PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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Ratesetting

TO PARTIES OF RECORD IN RULEMAKING 19-07-017:

This is the proposed decision of Administrative Law Judge Doherty. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 24, 2019, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, ex parte communications are prohibited pursuant to Rule 8.2(c)(4)(B).

/s/ ANNE E. SIMON
Anne E. Simon
Chief Administrative Law Judge

AES:jt2

Attachment

Decision **PROPOSED DECISION OF ALJ DOHERTY (Mailed 9/23/2019)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Authorization of a Non-Bypassable Charge to Support California's Wildfire Fund.	Rulemaking 19-07-017

DECISION APPROVING IMPOSITION OF A NON-BYPASSABLE CHARGE TO SUPPORT CALIFORNIA'S WILDFIRE FUND AND ADOPTING RATE AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

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DECISION APPROVING IMPOSITION OF A NON-BYPASSABLE CHARGE TO SUPPORT CALIFORNIA'S WILDFIRE FUND AND ADOPTING RATE AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION

Summary

This decision finds that it is appropriate for the Commission to exercise its broad authority to impose a non-bypassable charge on the ratepayers of California's large electrical corporations in order to support California's new Wildfire Fund, and that the imposition of such a charge is just and reasonable. This decision finds that the imposition of the non-bypassable charge is in the public interest, will support the financial stability of the large electrical corporations, reduce the costs to ratepayers associated with catastrophic wildfires caused by utility equipment, and allow the large electrical corporations to attract lower-cost capital to carry out necessary improvements, including the mitigation of wildfire threats posed by utility infrastructure.

This decision also implements the statutory directives regarding the revenue requirement and rate design that shall be used for setting and implementing the non-bypassable charge, adopts a Rate Agreement between the Commission and the Department of Water Resources, and determines that ratepayers of any non-participating electrical corporations shall not pay the non-bypassable charge.

1. Background

Assembly Bill 1054 (Ch. 79, Stats. 2019) (AB 1054) was enacted as an urgency measure to address the dangers and devastation from catastrophic

wildfires in California caused by electric utility[1] infrastructure, including the increased costs to ratepayers resulting from electric utilities' exposure to financial liability. At the outset of this decision, the Commission acknowledges the devastation caused by these recent fires and the tragic losses suffered by Californians in these catastrophes.

The Governor signed AB 1054 on July 12, 2019. As required by statute, the Commission moved quickly after AB 1054 was enacted into law to open a rulemaking to consider providing ratepayer funding for a fund established by Public Utilities Code Section 3284 (Wildfire Fund) to support the financial stability of California's electrical corporations, one element of the multi-faceted solution posed by the statute. The Commission issued an Order Instituting Rulemaking (OIR) at a meeting on July 26, 2019, consistent with Public Utilities Code Section 3289, in response to legislative direction in AB 1054 to consider whether the Commission should exercise its authority to require certain electrical corporations to collect from ratepayers a non-bypassable charge to support California's new Wildfire Fund defined in Public Utilities Code Sections 1701.8 and 3280 et seq. The OIR contained a preliminary scope and schedule for the proceeding. Notice of the Rulemaking appeared on the Commission's Daily Calendar on July 30, 2019. In the OIR the Commission preliminarily categorized this proceeding as ratesetting and determined hearings were not necessary.

The OIR set a date for a prehearing conference (PHC) of August 8, 2019. PHC statements were filed by Ruth Henricks on August 6, 2019 and by San Diego Gas & Electric Company (SDG&E), Southern California Edison

[1] Throughout this decision, the terms "utility" and "electrical corporation" are used interchangeably.

Company (SCE), Wild Tree Foundation, Bear Valley Electric Service, a division of Golden State Water Company (Bear Valley), Liberty Utilities (CalPeco Electric) LLC (Liberty), Utility Consumers' Action Network (UCAN), PacifiCorp d/b/a Pacific Power (PacifiCorp), the Coalition of California Utility Employees (CCUE), T he Utility Reform Network (TURN), Energy Producers and Users Coalition (EPUC), Bioenergy Association of California, the California Public Advocates Office at the California Public Utilities Commission (Cal Advocates), and Pacific Gas and Electric Company (PG&E) on August 7, 2019. The PHC was held on August 8, 2019 to discuss the issues of law and fact, the need for hearing, and the proceeding schedule for resolving the matter.

The respondents to the OIR – SCE, SDG&E, Bear Valley, Liberty, PacifiCorp, and PG&E – were automatically made parties to the proceeding. At the PHC, party status was also granted to the following entities: Institutional Equity Investors, California Large Energy Consumers Association (CLECA), EPUC, California Manufacturers and Technology Association (CMTA), Trans Bay Cable, LLC, Horizon West Transmission, LLC, California Farm Bureau Federation (CFBF), Western States Petroleum Association (WSPA), Solar Energy Industries Association (SEIA), William Abrams, CCUE, California Choice Energy Authority, Pioneer Community Energy, Silicon Valley Clean Energy Authority, Redwood Coast Energy Authority, Monterey Bay Community Power Authority, Sonoma Clean Power Authority, Marin Clean Energy, Peninsula Clean Energy Authority, Wild Tree Foundation, UCAN, Ruth Henricks, the Center for Accessible Technology (CforAT), Cal Advocates, and TURN.

