STATE OF CALIFORNIA — Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: January 23, 2013

To: The Commission
(Meeting of January 24, 2013)

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

Subject: **SB 48 (Hill) – Energy-related research: mergers: entities formed to receive benefits on behalf of ratepayers.**
As introduced: January 19, 2013

RECOMMENDED POSITION: OPPOSE

SUMMARY OF BILL:
This bill would impose new requirements on electric and gas ratepayer-funded Research, Development and Demonstration (RD&D) and would limit California Public Utilities Commission (CPUC) establishment of new entities in the context of approving large utility mergers or acquisitions.

Specifically, this bill:

- Requires the Energy Commission (CEC) to perform a "merit review" on any electric or gas ratepayer-funded RD&D project performed by a third party;
- Requires the CPUC to prepare an annual report to the legislature detailing all ratepayer-funded RD&D projects over the previous five years; and
- Requires that the CPUC, in approving a large utility merger, acquisition, or change of control, "not establish an entity to receive benefits on behalf of ratepayers without first obtaining statutory authorization from the Legislature."

CURRENT LAW:
- PU Code Section 451 - *All charges demanded or received by any public utility…for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable.*

- PU Code Section 740.1 – "*The commission shall consider the following guidelines in evaluating the research, development, and demonstration programs proposed by electrical and gas corporations:*

(a) Projects should offer a reasonable probability of providing benefits to ratepayers.
(b) Expenditures on projects which have a low probability for success should be minimized.
(c) Projects should be consistent with the corporation's resource plan.
(d) Projects should not unnecessarily duplicate research currently, previously, or imminently undertaken by other electrical or gas corporations or research organizations.
(e) Each project should also support one or more of the following objectives:
(1) Environmental improvement.
(2) Public and employee safety.
(3) Conservation by efficient resource use or by reducing or shifting system load.
(4) Development of new resources and processes, particularly renewable resources and processes which further supply technologies.
(5) Improve operating efficiency and reliability or otherwise reduce operating costs."

AUTHOR'S PURPOSE:
This bill appears to be a legislative response to the recent CPUC decision approving a ratepayer-funded RD&D contract between the three major energy utilities and Lawrence Livermore National Laboratory (LLNL). This bill would not prohibit such contracts, or other ratepayer-funded RD&D contracts, but would add a "merit review" by the CEC for all such contracts, and a report to the legislature by the CPUC detailing all ratepayer-funded RD&D projects. In addition, the bill would prohibit the CPUC from establishing certain entities in the context of a utility merger or acquisition without legislative approval. While the bill language is unclear, this appears to be a response to the creation of the California Emerging Technology Fund (CETF), a non-profit aimed at expanding broadband access that was created by the CPUC as a condition of its approval of the AT&T/SBC and Verizon/MCI mergers in 2005.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:
This bill should be opposed for the following reasons:

1) The bill would establish a duplicative process for vetting ratepayer funded RD&D activities. Ensuring the reasonableness of such funding is well addressed through the stakeholder processes upon which the CPUC relies to establish such programs, as well as the programmatic requirements the CPUC has incorporated into these initiatives to ensure effective use of ratepayer monies in funding RD&D efforts by third parties.
2) By housing the merit-review process at the CEC, the bill would create additional coordination and timing challenges that may inhibit effective/timely RD&D spending.
3) This bill could delay or prevent utility mergers or acquisitions, and will hinder creative and flexible solutions to issues presented by such mergers or acquisitions.

4) This bill creates perverse incentives by making it more difficult for the CPUC to approve mergers or acquisitions with public benefits than it would be for it to approve mergers or acquisitions without public benefits.

SUMMARY OF SUGGESTED AMENDMENTS:
None.

DIVISION ANALYSIS (Energy and Legal Divisions):
The bill would require the CEC to conduct merit reviews of all funding decisions involving the use of ratepayer monies to support RD&D activities conducted by third parties. The purpose of the "merit review" for RD&D aspect of the bill appears to be to ensure the quality of ratepayer-funded RD&D performed by a third party under contract to a utility. Alternatively, it could be to discourage such contracts in the future. From the bill language, it is not clear when the merit review would be performed – it could be either a prerequisite to entering a contract, or it could be an after-the-fact review. While the bill does cite to 10 CFR 600.13, which states that Department of Energy merit reviews are intended to be advisory not decisional, it silent as to when in the CPUC's process the CEC is to undertake it merit review. If the CEC is to undertake this review during the CPUC's process there may be legal concerns about the sharing of data and possible violations of Pub. Util. Code Sec.583. There may also be legal concerns about how the CEC's review gets into the record of the CPUC proceeding; including, but not limited to: Does the CEC have to become a party to the proceeding? Will it be subject to cross examination? And without an opportunity to cross would the report be considered hearsay?

