

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1100 (Aguiar-Curry)
Version: July 5, 2021
Hearing Date: July 13, 2021
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Communications service: emergencies and disasters: reports

DIGEST

This bill requires the California Public Utilities Commission (CPUC) to collect specified information related to the damage, repair, restoration, and backup generation of telecommunications infrastructure as a result of a fire or other disaster.

EXECUTIVE SUMMARY

Recent CPUC decisions have established certain steps that telecommunications providers must take to prepare for emergencies and implemented requirements for consumer assistance that providers must offer to Californians impacted by disasters and emergencies. Nevertheless, some natural disasters are so severe that they leave telecommunications infrastructure defunct or destroyed. This bill requires the CPUC to collect certain information from telecommunications service providers, within 12 months of a state or local disaster declared by the Governor, relating to the restoration of telecommunications infrastructure and any obstacles to restoring the same level of service that existed before the disaster. The bill authorizes the CPUC to make the information public unless it would pose a security threat, as specified, and requires the CPUC to aggregate the information received from all telecommunications service providers and report it annually to the Legislature.

This bill is sponsored by The Utility Reform Network (TURN) and Communications Workers of America, District 9, and is supported by the California Labor Federation. It is opposed by AT&T, the California Cable and Telecommunications Association, and Frontier Communications. This bill was passed by the Senate Energy, Utilities and Communications Committee with a vote of 11-2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the CPUC to regulate public services and utilities including electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies providing services to the public. (Pub. Util. Code, §§ 301-327.)
- 2) Provides that no information furnished to the CPUC by a public utility, except for matters specifically required to be open to public inspection, shall be open to public inspection or made public except on order of the CPUC. A present or former officer or employee of the CPUC who divulges any such information is guilty of a misdemeanor. (Pub. Util. Code, § 583.)
- 3) Requires the CPUC, whenever, after hearing, it finds that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that new structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, to make and serve an order directing that the necessary change be made and setting forth the time and manner in which it should be made. (Pub. Util. Code, § 762.)
- 4) Prohibits information furnished to the CPUC by a utility or business, except those matters specifically required to be open to public inspection, as specified, from being open to public inspection or made public except on order of the CPUC. Any present or former officer or employee of the PUC who divulges any such information is guilty of a misdemeanor. (Pub. Util. Code, § 583.)
- 5) Requires the CPUC to identify the need and best practices for backup electricity systems in telecommunication service networks and whether public safety services can be reached via telephone during electrical outages
 - a) A “telecommunications service” means voice communication provided by a telephone corporation, as specified, voice communication provided by a provider of wireline, wireless, satellite, Voice over Internet Protocol (VoIP) or any successor protocol, as specified. (Pub. Util. Code, § 2892.1.)
- 6) Requires a facilities-based mobile telephony services provider to take certain preparations for receiving notifications regarding the deenergization of electrical lines, and upon receipt of such a notification, communicate relevant situational information relative to communications capabilities to electrical corporations, local publicly owned electric utilities, electrical cooperatives, and appropriate public

safety stakeholders including emergency response offices for the affected area. (Pub. Util. Code, § 776.5.)

- 7) Requires all providers of access to 911 service to notify the Office of Emergency Services (OES) whenever a community isolation outage occurs that limits their customers' ability to make 911 calls or receive emergency notifications and requires those providers to provide the estimated time to repair the outage and when achieved, restoration of service; the notification must be made within 60 minutes of the provider's discovery of the outage. Except as necessary to notify applicable county office of emergency services, law enforcement, or public safety answering point affected by the outage, OES must keep community isolation outage notifications and their contents confidential. (Gov. Code, § 53122.)

