Date of Hearing: April 21, 2021

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY
Chris Holden, Chair
AB 1156 (Holden) – As Amended March 11, 2021

SUBJECT: Electrical corporations: safety certification: executive incentive compensation structures

SUMMARY: Retains the approval of electrical investor-owned utilities' (IOUs) executive incentive compensation structures at the California Public Utilities Commission (CPUC) rather than transferring that responsibility to the Office of Energy Infrastructure Safety (OEIS) as currently scheduled to occur on July 1, 2021, per statute.

EXISTING LAW:

1) Mandates the executive director of the CPUC to issue a safety certification to an IOU if the IOU provides documentation of the following:

    a. An approved wildfire mitigation plan;

    b. Is in good standing, which can be satisfied by the IOU having agreed to implement the most recent safety culture assessment, if necessary;

    c. An established safety committee of its board of directors composed of members with relevant safety experience;

    d. An executive incentive compensation structure approved by the Wildfire Safety Division (WSD) and structured to promote safety as a priority and to ensure public safety and utility financial stability with performance metrics that are measurable and enforceable for all executive officers. This may include tying 100 percent of the incentive compensation to safety performance and denying all incentive compensation in the event the electrical corporation causes a catastrophic wildfire that results in one or more fatalities;

    e. Board-of-director-level reporting to the commission on safety issues;

    f. An established compensation structure for any new or amended contracts for executive officers.

    g. Implementation of both its approved wildfire mitigation plan and recommendations of the most recent safety culture assessment. (Public Utilities Code § 8389 (e))

2) Establishes the WSD within the CPUC, and mandates WSD do all of the following:

    a. Oversee and enforce IOUs' compliance with wildfire safety pursuant to Chapter 6 (commencing with Section 8385) of Division 4.1.

    b. Develop and recommend to the CPUC, in consultation with the California Wildfire Safety Advisory Board, performance metrics to achieve maximum feasible risk reduction to be used to develop the wildfire mitigation plan (WMP) and evaluate an IOU's compliance with that plan.

c. Develop a field audit program for wildfire mitigation plan compliance by each IOU.

d. Consult with the Office of Emergency Services (OES) in the office's management and response to utility public safety power shutoff (PSPS) events and utility actions for compliance with public safety power shutoff program rules and regulations.

e. Support efforts to assess and analyze fire weather data and other atmospheric conditions that could lead to catastrophic wildfires and to reduce the likelihood and severity of wildfire incidents that could endanger the safety of persons, properties, and the environment within the state.

f. Retain appropriate staff that includes experts in wildfire, weather, climate change, emergency response, and other relevant subject matters.

g. Review, as necessary, in coordination with the California Wildfire Safety Advisory Board and necessary CPUC staff, safety requirements for electrical transmission and distribution infrastructure and infrastructure and equipment attached to that electrical infrastructure, and provide recommendations to the CPUC to address the dynamic risk of climate change and to mitigate wildfire risk.

h. Transfer all functions to OEIS, effective July 1, 2021. (Public Utilities Code § 326)

3) Establishes OEIS within the Natural Resources Agency, and vests all duties, powers, and responsibilities of WSD, including the power to compel information and conduct investigations, to OEIS on July 1, 2021. (Government Code §§ 15471-15476)

4) Establishes the Administrative Procedure Act (APA) to govern the procedures for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Specifies administrative approval is not a regulation pursuant to the APA. (Government Code §§ 11340-11361)

5) Excludes the CPUC from the APA, except for the CPUC's adoption of rules of practice and procedure. (Government Code § 11351)

6) Requires WSD to accept public comments on IOU WMPs, and consider those comments prior to approval of the plan. (Public Utilities Code §§ 8386(d), 8386.3)

7) Establishes the CPUC and authorizes the CPUC to exercise ratemaking and rulemaking authority over all public utilities, as defined, subject to control by the Legislature. (California Constitution, Article XII)

8) 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)

9) Authorizes intervenors involving electric, water, and telephone utilities to be compensated for making a substantial contribution to proceedings of the CPUC, as determined by the CPUC. (Public Utilities Code §§ 1801-1812)

10) Requires intervenor compensation to be awarded to eligible intervenors in a timely manner, within a reasonable period after the intervenor has made the substantial contribution to a proceeding that is the basis for the compensation award. (Public Utilities Code § 1801.3)

11) Defines "compensation" to mean payments for all or part, as determined by the CPUC, of reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a proceeding, and includes the fees and costs of obtaining an award, as specified, and of obtaining judicial review, if any. (Public Utilities Code § 1802)

12) Prohibits an electrical or gas IOU from recovering in rates any salary, bonus, benefits, or other value paid to an officer of an IOU. Specifies these expenses must be paid solely by shareholders. (Public Utilities Code § 706)

FISCAL EFFECT: This bill is keyed fiscal and will be referred to the Committee on Appropriations for its review.

