the balance between the electrical corporation's authorized revenue requirements relating to the volumetric sale of electricity and billed revenues associated with those sales. A revenue balancing account includes accounts reflecting the balance between the electrical corporation's authorized distribution base revenue requirements and recorded billed revenues from authorized distribution rates, and accounts reflecting the difference between the amount of the discount provided to consumers enrolled in the California Alternative Rates for Energy ("CARE") program and the CARE surcharge charged to non-CARE consumers.

(B) "Revenue balancing account" shall not include amounts reflecting the balance between costs and expenses relating to fuel and purchased electricity by the electrical corporation.

(13) "Service territory" means the geographical area that the electrical corporation provides with electric distribution service.

(14) "True-up adjustment" means a formulaic adjustment to the fixed recovery charges as they appear on customer bills that is necessary to correct for any overcollection or undercollection of the fixed recovery charges authorized by a financing order and to otherwise ensure the timely and complete payment and recovery of recovery costs over the authorized repayment term.

SEC. 3. Section 3280 of the Public Utilities Code is amended to read:

3280. For purposes of this part, the following definitions apply:

(a) "Administrator" means the Wildfire Fund Administrator appointed pursuant to Section 8899.72 of the Government Code.

(b) "Annual contribution" means either of the following:

(1) For an electrical corporation that qualifies as a large electrical corporation at the end of the prior calendar year, an amount equal to three hundred million dollars (\$300,000,000) multiplied by the Wildfire Fund allocation metric.

(2) For an electrical corporation that qualifies as a regional electrical corporation at the end of the prior calendar year, an amount equal to twenty-five dollars (\$25) multiplied by the number of customer accounts serviced by the electrical corporation within the state at the end of that calendar year.

(c) "Council" means the California Catastrophe Response Council created pursuant to Section 8899.70 of the Government Code.

(d) "Covered wildfire" has the same meaning as set forth in Section 1701.8.

(e) "Electrical corporation" has the same meaning as set forth in Section 218.

(f) "Eligible claims" means claims for third-party damages against an electrical corporation resulting from covered wildfires exceeding the greater of (1) one billion dollars (\$1,000,000,000) in the aggregate in any year, or (2) the amount of the insurance coverage required to be in place for the electrical corporation pursuant to Section 3293, measured by the amount of that excess.

(g) "Fund" means the Wildfire Fund created pursuant to Section 3284.

(h) "High fire-threat district" means areas identified as tier 2 (elevated) or tier 3 (extreme) fire risk on the fire-threat map maintained by the commission.

(i) "Initial contribution" means either of the following:

(1) For a large electrical corporation, an amount equal to seven billion five hundred million dollars (\$7,500,000,000) multiplied by the Wildfire Fund allocation metric.

(2) For a regional electrical corporation, an amount equal to six hundred twenty-five dollars (\$625) multiplied by the number of customer accounts serviced by the electrical corporation within the state as of July 12, 2019.

(j) "Insolvency proceeding" means a bankruptcy, insolvency, liquidation, reorganization, or similar proceeding brought pursuant to Title 11 of the United States Code.

(k) "Large electrical corporation" means an electrical corporation with 250,000 or more customer accounts within the state.

(l) "Participating electrical corporation" means an electrical corporation that satisfies the conditions to participate in the fund pursuant to Section 3291 or 3292, as applicable.

(m) "Regional electrical corporation" means an electrical corporation with less than 250,000 customer accounts within the state.

(n) "Wildfire Fund allocation metric" means, for each large electrical corporation, the arithmetic average of (1) the land area of the electrical corporation's territory, measured in square miles, in the high fire-threat districts as a proportion of all large electrical corporations' territory in the high fire-threat districts and (2) the electrical corporation's line miles of transmission and distribution lines in the high fire-threat districts as a proportion of all large electrical corporations' line miles of transmission and distribution lines in the high fire-threat districts. The large electrical corporations' averages shall then be adjusted to account for risk mitigation efforts. This adjustment shall reduce the allocation to electrical corporations that have invested historically in mitigation efforts and those allocations shall be reallocated to the other electrical corporations based on their proportionate share resulting from the initial calculation above. The Wildfire Fund allocation metric shall be determined by the Director of Finance no later than July 17, 2019. It is the expectation of the Legislature that the Wildfire Fund allocation metric is 64.2 percent for Pacific Gas and Electric Company, 31.5 percent for Southern California Edison Company, and 4.3 percent for San Diego Gas and Electric Company. If a new electrical corporation that is a large electrical corporation is admitted to the Wildfire Fund, the administrator shall promptly determine and publish a revised Wildfire Fund allocation metric based on the factors set forth in this subdivision.

(o) "Wildfire Fund assets" means the sum of all moneys and invested assets held in the fund which shall include, without limitation, any loans or other investments made by the state to the fund, all interest or other income from the investment of money held in the fund, any other funds specifically designated for the fund by applicable law, the proceeds of any special charge (or continuation of existing charge) allocated to and deposited into the fund, reinsurance, and the proceeds of any bonds issued for the benefit of the fund.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.