This bill:

- 1) Defines the following relevant terms:
 - a) "Advanced communications capability" has the same meaning as defined in section 1302 of Title 47 of the United States Code.
 - b) "Communications infrastructure" is the conduits, ducts, wires, lines, cables, poles, towers, and any other equipment and facilities used to provide telecommunications service and advanced telecommunications capability.
 - c) A "telecommunications service provider" is a facilities-based wireline or wireless provider that is required to file a communications resiliency plan pursuant to specified CPUC decisions.
- 2) Requires the CPUC, after a state or local disaster for which the Governor has issued a declaration, to collect, within 12 months of the declaration, the following information from a telecommunications service provider relating to the provider's efforts to restore, repair, or replace communications infrastructure that was damaged as a result of the disaster:
 - a) The extent of any damage to communications infrastructure caused by the disaster, including the type of infrastructure damaged.
 - b) The types of infrastructure used to restore telecommunications service and advanced telecommunications capability following an outage caused by, or to repair or replace related communications infrastructure damaged by, the disaster.
 - c) The obstacles encountered by the telecommunications service provider in repairing or replacing communications infrastructure.
- 3) Requires the CPUC to break down the information provided by each disaster, post the aggregated information on its website, and submit the information annually in a report to the Legislature and in presentation to the relevant policy committees of the Legislature.

- 4) Provides that the CPUC may make the above-listed information public, unless doing so would present a security threat to the public, a threat to the property of the telecommunications service provider, or a threat to the employees of the telecommunications service provider. When submitting information requested by the CPUC, a telecommunications service provider shall identify any information the disclosure of which might present a security threat to the public, a threat to the property of the telecommunications service provider, or a threat to the employees of the telecommunications service provider.
- 5) Requires the CPUC to seek to limit duplicative data requests as part of its data collection efforts.
- 6) Provides that nothing in the bill shall require the CPUC to revise or otherwise modify the requirements in specified existing decisions relating to wireless and wireline provider resiliency strategies.

COMMENTS

1. Author's comment

According to the author:

The wildfires of 2017 and 2018 caused massive devastation, from private property loss to telecommunications network damage. Many people reported their mobile phones went dark, and Internet service went out, as cell towers were damaged and underground fiber lines burned. In 2017 an online survey found that 64 percent of respondents in Sonoma County's wildfire affected areas lost landline phone service. Just last year in 2020, the Glass Fire reportedly damaged telecommunications infrastructure, causing disruptions in phone service in the affected area.

Without information regarding the methods and technology used to rebuild, there is no way to ensure that residents have the same or improved access to a reliable network. For most Californians, reliable voice telephone service is necessary to reach 911. Without it, the ability to contact emergency services is limited or nonexistent. AB 1100 is needed to ensure that state regulators and public officials are informed of telecommunications service failures and network damage after a natural disaster.

2. This bill requires the CPUC to collect certain information relating to telecommunications service providers' infrastructure restoration efforts after a disaster

According to the author and sponsors of the bill, there is a concern that telecommunications service providers, when rebuilding telecommunications

infrastructure after a disaster, are not restoring the infrastructure to the full extent or with the same quality of access that existed before the disaster. According to the Senate Energy, Utilities and Communications Committee's analysis of this bill, incorporated herein by reference, there are already laws in place governing when a telecommunications service may be replaced or discontinued, and requiring telecommunications providers to make disaster plans ahead of time:

Existing federal law prohibits telecommunications providers from degrading or ceasing service when replacing telecommunications facilities. When retiring or replacing certain facilities, providers must obtain permission from the FCC prior to discontinuing services or replacing infrastructure...

The CPUC, Legislature and Office of Emergency Services (OES) have taken a number of steps to address the need for greater emergency preparedness and response regarding telecommunications services. In response to the 2017 wildfires, the CPUC adopted emergency utility customer relief measures; however, these measures were temporary, and the CPUC subsequently opened a rulemaking (R.18-030-011) to establish more permanent, standardized emergency preparedness and relief measures. Since January 2020, the CPUC has adopted two decisions that create certain emergency preparedness and resiliency requirements for telecommunications providers:

- D.20-07-011 requires facility-based wireless telecommunications providers to file communications resiliency plans, which must identify certain steps providers will take to maintain service during outages and restore service after outages. The decision also required wireless providers to ensure that their facilities have sufficient backup power in the Tier 2 and Tier 3 fire threat areas to operate for 72 hours in the event of a power outage.
- D.21-02-029 requires wireline telecommunications providers, including VoIP providers, to file communications resiliency plans detailing the steps providers will take to maintain service during emergencies and restore service from outages. The decision also adopted a 72 hour standard for certain wireline telecommunications facilities in Tier 2 and Tier 3 fire threat areas.

