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SB-550 Public utilities: merger, acquisition, or control of electrical or gas corporations. (2019-2020)

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Senate Bill No. 550

CHAPTER 409

An act to amend Sections 851 and 854 of the Public Utilities Code, relating to public utilities.

[Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 550, Hill. Public utilities: merger, acquisition, or control of electrical or gas corporations.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law prohibits a public utility, other than certain common carriers, from selling, leasing, assigning, mortgaging, or otherwise disposing of, or encumbering its assets that are necessary or useful in the performance of its duties to the public by any means with any other public utility, unless the public utility has secured an order from the commission to do so for a qualified transaction above \$5,000,000 or an approval from the commission through the filing of an advice letter for a qualified transaction at or below \$5,000,000.

This bill would eliminate the requirement that the above-described transactions be with another public utility to be subject to those conditions on approval. The bill would explicitly require the commission to approve or reject any voluntary or involuntary change in ownership of assets from an electrical or gas corporation to ownership by a public entity and would require the commission to determine whether that transaction is fair and reasonable to the affected public utility employees as part of that review.

(2) Existing law prohibits a person or corporation, including a public entity, from merging, acquiring, or controlling, as described, either directly or indirectly, any public utility organized and doing business in this state without first securing authorization to do so from the commission. 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 requires the commission 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.

This bill would require the commission, before authorizing a merger, acquisition, or change in control of an electrical or gas corporation, where an entity to the proposed transaction has gross annual California revenues exceeding \$400,000,000, to additionally consider specified elements relating to the safety activities of an electrical or gas corporation, including a nonpunitive system for reporting potential safety incidents to the commission, and find, on balance, that the proposal is in the public interest. The bill would authorize the commission to delay the requirement that the commission consider these specified elements and find, on balance, that the proposal is in the public interest, until July 1, 2021, or until the commission adopts rules implementing this requirement, whichever is earlier. The bill would prohibit 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 nonpunitive system for reporting potential safety incidents. The bill would eliminate the requirement for these reviews for a change in ownership in the assets of an electrical or gas corporation to ownership by a public entity.

(3) Under existing law, a violation of any provision of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill are within the act and a violation of an order, decision, rule, direction, demand, or requirement of the commission implementing the bill's requirements would be a crime, the 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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 851 of the Public Utilities Code is amended to read:

851. (a) A public utility, other than a common carrier by railroad subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000), or for qualified transactions valued at five million dollars (\$5,000,000) or less, filed an advice letter and obtained approval from the commission authorizing it to do so. If the advice letter is uncontested, approval may be given by the executive director or the director of the division of the commission having regulatory jurisdiction over the utility. The commission shall determine the types of transactions valued at five million dollars (\$5,000,000) or less, that qualify for advice letter handling. For a qualified transaction valued at five million dollars (\$5,000,000) or less, the commission may designate a procedure different than the advice letter procedure if it determines that the transaction warrants a more comprehensive review. Absent protest or incomplete documentation, the commission shall approve or deny the advice letter within 120 days of its filing by the applicant public utility. The commission shall reject any advice letter that seeks to circumvent the five million dollar (\$5,000,000) threshold by dividing a single asset with a value of more than five million dollars (\$5,000,000), into component parts, each valued at less than five million dollars (\$5,000,000). Every sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the advice letter and approval from the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture.

(b) (1) Subdivision (a) shall apply to any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2.

(2) For any transaction described in subparagraph (F) of paragraph (1) of subdivision (b) of Section 854.2, as part of its review under subdivision (a), the commission shall determine whether the transaction is fair and reasonable to affected public utility employees, including both union and nonunion employees.

(c) This section does not prevent the sale, lease, encumbrance, or other disposition by any public utility of property that is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property that is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee, or encumbrancer dealing with that property in good faith for value, provided that this section does not apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

SEC. 2. Section 854 of the Public Utilities Code is amended to read:

854. (a) No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control, including pursuant to a change in control as described in subparagraphs (D) to (E), inclusive, of paragraph (1) of subdivision (b) of Section 854.2, either directly or indirectly, any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

(b) 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 utilities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall find that the proposal does all of the following:

- (1) Provide short-term and long-term economic benefits to ratepayers.
- (2) Equitably allocate, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.
- (3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.
- (4) For an electric or gas utility, ensure the utility will have an adequate workforce to maintain the safe and reliable operation of the utility assets.

(c) 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 five hundred million dollars (\$500,000,000), the commission shall consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest.

- (1) Maintain or improve the financial condition of the resulting public utility doing business in the state.
- (2) Maintain or improve the quality of service to public utility ratepayers in the state.
- (3) Maintain or improve the quality of management of the resulting public utility doing business in the state.
- (4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.
- (5) Be fair and reasonable to the majority of all affected public utility shareholders.
- (6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.
- (7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.
- (8) Provide mitigation measures to prevent significant adverse consequences that may result.

(d) (1) Before authorizing the merger, acquisition, or change in control of any electrical or gas 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 four hundred million dollars (\$400,000,000), the commission shall consider the elements in subparagraphs (A) to (G), inclusive, and find, on balance, that the proposal is in the public interest.

(A) A safety management system.

(B) A comprehensive safety plan that includes a systemwide strategic approach for the safety of both employees and the public.

(C) Plans to maintain or improve the records of the electrical corporation's electric plant or gas corporation's gas plant, including necessary audits to update incorrect or incomplete records of the electrical or gas corporation. For purposes of this paragraph, "records" shall include, but not be limited to, locations, depth, age, maintenance and testing history, maps, surveys, patrols, and violation history of the electrical corporation's electric plant or gas corporation's gas plant.

(D) Metrics to measure safety that are complete and drive appropriate behavior.

(E) An appropriate evaluation of safety expertise in the list of qualifications used in selecting corporate leadership.

(F) Active audits for safety controls.

(G) A nonpunitive system for reporting potential safety incidents to the commission to facilitate the identification of accident precursors by persons familiar with the operations of the electrical or gas corporation, including, but not limited to, employees and contractors of the electrical or gas corporation, and the collection, analysis, and dissemination of unbiased safety information. An employee of, or the employee of a contractor performing work for, the electrical or gas corporation

shall not be subject to demotion, discharge, or any other form of retaliation or discrimination for participating in the potential safety incident reporting system established pursuant to this subdivision.

(2) The commission may delay the implementation of this subdivision until July 1, 2021, or until the commission adopts rules implementing the requirements of this subdivision, whichever is earlier.

(e) When reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.

(f) The person or corporation seeking acquisition or control of a public utility organized and doing business in this state shall have, before the commission, the burden of proving by a preponderance of the evidence that the requirements of subdivisions (b), (c), and (d) are met.

(g) In determining whether an acquiring utility has gross annual revenues exceeding the amount specified in subdivisions (b) and (c), the revenues of that utility's affiliates shall not be considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control.

(h) Paragraphs (1) and (2) of subdivision (b) shall not apply to the formation of a holding company.

(i) For purposes of paragraphs (1) and (2) of subdivision (b), the Legislature does not intend to include acquisitions or changes in control that are mandated by either the commission or the Legislature as a result of, or in response to any electric industry restructuring. However, the value of an acquisition or change in control may be used by the commission in determining the costs or benefits attributable to any electric industry restructuring and for allocating those costs or benefits for collection in rates.

SEC. 3. 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.