

AUTHOR'S COPY**000550**

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, Hill.

General Subject: Public utilities: merger, acquisition, or control of electrical or gas corporations.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations and gas corporations. Existing law prohibits a person or corporation from merging, acquiring, or controlling, either directly or indirectly, any public utility organized and doing business in this state without first securing authorization to do so from the commission. Before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized and doing business in this state, where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding \$500,000,000, existing law requires the commission to consider specified criteria and to find that the merger, acquisition, or control proposal meets certain requirements and is in the public interest, as specified.

This bill would require the commission, before authorizing a merger, acquisition, or change in control of an electrical or gas corporation involving a party that meets that revenue threshold, to additionally ensure the proposal includes specified elements and find, on balance, that the proposal improves the safety of the utility service provided by the electrical or gas corporation.

Under existing law, a violation of any provision of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill are within the act and a violation of an order or decision of the commission implementing the bill's requirements would be a crime, the bill would impose a state-mandated local program.

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.



38673

01/28/19 10:55 AM
RN 19 05571 PAGE 1

AUTHOR'S COPY

An act to amend Section 854 of the Public Utilities Code, relating to public utilities.



190557138673BILLMS13

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 854 of the Public Utilities Code is amended to read:

854. (a) No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from the commission. The commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities which are subject to this section. Any merger, acquisition, or control without that prior authorization shall be void and of no effect. No public utility organized and doing business under the laws of this state, and no subsidiary or affiliate of, or corporation holding a controlling interest in a public utility, shall aid or abet any violation of this section.

(b) Before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized and doing business in this state, where any of the utilities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall find that the proposal does all of the following:

(1) Provides short-term and long-term economic benefits to ratepayers.

(2) Equitably allocates, where the commission has ratemaking authority, the total short-term and long-term forecasted economic benefits, as determined by the commission, of the proposed merger, acquisition, or control, between shareholders and ratepayers. Ratepayers shall receive not less than 50 percent of those benefits.

(3) Not adversely affect competition. In making this finding, the commission shall request an advisory opinion from the Attorney General regarding whether competition will be adversely affected and what mitigation measures could be adopted to avoid this result.

(4) For an electric or gas utility, ensures the utility will have an adequate workforce to maintain the safe and reliable operation of the utility assets.

(c) Before authorizing the merger, acquisition, or control of any electrical, gas, or telephone corporation organized and doing business in this state, where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall consider each of the criteria listed in paragraphs (1) to (8), inclusive, and find, on balance, that the merger, acquisition, or control proposal is in the public interest.

(1) Maintain or improve the financial condition of the resulting public utility doing business in the state.

(2) Maintain or improve the quality of service to public utility ratepayers in the state.

(3) Maintain or improve the quality of management of the resulting public utility doing business in the state.

(4) Be fair and reasonable to affected public utility employees, including both union and nonunion employees.

(5) Be fair and reasonable to the majority of all affected public utility shareholders.

(6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.



(7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.

(8) Provide mitigation measures to prevent significant adverse consequences which may result.

(d) Before authorizing the merger, acquisition, or change in control of any electrical or gas corporation organized and doing business in this state, where any of the entities that are parties to the proposed transaction has gross annual California revenues exceeding five hundred million dollars (\$500,000,000), the commission shall ensure each of the elements in paragraphs (1) to (7), inclusive, are included in the merger, acquisition, or control proposal and find, on balance, that the proposal improves the safety of the utility service provided by the electrical or gas corporation.

(1) A safety management system.

(2) A comprehensive safety plan that includes a system-wide strategic approach for the safety of both employees and the public.

(3) Plans to maintain or improve the records of the electrical or gas corporation's electrical or gas facilities, including necessary audits to update incorrect or incomplete records of the electrical or gas corporation. For purposes of this paragraph, "records" shall include, but not be limited to, locations, depth, age, maintenance and testing history, maps, surveys, patrols, and violation history of all the electrical or gas corporation's electric or gas facilities.

(4) Metrics to measure safety that are complete and drive appropriate behavior.

(5) An appropriate evaluation of safety expertise in the list of qualifications used in selecting corporate leadership, including the board of directors, managers, and other leaders.

(6) Active audits for safety controls.

(7) A nonpunitive system for reporting actual and potential safety incidents to the commission to facilitate the sharing of best practices between all California utilities.

(d)

(e) When reviewing a merger, acquisition, or control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.

(e)

(f) The person or corporation seeking acquisition or control of a public utility organized and doing business in this state shall have, before the commission, the burden of proving by a preponderance of the evidence that the requirements of subdivisions (b) and (e) (b), (c), and (d) are met.

(f)

(g) In determining whether an acquiring utility has gross annual revenues exceeding the amount specified in subdivisions (b) and (e) (b), (c), and (d), the revenues of that utility's affiliates shall not be considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control.

(g)

(h) Paragraphs (1) and (2) of subdivision (b) shall not apply to the formation of a holding company.

(h)



(i) For purposes of paragraphs (1) and (2) of subdivision (b), the ~~legislature~~ Legislature does not intend to include acquisitions or changes in control that are mandated by either the commission or the Legislature as a result of, or in response to any electric industry restructuring. However, the value of an acquisition or change in control may be used by the commission in determining the costs or benefits attributable to any electric industry restructuring and for allocating those costs or benefits for collection in rates.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

