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AB-242 Public utilities. (2021-2022)

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Date Published: 09/24/2021 02:00 PM

Assembly Bill No. 242

CHAPTER 228

An act to amend Sections 398.4, 854, 913.5, 913.6, 1701.8, and 3280 of, and to repeal Sections 913.2, 913.10, and 913.11 of, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 23, 2021. Filed with Secretary of State September 23, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 242, Holden. Public utilities.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities. Existing law requires every entity that offers an electricity product for sale to retail consumers in California to disclose its electricity sources and the associated intensity of greenhouse gas emissions for the previous calendar year. Existing law requires that disclosure to be made by the end of the first complete billing cycle for the third quarter of each year.

This bill would require that disclosure to be made instead on the retail supplier's internet website by October 1 of each year, and in written promotional materials by the end of the first complete billing cycle for the fourth quarter of the year.

(2) Existing law requires the commission to make various reports to the Legislature relating to energy efficiency.

This bill would consolidate 3 of those reports into a single report and, in doing so, would increase the frequency with which certain energy efficiency information would be reported.

Existing law requires the commission to annually report recommendations for a smart grid, the plans and deployment of smart grid technologies by the state's electrical corporations, and the costs and benefits of smart grids to ratepayers.

This bill would repeal that reporting requirement.

Existing law requires the commission, on or before February 1, 2010, and biennially thereafter, to report on the impacts of distributed energy generation on the state's distribution and transmission grid, as specified.

This bill would instead require the commission, on or before February 1, 2023, and biennially thereafter, to report on the progress made toward modernizing the state's distribution and transmission grid and the impacts of distributed energy resources on the state's distribution and transmission grid, as specified.

(3) Existing law creates the Wildfire Fund, which is a continuously appropriated fund, to provide funds to participating electrical corporations to satisfy eligible claims arising from covered wildfires, as specified. Existing law authorizes electrical corporations to participate in the Wildfire Fund if they provide initial and annual contributions to the fund, as specified. Under existing law, "covered wildfire" means a wildfire ignited on or after July 12, 2019, caused by an electrical corporation as determined by the governmental agency responsible for determining causation.

This bill would additionally include as covered wildfires those wildfires determined by a court of competent jurisdiction to be caused by an electrical corporation, and those wildfires asserted to have been caused by an electrical corporation that result in a court-approved dismissal resulting from the settlement of third-party damage claims. The bill would also specify that the annual contribution of an electrical corporation be made in 10 installments.

By expanding the definition of "covered wildfire," this bill would expand the purposes for which the Wildfire Fund is continuously appropriated, and thereby make an appropriation.

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

Because certain of the provisions of this bill would be codified in the act and 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.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 398.4 of the Public Utilities Code is amended to read:

398.4. (a) Every retail supplier that makes an offering to sell electricity that is consumed in California shall disclose its electricity sources and the associated greenhouse gases emissions intensity for the previous calendar year.

(b) The disclosures required by this section shall be made to potential end-use consumers in all product-specific written promotional materials that are distributed to consumers by either printed or electronic means, including the retail supplier's internet website, if one exists, except that advertisements and notices in general circulation media shall not be subject to this requirement.

(c) The disclosures required by this section shall be made annually to end-use consumers of the offered electricity. The annual disclosure shall be made on the retail supplier's internet website by October 1 of each year, and in written promotional materials by the end of the first complete billing cycle for the fourth quarter of the year, and shall be consistent with information provided to the Energy Commission pursuant to Section 398.5. A retail supplier may distribute the disclosures required by this section via email to any end-use consumer that has consented to receive email in lieu of printed materials.

(d) The disclosures required by this section shall be made separately for each portfolio offering made by the retail supplier.

(e) On or before January 1, 1998, the Energy Commission shall specify guidelines for the format and means for disclosure required by Section 398.3 and this section, based on the requirements of this article and subject to public hearing.

(f) The costs of making the disclosures required by this section shall be considered to be generation related.

(g) The disclosures required by this section shall comply with the following:

(1) A retail supplier's disclosure of its electricity sources shall be expressed as a percentage of annual sales derived from each of the following categories:

(A) Electricity from unspecified sources.

(B) Purchases of electricity from specified sources.

(2) A retail supplier's disclosure of its electricity sources shall also separately identify total California system electricity, which is the sum of all in-state generation and net electricity imports by fuel type.

(h) Each of the categories specified in subdivision (g) shall be additionally identified as a percentage of annual sales that is derived from the following fuels, sources of energy, or electricity products:

(1) Coal.

(2) Large hydroelectric (greater than 30 megawatts).

(3) Natural gas.

(4) Nuclear.

