

AMENDED IN SENATE JANUARY 21, 2020

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SENATE BILL

No. 378

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Kalra)

(Coauthor: Senator Wilk)

(Coauthors: Assembly Members Chiu, Cunningham, Eggman, *Lackey*,
Levine, and Mark Stone)

February 20, 2019

An act to add Sections 592, ~~707.3, 707.5~~, 748, 776.7, 911.3, and 2111.5 to the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 378, as amended, Wiener. Electrical corporations: deenergization events: procedures: allocation of costs: reports.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law requires every public utility to furnish any reports required by the commission. *Existing law requires the commission to establish the Wildfire Safety Division within the commission to undertake specified tasks. Existing law, effective July 1, 2021, transfers all functions of the Wildfire Safety Division to the Office of Energy Infrastructure Safety.*

This bill would require each electrical corporation ~~with more than 2,500,000 electrical service connections in California~~ to annually submit a report to the ~~commission, the Office of Emergency Services, the Department of Forestry and Fire Protection, the Independent System~~

~~Operator, and county governments within its service territory Wildfire Safety Division and, after June 30, 2021, to the Office of Energy Infrastructure Safety, that includes the age, useful life, and condition of the electrical corporation's equipment, inspection dates, and maintenance records for its equipment, investments to maintain and improve the operation of its transmission and distribution facilities, and an assessment of the current and future fire and safety risk posed by the equipment.~~

~~Existing law requires the commission to institute a rulemaking proceeding by March 1, 2012, for the purpose of considering and adopting a code of conduct, associated rules, and enforcement procedures, as specified, to govern the conduct of an electrical corporation relative to the consideration, formation, and implementation of community choice aggregation programs and to implement the code of conduct, associated rules, and enforcement procedures by January 1, 2013.~~

~~This bill would prohibit the commission from allowing an electrical corporation to recover in rates costs associated with the electrical corporation's opposition to the consideration, formation, implementation, or expansion of a local publicly owned electric utility, electrical cooperative, or microgrid, self-generation, or distributed resource program or policy or to other efforts to expand the electrical service options available to consumers. The bill would require the commission to ensure that an electrical corporation does not market against those efforts, except through an affiliate that is funded exclusively by the electrical corporation's shareholders, and would impose other related requirements on the commission.~~

~~Existing law requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the commission for review and approval, as specified. Existing law requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communications infrastructure.~~

~~Existing law establishes an independent Public Advocate's Office within the commission with the goal to obtain the lowest possible rate for service consistent with reliable and safe service levels.~~

This bill would require the commission, in consultation with the ~~Department of Consumer Affairs, Public Advocate's Office~~, on or before June 1, 2021, to establish a procedure for customers, local governments, and others affected by a deenergization event to recover costs accrued during the deenergization event from an ~~electrical corporation with more than 2,500,000 electrical service connections in California.~~ *corporation, within specified time periods.* The bill would require an ~~electrical corporation with more than 2,500,000 electrical service connections in California,~~ *corporation*, on or before June 1, 2021, to create a fund, of an amount to be determined by the commission, for the recovery of costs accrued by *establish a memorandum account to track expenses paid to customers, local governments, and others during for claims resulting from a deenergization event.* The bill would require that money be paid into the fund exclusively by the electrical corporation's shareholders, would prohibit expenses paid by the fund from being recovered either directly or indirectly in rates, and would require that those expenses be borne exclusively by the shareholders ~~of the electrical corporation.~~ *The bill would require the commission to establish rules to determine whether the expenses paid can be recovered from ratepayers.* The bill would prohibit an electrical corporation with more than 2,500,000 electrical service connections in California from billing customers for any nonfixed costs during a deenergization event or from charging customers increased amounts after a deenergization event in order to offset losses accrued during a deenergization event. The bill would require, on or before June 1, 2021, that any profit accrued by an ~~electrical corporation with more than 2,500,000 electrical service connections in California~~ *corporation*, due to a deenergization event *event that is determined by the commission to have been undertaken in an unreasonable or imprudent manner*, be remitted or credited to its ratepayers, ~~while~~ *and that any loss be borne by the electrical corporation's shareholders.*

This bill would require an ~~electrical corporation with more than 2,500,000 electrical service connections in California~~ to provide notification of a pending deenergization event as early as possible to the cities and counties within its service territory and to other local governmental entities upon their request, and to share information relating to a deenergization event with local governmental entities, as specified.