The assigned Commissioner's scoping memo and ruling (scoping memo) in this proceeding was filed on August 14, 2019. An Administrative Law Judge's (ALJ) ruling soliciting party comment on a proposed Rate Agreement between

the Commission and the Department of Water Resources was filed on August 21, 2019. An ALJ ruling soliciting party comment on the revenue requirement calculation to be used in this proceeding was filed on August 23, 2019.

Comments on the issues scoped into this proceeding were filed and served by SCE, SDG&E, Bear Valley, Liberty, PacifiCorp, PG&E, CLECA, EPUC, CCUE, Wild Tree Foundation, UCAN, Ruth Henricks, CforAT, Cal Advocates, TURN, and Pioneer Community Energy, California Choice Energy Authority, Sonoma Clean Power Authority, Peninsula Clean Energy Authority, Silicon Valley Clean Energy Authority, Marin Clean Energy, Monterey Bay Community Power Authority, and Redwood Coast Energy Authority[2] jointly as Joint CCAs, on August 29, 2019. Reply comments were filed and served by Wild Tree Foundation on September 5, 2019 and by SEIA, UCAN, Bear Valley, CforAT, Joint CCAs, WSPA, PG&E, SDG&E, SCE, PacifiCorp, CLECA, EPUC, Cal Advocates, TURN, CCUE, and Ruth Henricks on September 6, 2019. The record of the proceeding was considered submitted on September 6, 2019.

A motion for oral argument was filed by Ruth Henricks on September 6, 2019. The motion was granted, and oral argument in this proceeding is scheduled for October 10, 2019.

2. Jurisdiction

AB 1054 directs the Commission to consider whether to impose the Wildfire Fund non-bypassable charge (Wildfire Fund NBC) under its authority as defined by Public Utilities Code Section 701.[3] Various parties supported an

[2] Hereinafter referred to collectively as Joint CCAs.

[3] Pub. Util. Code § 3289(a)(1).

interpretation of Public Utilities Code Section 701 that grants the Commission authority to impose the Wildfire Fund NBC on ratepayers of electrical corporations participating in the Wildfire Fund.[4] The Commission agrees that the broad powers granted to it by Public Utilities Code Section 701, and the Legislature's endorsement of the Commission's authority under that statute to impose the Wildfire Fund NBC, grant the Commission jurisdiction and authority to impose the Wildfire Fund NBC.

By referring to Public Utilities Code Section 701, Public Utilities Code Section 3289(a)(1) directs the Commission to apply its broadest discretion and authority when determining if it is just and reasonable to impose the Wildfire Fund NBC.[5]

3. Issues Before the Commission

It is important to note that while the Wildfire Fund is part of the Legislature's broader response to the threat of catastrophic wildfires set out in AB 1054, the scope of this proceeding is limited to whether the Commission should exercise its broad ratemaking authority to determine if it is just and reasonable to impose the Wildfire Fund NBC, as well as directly related issues necessary to implement the Wildfire Fund NBC such as the revenue requirement to be authorized and the Rate Agreement to be entered into between the Commission and the Department of Water Resources. The scoping memo sets out the following issues for consideration in this proceeding:

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[4] PG&E opening comments at 2; SCE opening comments at 2; SDG&E opening comments at 2; EPUC opening comments at 4 (concluding that Pub. Util. Code § 701 gives the Commission discretion not to impose the Wildfire Fund NBC at all).

[5] *See Southern Cal. Edison v. Peevey* (2003) 31 Cal.4th 781, 792.

- Whether it is appropriate for the Commission to exercise its statutory authority, including under Public Utilities Code Section 701, to require certain electrical corporations to impose a non-bypassable charge on ratepayers to support California's Wildfire Fund established by AB 1054, including payment of bonds issued pursuant to Section 80500 et seq. of the Water Code.
- Whether imposition of the Wildfire Fund NBC is just and reasonable.
- The amount of the revenue requirement referred to in Section 3289 of the Public Utilities Code, including calculation of the amount and accounting for any impact of collections from regional electrical corporation ratepayers.
- Whether to approve the Commission's Rate Agreement with the Department of Water Resources pursuant to Water Code Section 80524(b).
- Whether it is reasonable to impose the Wildfire Fund NBC on PG&E customers if PG&E is deemed ineligible to participate in the Wildfire Fund.
- The Commission's process for determining and collecting the Wildfire Fund NBC "in the same manner as" payments made historically under the Department of Water Resources (DWR) bond charge as specified in Public Utilities Code Section 3289(a)(2).
- Other issues relating to the Wildfire Fund NBC that must be addressed before the Wildfire Fund NBC may be imposed.