If the CEC is to undertake this review after the CPUC's process there may be legal concerns as to the implications of a "negative" merit review. For instance, would such an outcome have the force and effect of overturning a CPUC decision? Would such a report be part of the administrative record on appeal? Without further clarification these questions and others raise significant legal concerns.

The bill, which would require the CEC to establish and conduct merit reviews regarding the use of the IOU ratepayer monies by third-parties to conduct RD&D appears unnecessarily duplicative of the CPUC's existing obligations and approach to ensuring the use of ratepayers funds is reasonable and provide ratepayers benefits. Furthermore, housing the merit-review function at the CEC creates a bifurcated process that is likely to create additional coordination challenges that could impede effective deployment of ratepayer funds dedicated to RD&D. This could also create strong incentives for RD&D efforts to be conducted by the IOUs or state agencies themselves, thus limiting the ability of the state to effectively leverage the substantial expertise represented by non-governmental and non-utility organizations. It is also unclear why the CEC is better-suited to oversee the merit-review process than the CPUC. No reason is provided to justify assigning this responsibility to the CEC.

The CPUC already has an obligation pursuant to PU code section 740.1 to consider various guidelines when evaluating RD&D expenditures proposed by the IOUs. More

generally, pursuant to PU code section 451, the CPUC has a mandate to ensure that ratepayer expenditures are reasonable. These guidelines and the CPUC's adherence to them, coupled with the rigorous stakeholder review process to which CPUC decision are subject, already ensure that ratepayer monies are reasonably spent. In practice, the various programs established by the CPUC that provide ratepayer funds to third parties to conduct RD&D already include oversight and evaluation processes consistent with what the bill proposes and thus the bill, if approved, would do little to enhance the efficacy of RD&D funding.

Below is an overview of several major, ratepayer-funded RD&D initiatives that provide ratepayer monies to third parties with a summary of the associated oversight regime.

1) The California Solar Initiative RD&D program – For the most recent CSI RD&D solicitation, project selection was made through a competitive process that included an independent technical review by one or more technical experts identified by the program administrator (ITRON). Technical reviewers were chosen from academia, industry, or government and assessed proposals for technical feasibility, likelihood of success, connections to the market, capabilities of the proposed team, and overall strengths and weaknesses of the proposed approach. This feedback was then provided to a scoring committee to inform the committee's recommendations. Once projects have been ranked and recommended for funding, they are submitted to the CPUC and a draft resolution approving the grant recipients is put before the CPUC for a vote.

2) LNL 21st Century Energy Systems Project – Specific project activities are subject to the majority approval of the Board of Directors, consisting of one representative from each of the three IOUs, and three members with backgrounds in academic or institutional research. Spending/project activities are subject to a majority approval by the board. Before funding can be encumbered, the proposed activities recommended by the Board must be submitted to the CPUC via advice letter that must provide a policy justification, evidence that the proposed activities are non-duplicative, a business case supporting each funding area etc.; and this advice letter must be approved via resolution that is voted on by the CPUC.

3) The Electric Program Investment Charge – Prior to the Program Administrators' implementation of any RD&D spending activities, they must develop and submit triennial investment plans that identify the specific program and project areas to which they intend to provide funding. These investment plans are subject to extensive stakeholder input prior to and after being submitted to the CPUC. Pursuant to the "Phase 2" decision in R.11-10-003, the investment plans must provide a clear policy case/rationale for each proposed funding area, explain the ratepayer benefits advanced by the project, identify specific eligibility requirements, and an explanation of how the proposed activities are consistent with PUC sections 740.1 and 8360. In addition to the prospective requirements, the EPIC also provides for robust program evaluation requiring the program administrators to identify metrics against which the investment plans' success should be evaluated, as well as the requirement that an

independent review/audit be undertaken in the 2016 timeframe.

As these examples indicate, the CPUC is committed to ensuring that ratepayer funded RD&D activities conducted by third-parties as defined in the bill provide meaningful benefits to customers, and has consistently established robust oversight regimes to achieve that objective. In our view, this obviates the need for merit review process envisioned in the bill.

As described above, under existing programs that involve the deployment of ratepayers dollars to support third party RD&D efforts, the CPUC already requires that project selection be informed by a robust review process through its existing stakeholder processes (i.e. notice and comment requirements) as well as through ongoing programmatic requirements that govern the project selection process. Given this, the merit review requirement would appear to create a duplicative process that will do little to improve RD&D funding decisions while unnecessarily limiting and/or retarding the state's ability to effectively move forward with RD&D funding. More generally, given the CPUC's obligations pursuant to statute regarding the use of ratepayer funds to support RD&D activities, as well as the CPUC reliance on stakeholder processes to inform decision making, the goals of the merit review process envisioned by the bill to ensure the efficacy of RD&D funding to third parties appears to already be well-addressed.

