

Date of Hearing: April 27, 2022

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

AB 2083 (Bauer-Kahan) – As Amended April 18, 2022

SUBJECT: Public Utilities: rates

SUMMARY: Prohibits ratepayer recovery by an electrical corporation or a gas corporation (IOUs) for expenses for a settlement agreement made to avoid criminal charges.

EXISTING LAW:

- 1) Prohibits rate recovery by an IOU of fines and penalties. (Public Utilities Code § 748.1)
- 2) Establishes misdemeanor penalties (up to \$5,000 or up to one year in jail) for any IOU or its officers, agents, or employees for violating or failing to comply with any order, decision, rule, direction, demand, or requirement of the California Public Utilities Commission (CPUC). (Public Utilities Code § 2110)
- 3) Subjects an IOU to penalties of \$500 to \$100,000 per offense, for failure to comply with any CPUC order, decision, decree, rule, direction, demand, or requirement. (Public Utilities Code § 2107)
- 4) Requires IOUs to construct, maintain, and operate electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment. (Public Utilities Code § 8386 [a])

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

BACKGROUND:

Civil & Criminal Settlement Agreements – On April 11th, Pacific Gas & Electric (PG&E) announced that it had reached settlements with the district attorneys in six counties to address the impacts of the Kincaid Fire in 2019 and the Dixie Fire in 2021. According to PG&E:

As a result of these agreements, no criminal charges will be filed in the Dixie Fire, and the criminal complaint regarding the Kincaid Fire will be dismissed. PG&E has also entered into long-term agreements with Butte, Lassen, Plumas, Shasta, Sonoma and Tehama counties to strengthen wildfire safety and response programs and to work with local organizations affected by the fires to help rebuild impacted communities.¹

The utility will pay civil penalties to the counties and additional cash payments to specified community and governmental organizations totaling \$55 million with a commitment that “PG&E

¹ *Making it Safe and Making it Right for Our Hometowns: PG&E Reaches Agreements with Six Counties to Further Invest in Wildfire Safety for Customers*, PG&E press release, April 11, 2022 at: https://www.pge.com/en_US/about-pge/media-newsroom/news-details.page?pageID=d627eaac-5302-4f48-bf69-3f86ddaf25aa&ts=1649737585543

will not seek recovery of these costs from customers.”² However, separate from those specific costs the utility also committed to the six county district attorneys to:

...a five-year monitorship of its vegetation management and system inspection work in the six counties. The monitor will be independent of PG&E and will regularly report to the district attorneys on the company’s progress. This role will be filled by Filsinger Energy Partners, which also serves as the Independent Safety Monitor for the California Public Utilities Commission. PG&E will continue to provide the resources needed to enable the monitor to meet its commitments to the CPUC, as well as additional resources needed to focus on PG&E’s critical wildfire safety work in these six counties.³

The “specified resources” committed to by the utility includes specified safety work by the utility which is normally included in its wildfire mitigation plans (WMPs) as approved by the Office of Safety Infrastructure (OEIS). Some of the work the utility has committed to includes the hiring of “100 new positions headquartered in or serving Sonoma County” and 100 positions in the other five counties, undergrounding distribution and transmission lines, and operating the *Enhanced Powerline Safety Settings* program in those counties.

These commitments to safety work do not appear to have been approved by the CPUC or the OEIS. It is not clear how the funding and execution of this safety work in these six counties stacks up against the safety needs and priorities of those counties compared to the other counties in the PG&E territory.

COMMENTS:

- 1) *Author’s Statement.* In the last five years, California has suffered an unprecedented number of wildfires. Between 2020 and 2021, California experienced the two largest fires ever recorded. The August Complex fire of 2020, burned over one million acres, followed by the Dixie Fire in 2021 which burned 963,000 acres.

A few weeks ago the six-county District Attorneys affected by the 2021 Dixie Fire agreed to civil prosecution settlements with PG&E, who admitted responsibility for the wildfires. The settlement agreements include expedited direct payments for home loss, mediation support for commercial timber landowners, performance commitments, good-faith contributions to county nonprofits, and civil penalties/DA attorney fees.