(5) Eligible renewable energy resources pursuant to the California Renewables Portfolio Standard Program (Article 16 (commencing with Section 399.11)), including any of the following:

(A) Biomass and biowaste.

(B) Geothermal.

(C) Eligible hydroelectric.

(D) Solar.

(E) Wind.

(6) Other categories as determined by the Energy Commission.

(7) The portion of annual sales derived from unbundled renewable energy credits shall be included in the disclosures in a format determined by the Energy Commission. A retail supplier may include additional information related to the sources of the unbundled renewable energy credits.

(i) All electricity sources disclosed as purchases of electricity from specified sources shall meet the requirements of subdivision (d) of Section 398.2.

(j) Purchases of electricity from specified sources identified pursuant to this section shall be from sources connected to the Western Electricity Coordinating Council interconnected grid.

(k) (1) Each retail supplier shall disclose both the greenhouse gas emissions intensity of any electricity portfolio offered to its retail customers and the Energy Commission's calculation of greenhouse gas emissions intensity associated with all statewide retail electricity sales, consistent with the requirements of this subdivision.

(2) The Energy Commission shall do all of the following:

(A) Adopt a methodology, in consultation with the State Air Resources Board, for the calculation of greenhouse gas emissions intensity for each purchase of electricity by a retail supplier to serve its retail customers.

(B) Calculate the greenhouse gas emissions intensity associated with statewide retail electricity sales based on the greenhouse gas emissions for total California system electricity.

(C) Rely on the most recent verified greenhouse gas emissions data while ensuring that greenhouse gas emissions intensity factors for electricity from specified and unspecified sources are available to retail suppliers with sufficient advance notice to permit timely reporting.

(D) Establish guidelines for adjustments to a greenhouse gas emissions intensity factor for a reporting year for any local publicly owned electric utility demonstrating generation of quantities of electricity in previous years in excess of its total retail sales and wholesale sales from specified sources that do not emit any greenhouse gases. Adjustments authorized by the guidelines established by the Energy Commission shall not permit excess generation procured in a single year to be counted more than once or to be resold to another retail supplier as a specified source.

(E) Ensure that there is no double-counting of the greenhouse gas emissions or emissions attributes associated with any unit of electricity production reported by a retail supplier for any specific generating facility or unspecified source located within the Western Electricity Coordinating Council when calculating greenhouse gas emissions intensity.

(F) (i) On or before January 1, 2018, adopt guidelines, through an open process, subject to public comment, and adopted by a vote of the Energy Commission, for the reporting and disclosure of greenhouse gas emissions intensity associated with retail sales based on the requirements of this subdivision. Beginning June 1, 2020, retail suppliers shall be required to report data on greenhouse gas emissions intensity associated with retail sales occurring after December 31, 2018.

(ii) Any new community choice aggregator formed after January 1, 2016, shall not be required to report data on greenhouse gas emissions intensity associated with retail sales until at least 24 months, but shall be required to report that data no later than 36 months, after serving its first retail customer.

(3) Any marketing or retail product claims relating to the greenhouse gas emissions intensity of the electric supply portfolio of a retail supplier shall be consistent with the methodology adopted by the Energy Commission pursuant to this section. Retail suppliers may provide additional information to customers describing other actions relating to greenhouse gases that are unrelated to the electric supply portfolio.

(l) The provisions of this section shall not apply to generators providing electric service onsite, under an over-the-fence transaction as described in Section 218, or to an affiliate or affiliates, as defined in subdivision (a) of Section 372.

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

854. (a) A person or corporation, whether or not organized under the laws of this state, shall not directly or indirectly merge, acquire, or control, including pursuant to a change in control as described in subparagraphs (D) or (E) of paragraph (1) of subdivision (b) of Section 854.2, 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 constitutes a merger, acquisition, or control activity that is subject to this section. Any merger, acquisition, or control without that prior authorization is void. A public utility organized and doing business under the laws of this state, and a subsidiary or affiliate of, or corporation holding a controlling interest in, a public utility, shall not 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, if any utility that is a party 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 electrical or gas corporation, ensure the corporation 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, if any entity that is a party 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, if any entity that is a party 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 subparagraph, "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 an affiliate of that utility shall not be considered unless the affiliate was used to effect the merger, acquisition, or control.

(h) Paragraphs (1) and (2) of subdivision (b) do 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. Section 913.2 of the Public Utilities Code is repealed.

SEC. 4. Section 913.5 of the Public Utilities Code is amended to read:

913.5. (a) Before July 1, 2022, and every three years thereafter, the commission shall submit a report to the Legislature on the energy efficiency and conservation programs it oversees. The report shall include information regarding authorized utility budgets and expenditures and projected and actual energy savings over the program cycle.

