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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement Public Utilities Code Section 451.2 Regarding Criteria and Methodology for Wildfire Cost Recovery Pursuant to Senate Bill 901 (2018).

Rulemaking 19-01-006

**ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

In setting forth the category, scope, and schedule of this proceeding we are mindful of and recognize the many challenges identified by parties to this proceeding in comments and at the prehearing conference (PHC). The statutory charge of Senate Bill (SB) 901 (Ch.626, Stats.2018) to the Commission in this instance is limited in scope. Consistent with the urgency set forth in the legislation, the Commission moved quickly after its adoption to discharge that statutory obligation. Yet since SB 901 was adopted, the tragedy of the 2018 fires occurred. Further, after this rulemaking was initiated, Cal Fire found that Pacific Gas and Electric Company's (PG&E) infrastructure is not implicated in the Tubbs

fires of 2017,<sup>1</sup> PG&E filed for Chapter 11 bankruptcy, and credit rating agencies have downgraded California utilities.

Governor Newsom is leading a Task Force to address the many issues related to wildfires, including wildfire costs.<sup>2</sup> The Commission on Catastrophic Wildfire Cost and Recovery, created by SB 901, has been convened, hosted its first two meetings, and is working towards a statutory requirement of publishing a report and recommendations to the Governor and Legislature by July 1, 2019.<sup>3</sup> Legislative action from these efforts may impact this proceeding. However, under existing law, per the legislative direction given to the Commission in SB 901, the methodology developed in this proceeding applies to costs incurred by an investor owned utility due to a 2017 fire. Financially viable utilities are inherently necessary to provide safe and reliable service and reduce costs to ratepayers. The Commission remains committed to finding the best solution which provides Californians safe and reliable service at just and reasonable rates.

## **1. Procedural Background**

SB 901 was signed by Governor Brown on September 21, 2018. Since SB 901 was adopted, the tragedy of the 2018 fires occurred, Cal Fire found that PG&E's infrastructure is not implicated in the Tubbs fires of 2017, PG&E filed for Chapter 11 bankruptcy, and credit rating agencies have downgraded California utilities debt ratings.

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<sup>1</sup> Report of Cal Fire is available online. Reference to this report is not an indication of the Commission's independent investigation into the fire, but merely to provide context to this proceeding. The report is available at:  
[http://calfire.ca.gov/fire\\_protection/downloads/FireReports/17LNU010045\\_tubbs\\_le80\\_Redacted\\_2.12.18.pdf](http://calfire.ca.gov/fire_protection/downloads/FireReports/17LNU010045_tubbs_le80_Redacted_2.12.18.pdf)

<sup>2</sup> State of the State Address by Governor Gavin Newsom, February 12, 2019.

<sup>3</sup> Cal.Pub. Resources Code Section 4205(c)(1).

The Commission opened R.19-01-006 (Rulemaking) to implement the provisions of SB 901 related to the Pub. Util. Code § 451.2. The goal of the Rulemaking is to adopt criteria and a methodology for the Commission to use in future applications for cost recovery of wildfire costs.

As explained in the Rulemaking adopted by the Commission, Pub. Util. Code § 451.2(a) describes how the Commission will review applications by electrical corporations that request recovery of costs and expenses from wildfires in 2017, and Pub. Util. Code § 451.2(b) requires the Commission to “determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service...” and to make disallowances of costs and expenses reviewed pursuant to Pub. Util. Code § 451.2(a) by taking that amount into consideration.

In undertaking the adoption of criteria and methodology to determine the maximum amount a corporation can pay, the Commission is mindful of both the finite resources of ratepayers in California, and the importance of maintaining financially viable utilities to provide safe and reliable service.

The criteria and methodology adopted in this proceeding may be invoked in future applications for cost recovery pursuant to Pub. Util. Code § 451.2(a). Pursuant to Pub. Util. Code § 451.2, this proceeding will not adopt any specific financial outcome for future applications.

Notice of the Rulemaking appeared on the Commission’s Daily Calendar January 11, 2019. In the Rulemaking the Commission preliminarily categorized this proceeding as ratesetting and determined hearings were not necessary. A PHC was held on February 20, 2019 to discuss the issues of law and fact and determine the need for hearing and schedule for resolving the matter.