BACKGROUND:

IOU executive incentive compensation – Utilities use various compensation mechanisms to incentivize preferred behavior in their employees. For executive-level and management-level employees, utilities have used a mix of short- and long-term incentive structures based on various performance metrics. If a utility performs well according to certain tracked metrics – such as system safety or financial performance or customer satisfaction – then the employee will receive a bonus, in accordance to the authorized incentive structure. Many corporations use these financial incentives to drive employee behavior and motivation, and the various incentive metrics a corporation establishes greatly reflect a corporation's priorities and culture.

What do these incentive structures look like for electric IOUs? Pacific Gas & Electric Company's (PG&E) January 2021 filing, as an example, show the incentives to be:[1]

Metric	Percent of Total Compensation
Electric Operations • Reportable Fire Ignitions • Wires Down Events Due to Equipment Failure	 • 15% • 5%
Gas Operations	

[1] PG&E letter to Caroline Thomas Jacobs; "Pacific Gas and Electric Company's Executive Compensation Approval Request Pursuant to Public Utilities Code § 8389(e)(4) and (e)(6);" January 15, 2021; https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/PGE%20Executive%20Compensation%202021.pdf

• Large Overpressure Events • Gas Dig-Ins Reduction	• 5% • 5%
Generation • Safe Dam Operating Capacity • DCPP Reliability and Safety Indicator	• 5% • 5%
Workforce Safety • Days Away, Restricted and Transferred Rate • Serious Injuries Actuals • Serious Injuries and Fatalities Investigation Timeliness • Serious Injuries and Fatalities Corrective Action Timeliness	• 5% • 5% • 5% • 5%
Operational Performance and Reliability • Gas Customer Response • 911 Emergency Response • Customers Experiencing Multiple Interruptions • Average Speed of Answer for Emergencies	• 3.34% • 3.33% • 3.33% • 5%
Financial Stability	• 25%

Utilities have used these incentive compensation packages for many years. The CPUC would approve them as part of the utility's General Rate Case. Following the chaptering of AB 1054 (Holden, Chapter 79, Statutes of 2019), a utility's executive incentive compensation structure was directed to be filed as a separate document, and approved by the newly-established WSD. WSD reviews the proposed incentive structure to ensure public safety and utility financial stability are prioritized, and that performance metrics were measurable and enforceable.[2]

WSD's approval of the utility's executive incentive compensation structure is one of many requirements for a utility to receive a safety certification from the CPUC. Failure to hold a valid safety certificate prevents a utility from access to the Wildfire Fund[3] as well as reverts the burden of proof back to the utility in CPUC reviews of ratepayer recovery for utility wildfire liability.[4] These critical approvals have proceeded at the CPUC since the passage of AB 1054 (Holden, Chapter 79, Statutes of 2019), enabling the public to participate in the filings of the utilities that ultimately lead to their receipt of a safety certification. However, beginning in July 2021, some of these duties will leave the CPUC when WSD transfers to OEIS at the Natural Resources Agency.

CPUC intervenor compensation – The CPUC initiated its intervenor compensation program in 1981 and state law was enacted in 1984 to govern the program. The program is intended to ensure that intervenors – individuals and groups that represent the interests of utility ratepayers –

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[2] PUC §8389 (e)(6)(A)
[3] PUC §3292 (h)(3)(B)
[4] PUC §451.1 (c)

have the financial resources to bring their concerns and interest to the CPUC at its proceedings. Intervenors advocate for a variety of ratepayers, including residential and small-business customers, minority groups, and the disabled. State law allows intervenors that participate in CPUC proceedings involving utilities, such as electric, gas, and water utilities, to request compensation for the costs associated with that participation. Public utilities generally pay these intervenor compensation awards from the amounts they collect from their ratepayers. These awards affect utility rates so that utilities can recoup any amounts they pay to intervenors. This program is unique to the CPUC; other state agencies, while allowing for public participation, do not compensate parties for their contribution to regulatory development.

COMMENTS:

1) *Author's Statement.* "AB 1156 retains CPUC oversight of electric investor-owned utilities' executive compensation structure, and ensures public transparency is maintained for such review. The utilities' executive compensation structures are comprehensive documents that list how the utility will financially reward its senior managers for meeting certain performance metrics. These performance metrics drive company decisionmaking and corporate culture. As part of the reforms to energy corporations' practices called out in AB 1054 (Holden, Chapter 79, Statutes of 2019), the utilities are required to file these structures with safety as a priority, and it is up to the CPUC to approve such structures only if they meet public safety principals. Beginning in July 2021, these approval duties are set to transition to the Office of Energy Infrastructure Safety at the Natural Resources Agency when the Wildfire Safety Division moves. However, it is currently unclear how the public might engage with the new Office.

   AB 1156 keeps the oversight of utility executive compensation structures at the CPUC, and makes clear that members of the public that participate and make important contributions to these plans will be compensated for their work. Nothing in AB 1156 adjusts the utilities' obligations to file their plans for approval; the measure merely retains the oversight at the agency currently approving these plans."