(b) In the report submitted pursuant to subdivision (a), the commission shall also report to the Legislature on the progress toward achieving the targets established pursuant to subdivision (a) of Section 454.55 and subdivision (a) of Section 454.56. The commission shall include specific strategies for, and an update on, progress toward maximizing the contribution of energy and electricity efficiency savings in disadvantaged communities identified pursuant to Section 39711 of the Health and Safety Code.

SEC. 5. Section 913.6 of the Public Utilities Code is amended to read:

913.6. (a) On or before February 1, 2023, and biennially thereafter, the commission, in consultation with the Independent System Operator and the Energy Commission, shall report to the Legislature and the Governor on the progress made toward modernizing the state's distribution and transmission grid and the impacts of distributed energy resources on the state's distribution and transmission grid and ratepayers. The report shall evaluate all of the following:

(1) Reliability and transmission issues related to connecting distributed energy resources to the local distribution networks and regional grid.

(2) Issues related to grid reliability and operation, including interconnection, and the position of federal and state regulators toward distributed energy resource accessibility.

- (3) The effect on overall grid operation of various distributed energy resources.
- (4) Barriers affecting the connection of distributed energy resources to the state's grid.
- (5) Emerging technologies related to distributed energy resource interconnection and operation.
- (6) Interconnection issues that may arise for the Independent System Operator and local distribution companies.
- (7) The effect on peak demand for electricity.
- (8) The potential for distributed energy resources to benefit the state's distribution and transmission grid.

(b) In addition, the commission shall specifically assess the impacts of the California Solar Initiative program, specified in Section 25781 of the Public Resources Code and Section 2851, the self-generation incentive program authorized by Section 379.6, and the net energy metering program specified in Sections 2827 and 2827.1.

SEC. 6. Section 913.10 of the Public Utilities Code is repealed.

SEC. 7. Section 913.11 of the Public Utilities Code is repealed.

SEC. 8. Section 1701.8 of the Public Utilities Code is amended to read:

1701.8. (a) For purposes of this section, the following definitions apply:

- (1) "Covered wildfire" means any wildfire ignited on or after July 12, 2019, for which either of the following is satisfied:

(A) The governmental agency responsible for determining causation or a court of competent jurisdiction determines the wildfire was caused by an electrical corporation.

(B) Asserted to have been caused by an electrical corporation and results in a court-approved dismissal resulting from the settlement of third-party damage claims.

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

(b) The following procedures and standards apply to a catastrophic wildfire proceeding:

(1) (A) An electrical corporation may file an application pursuant to Section 451 or 451.1, as applicable, at any time after it has paid, or entered into binding commitments to pay, all or, if authorized by the commission for good cause, substantially all third-party damage claims, including payments made pursuant to judgments or settlement agreements related to a covered wildfire. Except as authorized by the commission for good cause, before filing the application, the electrical corporation shall exhaust all rights to indemnification or other claims, contractual or otherwise, against any third parties, including collecting insurance proceeds, related to the covered wildfire.

(B) If an electrical corporation has received payments from the Wildfire Fund for a third-party damage claim for the covered wildfire, the electrical corporation shall file an application to recover the costs pursuant to subparagraph (A) no later than the earlier of the following:

(i) The date when it has resolved all third-party damage claims and exhausted all right to indemnification or other claims, contractual or otherwise, against any third parties, including collecting insurance proceeds, related to the covered wildfire.

(ii) The date that is 45 days after the date the administrator requests the electrical corporation to file the application.

(2) The president of the commission, upon the initiation of a catastrophic wildfire proceeding by the filing of an application pursuant to paragraph (1), shall assign a commissioner to act as the presiding officer in the proceeding and an administrative law judge to assist in conducting the proceeding.

(3) Within 15 days of the filing date of the application, the commission shall notice a prehearing conference, which shall be held within 25 days of the filing date.

(4) (A) Within 30 days of the filing date of the application, the assigned commissioner shall prepare and issue, by order or ruling, a scoping memorandum that states that the scope of the proceeding shall be whether the electrical corporation's costs and expenses for the covered wildfire are just and reasonable pursuant to Section 451 or 451.1, as applicable.

(B) The scoping memorandum shall establish a schedule for the proceeding, including the date of issuance of a proposed decision that is no later than 12 months after the filing date of the application.

(C) The assigned commissioner may extend the time established in the scoping memorandum for the date of issuance of a proposed decision by up to six months upon a showing of good cause.

(5) Notwithstanding any other law, the commission may meet in closed session at any point during the pendency of the catastrophic wildfire proceeding with a three-day notice to the public if the commission establishes a quiet period pursuant to paragraph (6) of subdivision (h) of Section 1701.3.

SEC. 9. 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 10 installments totaling 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. 10. 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.