Comments were filed on February 11, 2019 by the following entities: Institutional Equity Investors; Mussey Grade Road Alliance; Southern California Edison; Solar Energy Industries Association; Bear Valley Electric Service; Public Advocates Office; Small Business Utility Advocates; Energy Producers and Users Coalition; Independent Energy Producers Association; Coalition of California Utility Employees; The Utility Reform Network; PG&E, Liberty Utilities; Large-scale Solar Association; Pacific Power, a division of PacifiCorp; American Wind Energy Association of California; San Diego Gas & Electric Company; City and County of San Francisco; County of Mendocino, the County of Napa, & the County of Sonoma; Agricultural Energy Consumers Association; and Protect Our Communities Foundation.

Reply comments were filed on February 25, 2019 by the following entities: Mussey Grade Road Alliance; Small Business Utility Advocates; The Utility Reform Network; Southern California Edison Company; Public Advocates Office; Protect Our Communities Foundation; PG&E; San Diego Gas & Electric Company; The Energy Producers and Users Coalition; Bear Valley Electric Service, Liberty Utilities (CalPeco Electric) LLC, and PacifiCorp; Agricultural Energy Consumers Association and California Large Energy Consumers Association; Agricultural Energy Consumers Association; Wild Tree Foundation; Institutional Equity Investors; and City and County of San Francisco.

Pursuant to our rules, all of those entities are parties to this proceeding. In addition, at the PHC the California Manufacturers and Technology Association, and the California Farm Bureau Foundation moved for and were granted party status in this proceeding.

After considering the comments and reply comments regarding the scope of this proceeding, and discussion at the PHC, I have determined the issues and schedule of the proceeding to be as set forth in this scoping memo.

## **2. Issues**

Since the adoption of SB 901, many significant developments have occurred in regard to the financial status of California's utilities. The Commission is closely monitoring these developments and is committed to finding a resolution to the concerns raised by parties in conjunction with the Legislature. Despite these changed circumstances, the Commission has an obligation to continue to implement existing law, specifically Pub. Util. Code § 451.2 in this proceeding.

As noted in the rulemaking adopted by the Commission, this proceeding is limited to the implementation of Pub. Util. Code § 451.2. The scope of this proceeding does not include the consideration of cost recovery for any specific fire event. The Commission's approval of criteria and a methodology in this proceeding is not a determination of the reasonableness of any type of costs.

The primary focus of this proceeding will be on the language of Pub. Util. Code §§ 451.2(a) and (b), which state:

- (a) In an application by an electrical corporation to recover costs and expenses arising from, or incurred as a result of, a catastrophic wildfire with an ignition date in the 2017 calendar year, the commission shall determine whether those costs and expenses are just and reasonable in accordance with Section 451.

- (b) Notwithstanding Section 451, when allocating costs, the commission shall consider the electrical corporation's financial status and determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service. The commission shall ensure that the costs or expenses described in subdivision (a) that are disallowed for recovery in rates assessed for the wildfires, in the aggregate, do not exceed that amount.

Consistent with Pub. Util Code § 451.2(a), the determination of what costs and expenses are just and reasonable must be made in the context of an application for the recovery of specific costs related to the 2017 wildfires. To the extent the Legislature would like the methodology adopted in this proceeding to apply to fires, which ignited in years other than 2017, it may provide that instruction in legislation. In this rulemaking, we will focus on criteria and a methodology to inform determinations of the maximum amounts that an electrical corporation can pay for costs that may be disallowed in applications under Pub. Util. Code § 451.2(a). The aim of this proceeding will be to develop criteria and methods to determine "the maximum amount an [electrical] corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

The issues to be determined are:

1. What factors or financial metrics the Commission should consider when examining an electrical corporation's "financial status"? Specifically, whether these factors should include:
  - a. Debt/Equity ratios and changes to capital structure;
  - b. Net income;
  - c. Retained earnings;
  - d. Credit ratings;

- e. Changes to the ability of the electrical corporation to pay dividends;
  - f. Equity issuances by the electrical corporation;
  - g. Current outstanding debt and terms of debt issuances;
  - h. Current insurance costs and coverage amounts;
  - i. Outstanding liabilities and assets;
  - j. Accounting requirements under Generally Accepted Accounting Principles (GAAP);
  - k. Borrowing ability and ability to raise equity; and
  - l. Other factors (please describe).
2. How should the Commission define a “material impact” on a utility’s ability to provide safe and adequate service under Pub. Util. Code § 451.2(b)? For example, should a material impact be defined by a change to debt costs or cost of capital paid by ratepayers, by reference to a company's ability to finance its operations (including capital outlay for infrastructure improvements, and procurement of electricity and gas) or in another way?
  3. How should the Commission define harm to ratepayers under Section 451.2(b)? What measures or metrics should be used in determining whether ratepayers are harmed?