AB 1054 contains several provisions designed to facilitate the safe operation of utility infrastructure and reduce the risk of utility-caused wildfire. Some parties sought to include in the scope of this proceeding issues related to

these safety-specific provisions of AB 1054.[6] Other parties sought to litigate provisions of AB 1054 related to the utility's burden of proof when seeking recovery for eligible wildfire claims, arguing that these provisions created less financial incentives for the safe operation of utility infrastructure.[7]

While some parties have concerns about the new statutory provisions embodied in AB 1054, the text of the statute is not subject to revision by the Commission in this proceeding.

4. The Annual Revenue Requirement for the Wildfire Fund NBC

One of the tasks before the Commission in this proceeding is to determine the amount of the revenue requirement identified by Section 3289 of the Public Utilities Code, accounting for any impact of collections from regional electrical corporation ratepayers.

4.1. Impact of Collections from Regional Electrical Corporation Ratepayers

Public Utilities Code Section 3289(a)(1)(A) requires the Commission to consider imposing the Wildfire Fund NBC for large electrical corporation customers "in an amount sufficient to fund the revenue requirement, as established pursuant to Section 80524 of the Water Code." For customers of regional electrical corporations the law establishes a Wildfire Fund NBC of $0.005/kilowatt-hour (kWh).[8] This charge is collected in rates, but the statute

[6] Reporter's Transcript (RT) 25:21-27 (comments of Wild Tree Foundation at the PHC concerning the safety certification process); RT 26:20-25 (comments of Abrams concerning the changes to the schedule for consideration of wildfire mitigation plans).

[7] *See, e.g.,* Henricks PHC statement at 10; Wild Tree Foundation PHC statement at 3.

[8] Pub. Util. Code § 3289(a)(1)(B).

provides that it is not remitted to DWR, and is instead directly deposited into the Wildfire Fund.[9] Further, the reference in the law to the revenue requirement is contained in a sentence referring to large electrical corporations rather than electrical corporations generally. It is therefore reasonable to conclude that the Legislature intended for the revenue requirement established by Water Code Section 80524 to only apply to customers of large electrical corporations, while customers of regional electrical corporations would not be subject to a specific revenue requirement and would simply pay the statutorily determined rate for the Wildfire Fund NBC.

In its opening comments, PG&E offers a different interpretation whereby "the shares of the revenue requirement allocated to the large electrical corporations may need to be adjusted to take into account the amount of contributions provided by the regional electrical corporations that choose to participate in the Wildfire Fund."[10] Similar statements were made by other parties. For example, Bear Valley argued that it is appropriate for the contributions of regional electrical corporation ratepayers to be included in the "overall" calculation of the revenue requirement.[11]

This decision follows the statutory language, which provides that collections from the ratepayers of regional electrical corporations shall be remitted directly to the Wildfire Fund administrator, and will not be remitted to DWR.[12] Those collections will not adjust the annual revenue requirement for the

[9] Pub. Util. Code § 3292(b)(2).

[10] PG&E opening comments at 4.

[11] Bear Valley opening comments at 5.

[12] Pub. Util. Code § 3292(b)(2).

Wildfire Fund NBC established in Water Code Section 80524(a) or be covered by the Rate Agreement between DWR and the Commission. Any collections from regional electrical corporation ratepayers shall be regarded as additional to the revenue requirement established by this decision.

The Commission notes that this issue may be moot as the regional electrical corporations have notified the Commission that they do not intend to participate in the Wildfire Fund.[13] However, to the extent any regional electrical corporation elects to participate in the Wildfire Fund, this decision must take the step of establishing what the Wildfire Fund NBC will be for the regional electrical corporation. Pursuant to Public Utilities Code Section 3289, for any regional electrical corporation that voluntarily imposes a Wildfire Fund NBC on its customers, that Wildfire Fund NBC shall be one-half cent per kWh.

4.2. The Revenue Requirement for Large Electrical Corporation Ratepayers is Based on Average Annual Collections

Public Utilities Code Section 3289(a)(1)(A) refers to "the revenue requirement" for large electrical corporations, referring to Water Code Section 80524 for more detail. Section 80524 of the Water Code is, like Public Utilities Code Section 3289, a creation of AB 1054. With respect to the revenue requirement for the Wildfire Fund NBC, Water Code Section 80524(a) states:

> The revenue requirement for each year or, with respect to the first year and last year, the pro rata portion of the year, shall be equal to the average annual amount of collections by the [Department of Water Resources] with respect to charges imposed pursuant to the

[13] PacifiCorp Notice of Intent, served August 28, 2019; Liberty Notice of Intent, served September 10, 2019; Bear Valley Notice of Election not to Participate in Wildfire Fund, served September 11, 2019.

> revenue requirements established by the [Department of Water Resources] under Section 80110 of Division 27 [of the Water Code] for the period from January 1, 2013, through December 31, 2018. The revenue requirement shall remain in effect until January 1, 2036.