This bill would require the commission to biennially produce a report on the economic, environmental, public health, and public safety impacts

of deenergization events, using information provided by electrical corporations ~~with more than 2,500,000 electrical service connections in California~~ and independent analysis.

Existing law provides for the imposition of fines and civil penalties for the violation of the California Constitution, statutes, or an order, decision, or requirement of the commission by a public utility.

This

If the commission determines that the electrical corporation failed to act in a reasonable and prudent manner in its implementation and execution of a deenergization event, this bill would provide that an electrical corporation is subject to a civil penalty of not less than ~~\$500,000~~ \$250,000 per 50,000 affected customers for every hour that a deenergization event is in place, and would require that the penalty be borne exclusively by the electrical corporation’s shareholders.

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, when a penalty has not otherwise been provided.

Because the provisions of this bill would be a part of the act and would require action to be taken by the commission to implement its requirements, and because penalties are not provided for certain of the bill’s requirements, the bill would impose a state-mandated local program by creating a new crime.

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: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 592 is added to the Public Utilities Code,
- 2 to read:
- 3 592. (a) The commission shall direct each electrical corporation
- 4 ~~with more than 2,500,000 electrical service connections in~~
- 5 ~~California to submit an annual report to the commission, the Office~~
- 6 ~~of Emergency Services, the Department of Forestry and Fire~~
- 7 ~~Protection, the Independent System Operator, and county~~
- 8 ~~governments within its service territory~~ *Wildfire Safety Division*

1 *and, after June 30, 2021, to the Office of Energy Infrastructure*
2 *Safety, that includes all of the following:*

3 (1) The age, useful life, and condition of the electrical
4 corporation's equipment.

5 (2) For all equipment subject to inspection, the date of the most
6 recent inspections.

7 (3) The maintenance records for the electrical corporation's
8 equipment.

9 (4) A list of the electrical corporation's investments made in
10 the preceding year to maintain and improve the operation of its
11 transmission and distribution facilities.

12 (5) An assessment of the current and future fire and safety risk
13 posed by the equipment.

14 (b) ~~The commission~~ *Wildfire Safety Division, or after June 30,*
15 *2021, the Office of Energy Infrastructure Safety, shall post each*
16 *submitted report on its internet website.*

17 (c) For purposes of this section, "deenergization event" has the
18 same meaning as defined in Section 748.

19 ~~SEC. 2.— Section 707.3 is added to the Public Utilities Code, to~~
20 ~~read:~~

21 ~~707.3.—(a) The commission shall not allow an electrical~~
22 ~~corporation to recover in rates costs associated with the electrical~~
23 ~~corporation's opposition either to the consideration, formation, or~~
24 ~~implementation of a new local publicly owned electric utility or~~
25 ~~electrical cooperative, or to the expansion of an existing local~~
26 ~~publicly owned electric utility or electrical cooperative.~~

27 ~~(b) The commission shall do all of the following:~~

28 ~~(1) Ensure that an electrical corporation does not market against~~
29 ~~the consideration, formation, implementation, or expansion of a~~
30 ~~local publicly owned electric utility or electrical cooperative, except~~
31 ~~through an affiliate that is funded exclusively by the electrical~~
32 ~~corporation's shareholders.~~

33 ~~(2) Require that an electrical corporation's marketing against~~
34 ~~the consideration, formation, implementation, or expansion of a~~
35 ~~local publicly owned electric utility or electrical cooperative be~~
36 ~~conducted by an affiliate of the electrical corporation and not by~~
37 ~~a marketing division of the electrical corporation, subject to affiliate~~
38 ~~transaction rules to be developed by the commission.~~

39 ~~(3) Limit an electrical corporation's affiliate's use of support~~
40 ~~services from the electrical corporation's ratepayer-funded~~

1 divisions, and ensure that an electrical corporation's affiliate is
2 allocated the costs of any permissible support services from the
3 electrical corporation's ratepayer-funded divisions on a fully
4 allocated embedded cost basis, with the corporation providing
5 detailed public reports of such use.