2) *Executive Incentive Compensation Approvals at the CPUC.* The CPUC has long overseen IOU rates, and ensured the IOU rates are just and reasonable.[5] The authorization of utility rates is much more expansive than simply the rates charged to customers for their energy consumption, and includes the authorized rates of return (essentially, the profitability of a utility), tax liabilities, and bonuses paid to utility employees and executives, among other items. Historically, the CPUC has approved these myriad rate requests within an IOU's general rate case filing. However, with the passage of AB 1054 (Holden, Chapter 79, Statutes of 2019), a utility's executive incentive compensation structure (i.e. bonuses paid to executives) was directed to be filed as a separate document, and approved by the newly-established WSD. By establishing a separate process for IOU executive compensation, the CPUC is able to provide more oversight and scrutiny to a document that greatly drives behavior of utility executives and corporate culture. It also provides the opportunity for a more thorough vetting from the many stakeholders engaged in CPUC decisionmaking.

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[5] PU Code § 451

The current framework of executive compensation approval at WSD has followed traditional processes at the CPUC. In early January of 2020, WSD issued guidance on the executive compensation submissions for PG&E, Southern California Edison (SCE), and San Diego Gas & Electric (SDG&E), and in late January SCE and SDG&E submitted their proposals to WSD for approval.[6] In February 2020, stakeholders submitted comments and SCE and SDG&E submitted reply comments. In June 2020, the WSD issued approvals of SCE's and SDG&E's executive compensation submissions.[7] Following the comment period, the Utility Reform Network (TURN) requested intervenor compensation for their contribution to the executive incentive compensation plans.[8] On March 4, 2021, the CPUC denied TURN's request for compensation for their comments on the utilities' executive compensation structures. The main reason for the denial was that the approval process for the compensation structures was administrative and staff-led, thus leaving the process outside the statutory guidelines for intervenor compensation participation.[9] In early January 2021, SCE, SDG&E, PG&E, and Bear Valley Electric Service submitted updated executive compensation proposals. The CPUC is currently evaluating these 2021 submissions.

This bill will ensure this current process will continue, by requiring executive incentive compensation approvals be kept at the CPUC in a proceeding. Additionally, in specifying that the process be conducted within a proceeding, this bill will make compensation available to parties that comment on the utilities' filings.

3) *What Happens to these Approvals When They Transfer to OEIS?* Beginning in July of this year, many of WSD's duties will move to the Natural Resources Agency's new Office – OEIS. OEIS was created after multiple years of legislative focus on utility safety, principally around prevention of wildfire ignitions caused by utility equipment. OEIS's creation seeks to establish an Office whose sole mission is utility safety, so that the focus on safety is not reduced by other competing priorities of any agency or local board. Many of the duties of WSD currently follow this safety-focused mission, such as the approval and oversight of utility wildfire mitigation plans or coordinating with OES on utility PSPS events. However, the approval of corporate financial incentives could be seen as better suited to the regulator tasked with overseeing the finances of a utility (the CPUC).

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[6] SCE's may be found here:
https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/Assembly%20Bill%201054_Exec%20Comp%20Submission%20of%20SCE.pdf
SDG&E's may be found here:
https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/012720%20SDGE%20Exec%20Comp%20Letter.pdf
[7] SCE's may be found here:
https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/WSD%20to%20SCE%20-%20Exec%20Comp%20Approval%20Letter%20%2020200630.pdf
SDG&E's may be found here:
https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/WSD%20to%20SDGE%20-%20Exec%20Comp%20Approval%20Letter%2020200630.pdf
[8] A. 20-08-025
[9] D. 21-03-013 in A. 20-08-025

Moreover, given that the current framework for executive incentive compensation approval is staff-led, it is unclear whether the approval process established once OEIS transfers to the Natural Resources Agency will be subject to similar public processes as currently occur at the CPUC. Most state agencies are subject to the APA,[10] which details a public process for engagement when agencies issue adoption, amendment, or repeal of regulations. However, it is uncertain whether a staff-led approval of an application brought forward by an IOU will fall within the definition of a "regulation"[11] subject to the APA. This bill, keeps the approval of IOU executive incentive compensation at the CPUC and further clarifies that such approvals will be open to public engagement and scrutiny.

4) *Prior Legislation.*

AB 1054 (Holden), among its many provisions, requires electric IOUs to establish an executive incentive compensation structure, approved by the Wildfire Safety Division and structured to promote safety as a priority, as one of many qualifying documents to enable IOUs to receive a safety certification. Status: Chapter 79, Statutes of 2019.

AB 111 (Committee on Budget and Fiscal Review), among its many provisions, establishes the Office of Energy Infrastructure Safety within the Natural Resources Agency, and vests all duties, powers, and responsibilities of the CPUC's Wildfire Safety Division on July 1, 2021. Status: Chapter 81, Statutes of 2019.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Support If Amended

The Utility Reform Network (TURN)

Opposition

None on file.

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[10] GOV §11340-11361
[11] GOV §11342.600