While the agreements stipulated that the good-faith contributions and penalties/fees were not recoverable through PG&E customer rates, the rest of the agreement did not provide this protection. The wildfire was caused by the company, and the company and its investors should be liable for settlement agreements made, not ratepayers.

AB 2083 will prohibit the use of ratepayer funds being used by an electrical or gas corporation in a settlement agreement that avoids civil or criminal prosecution. It is long past time for investor owned utilities to stop passing the buck on and take full responsibility, regardless of prosecution, when they are solely responsible for starting a wildfire.

² *Id.*

³ *Id.*

- 2) *Settlements to Avoid Prosecution.* Historically the CPUC has not allowed ratepayer recovery of “fines and penalties” paid by an IOU; this is current law. The settlement agreements to which the utility has committed resolve “PG&E’s liability to the People for all charges and causes, civil or criminal, that the People could have brought or could consider bringing in relation to the Fire...”⁴

The agreements have two distinct components. First there are specified cash payments to the counties and other third parties for which PG&E has agreed it will not seek rate recovery. Second, the utility has committed to a five-year monitoring of its work by the counties and specific work. Several aspects of that work such as the hiring of up to 200 new employees for the six counties and executing the “Enhanced Powerline Safety Settings” program (which is still being piloted) have not been approved by the CPUC. It also states that undergrounding of lines will be done. Undergrounding has been generally approved as a wildfire mitigation but location and cost recovery has not been settled. The settlement agreements are silent on rate recovery for this safety work.

It is not clear whether utility costs for safety work to which the utility commits as part of a settlement, which are normally recoverable in rates, is a “fine or penalty” under current law. It is also not clear that financial payments to specified individuals, nonprofits and county agencies made as part of a settlement agreement to avoid civil and criminal prosecution are equivalent to a “fine or penalty.”⁵

This bill intends to clarify that no payments in these settlement agreements are recoverable in rates. The utilities state that “...to the extent that the terms of certain settlements include system improvements, increased operations and maintenance, or other costs related to electrical infrastructure, review of those costs should remain with the CPUC to determine their eligibility for recovery.”

- 3) *Clarifying Amendments.* The bill restricts ratepayer recovery for settlements to “avoid” criminal penalties. Interpreting actions of the parties in a settlement may be a challenge on implementation since it requires a review of the intent of the parties. The settlements were made with district attorneys on behalf of the People in lieu of civil litigation under current law (Business and Professions Code 17200 et seq.) which this bill does not capture. The CPUC may also be challenged when implementing this measure on where to draw the line between costs in the settlement agreement and those arising more generally from safety work in the wildfire mitigation plan, for instance. The bill only references district attorneys but civil and criminal prosecution can be pursued by other representatives of the People which should be included. *To address these issues, the committee may wish to consider striking the current language and inserting: An electrical corporation or gas corporation shall not recover, through a rate approved by the commission, costs arising directly from an activity expressly committed to by the corporation, or any direct payment, fine, or penalty paid by the corporation, in a settlement agreement that is the result of a potential or actual criminal or civil*

⁴ *People v. PG&E*, Plumas County Superior Court, *Stipulation for Entry of Final Judgment*, Exhibit 1, page 34, April 11, 2022.

⁵ *Id.* at 30, however the settlement agreements state that the utility will not seek ratepayer recovery for these payments.

prosecution by the Attorney General, or a district attorney, county counsel, city attorney, or city prosecutor.

- 4) *Public Safety Committee hearing.* This bill was heard, defeated, and reconsidered by the Public Safety Committee on April 5, 2022. However, the bill language considered by Public Safety would have authorized criminal fines up to \$100,000 for a misdemeanor, and not to exceed \$10,000,000 for a felony, offense for recklessly causing a wildfire when the fire resulted from a failure to maintain clearance around electrical transmission or distribution lines. The bill before the Utilities & Energy Committee has language not considered by the Public Safety Committee and the criminal penalties they considered have been stricken from the bill.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

Pacific Gas and Electric Company
San Diego Gas & Electric
Sempra Energy Utilities
Southern California Edison
Southern California Gas Company

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