

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 21, 2012

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

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

Subject: **AB 1843 (Hill) – Whistleblower protection.**
As introduced: February 22, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT IF AMENDED

SUMMARY OF BILL:

This bill would require that the California Public Utilities Commission (CPUC) establish a comprehensive whistleblower protection program to protect public utilities' employees, former employees, and third-party contractors and subcontractor from retaliation from utility management for bringing information to the CPUC or other public entities regarding unreported information, including safety issues, as part of the CPUC's R.11-02-019.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

If amended, the CPUC should support this bill, because it could help provide vital information to the CPUC from the employees and contractors about the natural gas utilities' unsafe operations or facilities, of which the CPUC might not otherwise learn. Indeed, this bill merely ensures that the CPUC goes through with the whistleblower protection program that the CPUC had listed as an issue in its Gas Safety Order Instituting Rulemaking (OIR), R.11-02-019.

SUMMARY OF SUGGESTED AMENDMENTS:

The bill should provide that the CPUC may protect the anonymity of employees or contractors, when necessary, notwithstanding any other provision of California law.

DIVISION ANALYSIS (Legal Division):

In its Order Instituting Rulemaking (OIR) R.11-02-019, the CPUC is already considering whistleblower protections with regards to retaliation against natural gas employees in the aftermath of the San Bruno tragedy. This is already listed as an issue in the OIR, but

the CPUC has not yet taken any formal action. Moreover, CPSD and Legal Division staff have been conducting discovery on this subject to become better informed of the nature of the problems and the solutions, before proposing any regulation in this subject area. An Assigned Commissioner Ruling has been prepared to address this issue in the OIR, so the impact should not be that significant.

The “whistleblower” hotline maintained by the Attorney General pursuant to section 1102.7 of the California Labor Code, is listed as an example of a public entity to which utility employees may report unsafe conditions. The federal Pipeline Safety Act, 49 U.S.C. § 60129, similarly has whistleblower protections, which allow employees to bring actions before the U.S. Department of Labor if they are retaliated against by management. However, simply having the California Labor Commissioner or U.S. Department of Labor as an entity to review matters involving retaliation does not mean that the whistleblowers would ultimately prevail unless they have excellent attorneys representing them in the administrative hearings and in court if these agencies (with their limited resources) are not able to rule on the issues.

The problem addressed by the bill is very real, and, has been the subject of discovery by CPSD and Legal Division, as well as the subject of a motion by the Utilities Workers Union of America (UWUA).

The CPUC agrees with the goal of the legislation, and, could support it with the amendments, which we have proposed. Moreover, if the only way to get information from an employee or a contractor is to guarantee his or her anonymity, a statutory provision clearly giving the CPUC this right, notwithstanding any other provision of state law, would help the CPUC’s whistleblower program.

PROGRAM BACKGROUND:

As discussed above, the whistleblower program is already in the OIR and the bill is probably to ensure that we go through with the program. It is imperative that the Commission address the whistleblower protection issue in the OIR and announce its policies against management retaliation.

If and when the CPUC adopts whistleblower protections in the current OIR, which provides meaningful protection for employees who report unsafe conditions, there should be a significant increase in the number of reports of unsafe conditions, which will impact the resources of this agency by requiring follow-up investigations, but in a very focused and effective manner. It will also impact the CPUC, by requiring some screening to be done so as to protect the CPUC from employees, who have no useful information to provide but try to exploit the program, in order to protect themselves from warranted terminations from the utilities. However, to hear from employees or contractors about unsafe conditions, would make the program worthwhile.

In addition, if the legislation further clarifies that the CPUC may keep anonymous an employee or contractor, notwithstanding any other state law, we would probably have

more employees and contractors come forward to report unsafe conditions to the CPUC.

The CPUC's Consumer Protection and Safety and Legal Divisions have requested and received from PG&E complaints filed against PG&E by employees claiming that PG&E violated whistleblower statutes or committed fraudulent acts against employees. If the present legislation further clarifies that the CPUC may keep anonymous an employee or contractor, notwithstanding any other state law, we would probably have more employees and contractors come forward to report unsafe conditions to the CPUC.

As discussed, the bill itself references to "whistleblower" hotline maintained by the Attorney General pursuant to section 1102.7 of the California Labor Code, as an example of a public entity to which utility employees may report unsafe conditions. The federal Pipeline Safety Act, 49 U.S.C. § 60129, similarly has whistleblower protections, which allow employees to bring actions before the U.S. Department of Labor if they are retaliated against by management for whistleblowing. The Commission does not know how well these laws have worked with these other agencies.

LEGISLATIVE HISTORY:

Similar laws, which are related to natural gas safety requirements and became law in the past year, include the following:

- 1) AB 56, which require utilities to pressure-test all pipelines, maintain accurate records and install pipeline automatic shut-off valves in high population areas;
- 2) SB 216, which requires automatic shut-off valves on pipelines in densely-populated areas or which cross active earthquake fault lines;
- 3) SB 44, which requires utilities to have emergency-response plans and notify local agencies when a rupture occurs;
- 4) SB 705, which directs the natural gas industry to make the safety of their pipelines their top priority, and prohibits utilities from passing the costs of safety improvements in the form of unreasonable rate increases; and
- 5) SB 879, which increases the maximum fines for violations of CPUC rules from \$20,000 per day to \$50,000 per day as of January 1, 2012.
- 6) AB 1703, a pending bill sponsored by Assembly Member Hill, is related to this bill with reporting requirements imposed upon the utility.

FISCAL IMPACT:

The fiscal impacts on the CPUC would not be significant if the Governor's budget is approved by the Legislature, since we would have new safety enforcement attorneys,

Administrative Law Judges and inspectors. Therefore, assuming that the Governor's budget for the CPUC is approved, if the legislation were to pass, there could be some fiscal impact in the form of 1 additional Senior Utility Engineer (Specialist) to review the reports/filings that come in on an ongoing basis and conduct investigations and enforcement.

STATUS:

AB 1843 is awaiting policy committee referral.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 1843 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Hill

FEBRUARY 22, 2012

An act to add Article 7 (commencing with Section 8295) to Chapter 7 of Division 4 of the Public Utilities Code, relating to whistleblower protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as introduced, Hill. Whistleblower protection.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities. The California Constitution authorizes the commission to establish rules for all public utilities, subject to control by the Legislature.

This bill would require the commission, at a specified rulemaking proceeding, to establish a comprehensive whistleblower protection program to protect public utility employees, former employees, and 3rd-party contractors and subcontractors from retaliation for bringing information to the commission or other public entities, as specified, regarding, but not limited to, safety issues.

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

Because the bill would require the commission to adopt rules for the protection of whistleblowers and a violation of these rules would be a crime, 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. Article 7 (commencing with Section 8295) is added to Chapter 7 of Division 4 of the Public Utilities Code, to read:

Article 7. Whistleblower Protection Program

8295. As part of Rulemaking 11-02-019 (Order Instituting Rulemaking on the Commission's Own Motion to Adopt New Safety and

Reliability Regulations for Natural Gas Transmission and Distribution Pipelines and Related Ratemaking Mechanisms, filed February 24, 2011), the commission shall establish a comprehensive whistleblower protection program to protect public utility employees, former employees, and third-party contractors and subcontractors from retaliation for bringing information to the commission or other public entities regarding, but not limited to, safety issues. For purposes of this section, "other public entities" includes the whistleblower hotline maintained by the Attorney General pursuant to Section 1102.7 of the Labor Code.

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.