To the degree the merit review would apply to all CPUC programs including existing programs, the staffing implications could be significant. Existing programs may need to be modified to incorporate the merit review process required by the bill. This may require modifying existing decisions, as well as program rules adopted pursuant to those decisions. This may require additional staff resources and could substantially disrupt existing programs, by imposing additional requirements/processes that are not already incorporated into programs and schedules. Depending on the CEC's capacity to assume the responsibilities envisioned by the bill, the delay that implementation of the bill may engender could be significant.

Related to the merger portion of the bill, it is useful to note that because the CETF was established in 2005, this bill's provisions relating to mergers and acquisitions would have no impact on its existence. The bill would, however, prevent CPUC Commissioners from serving as a director or officer of CETF. (President Peevey is currently Chairman of the Board of CETF.)

The bill would not appear to prevent the CPUC from establishing non-profit entities such as the CETF in any context outside of a merger, acquisition, or change in control of a utility.

PROGRAM BACKGROUND:
California and the CPUC have a long history supporting ratepayer-funded RD&D efforts. Historically the primary vehicles for providing ratepayers monies to RD&D activities has been through the Public Goods Charge (PGC) and via utility funding requests made through their General Rate Cases as well through one-off applications. A back of the

envelope analysis developed by Energy Division staff and incorporated into the staff proposal submitted in the proceeding considering the Electric Program Investment Charge, suggests that ratepayer supported funding of RD&D efforts in recent years has been on the order of $140 million per year. In the section above we provide some specific examples of recent RD&D funding activities/programs that have been approved by the CPUC. In all of these cases, ratepayer monies are frequently provided to third parties to conduct RD&D. Reliance on third-parties is essential to expanding the field of potential RD&D projects given the extensive expertise and range of activities taking place and in need of ratepayer support outside of the IOUs and the CPUC, recognizing California's position as a global leader in technology innovation. By expanding the field of potential funding opportunities, the overall quality of RD&D is improved by increasing the level of competition for the relatively limited pool of funds available for this purpose. As explained in more detail above, use of ratepayer monies for RD&D purposes, whether conducted by the IOUs or other entities, is subject to substantial review prior to approval. In addition, as a matter of practice, the CPUC has generally established programmatic rules that provide for rigorous ongoing review to ensure that projects ultimately receiving funding are in the best interest of ratepayers.

The CETF was established to close the "Digital Divide" in California by accelerating the deployment and adoption of broadband to unserved and underserved communities and populations by making investments in programs and projects to improve access, affordability, applications, accessibility and assistance to broadband. The CETF's priority focus is on: 1) rural communities that lack broadband infrastructure; 2) urban poor and disadvantaged communities that lack computers and affordable connections to the internet; and 3) disabled populations that lack technology accessibility. While this bill would not eliminate the CETF, it would prohibit CPUC Commissioners from serving on the board or as an officer of CETF or similar entities, and it would prohibit the CPUC from establishing such entities in the future.

The CPUC has established or approved the establishment of other non-profit entities, including the California Clean Energy Fund (CalCEF) and the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council). Because those entities were not established in the context of a merger, acquisition, or change of control, this bill does not appear to affect these entities. For example, CPUC Commissioners could continue to be directors or officers of these entities.

SAFETY IMPACT:
This bill does not appear to have any direct impact on the safety of California citizens. However, we note that ratepayer funded RD&D activities have historically included valuable efforts that seek to enhance safety. For example, in the context of gas safety and reliability, the CEC has allocated approximately $500,000 in gas ratepayer monies to the Center for Information Technology in the Interest of Society (CITRIS) to develop innovative monitoring and sensing technologies. These technologies can enable more effective pipeline monitoring with the goal of improving the ability to proactively identify and address adverse pipeline conditions. Through the California Solar Initiative's RD&D program, funding has gone toward research to evaluate and quantify the risks of

unintended islanding, and, related to this to review PG&E's Rule 21 interconnection requirements with respect to islanding. CSI RD&D funds have also been allocated to support a project led by the Electric Power Research Institute to develop a screening methodology to determine the level of PV that can be accommodated on individual distribution feeders. Going forward, a number of RD&D efforts also seek to enhance safety and reliability. The recently approved LLNL 21st Century Energy Systems Project identified several high level funding areas that emphasize safety concerns including improved electricity and gas flow modeling, as well as efforts aimed at enhancing cyber security. Similarly, a substantial number of the project areas that have been proposed by the CEC and the IOUs in their EPIC investment plans are directly related to enhancing safety and reliability associated with the provision of electricity services.