6 (4) Ensure that an electrical corporation's affiliate does not have
7 access to competitively sensitive information.

8 SEC. 3.— Section 707.5 is added to the Public Utilities Code, to
9 read:

10 707.5. (a) The commission shall not allow an electrical
11 corporation to recover in rates costs associated with the electrical
12 corporation's opposition to the consideration, formation,
13 implementation, or expansion of a microgrid, self-generation, or
14 distributed resource program or policy or to other efforts to expand
15 the electrical service options available to consumers.

16 (b) The commission shall do all of the following:

17 (1) Ensure that an electrical corporation does not market against
18 the consideration, formation, implementation, or expansion of a
19 microgrid, self-generation, or distributed resource program or
20 policy or against other efforts to expand the electrical service
21 options available to consumers, except through an affiliate that is
22 funded exclusively by the electrical corporation's shareholders.

23 (2) Require that an electrical corporation's marketing against
24 the consideration, formation, implementation, or expansion of a
25 microgrid, self-generation, or distributed resource program or
26 policy, or against other efforts to expand the electrical service
27 options available to consumers, be conducted by an affiliate of the
28 electrical corporation and not by a marketing division of the
29 electrical corporation, subject to affiliate transaction rules to be
30 developed by the commission.

31 (3) Limit an electrical corporation's affiliate's use of support
32 services from the electrical corporation's ratepayer-funded
33 divisions, and ensure that an electrical corporation's affiliate is
34 allocated the costs of any permissible support services from the
35 electrical corporation's ratepayer-funded divisions on a fully
36 allocated embedded cost basis, with the corporation providing
37 detailed public reports of such use.

38 (4) Ensure that an electrical corporation's affiliate does not have
39 access to competitively sensitive information.

1 ~~SEC. 4.~~

2 *SEC. 2.* Section 748 is added to the Public Utilities Code, to
3 read:

4 748. (a) For purposes of this section, “deenergization event”
5 means an intentional, temporary termination of electrical service
6 to an area for the purpose of reducing or eliminating the risk of
7 wildfires resulting from the operation of the electrical grid or
8 related facilities.

9 (b) (1) On or before June 1, 2021, the commission, in
10 consultation with the ~~Department of Consumer Affairs, Public~~
11 *Advocate’s Office*, shall establish a procedure to do both of the
12 following:

13 (A) To enable customers and others affected by a deenergization
14 event to recover costs accrued during the deenergization event
15 from an electrical corporation ~~with more than 2,500,000 electrical~~
16 ~~service connections in California within two weeks of the end of~~
17 *within the utility bill encompassing the dates of* the event.

18 (B) To enable local governments affected by a deenergization
19 event to recover costs accrued during the deenergization event
20 from an electrical corporation ~~with more than 2,500,000 electrical~~
21 ~~service connections in California within two weeks of billing the~~
22 electrical corporation for those costs.

23 (2) Costs recoverable under this section *may* include, but are
24 not limited to, assets, revenue, and wages lost as a direct result of
25 a deenergization event, medical bills, travel expenses, lodging
26 costs, and other incidental expenses incurred as a direct result of
27 a deenergization event, and local government planning and
28 response activity costs directly related to a deenergization event.

