

Date of Hearing: June 22, 2022

ASSEMBLY COMMITTEE ON UTILITIES AND ENERGY

Eduardo Garcia, Chair

SB 884 (McGuire) – As Amended April 26, 2022

SENATE VOTE: 25-3

SUBJECT: Electricity: expedited utility distribution infrastructure undergrounding program

SUMMARY: Requires the California Public Utilities Commission (CPUC) to establish an expedited, optional utility distribution infrastructure undergrounding program. Specifically, **this bill:**

- 1) Requires the CPUC to establish an expedited utility distribution infrastructure undergrounding program to which a large electrical corporation (IOU) may choose to apply before July 1, 2023 by submitting a plan that identifies the eligible undergrounding projects that it will construct as part of the program, including timelines for the completion of those undergrounding projects.
- 2) Requires each undergrounding project to fully exhaust all available federal, state, and other nonratepayer moneys before any costs are recovered from ratepayers, and deems each undergrounding project to be an environmental leadership development project for purposes of the Jobs and Economic Improvement Through Environmental Leadership Act of 2021 and a development project for purposes of the Permit Streamlining Act, as specified.
- 3) Requires telecommunications providers, if the CPUC approves the IOU's plan, to cooperate with the IOU to underground non-wireless telecommunications infrastructure on utility poles that will be removed as part of an undergrounding project, except as specified. Requires telecommunications providers to pay their proportionate costs for undergrounding telecommunications infrastructure.
- 4) Imposes new duties on local agencies by expanding the applicability of the Permit Streamlining Act to undergrounding projects. Provides that no reimbursement to local agencies is required by this act because a local agency has the authority to levy service charges, fees, or assessments sufficient to pay for the program mandated by this act or because costs incurred may be incurred because this act creates a new crime or changes the definition of a new crime.

EXISTING LAW:

- 1) Declares that it is the policy of the state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any highway designated a state scenic highway and which would be visible from such scenic highways if erected above ground. (Public Utilities Code § 320)
- 2) Requires IOUs to construct, maintain, and operate electrical lines and equipment in a manner that minimizes risk of catastrophic wildfire and annually submit WMPs to the

Office of Energy Infrastructure Safety (OEIS) for review and approval. (Public Utilities Code § 8386)

- 3) Requires IOU WMPs to include, among other provisions:
 - a. Identification of circuits that have frequently been deenergized and the measures taken or planned to reduce the need for, and impact of, future deenergization of those circuits, including, but not limited to, replacing, hardening, or undergrounding any portion of the circuit or of upstream transmission or distribution lines;
 - b. a description of the actions the IOU will take to harden and modernize its infrastructure with improved engineering, system design, standards, equipment, and facilities, such as undergrounding, insulation of distribution wires, and pole replacement; and
 - c. A description of where and how the IOU considered undergrounding electrical distribution lines within those areas of its service territory identified to have the highest wildfire risk in a CPUC fire threat map. (Public Utilities Code § 8386 [c][8, 14, 15])
- 4) Creates the OEIS within the Natural Resources Agency which is vested with all of the duties, powers, and responsibilities of the CPUC's Wildfire Safety Division, including but not limited to, the power to compel information and conduct investigations and requires it to supervise IOU compliance with the requirements of WMPs. (Government Code § 15473, Public Utilities Code § 8385)
- 5) Defines a large electrical corporation as one with 250,000 or more customer accounts within the state. (Public Utilities Code § 3280)
- 6) Establishes rules for the construction and undergrounding of electric supply and communication systems. (CPUC General Order 128)
- 7) Establishes permitting requirements by the CPUC for the construction of any electric power line facilities or substations which are designed for immediate or eventual operation at specified voltages. (General Order 131-D)
- 8) Requires the undergrounding of all distribution line extensions for all new residential subdivisions and developments, commercial developments, industrial developments, and locations that are in proximity to and visible from designated scenic areas, except as specified. (CPUC Electric Tariff Rules 15 & 16)
- 9) Requires IOUs to implement the California Overhead Conversion Program to provide financial assistance to local governments to facilitate undergrounding of distribution lines which are in the public interest and meet specified criteria. (CPUC Electric Tariff Rule 20)

PERMITTING:

- 10) Establishes the California Environmental Quality Act (CEQA) and requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report for this action, unless the project is exempt from CEQA. (Public Resources Code § 21000 et seq.)
- 11) Requires the Office of Planning and Research to adopt guidelines for implementation of CEQA by public agencies and requires the guidelines to include a list of classes of projects that have been determined not to have a significant effect on the environment. Requires OPR to transmit the guidelines to the Natural Resources Agency. (Public Resources Code §§ 21083, 21084)
- 12) Authorizes the Governor, via the *Jobs and Economic Improvement Through Environmental Leadership Act of 2021*, until January 1, 2024, to certify projects that meet specified requirements for certain streamlining benefits related to CEQA. (Public Resources Code §21178)
- 13) Requires public agencies, via the Permit Streamlining Act, to approve or disapprove of a development project within specified timeframes. (Government Code §65920)

FISCAL EFFECT: According to the Senate Appropriations Committee,

- CPUC estimates ongoing costs in the low millions of dollars annually (ratepayer funds) to establish an expedited utility distribution infrastructure undergrounding program as would be required by this bill.
- To the extent that this bill results in increased undergrounding of utility infrastructure that reduces the risk of catastrophic wildfire from what it otherwise would be, this bill would result in unknown but potentially significant cost savings for reduced fire suppression (General Fund).

BACKGROUND:

PG&E Proposed 10-year Undergrounding Plan – As the Dixie Fire raged in July 2021, Pacific Gas & Electric (PG&E) announced a multiyear program to underground approximately 10,000 miles of overhead distribution powerlines in and near high wildfire risk areas. They represented that the plan:

...will contribute substantially to driving down wildfire risk and reducing the number of customers impacted by Public Safety Power Shutoff (PSPS) and Enhanced Powerline Safety Setting (EPSS) events over the long term. PG&E intends to scale our undergrounding program as quickly as possible, with plans to underground up to 1,200 miles or more per year, but it will take several years to reach that goal. In the areas targeted for undergrounding, PG&E believes that this approach is the most economically beneficial long-

term option for our customers when compared to other measures to reduce wildfire risk and improve reliability.¹

The utility's 2022 WMP (pending review by the OEIS) has targeted "at least 175 circuit miles of undergrounding work" for 2022 and "to significantly increase underground miles annually, ramping up to 1,200 miles or more of undergrounding per year by 2026 which would total 3,645. Adding 1,200 miles each year would get them to 10,000 miles by sometime in 2032."² Specifically the utility presents the following annual goals:

Year	Goal
2021	70
2022	175
2023	400
2024	800
2025	1,000
2026	1,200
2027	1,200
2028	1,200
2029	1,200
2030	1,200
2031	1,200
2032	355
Total	10,000

PG&E Territory – The utility provides natural gas and electric service to approximately 16 million people throughout a 70,000-square-mile service area in northern and central California. The utility's service area stretches from Eureka in the north to Bakersfield in the south, and from the Pacific Ocean in the west to the Sierra Nevada in the east. It has 106,681 circuit miles of electric distribution lines, 18,466 circuit miles of interconnected transmission lines, 42,141 miles of natural gas distribution pipelines, 6,438 miles of transmission pipelines, 5.5 million electric customer accounts, and 4.5 million natural gas customer accounts.

Approximately 25,000 circuit miles of distribution lines are in high fire threat areas 2 and 3.

PG&E's WMP states that the time for an undergrounding project is 34 months from scoping to project closeout and that "baseline expected lifespan of modern undergrounded lines is approximately 50 years. However, in many cases, newer underground lines are expected to last much longer because of engineering innovations like application of jacketed cable."

WMP Approval & Cost Recovery – Statute requires that the WMP cover at least a three-year period and that it be filed annually. OEIS approval means the utility has satisfied the evaluation

¹ *PG&E Announces Major New Electric Infrastructure Safety Initiative to Protect Communities From Wildfire Threat*, July 21, 2022 at https://www.pge.com/en_US/about-pge/media-newsroom/news-details.page?pageID=d2d2b20a-42da-4e8f-82a9-736e9c1f7265&ts=1655762228342

² See *2022 Wildfire Mitigation Plan Update*, February 25, 2022, starting at p. 523, https://www.pge.com/pge_global/common/pdfs/safety/emergency-preparedness/natural-disaster/wildfires/wildfire-mitigation-plan/2022-Wildfire-Safety-Plan-Update.pdf

criteria and substantiated its mitigation strategy such that implementation of the plan is appropriate. However, approval does not mean that costs have been reviewed or approved.

At the time of plan approval by the OEIS, the CPUC authorizes the IOU to establish a memorandum account to track costs incurred to implement the plan. Statute requires that the IOUs seek cost recovery and prove all expenditures are just and reasonable in their general rate cases (GRCs) or by a separate application where the CPUC reviews the costs in the memorandum accounts and disallows recovery of those costs it deems unreasonable.