If the provision relating to mergers and acquisitions delays or prevents the merger or acquisition of a utility experiencing financial or operational problems, this bill could have an unknown adverse effect on public safety.

RELIABILITY IMPACT:
This bill does not appear to have any direct impact on the reliability of utility service. To the extent it hinders research and development into technologies that would improve reliability, it may have an unknown indirect impact on future reliability. To the extent that it delays or prevents a merger or acquisition of a utility experiencing financial or operational problems, this bill could have an unknown adverse effect on reliability.

RATEPAYER IMPACT:
By expanding the workload of the CEC and the CPUC, this bill could result in minor increases in rates charged to consumers.

FISCAL IMPACT:
This bill could result in a significant expansion of CPUC workload in the near term, as the CPUC may be required to review and modify existing decisions and programs that involve the use of ratepayer monies to fund third-party RD&D activities. Additionally, the CPUC would be required to write a new report and to include new information in an existing report. Collectively these additional demands would require one ALJ II and .5 of a PURA III to fulfill, with an annual impact of $202,022.

ECONOMIC IMPACT:
Because the direct economic impacts of RD&D efforts are difficult to calculate with certainty, the impact of the bill is uncertain. However, in terms of its impact on the pace of RD&D funding and activity, the bill would create additional processes in order to implement and likely create substantial delays. To the extent it discourages utilities from entering into third-party contracts for RD&D with entities such as LLNL, EPRI, or consulting firms, it would have an adverse economic impact on those entities as well as potentially adversely impact the type of RD&D activities that are undertaken.

To the extent that mergers or acquisitions are delayed or prevented, there may be adverse economic impacts on the involved corporations. To the extent that entities

created by the CPUC (such as the CETF) provide economic benefits, those economic benefits would be lost.

LEGAL IMPACT:
The bill would potentially limit or place additional reviews on certain actions by the CPUC, or require legislative approval for other actions. Because it is unclear how and when the "merit review" process would occur, it is not clear exactly how it would impact CPUC processes and the requirement of the Public Utilities Code. If the "merit review" occurs after a CPUC decision is issued, it is not clear how it would interact with existing requirements under the Public Utilities Code, including questions of jurisdiction and appellate review.

The provision of the bill prohibiting the CPUC from establishing an "entity to receive benefits on behalf of ratepayers" without first obtaining statutory authorization from the legislature could result in problems in finalizing utility mergers and resolving potential conflicts. For example, if two regulated utilities were merging, or a company was acquiring a regulated utility, and as part of that transaction offered to create a non-profit entity for the benefit of ratepayers, it appears that the CPUC could not approve that merger or acquisition. The resulting delay could cause serious problems for the companies and the customers of those companies. Also, if the same merger or acquisition were presented to the CPUC without that entity, the CPUC could approve it, so this bill makes it harder to approve mergers or acquisitions that provide public benefits than to approve mergers that do not provide public benefits.

In addition, there is no definition of "an entity to receive benefits on behalf of ratepayers," so it is unclear what the bill actually prohibits the CPUC from doing. Would creation of a park or conservation easement be prohibited? What about creation of a recreation or senior center, or a job training or educational program? This lack of clarity will reduce the flexibility and creativity of companies (and the CPUC) to address and resolve public concerns relating to mergers and acquisitions of utilities, and may also result in additional litigation by opponents to such mergers and acquisitions.

OTHER STATES' INFORMATION:
None.

LEGISLATIVE HISTORY:
There is no known related legislation from recent past legislative sessions.

STATUS:
SB 48 is pending hearing in the Senate Energy, Utilities and Communications Committee.

SUPPORT/OPPOSITION:

None on file.

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BILL LANGUAGE:

BILL NUMBER: SB 48 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Hill

DECEMBER 19, 2012

An act to amend Section 854 of, and to add Sections 740.5 and 854.5 to, the Public Utilities Code, relating to energy.

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as introduced, Hill. Energy-related research: mergers: entities formed to receive benefits on behalf of ratepayers.

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations and gas corporations, as defined. Existing law authorizes the PUC to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law authorizes certain public utilities, including electrical corporations and gas corporations, to voluntarily adopt certain research and development programs and authorizes the PUC to allow inclusion of expenses for research and development in rates. Existing law requires the PUC to consider specified guidelines in evaluating the research, development, and demonstration programs proposed by electrical corporations and gas corporations.