29 (c) On or before June 1, 2021, the commission shall require an
30 electrical corporation ~~with more than 2,500,000 electrical service~~
31 ~~connections in California to create a fund, of an amount to be~~
32 ~~determined by the commission, to fund recovery of costs accrued~~
33 *by to establish a memorandum account to track expenses paid to*
34 customers, local governments, and others ~~during for claims~~
35 *resulting from* a deenergization event. ~~Moneys shall be paid into~~
36 ~~the fund exclusively by the electrical corporation’s shareholders,~~
37 ~~and expenses paid by the fund shall not be recoverable either~~
38 ~~directly or indirectly in rates and shall be borne exclusively by the~~
39 ~~shareholders of the electrical corporation. The commission shall~~

1 *establish rules to determine whether the expenses paid can be*
2 *recovered from ratepayers.*

3 (d) An electrical corporation ~~with more than 2,500,000 electrical~~
4 ~~service connections in California~~ shall not bill customers for any
5 nonfixed costs during a deenergization event, including with the
6 intent of subsequently reimbursing the customers, and shall not
7 charge customers increased amounts after a deenergization event
8 in order to offset losses accrued during a deenergization event.

9 (e) Beginning on or before June 1, 2021, the commission shall
10 require any profit accrued by an electrical corporation ~~with more~~
11 ~~than 2,500,000 electrical service connections in California~~ due to
12 a deenergization event *that the commission determines to have*
13 *been undertaken in an unreasonable or imprudent manner* to be
14 remitted or credited to its ratepayers and any loss to be borne by
15 the electrical corporation's shareholders.

16 ~~SEC. 5.~~

17 *SEC. 3.* Section 776.7 is added to the Public Utilities Code, to
18 read:

19 776.7. (a) An electrical corporation ~~with more than 2,500,000~~
20 ~~electrical service connections in California~~ shall provide
21 notification of a pending deenergization event as early as possible
22 to the cities and counties within its service territory and to other
23 local governmental entities upon their request.

24 (b) An electrical corporation shall share ~~any~~ information relating
25 to a deenergization event, including information relating to the
26 duration, timing, and location of the deenergization event, impacted
27 facilities, and affected customers, with all local governmental
28 entities within its service territory.

29 (c) An electrical corporation shall share ~~any~~ location-specific
30 information relating to a deenergization event, including
31 information relating to the duration, timing, and location of the
32 deenergization event, impacted facilities, and affected customers,
33 with all local governmental entities with jurisdiction over that
34 location.

35 (d) For purposes of this section, "deenergization event" has the
36 same meaning as defined in Section 748.

37 ~~SEC. 6.~~

38 *SEC. 4.* Section 911.3 is added to the Public Utilities Code, to
39 read:

1 911.3. The commission shall biennially produce a report on
 2 the economic, environmental, public health, and public safety
 3 impacts of deenergization events, using information provided by
 4 electrical corporations with more than 2,500,000 electrical service
 5 connections in California and independent analysis. For purposes
 6 of this section, “deenergization event” has the same meaning as
 7 defined in Section 748.

8 ~~SEC. 7.~~

9 *SEC. 5.* Section 2111.5 is added to the Public Utilities Code,
 10 to read:

11 2111.5. An electrical corporation with more than 2,500,000
 12 electrical service connections in California is subject to a penalty
 13 of not less than ~~five hundred thousand dollars~~ \$500,000 *two*
 14 *hundred fifty thousand dollars (\$250,000)* for every hour that a
 15 deenergization event is in place, multiplied by the sum of the
 16 number of full sets of 50,000 customers affected plus one for any
 17 ~~remainder.~~ *remainder, if the commission determines that the*
 18 *electrical corporation failed to act in a reasonable and prudent*
 19 *manner in its implementation and execution of the deenergization*
 20 *event.* Penalties remitted pursuant to this section shall be borne
 21 exclusively by the electrical corporation’s shareholders. For
 22 purposes of this section, “deenergization event” has the same
 23 meaning as defined in Section 748.

24 ~~SEC. 8.~~

25 *SEC. 6.* No reimbursement is required by this act pursuant to
 26 Section 6 of Article XIII B of the California Constitution because
 27 the only costs that may be incurred by a local agency or school
 28 district will be incurred because this act creates a new crime or
 29 infraction, eliminates a crime or infraction, or changes the penalty
 30 for a crime or infraction, within the meaning of Section 17556 of
 31 the Government Code, or changes the definition of a crime within
 32 the meaning of Section 6 of Article XIII B of the California
 33 Constitution.