Utilities file GRC applications with the CPUC every four years to cover the next four years forward. The CPUC's review of GRCs is a lengthy and quasi-judicial process which is intended to take 18 months but has been known to take longer. Two and one half years is not uncommon, and as long as three years in one instance. Other related major rate proceedings on the electric side that feed-in to the GRC are the Safety Model Assessment (SMAP) Proceeding and Risk Assessment and Mitigation Phase (RAMP) proceeding.

PG&E's GRC for 2023-2026 is currently under review.

COMMENTS:

- 1) *Author's Statement.* According to the author, "For far too long, America's largest utility – PG&E – has failed its customers and made California unsafe. For years, the utility underfunded modernization and wildfire safety efforts, which has had devastating impacts here in the Golden State. PG&E has been charged with nearly 100 felonies in the deaths of California residents in wildfires they caused over the past four years. Californians have literally run for their lives while their homes burned to escape flames from PG&E-caused wildfires. Californians have sat in the dark with food spoiling in their warm refrigerators for days on end during wind-driven public safety power shutoffs, and they've been left without access to critical lifeline services when power lines go down. This has been our reality for long enough. SB 884 will provide a path to expedite undergrounding of 10,000 miles of PG&E utility lines in the highest fire risk zones, save ratepayers money, and hold PG&E accountable to their timelines. Currently, PG&E undergrounds less than 100 miles of their electrical lines annually."
- 2) *Permitting, CEQA, & Double-Referral.* This bill proposes to encourage electric IOU participation in the undergrounding program by offering, upon plan approval, designation of the plan as environmental leadership development projects for environmental review expediting and local jurisdiction permit streamlining afforded in the Permit Streamlining Act. Analysis of these provisions is not included here. Should the measure be passed by this committee, it will be re-referred to the Natural Resources Committee for consideration of these provisions.
- 3) *Wildfire Mitigation Plans.* The purpose of the WMPs is to focus IOUs on reducing the risk and occurrence of catastrophic wildfires caused by utility infrastructure which have devastated California in recent years. Undergrounding is referenced as a hardening measure for use in WMPs but it is not mandated. The IOUs may request funding within GRCs to convert existing overhead electric system equipment to undergrounding if there is a compelling risk reduction reason for such an investment. Application of those elements through the WMP is unique for each utility, its regions, and its wildfire risk exposure.

- 4) *Carrots & Sticks.* The author intends to facilitate and encourage PG&E's filing of a long-term undergrounding plan by authorizing permit approval efficiencies with plan approval but also intends to ensure that the utility is held accountable to do the work in a cost-effective and timely fashion (accountability metrics). The utility reports that in order to meet the plan goals on time and with cost efficiencies that will reduce costs over the life of the plan, it needs approvals by the OEIS and cost consideration by the CPUC for the full-ten years and soon. The utility reports that permitting is always a challenge but the greatest regulatory barriers it has in the way of moving forward on its 10-year plan are the limited three-year time frame for the WMP with year-to-year approval by OEIS and the four-year GRC cycles at the CPUC that are not aligned with the current three-year WMPs let alone a ten year project. The bill in print does not address those barriers.

Committee staff is also aware that PG&E has a large debt-to-equity ratio which hinders their ability to finance big, long-term projects at a reasonable cost. Without some type of cost review and at least conditional approval at the front end of the plan, PG&E may not be able to secure the financing it needs to proceed and, at a minimum, financing costs would be higher.

PG&E represents that approval of a long-term plan will help stop wildfires caused by equipment, reduce public safety outages, decrease the need for tree trimming, improve system reliability, allow utilities and their partners to develop and train a labor workforce, build an efficient supply chain, and contract with vendors and other partners over a longer term and at reduced cost. The stop/start mode of the existing short-term OEIS WMP reviews and the staggered GRC cycles for cost review will not allow the utility to manage the plan in a way to meet the planned safety and cost reduction elements of the plan.

- 5) *Costs & Safety Impacts.* Most critically, PG&E has presented the committee with findings from a cost study which they will soon file with the CPUC showing that a ten-year undergrounding plan would reduce WMP costs by half in comparison to current mitigation strategies of vegetation management, limited undergrounding, covered conductors, and use of PSPS and EPSS – \$17 billion for undergrounding vs. \$35 billion for current mitigation strategies for those 10,000 miles of lines. It would also provide a 99% reduction in risk compared to 68% for currently planned measures.
- 6) *New Distribution Undergrounding Safety & Cost Plans.* Trying to fit a ten-year undergrounding plan into the constraints of the WMP filing and approval process at OEIS and the four-year GRC cycles at the CPUC creates a barrier for PG&E to present its safety and cost goals for review and get the necessary approvals to move forward with the project in a manner that gets the work done as expeditiously as possible with substantially lower costs than the safety work of its current WMP. Committee staff, in consultation with the author and PG&E, have developed a framework (reflected as amendments in Attachment A) which is intended to permit an IOU to file a long-term undergrounding plan with expedited safety review by the OEIS, and cost review by the CPUC. The utility must show that the plan will substantially reduce costs, outages, and fire risk over the life of the plan, among other requirements.

