Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY
Chris Holden, Chair
AB 2346 (Quirk) – As Amended April 18, 2018

SUBJECT: Public utilities: rates: wildfire expense memorandum accounts

SUMMARY: Requires the California Public Utilities Commission (CPUC) to authorize investor owned utilities (IOUs) to create memorandum accounts to track expenses related to the 2017 wildfires. Specifically, **this bill**:

1) Requires the CPUC to authorize IOUs to establish wildfire expense memorandum accounts to track costs related to the 2017 California wildfires and track:

   a. Payments to satisfy wildfire claims, including co-insurance and deductible expenses paid by the IOU, but excluding costs previously authorized in the IOU's general rate case;

   b. Outside legal costs incurred defending against claims; and

   c. Increases or decreases in wildfire insurance premiums from amounts authorized in the IOU's general rate case.

2) Prohibits automatic rate recovery of recorded costs.

EXISTING LAW:

1) Requires the CPUC if, after a hearing, it finds that the rates charged or collected by any IOU are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, to determine and fix, by order, the just, reasonable, or sufficient rates, classifications, rules, practices, or contracts to be thereafter observed and in force. (Public Utilities Code § 728)

2) Requires that all charges demanded or received by any public utility for any product, commodity or service be just and reasonable, and that every unjust or unreasonable charge is unlawful. (Public Utilities Code § 451)

3) Requires the CPUC to authorize IOUs to create memorandum accounts to track expenses related to catastrophic events and permits recovery of recorded costs in rates upon application by the IOU and a finding of reasonableness and approval by the CPUC. (Public Utilities Code § 454.9)

FISCAL EFFECT: Unknown

BACKGROUND:

Cost Recovery of Expenses – CPUC-regulated utilities routinely submit requests for cost recovery related to their operations, including expanding their infrastructure, paying for operation expenses, etc. Under current law the CPUC may only approve an IOU's request for cost recovery that is deemed just and reasonable. Review of utility expenses to ensure they are just and reasonable is the principle purpose of the CPUC's existence and the main task of the agency as an economic regulator. Uninsured expenses, just as other expenses related to the operation of an IOU, must be reviewed by the CPUC to ensure they meet the requirements that they are just and reasonable.

Balancing and Memorandum Accounts – Both balancing accounts and memorandum accounts are employed by the CPUC to ensure the accurate recovery of the actual costs of a regulatory program. However, balancing accounts have an associated expectation of recovery since they have been pre-authorized by the CPUC, and it is the amounts – not the creation of the accounts themselves – that the CPUC review for reasonableness. In contrast, memorandum accounts are accounts in which the utilities record amounts for tracking purposes. However, their recovery is not guaranteed with memorandum accounts, instead IOUs may later ask for recovery and the CPUC reviews to ensure the expenses are just and reasonable. In the case of uninsured expenses, the utility files an application with the CPUC requesting authorization to have ratepayer funds collected to recover the costs associated with the uninsured expense. The CPUC opens a rate-setting proceeding to allow parties to weigh in on the matter and develop an evidentiary record to review the expenses with the CPUC making a final determination based on the merits found in the record. In the case of uninsured expenses, the burden is on the utility to demonstrate through a preponderance of the evidence that it acted prudently and reasonable in order to receive approval for cost recovery through ratepayer funding.

COMMENTS:

1) Author's Statement. Beginning on October 8, 2017, several major wildfires spread through Napa, Sonoma, Butte, Humboldt, Mendocino, and Del Norte Counties, as well as in the areas surrounding Grass Valley and Yuba City which was primarily in the territory of Pacific Gas & Electric. In December 2017, several major wildfires spread through Southern California, including the Rye Fire, the Thomas Fire, and Liberty Fire, and the Creek Fire. These were primarily in the territory of Southern California Edison.

   Causation has yet to be determined for any of the fires. Even if the IOUs are not found to be negligent, the IOUs could be held strictly liable under the doctrine of inverse condemnation. The IOUs must have memorandum accounts so that the expenses can be clearly segregated from expenses previously authorized to be recovered in rates. This will allow for clear segregation from those for which ratepayer recovery has already been authorized by the CPUC.

2) Memorandum Accounts. These accounts are regularly established by the regulated utilities when approved by the CPUC. The purpose of the accounts is to track all amounts paid by IOUs as result of extraordinary expenses that were not previously authorized in a general rate case.

   The 2017 Wildfires have created extraordinary costs for the IOUs that were not previously authorized in general rate cases. Causation has yet to be determined for any of the fires but IOU infrastructure is largely implicated. Causation is legally distinct from negligence. However, under current statutory and judicial doctrines, the utilities will likely be held responsible for all property damages and attorney fees, at a minimum, due to the doctrine of inverse condemnation. The utilities cannot seek recovery of wildfire expenses unless those expenses are reviewed and approved at a later date by the CPUC. The threshold for recovery of expenses from ratepayers however is high requiring the IOUs to show the CPUC that it acted prudently in the management of the system.

3) Related Legislation. SB 819 (Hill) prohibits an electrical corporation from recovering a fine or penalty through a rate approved by the CPUC. This bill would also prohibit an electrical or gas corporation from recovering through a rate approved by the CPUC an uninsured expense from damages caused by the IOU's electric facilities or gas facilities, if the CPUC determines that the electrical corporation did not reasonably construct, maintain, manage, control, or operate the facility. Status: Set in Senate Judiciary Committee April 24th.

REGISTERED SUPPORT / OPPOSITION:

Support

California State Association of Electrical Workers
California State Pipe Trades Council
Coalition of California Utility Employees

Opposition

None on file.

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