### **3. Workshop**

A Commission Staff Report will be published by April 5, 2019, and a workshop addressing the Staff Report will be held at 1:00 p.m., April 10, 2019 in the CPUC Auditorium, 505 Van Ness Ave., San Francisco, CA. The Staff Report will be an initial concept, subject to change, and the public will have an opportunity at the workshop and in written comments to provide feedback.

### **4. Need for Evidentiary Hearing**

There are no issues of material disputed fact. Accordingly, evidentiary hearing is not needed.

## 5. Schedule

The following schedule is adopted here and may be modified by the administrative law judge (ALJ) as required to promote the efficient and fair resolution of the Rulemaking:

Opening comments on OIR filed and served	February 11, 2019
Prehearing Conference	February 20, 2019
Reply Comments filed and served	February 25, 2019
Draft Staff Report Published	April 5, 2019
Workshop on Staff Report	April 10, 2019
Opening Comments on Staff Report served and filed	April 19, 2019
Reply Comments on Staff Report served and filed	April 26, 2019

The organization of the comments must correlate to the identified issues in the Staff Report. The proceeding will stand submitted upon the filing of reply comments on the Staff Report, unless the administrative law judge requires further evidence or argument. Based on this schedule, the proceeding will be resolved within 18 months as required by Pub. Util. Code § 1701.

In addition, on March 5, 2019, Wild Tree Foundation, The Utility Reform Network, Mussey Grade Road Alliance, Protect Our Communities Foundation, and the City and County of San Francisco filed a joint motion seeking the scheduling of public participation hearings in this proceeding. As the moving parties failed to identify specific issues of fact that could be addressed at public participation hearings, the direction from the legislation that the Commission quickly address the issues of law and policy raised, and the significant number of ways members of the public can already provide input on the issues raised in the OIR, the joint motion is denied.



## **6. Category of Proceeding/*Ex Parte* Restrictions**

This ruling confirms the Commission's preliminary determinations that this is a ratesetting proceeding. (OIR at 6.) Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

## **7. Public Outreach**

Pursuant to Pub. Util. Code § 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

Additionally, information regarding the R.19-01-006 was distributed statewide as a news release on January 10, 2019, and the Commission's outreach officers distributed a summary and link directly to County, Office of Emergency Services, and municipal level contacts who had expressed interest in the topic across the state, on or shortly after January 14, 2019.

In addition, the Commission served the Rulemaking on all respondents (PG&E, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities, Bear Valley Electric Service, and Pacific Power, a division of PacifiCorp). Further, in the interest of broad notice, the Rulemaking was served on the official service lists for the following proceedings:

- R.15-05-006, Order Instituting Rulemaking to Develop and Adopt Fire-Threat Maps and Fire-Safety Regulations;
- Application (A.) 15-09-010, Application of SDG&E Company for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA);

- A.17-07-011, Application of Pacific Gas and Electric Company for Authority to Establish the Wildfire Expense Memorandum Account;
- A.18-04-001, Application of Southern California Edison Company to Establish the Wildfire Expense Memorandum Account;
- A.18-09-002, Application of Southern California Edison Company for Approval of Its Grid Safety and Resiliency Program.
- R.18-10-007, the Wildfire Mitigation Plans Rulemaking

In addition, in the interest of broad notice, the Rulemaking was served on the following agencies named in SB 901:

- California Energy Commission
- State Air Resources Control Board
- California Infrastructure and Economic Development Bank
- California Office of Planning and Research

Service of the Rulemaking does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents.

## **8. Intervenor Compensation**

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by March 22, 2019, 30 days after the PHC.

## **9. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public

Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

**10. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

**11. Assignment of Proceeding**

Michael Picker is the assigned commissioner and Robert W. Haga is the assigned ALJ for the proceeding.

**IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. Evidentiary hearings are not needed.
4. The category of the proceeding is ratesetting.
5. The March 5, 2019, Joint Motion of Wild Tree Foundation, The Utility Reform Network, Mussey Grade Road Alliance, Protect Our Communities Foundation, and the City and County of San Francisco is DENIED.

Dated March 29, 2019, at San Francisco, California.

/s/ MICHAEL PICKER

Michael Picker  
Assigned Commissioner

