

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 20, 2012

To: The Commission
(Meeting of March 22, 2012)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2584 (Bradford) – Electrical Corporations and Gas Corporations:
Unplanned Service Outages: Retention of Evidence.
As introduced: February 24, 2012**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

This bill would require every electrical and gas corporation that has unplanned outages to preserve, for five business days, any materials that evidence the cause of the unplanned outage. If preservation of materials or evidence would impede restoration of service or threaten public safety, the utility is required to identify those utility facilities that are altered and preserve the remaining materials or evidence. The bill provides that this requirement does not apply if the California Public Utilities Commission (CPUC) notifies the utility, during the five business day period provided in the bill, that any intended investigations into the cause of the unplanned outage are concluded.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

In order to thoroughly and adequately investigate incidents and outages, investigators need to have access to all potentially relevant materials or evidence during the course of an investigation. Over the years, lack of or destruction of evidence has been a significant barrier to thorough investigations for CPUC investigators on numerous occasions. Requiring the preservation of materials that evidence the causation of unplanned outages should improve investigator's ability to conduct adequate and thorough investigations without being excessively expensive.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill should be amended as follows:

- The scope of the bill should be narrowed from including all unplanned outages to including just those outages which are: 1) currently reported to the CPUC; 2) caused

by equipment failure; or 3) related to non-scheduled maintenance activity. Currently outages which are reported to the CPUC consist of those which result in property damage exceeding \$50,000, cause personal injury which requires overnight hospitalization or results in death, and outages that garner major media attention. Requiring utilities to preserve evidence relating to outages which would never be reported to the CPUC, and would not come to the attention of investigators in a time period immediate to the event, could be excessive. Nonetheless, preservation of evidence from outages caused by equipment failure, if the failure does not meet reporting criteria, can potentially help utility operators identify trends and provide insight into poorly maintained, defective, or deteriorating utility facilities, thus promoting safety and reliability.

- While requiring utilities to preserve evidence related to unplanned outages is an important factor in aiding CPUC investigators' ability to conduct thorough investigations, the manner in which the evidence is preserved is equally important. At times, poorly maintained, catalogued, or inaccessible preserved evidence is synonymous to disposed or destroyed evidence, as the resulting evidence is not valuable to investigations. Therefore, the bill should include language requiring utilities to properly label/catalogue and maintain preserved evidence in an accessible manner for assessment by CPUC investigators. Furthermore, when inspecting preserved evidence, utilities should provide the appropriate staff to aid investigators in identifying and accessing any evidence of interest which is not clearly labeled or inaccessible.
- The preservation of the evidence for a minimum of 5 business days could be too short and administrative complications could result in accidental disposal of evidence. For this reason, the 5-day requirement should be replaced with the requirement that evidence be retained until specified otherwise by CPUC staff.
- The word "accident" in the bill should be replaced with the word "incident" since "incident" is defined in CPUC regulations and "accident" is not.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

CPUC General Order 95, *Rules for Overhead Electric Line Construction*, requires electric corporations to preserve and provide to CPUC staff all evidence that is collected as part of the utility's own investigation related to any major accidents (as defined in General Order 95, Rule 17) or reportable incidents (as defined in CPUC Resolution E-4184). Rule 19 also requires that documents or evidence collected as part of the utility's own investigation related to the incident shall be preserved for at least five years. Since major accidents and reportable incidents do not account for all unplanned outages, this bill would expand the criterion which triggers evidence preservation requirements for electric corporations.

CPUC General Order 112-E, which adopted the 49 Code of Federal Regulation (49 CFR), Part 192, contains standards that require gas corporations to establish

procedures for analyzing accidents and failures, including sample selection of failed facilities or equipment for the purpose of determining causes of failure. The regulations do not define failure, nor do they specifically require that evidence must be preserved and made available to CPUC staff. Therefore, the proposed bill would provide specific criteria regarding evidence preservation for gas corporations. Furthermore, 49 CFR, Part 192, does not indicate how long evidence must be preserved; therefore, by requiring that evidence be preserved for a minimum amount of time, this bill would improve evidence retention and assist the CPUC as well as the gas corporations' investigators in understanding the relevant evidence retention requirements. This, in turn, would allow for more thorough investigations.