In addition to the CPUC's actions, the Legislature passed SB 670 (McGuire, Ch. 412, Stats. 2019), which required telecommunications providers to submit a notice to OES within 60 minutes when an outage impacting 911 calls and emergency notifications occurs. These notifications are intended to ensure that emergency responders have sufficient real time information for situational awareness. OES has adopted regulations to implement this outage reporting.

This bill adds another layer of reporting by requiring the CPUC, within 12 months of a state or local disaster declared by the Governor, to collect specified information related to telecommunications service providers' efforts to restore and repair service, including

what type of infrastructure is being put in place and whether there are any obstacles to replacing the pre-disaster level of service. The author accepted amendments in the Senate Energy, Utilities and Communications Committee that reduced the extent to which the bill's reporting requirements were duplicative with existing reporting requirements, and that ensured consistency with the CPUC's existing decisions relating to emergency planning.

3. This bill authorizes the CPUC to make the reported information public unless doing so would pose a security threat

Public Utilities Code section 583 (Section 583) provides public utility companies with a uniquely broad exemption from the general requirements of the CPRA and the California Constitution. Instead of information provided by utilities to the CPUC being presumptively *public*, subject only to express exemptions from disclosure, Section 583 provides that information furnished to the CPUC by a utility is presumptively *private*, unless another law specifically requires the information to be disclosed or the CPUC orders it made public.¹ This presumption of privacy is backed up with criminal sanctions: any present or former officer or employee of the CPUC who divulges information not deemed public is guilty of a misdemeanor.² This sweeping prohibition on public access to the CPUC's documents and writings is justified as necessary because of the security risks posed by disclosing specific information about the location and nature of public utility infrastructure. Many have criticized the prohibition, however, as overbroad, and argue that much of the information rendered private does not pose the kind of security risk that warrants exempting the information from disclosure.

The CPUC has recently reexamined the possible breadth of Section 583 and developed a new approach to weighing utilities' claims of confidentiality and the public's interest in disclosure. Noting that Section 583 does not include any substantive rules about what information is or is not appropriate for protection, the PUC concluded that Section 583 does not require the CPUC to maintain confidentiality for information that does not satisfy existing substantive requirements for such treatment.³ Accordingly, the CPUC now looks to other laws and regulations to provide the substantive basis for a claim of confidentiality, and uses Section 583 as the procedural mechanism, i.e., requiring the CPUC to order information be public if it does not qualify for confidential treatment.⁴

Under this new framework, the CPUC recently issued an order adopting a procedure for determining when utility infrastructure information must stay confidential under

¹ Pub. Util. Code, § 583.

² *Ibid.*

³ Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, Phase 2A Decision Adopting General Order 66-D and Administrative Processes for Submission and Release of Potentially Confidential Information (2017) Cal. P.U.C. Dec. No. 17-09-023, at pp. 12-13.

⁴ *Id.* at pp. 13-14.

one of the CPRA's substantive exemptions from disclosure, the exemption for critical infrastructure information submitted to the Office of Emergency Services.⁵ The CPUC, in the order, notes that this exemption is "one of the most frequently asserted privileges for information submitted to" the CPUC, and stated that, while public disclosure of highly sensitive information could be devastating to the safety of the state, "the fear and uncertainty surrounding terrorist attacks to the utilities' infrastructure has led to the privilege being overused."⁶ In order to correct the overuse of this critical infrastructure exemption, the CPUC implemented a requirement that, if a public utility believes information it provides to the PUC falls within the exemption, the utility must make a detailed showing that the subject matter (1) is not customarily in the public domain, including a declaration that the information is not related to a structure that is visible to the naked eye or already available online or in print, and (2) either could allow a bad actor to attack or incapacitate a facility providing critical utility service or discusses vulnerabilities of a such a facility.⁷

This bill authorizes the CPUC to make information provided to it by a telecommunications service provider public unless making the information public would present a security threat to the public, a threat to the property of the telecommunications service provider, or a threat to the employees of the telecommunications service provider. The bill does not require the CPUC to guess about whether information presents a security threat, but instead requires the telecommunications service submitting the information to identify any information it believes would present a security threat if disclosed. This provision appears consistent with the CPUC's existing provisions for determining whether information provided by a utility should remain confidential for security reasons, and does not conflict with Section 583's requirement that the CPUC itself determine whether information should be disclosed.