This decision therefore holds that the plain meaning of the statute is to base the revenue requirement calculation on the actual collections made by DWR historically for the DWR Bond Charge, not the revenue requirement authorized historically for the DWR Bond Charge, or the per kilowatt-hour (kWh) charge levied for the DWR Bond Charge, as recommended by parties such as CLECA and TURN.[14]

The Commission's Energy Division compiled a table showing the DWR Bond Charge collections received by DWR in the years 2013, 2014, 2015, 2016, 2017, and 2018, using data supplied by the Department of Water Resources in proceeding Rulemaking (R.) 15-02-012. The Commission's Energy Division verified the amounts by comparing the sums to the total annual collections reported by DWR in annual reports made available through the Electronic Municipal Market Access website.[15] The table, which was supplied to parties for comment in an ALJ ruling of August 23, 2019, appears below.

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[14] *See, e.g.*, TURN opening comments at 6-8 (arguing for the use of the annual authorized revenue requirement rather than collections and claiming that "[t]he average kWh nonbypassable charge over the 2013-2018 period is the foundational value which the Commission should use as a cap for the Wildfire Fund bond charge and its associated revenue requirement"); CLECA reply comments at 4 (seeking a cap of $880 million per year based on historic DWR Bond Charge authorizations); PG&E opening comments at 4 (recommending the Commission interpret the word "collections" to include a true-up mechanism to ensure the Wildfire Fund NBC does not collect more than necessary to service DWR's eventual bond issuance).

[15] These reports are public and available for 2013-2015 at https://emma.msrb.org/ES1040110.pdf, p. 21; for 2016 at https://emma.msrb.org/ES1200377.pdf, p.35; for 2017 at

Footnote continued on next page

Annual Collections Received by DWR for the DWR Bond Charge (Millions)

Year	PG&E	SCE	SDG&E	Total
2013	$383.8	$381.8	$84.5	$850.1
2014	$406.6	$402.6	$89.8	$898.9
2015	$409.2	$408.8	$90.8	$908.8
2016	$408.6	$412.9	$90.0	$911.5
2017	$410.8	$421.9	$91.4	$924.1
2018	$408.6	$421.4	$91.1	$921.1
Average (2013-2018)	$404.6	$408.2	$89.6	$902.4

Several parties commented on the estimated annual revenue requirement per large electrical corporation in response to the ALJ ruling of August 23, 2019. The large electrical corporations agreed with the figures provided by the Energy Division,[16] or did not object to the figures.[17]

TURN asserted that the reported collections are not net of refunds for overcollections of the DWR Bond Charge made to ratepayers through the DWR Power Charge.[18] TURN claims that in 2015 the DWR Power Charge refunded approximately $6 million to ratepayers in overcollections relative to the DWR

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https://emma.msrb.org/ES1274739.pdf, p.35; and for 2018 at https://emma.msrb.org/ES1386549.pdf, p.38.

[16] SCE opening comments at 4; SDG&E opening comments at 12 (confirming the accuracy of the revenue requirement calculation for SDG&E).

[17] PG&E opening comments at 3 ("PG&E has performed a preliminary review of Energy Division's calculation and has identified no revision or correction to the total number in Row RR of Table 1 at this time").

[18] TURN opening comments at 3 ("[t]he collected DWR Bond Charge revenue requirement does not account for 'Excess Amounts' credited to ratepayers through the DWR Power Charge and accordingly, overstates the amount of the DWR Bond Charge revenue requirement funded by ratepayers").

Bond Charge revenue requirement, and that this amount is not reflected in the revenue requirement data collections prepared by Energy Division. TURN speculates that other years between 2013-2018 could have included such refunds through the DWR Power Charge; but that those amounts are unknown to TURN at this time.[19]

TURN's argument misreads the Commission's decisions which approved the annual DWR Bond Charge and DWR Power Charge as separate and distinct revenue streams to fund separate annual revenue requirements. In Decision (D.) 02-02-051, the Commission determined that establishing separate DWR Bond Charges and DWR Power Charges was in the public interest, delineated the separate uses for each charge, and approved a rate agreement with DWR that segregated DWR Bond Charges from DWR Power Charges.[20] TURN's speculation that DWR Bond Charge overcollections may have been refunded through the DWR Power Charge is not sufficiently supported to contravene the Commission decisions segregating the two charges.

For example, TURN asserts that a negative power charge was employed to refund DWR Bond Charge overcollections in D.11-12-005. That decision shows that in October 2011, DWR submitted a revised revenue requirement that decreased the DWR Bond Charge revenue requirement by $8 million compared to the forecast submitted by DWR in August 2011. The Commission approved a DWR Bond Charge for that year based on the downwardly revised revenue

[19] TURN opening comments at 8-11.

[20] D.02-02-051 at 14-21, 28-29.

requirement.[21] There is no discussion or other indication of DWR Bond Charge refunds. Separately, DWR's revised revenue requirement resulted in DWR returning $94 million more to customers than it had planned to in its August 2011 filing, but those refunds stemmed from DWR Power Charge-related cost reductions, not DWR Bond Charge overcollections.[22]

Finally, the "negative revenue requirement" that TURN believes was used to refund DWR Bond Charges was actually attributable to reductions in DWR's operating reserves (i.e., the DWR Power Charge costs), and payments to California from settlements of litigation challenges stemming from the energy crisis of 2000-2001. These reductions were not related to DWR Bond Charge-related costs or collections.[23] This conclusion also applies for D.14-12-002 for similar reasons.

