

Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

AB 2765 (Pellerin) – As Amended March 11, 2024

**SUBJECT:** Telecommunications services: backup electricity: verification

**SUMMARY:** This bill would require the California Public Utilities Commission (CPUC) to develop and implement rules to conduct random annual facility checks to verify that providers of telecommunications service are in compliance with their plans submitted to and approved by the commission regarding backup electricity for telecommunications infrastructure.

Specifically, **this bill:**

- 1) Requires the CPUC to develop the rules in a new or existing proceeding.
- 2) Requires the CPUC to adopt rules that annually require 12 random facility checks throughout the state that are equitably distributed by region and among provider of telecommunications service.
- 3) Clarifies that the CPUC may adopt rules governing fines or other remedial actions.

**EXISTING LAW:**

- 1) Provides that the CPUC' has authority over public utilities, including oversight of both public utility services and facilities. [California Constitution Art. XII, §3; Public Utilities Code §701]
- 2) Defines a “public utility” to include telephone corporations. [Public Utilities Code § 216(a)]
- 3) Vests the CPUC with the power to establish rules, hold various types of hearings, punish for contempt, and establish its own procedures. (California Constitution, Article XII)
- 4) Vests the Legislature with plenary power to confer additional authority and jurisdiction to the CPUC. (California Constitution, Article XII)
- 5) Vests the CPUC with the authority to adopt and enforce fines and penalties for failure to comply with the Constitution or any order, decision, decree, rule, direction, demand, or requirement of the commission. (Public Utilities Code § 2107-2109)
- 6) Requires the CPUC to ensure that utilities, including telephone corporations, “furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities ... as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.” [Public Utilities Code § 451]
- 7) Vests the CPUC with an ongoing responsibility to ensure the reasonableness and sufficiency of utility facilities; and may order “additions, extensions, repairs, or improvements to, or changes in” utility facilities that the Commission finds “ought reasonably to be made.” [Public Utilities Code §761-762]

- 8) Requires the CPUC to identify backup power systems needed for telecommunications facilities, not on customers' premises. Existing law authorizes the CPUC to set performance reliability standards for telecommunications backup power, subject to best practices and feasibility. (Public Utilities Code §2892.1(b-e))
- 9) Requires the CPUC, in consultation with the Office of Emergency Services (OES), to develop and implement backup electricity rules to require providers of telecommunications service to submit resiliency plans to maintain backup electricity for their telecommunications infrastructure sufficient to maintain telecommunications service for at least 72 hours. (Public Utilities Code § 776.2)

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

- 1) *Author's Statement.* According to the author "In the event of an emergency, the ability for fleeing residents to make phone calls and receive emergency notifications can quickly become a lifeline. Considering this in 2021, the Legislature directed the Public Utilities Commission to establish requirements for telecommunications providers to submit resiliency plans for maintaining backup electricity for telecommunication facilities for at least 72 hours during an emergency. However there is no clear oversight mechanism to ensure compliance with these resiliency plans. AB 2765 will establish oversight by requiring the Public Utilities Commission to randomly inspect back-up power generators across California in order to verify compliance of telecommunication facilities to their backup power resilience plans."
- 2) *The resiliency of the communications network is a public safety issue.* The failures of California's communication network in recent years, caused in part by historically destructive wildfires in 2017, 2018, 2019, as well as public-safety power-shutoffs (PSPS) initiated by California's large investor-owned utilities, demonstrated the importance of a resilient communications network. During widespread outages of the wireless and wireline communications network in affected areas, public safety was negatively impacted when first responders were unable to reliably communicate with each other and vulnerable California residents were unable to access 9-1-1 services. Proper maintenance of infrastructure, including reliable backup power, is critical in these types of catastrophic events for purposes of alerting citizens to hazards, reaching emergency services through 9-1-1, or receiving orders to evacuate. Without access to reliable communications, especially in an emergency situation, first responders and vulnerable Californians may be left stranded in life and death situations. For these reasons, it is clear that the resiliency of the communications network is a public safety issue that must be preserved in order to protect safety, health, and convenience of California residents.
- 3) *Providers are required to maintain backup power for communications network resiliency and submit communications resiliency plans to the CPUC.* Given the failures of the communications network and negative impact to public safety, in 2020 and 2021 the CPUC adopted two decision establishing rules for wireless and wireline communications provider resiliency strategies. The decisions were applicable to wireline and wireless providers respectively, but had in common six groups of resiliency strategies for providers with facilities located in Tier 2 and Tier 3 High-Fire Threat Districts. Among the six groups of strategies, among the most notable was a requirement placed on providers to implement 72-