Following the November 2011 windstorms in Southern California, over half of the evidence (failed utility poles) was discarded and prevented investigators from thoroughly investigating and determining root cause of the various failed poles. Having all of the evidence available would have provided investigators a clearer picture into the damages in order to determine whether utility facilities were in violation of CPUC rules.

It is possible that the problem involving electric and gas corporations could be resolved through regulatory proceedings, but these proceedings can be lengthy, costly, and controversial, and less likely to resolve the problem than clear, enforceable legislation.

Depending on the number and location of reportable incidents in any given period, it may not be possible for staff to conduct sufficient analysis within a five-day period after any specific incident. Providing staff with the flexibility to request a longer retention time would allow staff to conduct more thorough investigations. More effective evidence preservation requirements would help achieve CPUC objectives of maintaining the safe and reliable delivery of gas and electricity. As more evidence is collected and preserved from outages, the CPUC can conduct more thorough investigations, make better determinations regarding root cause, and potentially identify trends in equipment failures to help prevent future occurrences.

PROGRAM BACKGROUND:

Public Utilities Code Section 315 requires the CPUC to investigate the cause of all incidents occurring within this State that involve a gas or electric corporation directly or indirectly arising from or connected with maintenance or operation, resulting in loss of life or injury to person or property and requiring or in the judgment of the CPUC. In CPUC Resolution E-4184, the CPUC clarified what incidents corporations are required to report to the CPUC. Pursuant to Resolution E-4184, gas and electric corporations are required to report incident that involve their facilities and: 1) result in property damage exceeding \$50,000; 2) result in personal injury which requires overnight hospitalization or results in death; and 3) cause outages that garner major media attention.

CPUC General Order 95, *Rules for Overhead Electric Line Construction*, currently requires electric corporations to preserve, for five years, all evidence that is collected as

part of the utility's own investigation related to any major accidents or reportable incidents. Major accidents and reportable incidents, however, do not account for all unplanned outages, as required by the bill, thus this bill would expand the criterion which triggers evidence preservation requirements for electric corporations.

CPUC General Order 112-E, which adopted the 49 Code of Federal Regulation (CFR), Part 192, currently contains standards that require gas corporations to establish procedures for analyzing accidents and failures, including sample selection of failed facilities or equipment for the purpose of determining causes of failure. However, the regulations do not define failure nor indicate the duration that evidence must be preserved; therefore, this bill would introduce more stringent requirements on gas corporations.

Although there are provisions in the above mentioned regulations regarding the preservation of evidence, this bill, if enacted, would aid investigator's efforts in conducting thorough investigations. This bill would not adversely affect the work of CPUC investigators.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 2584 is pending hearing in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION:

None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 2584 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Bradford

FEBRUARY 24, 2012

An act to add Section 557 to the Public Utilities Code, relating to electrical corporations and gas corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2584, as introduced, Bradford. Electrical corporations and gas corporations: unplanned service outages: retention of evidence.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law requires the PUC to adopt inspection, maintenance, repair, and replacement standards for the distribution systems of electrical corporations in order to provide high quality, safe, and reliable service. Existing law requires the PUC to conduct a review to determine whether the standards have been met and to perform the review after every major outage.

This bill would require every electrical corporation and gas corporation that has an unplanned service outage resulting from an accident, natural event, or caused by the unplanned act of a utility employee, to preserve and not dispose of any materials that evidence the cause of the unplanned outage for 5 business days following the unplanned outage. The bill would provide that where evidence is required to be altered in order to restore utility service or to protect the public safety, the electrical corporation or gas corporation is required to identify those utility facilities that have been altered and preserve those materials that are unnecessary to restoration of service or protection of the public safety.

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.

Because the provisions of this bill are within the act, 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:

SECTION 1. Section 557 is added to the Public Utilities Code, to read:

557. Every electrical corporation and gas corporation that has an unplanned service outage resulting from an accident, natural event, or caused by the unplanned act of a utility employee, for five business days following the unplanned outage, shall preserve and not dispose of any materials that evidence the cause of the unplanned outage. Where materials or evidence are required to be altered in order to restore utility service or to protect the public safety, the utility shall identify those utility facilities that have been altered and preserve those materials or evidence that are unnecessary to restoration of service or protection of the public safety. The duty to preserve evidence of unplanned outages pursuant to this section is inapplicable when, during the five-day period, the commission notifies the utility that it has concluded any investigation it intends to conduct as to the reasons for the outage.

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.