TURN's argument has not raised a material dispute regarding the accuracy of the Energy Division's table showing the compilation of historic average annual collections.

In reply comments, UCAN refers to the analysis by Energy Division as an "exceedingly thin reed" on which to rest this decision's findings.[24] UCAN also supported EPUC's arguments that the revenue requirement should be reduced from the amount of collections received.[25]

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[21] D.11-12-005 at 10.

[22] D.11-12-005 at 7.

[23] D.11-12-005 at 3-4.

[24] UCAN reply comments at 3.

[25] *Id.*

The Commission rejects these arguments. The compilation of data that the Energy Division's staff developed was provided to parties for their review and comment. No party raised an objection to the figures provided by Energy Division, with the exception of TURN as discussed previously. The figures Energy Division compiled showing the collections received by DWR from the DWR Bond Charge are uncontested. Where facts are uncontested, the reed is thickened and where, as here, the facts are sufficiently reliable and their reliability unchallenged, there is no dispute requiring resolution.

Finally, while parties such as TURN and UCAN argue that the Commission *should* set a revenue requirement that is lower than the average annual collections by DWR for the DWR Bond Charge over the last several years, AB 1054 is clear that the annual revenue requirement must be based on collections made by DWR for the DWR Bond Charge.[26]

4.2.1. The Revenue Requirement is Based on Participating Large Electrical Corporations

The position that a non-participating electrical corporation's ratepayers should not pay the Wildfire Fund NBC was broadly supported by parties in their comments.[27] In fact, no party suggested that a non-participating electrical corporation's ratepayers should be made to pay the Wildfire Fund NBC.[28] The Joint CCAs state the principle as "customers of an [electrical corporation] should

[26] Water Code § 80524(a).

[27] Bear Valley opening comments at 5; CLECA opening comments at 9-10; CforAT opening comments at 6; TURN opening comments at 19-20; UCAN opening comments at 5; Cal Advocates opening comments at 17-18; PG&E opening comments at 5; PacifiCorp opening comments at 3.

[28] SCE's opening comments do suggest that the issue of how to treat PG&E's ratepayers in the event PG&E cannot participate in the Wildfire Fund is not ripe for consideration at this time.

not be required to pay the Wildfire Fund NBC if benefits from the Wildfire Fund are not directly available to the [electrical corporation]."[29] CforAT's version of the principle states that an electrical corporation "should not be directed to impose and collect the [Wildfire Fund NBC] if the [electrical corporation] is not participating in the Wildfire Fund."[30] Further, SDG&E raised a concern, shared by other parties, that its ratepayers would be responsible for substantially more revenue requirement than historically assigned to them in the event PG&E is ineligible to participate in the fund.[31]

The Commission agrees with the consensus of the parties on this point. As a matter of law, the ratepayers of an electrical corporation that is not participating in the Wildfire Fund should not pay the Wildfire Fund NBC.[32] In setting a total annual revenue requirement for the Wildfire Fund NBC the Commission must take into account only the large electrical corporations that are eligible and elect to participate in the Wildfire Fund.

The Rate Agreement that is adopted by this decision is consistent with the statute and this decision's implementation of AB 1054. The Rate Agreement is structured to ensure that the revenue requirement for the Wildfire Fund NBC is determined based on historic contributions from the ratepayers of the electrical corporations that participate in the Wildfire Fund. Section 4.1 of the Rate Agreement states that the revenue requirement shall be equal to the average

[29] Joint CCAs reply comments at 11-12.

[30] CforAT opening comments at 5-6.

[31] SDG&E opening comments at 12-13. *See also* EPUC opening comments at 11-12; TURN opening comments at 19-20.

[32] *See, e.g.*, Pub. Util. Code §§ 3281(g), 3291(c), and 3292(c).

annual amount of collections by DWR with respect to the DWR Bond Charges "on customers of each Large Electrical Corporation that is eligible and elects to participate in the Wildfire Fund." Section 1.1 of the Rate Agreement defines "Nonbypassable Charges" as a charge imposed on "customers in each of the Service Areas of any Large Electrical Corporation that is eligible and elects to participate in the Wildfire Fund." In Section 5.1 of the Rate Agreement, through the Charge Covenant, the Commission agrees to impose non-bypassable charges "sufficient to fund the Revenue Requirement," which is defined in reference solely to those large electrical corporations participating in the Wildfire Fund. These provisions ensure that ratepayers of participating electrical corporations will not bear any responsibility for the historic DWR Bond Charge contributions from non-participating electrical corporations, and ratepayers of non-participating electrical corporations will not pay the Wildfire Fund NBC.

AB 1054 and the Commission's interpretation of it, including Public Utilities Code Section 3289 and Water Code Section 80524, are consistent with a memorandum from the Director of DWR to the Executive Director of the Commission dated August 21, 2019. This memorandum explained DWR's view that the calculation method provided in the Rate Agreement harmonizes the statutory provisions, including the relevant sections of the Water Code, with the overall legislative intent and thus appropriately implements the Wildfire Fund funding mechanism contemplated by AB 1054.[33] The Commission must also consider the statute as a whole and harmonize its various provisions in order to effectuate the intent of AB 1054. This decision's approval of these terms of the

[33] August 21, 2019 ALJ Ruling seeking party comment on proposed Rate Agreement, Attachment 2.

