

SENATE THIRD READING

SB 350 (Hill)

As Amended June 11, 2020

Majority vote

SUMMARY:

Authorizes the creation of a non-profit public benefit corporation to acquire the Pacific Gas & Electric Company and the Pacific Gas & Electric Corporation (collectively PG&E) under specified circumstances including its failure to exit its pending bankruptcy and if it fails in its safety performance under the terms of an enhanced oversight and enforcement process adopted by the California Public Utilities Commission (CPUC).

Major Provisions

- 1) Permits the Governor or his designee to incorporate Golden State Energy (GSE) as a non-profit public benefit corporation for the purpose of owning, controlling, operating, or managing electrical and gas services for the current customers of PG&E and for the benefit of all Californians.
- 2) Initially requires the appointment of a nine-member board of directors (board) with staggered terms: five by the Governor; two by the Senate Rules Committee; and two by the Speaker of the Assembly. A transition would occur to a nine-member board with six members elected by customers (based on a slate of candidates meeting specified skills, and selected by the board, based on recommendations from a search firm) and one appointment each by the Governor, Senate Rules Committee and Speaker of the Assembly.
- 3) Establishes GSE as an electrical and gas corporation under the regulatory authority of the CPUC, with specific and limited exceptions which are under the oversight of the Attorney General for nonprofit corporations.
- 4) Authorizes the appointment of a receiver by a superior court, upon application of the CPUC, to control and operate PG&E under terms and conditions prescribed by the court if the CPUC determines that appointment of a receiver is warranted pursuant its enhanced safety and enforcement process.
- 5) Authorizes the GSE to commence an eminent domain action to acquire PG&E if the CPUC determines that PG&E's certificate of public convenience and necessity (CPCN or license to operate) for the provision of gas or electrical service should be revoked.
- 6) Extends the revenue requirement in effect for PG&E customers at the time of the closing of acquisition by GSE for three years; requires the filing of an attrition year adjustment with the CPUC; authorizes rate increases GSE for the first three years of operation but requires a concurrent filing of an application for review of those increases with the CPUC.
- 7) Requires the CPUC to approve rates for GSE customers only if found to be just and reasonable but in an amount needed to cover indebtedness.
- 8) Permits fines and penalties levied on GSE to be recovered from its ratepayers.

- 9) Authorizes GSE to utilize financing mechanisms available to economic development facilities through the California Infrastructure and Economic Development Bank (IBank).
- 10) Restates that GSE would be exempt from income taxation, would continue to be responsible for property taxation, and its indebtedness would be free from state income taxation.
- 11) Requires administrators of the California Wildfire Fund (Wildfire Fund) to authorize GSE to participate as a successor to PG&E, continues a previously imposed surcharge on PG&E customers, to GSE customers, to participate, and adjusts required contributions and the liability cap established for PG&E.

COMMENTS:

This bill would effectuate the acquisition of PG&E by GSE under three scenarios:

First, if PG&E fails to get confirmation of its reorganization plan by June 30, 2020 in the bankruptcy or, fails to secure financing and subsequent exit from bankruptcy by September 30, 2020. As a result the bankruptcy court would oversee a bidding process for acquisition of PG&E. It would be open; GSE would not be the guaranteed winner. However, if the state demonstrates it wants to move away from an IOU model, it is expected that investors would be unlikely to bid against the state. The ability of any other entity to be up and running and able to secure financing for the transaction in such a short turnaround is also not likely. Consequently, GSE would be well-situated with the authority of this bill, market capitol, and IBank authority to acquire the utility.

In either of these situations, the PG&E reorganization plan would be set aside, including the settlement agreement with fire victims which was just voted on and approved by the victims May 15, 2020. All debt would have to be considered as part of the bid and settlements renegotiated with the parties.

Second and additionally, if PG&E attempts to sell the utility to a third party before it exits bankruptcy, GSE would be situated to bid on the utility which is the only process available for a sale initiated by the utility while in bankruptcy.

Third, after exit from bankruptcy, if at some future date PG&E fails in its safety obligations (reflected in the CPUC's May 27th decision approving PG&E's reorganization plan), the CPUC could ultimately revoke PG&E's CPCN (aka license to operate). In this event, the utility has agreed, as part of its reorganization plan, that it will sell the utility to GSE. The state would have the option to purchase all of the issued and outstanding equity interests of PG&E directly or via GSE at an aggregate price.

If PG&E reneges on the sale agreement, GSE would have the authority to use eminent domain under the terms of this bill.