Elements of the bill allowing a utility to access expedited permitting processes (to be reviewed by the Natural Resources Committee) would remain. The utility would also be

required to file regular reports to the OEIS, hire an independent monitor approved by the OEIS, and the CPUC would have specific fining authority if the utility fails to substantially comply with the plan on an annual basis. *The committee may wish to consider adopting the amendments in "Attachment A" which strike language beginning on page 14, line 4, through 13 and, at page 15, lines 23-35 and authorize the filing of the two-part safety and cost plans with the OEIS and CPUC and require decisions within six months of filing.*

- 7) *Co-location of Telecommunication Infrastructure.* A good portion of electric distribution lines also run broadband and telephone lines at a lower level, but on the same poles. The author has attempted to facilitate accommodation of the collocated telecommunication lines but it appears that the work may require a more nuanced approach than legislation can provide. These terms are largely dictated by existing contracts (aka joint pole agreements) between the telecommunication companies and the IOUs. *The committee may wish to consider striking the requirement that the commission work with IOUs on the impacts of co-location which is reflected in subdivision (f) at page 14, lines 14-20 (and reflected in Attachment A).*

8) *Related Legislation.*

AB 2889 (Wicks) Proposed that each IOU, as part of its wildfire mitigation plan required by current law, submit to the OEIS a wildfire mitigation plan that covers at least seven years and not more than ten years. Status: Held in Assembly Appropriations Committee.

9) *Prior Legislation.*

SB 70 (Nielsen) Proposed that all IOUs include in wildfire mitigation plans (WMPs) a description of where and how the IOU considered undergrounding electrical distribution lines within those areas of its service territory identified to have the highest wildfire risk in a commission fire threat map. Status: Chapter 400, Statutes of 2019.

AB 281 (Frazier) Proposed that IOUs to develop and administer programs to replace overhead electric facilities along public streets and roads, and on other public or private properties in high fire threat districts, as determined by the commission, with underground electric facilities. Status: Held in Assembly Utilities & Energy Committee, 2019.

SB 584 (Moorlach) Proposed a program to provide grants to local jurisdictions for overhead line conversion projects in Tier 3 High Fire Threat Districts; funded from Greenhouse Gas Reduction Funds. Status: Held in Senate Appropriations Committee, 2019.

SB 901 (Dodd) Established a comprehensive framework to address and prevent catastrophic wildfires including prevention and planning by the state's electric utilities, management of the state's forests, chaparrals, and other lands to prevent and defend against wildfires, and standards to stabilize IOUs in the event of extensive liability resulting from claims under inverse condemnation. Status: Chapter 626, Statutes of 2018.

REGISTERED SUPPORT / OPPOSITION:**Support**

Cal Fire Local 2881
Sonoma Clean Power

Opposition

Agricultural Energy Consumers Association
Bay Area Council
California Asian Pacific Chamber of Commerce (CAPCC)
California Cable & Telecommunications Association
California Chamber of Commerce
California Community Economic Development Association (CCEDA)
California Hispanic Chamber of Commerce
California Manufacturers and Technology Association
California Taxpayers Association
Clean Coalition
Cloverdale Indivisible
Coalition of Small and Disabled Veteran Businesses
Edison International and Affiliates, Including Southern California Edison
Indivisible Alta Pasadena
Indivisible California Green Team
Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Resistance San Diego
Indivisible Riverside
Indivisible Sacramento
Indivisible San Jose
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Ventura
Livermore Indivisible
Long Beach Alliance for Clean Energy
National Federation of Independent Business
Progressive Democrats of Santa Monica Mountains
San Diego Gas & Electric
Small Business California
SoCal 350
Stand Strong LA Indivisible
The Resistance Northridge-indivisible
United States Telecom Association DbA Ustelecom - the Broadband Association
Valley Women's Club of San Lorenzo Valley

Oppose Unless Amended

California Large Energy Consumers Association
Reclaim Our Power Utility Justice Campaign

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ATTACHMENT A

DRAFT AMENDMENT OUTLINE

**SB 884 (McGUIRE)
as amended June 13, 2022**

- Strike language beginning on page 14, line 4, through 13 and, at page 15, lines 23-35;
- Strike language at page 14, lines 14-20