Rate Agreement is consistent with and effectuates the Commission's interpretation of AB 1054, including Public Utilities Code Section 3289 and Water Code Section 80524.

The Commission also holds that, under Public Utilities Code Section 3292, once a large electrical corporation has made its commitment to participate in the Wildfire Fund, then it shall continue to participate in the Wildfire Fund and shall fully satisfy the statutorily required shareholder contributions. AB 1054 contains no provision that allows a large electrical corporation to change its status as a participating utility and as a result the commitment to make annual contributions contained in the statute must be implemented as a binding commitment.

Accordingly, this decision finds that the concerns raised by parties and our conclusion agreeing with their concerns are fully addressed by the manner in which the revenue requirement is calculated, the fact that ongoing participation in the Wildfire Fund is imposed, and the terms of the Rate Agreement adopted by this decision.

4.2.2. Approved Revenue Requirement

Public Utilities Code Section 3292(b)(1) states that a utility that is subject to an insolvency proceeding, or on criminal probation, must, by June 30, 2020, meet certain criteria in order to participate in the Wildfire Fund. As a result, whether or not the collections of historic DWR Bond Charges from PG&E's ratepayers will be included in the calculation of the revenue requirement for the Wildfire Fund NBC is a question that can only be resolved after June 30, 2020. Accordingly, in light of AB 1054's provisions, the Energy Division's data compilation, comments received from parties on this issue, and the discussion above, the total annual revenue requirement for the Wildfire Fund NBC shall be

set at the sum of the following amounts collected from customers of each large electrical corporation that is eligible and elects to participate in the Wildfire Fund, not to exceed $902,400,000:

- $404,600,000 for historic collections if PG&E participates in the Wildfire Fund.
- $408,200,000 for historic collections if SCE participates in the Wildfire Fund.
- $89,600,000 for historic collections if SDG&E participates in the Wildfire Fund.

Pursuant to Water Code Section 80524(a) this annual revenue requirement shall expire at the end of the year 2035.

4.2.3. Impact of Large Electrical Corporation Participation on the Amount of Bonds Issued

EPUC raised an argument that a total revenue requirement that is smaller than the maximum that would be achieved if all three large electrical corporations participated in the Wildfire Fund should lead to reduced bond issuance by DWR. EPUC states that AB 1054 includes "permissive terms and only caps the total [bond issuance] at $10.5 billion, allowing the Commission the discretion to authorize a lower amount."[34]

This claim does not accurately describe the statute. Water Code Section 80540 provides that "bonds may not be issued in an amount the debt service on which… is estimated by the department to exceed the amounts estimated to be available in the fund for their payment."

[34] EPUC opening comments at 13.

As a result, the bond issuance is limited, in addition to the hard cap, by the amount DWR has available for debt service. The Rate Agreement has analogous provisions stating that the security for any bonds will be the covenant contained in Sections 5.1(a) and 5.1(b), which will be irrevocable. That covenant states that the Wildfire Fund NBC will be "at all time sufficient to fund Revenue Requirement" which section 4.1(a) of the Rate Agreement requires to be calculated based on the average annual collections of past DWR Bond Charges imposed on "customers of each Large Electrical Corporation that is eligible and elects to participate in the Wildfire Fund." By defining the amounts that can be securitized in this manner, the Rate Agreement effectively limits the size of the bonds to an amount that corresponds to the revenue collected by the Wildfire Fund NBC, taking into account the large electrical corporations that are participating in the Wildfire Fund. The Rate Agreement is therefore consistent with Water Code Section 80540.

5. The Commission's Rate Agreement with the Department of Water Resources

By establishing the revenue requirement and adopting the Wildfire Fund NBC, this decision implements a series of requirements contained in AB 1054, for example in Public Utilities Code Sections 3289 and 3292, and in Water Code Section 80524. The revenue requirement defines the amounts to be collected and remitted to DWR, and Water Code Section 80524(b) provides that the Commission and DWR are to reach an agreement "with respect to the revenue requirement" and the charges described in Public Utilities Code Section 3289, and that this agreement will have the force and effect of a financing order.

The Rate Agreement adopted by this decision is based on these statutory requirements, including statutory language stating the charge is to be calculated

by referring to past DWR Bond Charges assessed on individual ratepayers.[35] As a result, the Rate Agreement ensures that the revenue requirement that will be funded by the Wildfire Fund NBC is to be collected from individual ratepayers whose serving utility is participating in the fund, which is consistent with the principle that the ratepayers of an electrical corporation that is not participating in the Wildfire Fund should not pay the Wildfire Fund NBC. The Director of DWR submitted a memorandum to the Executive Director of the Commission explaining that the calculation method provided in the Rate Agreement harmonizes the statutory provisions and implements the overall legislative intent for AB 1054.[36] This analysis by the agency with responsibility for implementing the Water Code give this Commission appropriate guidance for interpreting the statute as a whole.