If the formation of GSE is triggered, it would basically "lift and shift" PG&E to GSE which would be defined as an electrical and gas corporation and subsume all statutory and regulatory responsibilities currently required of investor-owned utilities in California. By taking ownership of PG&E's transmission lines, it would also be subject to the regulation of the Federal Energy Regulatory Commission. The measure also extends the protections of the Wildfire Fund created

last year by AB 1054 (Holden), Chapter 79, Statutes of 2019 to GSE along with applicable utility and ratepayer contributions and authorizes the use of financing mechanisms of the IBank,

According to the Author:

According to the author, "PG&E's emergence from its second bankruptcy has provided an opportunity for the state to demand necessary reforms to ensure safe, reliable, and affordable energy is provided to PG&E's customers. Many of these reforms have been outlined in regulatory filings, court documents, and legislation – last year's AB 1054. However, the state has yet to offer its contingency plan – it's 'Plan B' – should PG&E fail to adopt the required reforms and fail to correct its behavior. The state cannot risk this failure. SB 350 provides the much-needed safety net should PG&E fail to reform its governance, regulatory oversight, risk management, and safety investments and safety performance."

"SB 350 provides the statutory authorization for the CPUC to enhance its oversight and enforcement, in the event that PG&E does not comply with the terms of its bankruptcy restructuring. SB 350 additionally enables the state to swiftly take the necessary steps for PG&E to transform into GSE, a nonprofit public benefit corporation, should the CPUC determine the enhanced oversight and enforcement actions have not led to the necessary changes at PG&E." "The processes put forward in SB 350 are ones I hope we never need. I hope PG&E never starts another wildfire or causes another pipeline explosion. I hope the company improves its safety record and public image. But the State cannot rely on hope alone. We require overdue reforms and accountability, and will have a contingency plan – SB 350 – ready, should the need arise.

Arguments in Support:

350 Bay Area Action supports the measure and opines that it "puts teeth into PG&E's reorganization plan by providing the PUC authority to appoint a receiver for PG&E, which sends another and necessary signal to PG&E that its post-bankruptcy behavior can be subject to loss of control or ownership of its assets."

Arguments in Opposition:

There is no opposition to this bill.

Concerns:

A few groups have expressed concern that generally the bill doesn't go far enough and should require an immediate takeover of PG&E. Mayor Sam Liccardo writes that his coalition of mayors supports the nonprofit model and regulation by the state of labor, environmental, and safety mandates but that GSE should set its own rates and revenue requirements. He also opposes appointments by the Governor, Assembly Speaker, and Senate Rules Committee to the governing board. Similarly, the Reclaim Our Power: Utility Justice Campaign supports a model to replace PG&E which is decentralized, has democratic control and accountability, and community energy and doesn't want to wait until PG&E fails.

FISCAL COMMENTS:

According to the Assembly Appropriations Committee,

- 1) No direct state costs. This is because the bill's requirements are contingent upon any one of several events, including PG&E's failure to win approval of its bankruptcy plan or to put the plan into effect, PG&E's decision to sell its assets and stock, or the CPUC's decision to

revoke PG&E's license to operate. Should any one of these events, or other related events, occur, the CPUC and, likely, other state entities will face considerable workload. This bill prescribes and directs that workload; however, the bill does not create that workload.

- 2) Potential reduction in property tax revenue of an unknown, but likely significant, amount, as a result of the bill's exemption GSE indebtedness from all state taxation. Property tax revenue generally goes to local governments. Amendments described in the Assembly Utilities and Energy Committee (UEC) analysis of the bill, and agreed to by the author and UEC during UEC's hearing of the bill, eliminate this potential reduction in property tax revenue. This committee will adopt the UEC amendments, as outlined below.

VOTES:**SENATE FLOOR: 37-0-1**

YES: Allen, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Glazer, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Jones, Leyva, McGuire, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Stone, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Archuleta

ASM UTILITIES AND ENERGY: 12-2-1

YES: Holden, Burke, Carrillo, Eggman, Cristina Garcia, Eduardo Garcia, Mayes, Muratsuchi, Aguiar-Curry, Reyes, Santiago, Ting

NO: Chen, Cunningham

ABS, ABST OR NV: Patterson

ASM APPROPRIATIONS: 10-3-5

YES: Gonzalez, Bauer-Kahan, Bloom, Bonta, Carrillo, Chau, Eggman, Gabriel, Petrie-Norris, McCarty

NO: Bigelow, Fong, Voepel

ABS, ABST OR NV: Calderon, Megan Dahle, Diep, Eduardo Garcia, Robert Rivas

UPDATED:

VERSION: June 11, 2020

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