This bill would require that any research and development or research, development, and demonstration project that is performed by a 3rd party, as defined, and is funded in whole or in part by the ratepayers of an electrical or gas corporation be subject to a merit review, as defined. The bill would require the State Energy Resources Conservation and Development Commission to select the persons to perform the merit review. The bill would require the PUC to prepare and submit to the policy and fiscal committees of the Legislature, by February 1 of each year, a written report listing all research and development, or research, development, and demonstration projects, including specified information, that were funded in whole or in part by the ratepayers of an electrical or gas corporation during the previous 5 years.

The Public Utilities Act, prohibits any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, without first securing authorization to do so from the PUC. The act requires the PUC, before authorizing the merger, acquisition, or change in control of an electric, gas, or telephone utility having revenues in excess of a specified amount, to consider, among other things, that the proposal provides short-term and long-term economic benefits to ratepayers, and equitably allocates the short-term and long-term forecasted economic benefits of the proposed merger, acquisition, or control, as determined by the PUC, between shareholders and ratepayers, where the PUC has ratemaking authority. Existing law requires that the

ratepayers receive not less than 50% of the benefits.

This bill would prohibit the PUC, when authorizing a merger, acquisition, or change in control, from establishing an entity to receive benefits on behalf of ratepayers without first obtaining statutory authorization from the Legislature. The bill would prohibit a commissioner of the PUC from being an officer or director of an entity formed to receive benefits of behalf of ratepayers resulting from approval of a merger, acquisition, or change in control of an electrical, gas, or telephone corporation.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 740.5 is added to the Public Utilities Code, to read:

740.5. (a) For purposes of this section, the following terms have the following meanings:

(1) "Merit review" means a thorough, consistent, and objective examination based on preestablished criteria by persons who are independent of persons submitting an application, or conducting the research and development, and who are knowledgeable in the field of endeavor to which the application or research and development pertains.

(2) "State agency" includes every state office, officer, department, division, bureau, board, and commission. "State agency" does not include the University of California or California State University.

(3) "Third party" means a person, corporation, or other entity that is not a state agency or an electrical corporation or gas corporation regulated by the commission.

(b) Any research and development or research, development, and demonstration project that is performed by a third party and is funded in whole or in part by the ratepayers of an electrical or gas corporation shall be subject to a merit review. The Energy Commission shall select the persons to perform the merit review. The Energy Commission shall use the most recent Merit Review Guide for Financial Assistance, or successor guide, issued by the federal Department of Energy pursuant to Section 600.13 of Subpart A of Part 600 of Chapter II of Title 10 of the Code of Federal Regulations (10 CFR 600.13) as a guide for conducting merit reviews.

(c) (1) Notwithstanding Section 10231.5 of the Government Code, by February 1 of each year, the commission shall prepare and submit to the policy and fiscal committees of the Legislature a written report listing all research and development, or research, development, and demonstration projects that were funded in whole or in part by the ratepayers of an electrical or gas corporation during the previous five years, including for each project the citations of all published papers and all oral and poster presentations given at public meetings. For an electrical corporation, the report may be included in the report made to the Legislature pursuant to Section 910.

(2) A report to be submitted pursuant paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 2. 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 *obtain* control *,* either directly or indirectly *, of* 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 *change in* 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 *a change in* control of any ~~electric~~ *electrical* , gas, or telephone~~utility~~ *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.

(c) Before authorizing the merger, acquisition, or *a change in* control of any ~~electric~~ *electrical* , gas, or telephone ~~utility~~ *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) When reviewing a merger, acquisition, or *change in* 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) 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 (c) are met.

(f) In determining whether an acquiring utility has gross annual revenues exceeding the amount specified in subdivisions (b) and (c), 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) Paragraphs (1) and (2) of subdivision (b) shall not apply to the formation of a holding company.

(h) For purposes of paragraphs (1) and (2) of subdivision (b), the 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~~ *electrical* industry restructuring and for allocating those costs or benefits for collection in rates.

SEC. 3. Section 854.5 is added to the Public Utilities Code, to read:

854.5. (a) When authorizing a merger, acquisition, or change in control pursuant to this chapter, the commission shall not establish an entity to receive benefits on behalf of ratepayers without first obtaining statutory authorization from the Legislature.

(b) No commissioner shall be a director or officer of an entity formed to receive benefits on behalf of ratepayers. The holding of simultaneous positions as a commissioner and as a director or officer of an entity formed to receive benefits of behalf of ratepayers resulting from approval of a merger, acquisition, or change in control pursuant to this chapter is the holding of public offices that are incompatible pursuant to Section 1099 of the Government Code.