In this decision the Commission finds that it will exercise its authority to impose the Wildfire Fund NBC on the ratepayers of electrical corporations participating in the Wildfire Fund, and that the imposition of such a charge is just and reasonable. This determination triggers a provision of Water Code Section 80524(b) that requires the Commission to "enter into an agreement with [DWR] with respect to [Wildfire Fund NBC charges] with respect to the revenue requirement, and that agreement shall have the force and effect of an irrevocable financing order… as determined by the commission." Water Code Section 80524(b) goes on to establish the following requirements for the Rate Agreement:

[35] Pub. Util. Code § 3289, Water Code § 80524.

[36] August 21, 2019 ALJ Ruling seeking party comment on proposed Rate Agreement, Attachment 2.

> [P]rovide for the administration of the revenue requirement, including provisions to the effect that (1) the department shall notify the commission each year of the annual collections received by the department with respect to the revenue requirement and the amount of any excess or deficiency in collections above or below the revenue requirement and that the commission shall adjust charges in the subsequent year to reflect any such excess or deficiency, and (2) during any revenue requirement period if the department forecasts that the revenue requirement for that period will not be met and that collections will not be sufficient to fund any of the amounts in paragraphs (1) to (5), inclusive, of [Water Code] Section 80544, then the department shall notify the commission in writing and the commission shall act within 30 days to increase charges so that the amounts collected during that period are sufficient to meet those obligations. For avoidance of doubt, no such adjustment to charges by the commission shall affect in any respect the commission's just and reasonable determination with respect to the revenue requirement.

A proposed Rate Agreement between the Commission and DWR was submitted to the parties for their review in an ALJ ruling of August 21, 2019. As noted above, a memorandum from DWR was provided in connection with the Rate Agreement. Most parties declined to comment on the proposed Rate Agreement itself, however TURN did recommend modifying the Rate Agreement to address the issue of over- or under-collections.[37] Because this decision sets the revenue requirement as directed by statute, there is no possibility that the revenue requirement itself will be revisited until 2036. As there will therefore be no adjustment to the revenue requirement based on collections received by DWR in a previous year, there is no reason to modify the Rate Agreement in the manner recommended by TURN.

[37] TURN reply comments at 10.

The table below describes the requirements of Water Code Section 80524(b) and how the provisions of the proposed Rate Agreement satisfy each of those requirements.

Water Code Section 80524(b) Requirement	Rate Agreement Provision
Provide for the administration of the revenue requirement.	Article IV of the Rate Agreement generally concerns the revenue requirement and its administration.
DWR shall notify the Commission annually of the collections received by DWR and the amount of any excess or deficiency in collections above or below the revenue requirement.	Section 4.1(c)-(d) of the Rate Agreement provides for such notification.
Commission shall adjust Wildfire Fund NBC charges in the subsequent year to reflect any excess or deficiency reported by DWR.	Section 4.1(c) of the Rate Agreement provides for such adjustment.
DWR shall notify the Commission in writing if during any revenue requirement period if the department forecasts that the revenue requirement for that period will not be met and that collections will not be sufficient to fund any of the amounts in paragraphs (1) to (5), inclusive, of [Water Code] Section 80544.	Section 4.1 of the Rate Agreement provides for such notification and the Commission expects DWR to spell out the shortfalls for any of paragraphs (1) – (5) of Water Code Section 80544.
The Rate Agreement shall have the force and effect of an irrevocable financing order as determined by the Commission.	Section 5.1 of the Rate Agreement

Based on the comments received from the parties, the memorandum from DWR, and a review of the proposed Rate Agreement, this decision finds that the proposed Rate Agreement as submitted to the parties in the ALJ ruling of

August 21, 2019, and as modified to make some technical changes, complies with the requirements of Water Code Section 80524(b) and other applicable law. The Rate Agreement should be adopted by the Commission and the provisions in Section 5.1(a) and 5.1(b) should have the force and effect of a financing order as provided in Water Code Section 80524(b). A copy of the modified Rate Agreement as a redline version of the original proposed Rate Agreement attached to the ALJ ruling of August 21, 2019 is attached to this decision as Appendix A. The Commission will execute the attached Rate Agreement as soon as practicable after the issuance of this decision.

6. Wildfire Fund NBC Rate Design

AB 1054 specifies that if the Wildfire Fund NBC is adopted then it should be collected "in the same manner as" the current DWR Bond Charge.[38] Some parties suggested delaying consideration of the design of the Wildfire Fund NBC.[39] This decision determines the design of the Wildfire Fund NBC at this time, instead of in a later phase of this proceeding.

The Commission notes the argument of the Joint CCAs that the words "in the same manner" may be ambiguous.[40] The Commission disagrees and holds that the term "in the same manner" means that the Wildfire Fund NBC should be collected in no different a manner from the DWR Bond Charge.

The existing DWR Bond Charge is collected on a dollar per kWh basis. According to TURN, this charge has averaged approximately half a cent per kWh

[38] Pub. Util. Code § 3289(a)(2).

[39] CLECA opening comments at 5, Cal Advocates opening comments at 8.