4. Arguments in support

According to bill sponsor Communications Workers of America, District 9 (CWA):

Despite the massive destruction left in the wake of [recent wildfires], little is known about the full impact they have had on telecommunications networks and how these [telecommunications] companies have responded. CWA members are on the front lines repairing and maintaining these networks, and they see firsthand the need for transparency. Without information regarding the methods and technology used to rebuild, there is no way to ensure that residents have the same or improved access to a reliable network. There have been reports of

⁵ See Gov. Code, § 6254(ab).

⁶ Order Instituting Rulemaking to Improve Public Access to Public Records Pursuant to the California Public Records Act, Phase 2B Decision Adopting Baseline Showings Necessary to Qualify for Consideration of Confidential Treatment (2020) Cal. P.U.C. Dec. No. 20-08-031, at p. 8.

⁷ *Id.* at pp. 13-14.

telecommunications companies publically saying that service has been restored in an area, while many residents still do not have service. Companies can also use temporary mobile cell towers to restore service, while neglecting to invest in permanent infrastructure.

CWA has long supported policies that hold telecommunications companies accountable for their infrastructure and service. AB 1100 would finally bring transparency to the restoration and reconstruction process by requiring the CPUC to collect information from telecommunications providers regarding efforts to repair and replace infrastructure that was damaged as a result of a disaster. The CPUC would submit this information to the Legislature, where these companies can be held accountable.

5. Arguments in opposition

According to the California Cable and Telecommunications Association, writing in opposition to the bill:

AB 1100 is another version of prior legislation that the Legislature has rejected multiple times before because it is inconsistent with and undermine the public safety objectives of many other recently adopted laws and regulations related to communications service during emergencies. This bill is even worse given the many additional new requirements imposed by recently enacted laws and regulations that agencies are still finalizing and providers are still implementing...

AB 1100 would also require service providers to submit to the CPUC confidential "critical infrastructure" and network information and authorize CPUC disclosure of that information irrespective of current law and a recent CPUC decision establishing a new framework for protecting confidentiality of "critical infrastructure" information (D.20-08-031).

This bill would give the CPUC unfettered discretion to disregard the new decision and instead disclose information if it disagrees with a provider's claim that disclosure would present a security threat to the public or the provider's property or employees. This approach is also inconsistent with federal and state law protecting "critical infrastructure" and ignores the real public safety risk posed by hostile parties and bad actors using information about communications networks to cause public harm.

SUPPORT

Communications Workers of America, District 9 (co-sponsor)

The Utility Reform Network (co-sponsor)

California Labor Federation

OPPOSITION

AT&T
California Cable and Telecommunications Association
Frontier Communications

RELATED LEGISLATION

Pending Legislation:

SB 341 (McGuire, 2021) requires a telecommunications provider to maintain on its website a map of its service outages, and requires the OES to collect all provider outage information, provide it to the CPUC, and aggregate that data and post it on its website. SB 341 is pending before the Assembly Emergency Management Committee.

Prior Legislation:

AB 183 (Wood, 2019) was substantially similar to this bill and would have required the CPUC to collect specific information from telecommunications after an emergency or natural disaster and provide a report to the Legislature on service outages. AB 183 died in the Assembly Appropriations Committee.

AB 2910 (Wood, 2018) was substantially similar to this bill and would have required the CPUC to collect specific information from telecommunications after an emergency or natural disaster and provide a report to the Legislature on service outages. AB 183 died in the Senate Energy, Utilities and Communications Committee.

PRIOR VOTES:

Senate Energy, Utilities and Communications Committee (Ayes 11, Noes 2)
Assembly Floor (Ayes 57, Noes 18)
Assembly Appropriations Committee (Ayes 12, Noes 4)
Assembly Emergency Management Committee (Ayes 5, Noes 2)
Assembly Communications and Conveyance Committee (Ayes 10, Noes 2)
