

**Introduced by Senator Hill**December 19, 2012

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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:*

- 1 SECTION 1. Section 740.5 is added to the Public Utilities
- 2 Code, to read:
- 3 740.5. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) “Merit review” means a thorough, consistent, and objective
- 6 examination based on preestablished criteria by persons who are
- 7 independent of persons submitting an application, or conducting
- 8 the research and development, and who are knowledgeable in the
- 9 field of endeavor to which the application or research and
- 10 development pertains.

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

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

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

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

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

33 SEC. 2. Section 854 of the Public Utilities Code is amended  
34 to read:

35 854. (a) No person or corporation, whether or not organized  
36 under the laws of this state, shall merge, acquire, or *obtain* control,  
37 either directly or indirectly, *of* any public utility organized and  
38 doing business in this state without first securing authorization to  
39 do so from the commission. The commission may establish by  
40 order or rule the definitions of what constitute merger, acquisition,

1 or control activities which are subject to this section. Any merger,  
2 acquisition, or *change in* control without that prior authorization  
3 shall be void and of no effect. No public utility organized and  
4 doing business under the laws of this state, and no subsidiary or  
5 affiliate of, or corporation holding a controlling interest in a public  
6 utility, shall aid or abet any violation of this section.

7 (b) Before authorizing the merger, acquisition, or *a change in*  
8 control of any ~~electric~~ *electrical*, gas, or telephone ~~utility~~  
9 *corporation* organized and doing business in this state, where any  
10 of the utilities that are parties to the proposed transaction has gross  
11 annual California revenues exceeding five hundred million dollars  
12 (\$500,000,000), the commission shall find that the proposal does  
13 all of the following:

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

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

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

25 (c) Before authorizing the merger, acquisition, or *a change in*  
26 control of any ~~electric~~ *electrical*, gas, or telephone ~~utility~~  
27 *corporation* organized and doing business in this state, where any  
28 of the entities that are parties to the proposed transaction has gross  
29 annual California revenues exceeding five hundred million dollars  
30 (\$500,000,000), the commission shall consider each of the criteria  
31 listed in paragraphs (1) to (8), inclusive, and find, on balance, that  
32 the merger, acquisition, or control proposal is in the public interest.

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

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

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

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

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

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

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

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

11 (d) When reviewing a merger, acquisition, or *change in control*  
12 proposal, the commission shall consider reasonable options to the  
13 proposal recommended by other parties, including no new merger,  
14 acquisition, or control, to determine whether comparable short-term  
15 and long-term economic savings can be achieved through other  
16 means while avoiding the possible adverse consequences of the  
17 proposal.

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

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

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

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

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

1 854.5. (a) When authorizing a merger, acquisition, or change  
2 in control pursuant to this chapter, the commission shall not  
3 establish an entity to receive benefits on behalf of ratepayers  
4 without first obtaining statutory authorization from the Legislature.  
5 (b) No commissioner shall be a director or officer of an entity  
6 formed to receive benefits on behalf of ratepayers. The holding of  
7 simultaneous positions as a commissioner and as a director or  
8 officer of an entity formed to receive benefits of behalf of  
9 ratepayers resulting from approval of a merger, acquisition, or  
10 change in control pursuant to this chapter is the holding of public  
11 offices that are incompatible pursuant to Section 1099 of the  
12 Government Code.