hour back-up power to support essential communications equipment and minimum service levels for the public. Additionally, under the decisions the providers were required to annually submit communications resiliency plans to the CPUC for approval. The communications resiliency plans are required to describe a provider's ability to maintain minimum service coverage for 100% of customers, in the event of an electric grid outage. Additionally, the plan must include a summary of facilities with and without battery backup, fixed generator, and mobile generator hookups; the number of mobile generators and refueling trucks and specify which are stationed in California; a description of the provider's ability to replace damaged facilities; and information about refueling. Following adoption of the CPUC decisions, the Legislature codified the backup power requirement through SB 341 (McGuire. Chapter 425, Statutes of 2021).

- 4) *The CPUC already conducts inspections to ensure compliance with its rules.* Under existing law, including the California Constitution, the CPUC has the authority to ensure compliance with and enforce its own decisions including through inspections, audits, and fines. The CPUC uses that authority to investigate alleged violations of the Public Utilities Code, CPUC regulations, and other California statutes involving stationary utilities, including telephone (both wireline and wireless), electric, gas and water companies. These investigations generally involve consumer fraud, marketing abuse and other utility misconduct. Specifically, the staff of the Utilities Enforcement Branch (UEB) of the Consumer Protection and Enforcement Division (CPED) within the CPUC are tasked with enforcing state and other related regulations. According to the CPUC, the UEB staff have been involved in levying over \$456 million in fines and restitution from 2004 through February 2024 across the utilities it regulates. As the CPUC's existing authority relates to enforcement of the backup power decisions and communications resiliency plans, the CPUC reports that its staff have already completed over 50 facility checks since the wireline resiliency decisions were adopted by the CPUC.
- 5) *Evaluating the impact of this legislation.* This bill would require the CPUC to adopt rules requiring at least 12 random facility checks throughout the state to ensure compliance. Given that the CPUC has been actively enforcing its decisions through compliance checks, even beyond the minimum number of 12 proposed under this bill, it is unclear if this bill would make a significant difference in the CPUC's operations. Regardless, because this bill would require the CPUC to adopt specific rules on enforcement of the resiliency decisions, the CPUC would be required to reopen an existing proceeding or initiate a new proceeding to adopt those rules. The rulemaking process would require new rounds of public comment, wherein some parties could potentially advocate for any number of inspections beyond 12. Additionally, parties would be required to provide evidence to support their claims on the proper number of inspections per year. For example, it is plausible that some parties may advocate for the CPUC to conduct 50 annual inspections per year because that is what they've already been doing. On the other hand, the regulated industries may advocate for a maximum of 12 inspections per year to reduce the burden on their operations. In reaching a decision about the rules, the CPUC would need to consider the reasonableness of the frequency of the inspections face-to-face with other considerations such as the commission's staffing resources to follow the decision, but it is open ended what the final decision would be. In turn, it's difficult to predict whether the final rules would be weaker or stronger than the existing practice. Nonetheless, the random inspections are already happening.

6) *Related/prior legislation.*

- a. SB 1152 (Limon) of this session would require the State Fire Marshal to propose updates to the fire standards relating to requirements for lead-acid and nickel-cadmium battery systems. These types of batteries are used in some backup power system that providers are interested in deploying. The bill is pending in the Senate.
- b. SB 341 (McGuire. Chapter 425, Statutes of 2021), among other things, required the CPUC to adopt and implement backup power rules for providers of telecommunications service.
- c. AB 2421 (Quirk. Chapter 225, Statutes of 2020) required, only until January 1, 2024, expedited permitting of emergency standby generators for macro cell towers. The provisions of the bill are no longer in effect.

7) *Committee Amendments.* Given that the inspections required by this bill are already happening but there seems to be a lack of public awareness about the outcomes, the author may wish to amend this bill to instead require the CPUC to report on these inspections in their existing annual report submitted to the Legislature.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

The Utility Reform Network (TURN)

**Opposition**

Calbroadband

Calchamber

Calcom Association

CTIA

United States Telecom Association DbA Ustelecom - the Broadband Association

**Analysis Prepared by:** Emilio Perez / C. & C. / (916) 319-2637