OEIS

In addition to the annual filing of a comprehensive wildfire mitigation plan as required by PUC 8386, an IOU may file a Distribution Undergrounding Plan with OEIS. Plan elements must address/include:

- 1) Undergrounding plan through 2031;
- 2) Identification of the undergrounding projects that will be constructed as part of the program, including a means of prioritizing circuits for mitigation based on wildfire risk reduction, public safety, and reliability benefits;
- 3) Timelines for the completion of identified and prioritized undergrounding projects, as well as unit cost targets and mileage completion targets for each year covered by the plan;
- 4) A comparison of undergrounding versus aboveground hardening of electrical equipment and vegetation management activities for achieving comparable risk reduction, or any other alternative mitigation strategy, such as covered conductor and rapid earth fault current limiter (REFCL) devices, for those prioritized circuits identified pursuant to paragraph (3), evaluating the scope, extent, and risk reduction of each activity, separately and collectively, over the duration of the period covered in the plan. The comparison shall maximize for risk reduction but also include an analysis of the cost of each activity for reducing wildfire risk, separately and collectively, over the duration of the period covered in the plan;
- 5) A plan for utility and contractor workforce development; and
- 6) An evaluation of project costs, projected economic benefits over the duration of the plan, and any cost containment assumptions including the economies of scale necessary to reduce mitigation costs and a sustainable supply chain.

OEIS shall:

- 1) Publish for public comment; and
- 2) Review and approve or deny within six months but only if the IOU has shown a substantial increase in reliability with a reduction in the use of PSPS, EPSS and any other outage programs, and a substantial risk reduction.

If plan is approved by OEIS and CPUC, the IOU shall:

- 1) File progress reports every 6 months with OEIS which will be published on the IOU and OEIS websites; and
- 2) Include ongoing work plans and progress in annual WMP filings.
- 3) Hire an independent monitor, approved by OEIS, to review and assess the IOU's compliance with its plan and file a report with the OEIS each December 1 over the course of the plan which shall be made publicly available.
- 4) The monitor shall assess whether the IOU's progress on undergrounding work has been consistent with the objectives identified in its undergrounding plan. The report shall specify any failure, delays, and/or shortcomings of the IOU and provide recommendations for improvements to accomplish the objectives set forth in the undergrounding plan. The electrical corporation shall have 180 days to correct and eliminate any deficiency specified in the report.
- 5) The Office shall consider the monitor's findings, whether the IOU has cured any deficiencies, and recommend to the CPUC consideration of penalties penalty assessment.

CPUC

If OEIS approves Plan, IOU shall submit Advice Letter to CPUC within 20 days with a Distribution Undergrounding Cost Plan requesting review and conditional approval of costs.

Advice letter filing must include:

- 1) Substantial improvement in safety risk and reduction in costs compared to other hardening and safety management measures over the course of the undergrounding plan.
- 2) The cost targets, at a minimum, result in feasible and attainable cost reductions as compared to the utility's three-year average undergrounding cost as a baseline.

- 3) The cost targets decline over time due to cost efficiencies and economies of scale for at least the first three years of the undergrounding plan.
- 4) The utility has demonstrated, including as part of an approved undergrounding plan, a strategy for achieving cost reductions over time.
- 5) Advice letter must be distributed to service list for most recent general rate case, notice in media.

CPUC shall:

- 1) Make available for and take public comment for 30 days;
- 2) Hold public workshop for presentation of plan and public comment; and
- 3) Review and approve or deny in no more than six months.

FINES/ENFORCEMENT

Amend CPUC 8386.1 to specify separate penalties for failure to meet plan objectives

The commission shall assess penalties on an electrical corporation that fails to substantially comply with its plan. In determining an appropriate amount of the penalty, the commission shall consider all of the following:

- (a) The nature and severity of any noncompliance with the plan, including whether the noncompliance resulted in harm.
- (b) The extent to which the commission or office has found that the electrical corporation complied with its plans in prior years.
- (c) Whether the electrical corporation self-reported the circumstances constituting noncompliance.
- (d) Whether the electrical corporation implemented corrective actions with respect to the noncompliance.
- (e) Whether the electrical corporation knew or in the exercise of reasonable care should have known of the circumstances constituting noncompliance.
- (f) Whether the electrical corporation had previously engaged in conduct of a similar nature that caused significant property damage or injury.
- (g) Any other factors established by the commission in a rulemaking proceeding, consistent with this chapter.

(h) Failure to substantially comply with an approved Distribution Undergrounding Plan on an annual basis and Distribution Undergrounding Cost Plan.