[40] Joint CCAs reply comments at 4.

over the last several years.[41] All customers in all customer classes are required to pay the DWR Bond Charge on an equal cents per kWh basis, with some exceptions as discussed more fully below. As an initial matter, this decision rejects SDG&E's suggestion that the Wildfire Fund NBC be collected as a fixed charge rather than a volumetric charge.[42] SEIA argues that the plain meaning of the phrase "in the same manner as" requires the design of the Wildfire Fund NBC as a volumetric charge.[43]

This decision agrees with SEIA and finds that the Wildfire Fund NBC shall be collected on a dollar per kWh basis to conform with the directive of Public Utilities Code Section 3289(a)(2). Collecting the Wildfire Fund NBC as a fixed charge (presumably on a dollar per customer/month basis) would not collect the charge in the same manner as the DWR Bond Charge.[44]

6.1. Wildfire Fund NBC Revenue Allocation

TURN argues that the allocation of the Wildfire Fund NBC across customer classes should mirror the allocation currently used for the DWR Bond Charge, as deviations from the existing allocation methodology would result in electric rate increases for some customers and arguably violate the statute's terms.[45]

No party other than TURN specifically addressed the issue of revenue allocation for the Wildfire Fund NBC. TURN claims that the DWR Bond Charge

[41] TURN opening comments at 7.

[42] SDG&E opening comments at 14.

[43] SEIA reply comments at 4. *See also* CforAT reply comments at 6.

[44] CforAT reply comments at 6.

[45] TURN opening comments at 15.

revenue allocation method it describes in comments dates to Commission decisions from 2002, and that the method should be used for the Wildfire Fund NBC. That method assigns the charge to all utility distribution ratepayers, including DA and CCA customers. TURN states that this is appropriate "from an equity and policy perspective" as the Wildfire Fund is "related to the components of utility service that both bundled and unbundled customers receive" from the utilities.[46]

The DWR Bond Charge revenue allocation method assigns the costs of the DWR Bond Charge to each class proportionate to a class's share of the utility's kWh sales in a given year. This essentially means a class's responsibility for the DWR Bond Charge costs is directly proportional to the amount of energy that class consumes. It also has the effect of making the DWR Bond Charge virtually identical on a dollar per kWh basis across classes.

Maintaining the revenue allocation for the Wildfire Fund NBC so that it is identical to the existing revenue allocation for the DWR Bond Charge is equitable and conforms with the statute's instructions to collect the Wildfire Fund NBC in the same manner as the DWR Bond Charge. For these reasons this decision orders that the Wildfire Fund NBC use the same revenue allocation as the DWR Bond Charge as described above. All customers of a given large electrical corporation shall pay the same amount per kWh for the Wildfire Fund NBC, unless that customer is excluded as ordered below.

[46] TURN opening comments at 16.

6.2. Exclusions of Certain Customers from the Wildfire Fund NBC

Parties pointed out that the DWR Bond Charge is not collected from several types of customers. These customers include California Alternate Rates for Energy (CARE) residential customers, Medical Baseline residential customers, and continuous direct access (DA) customers.[47]

6.2.1. CARE and Medical Baseline Residential Customers

TURN maintains that the existing exemptions from the DWR Bond Charge for residential customers that participate in the CARE program and Medical Baseline program should apply to the Wildfire Fund NBC as well. Their argument is grounded in equity and would mirror the current method for collecting the DWR Bond Charge.[48] Joint CCAs also supported the existing CARE and Medical Baseline exemptions.[49] This argument is reasonable and complies with the statute's language.[50] The Wildfire Fund NBC shall not be collected from CARE or Medical Baseline residential customers.

6.2.2. Continuous DA Customers and Other Excluded Customers

Continuous DA customers were exempted from paying the DWR Bond Charge in D.02-11-022 because those customers did not consume the electricity that DWR purchased for utility customers during the height of the energy crisis.

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[47] Continuous DA customers are those that have been taking DA service continuously both before and since January 17, 2001 in the PG&E and SCE service territories or February 7, 2001 in SDG&E's service territory.

[48] TURN opening comments at 18-19.

[49] Joint CCAs opening comments at 3.

[50] Pub. Util. Code § 3289(a)(2).

As these customers did not consume the electricity purchased by DWR, the Commission reasoned that they should not be obligated to pay the charge that reimbursed DWR for those electricity purchases.[51]

TURN argues that the situation with the Wildfire Fund NBC is distinguishable, as continuous DA customers remain distribution customers of the utilities, and the Wildfire Fund is designed to address liabilities arising from the damages caused by a utility's infrastructure. TURN and Joint CCAs assert that continuous DA customers should be equally responsible for any wildfire liability costs assigned to ratepayers as such customers are served by utility infrastructure that may ignite wildfires.[52]

EPUC sought to maintain the exemption for continuous DA customers in order to ensure that the Wildfire Fund NBC is collected in the same manner as the existing DWR Bond Charge.[53]

Whatever the merits of the argument for imposing the Wildfire Fund NBC on continuous DA customers, the statute states that the Wildfire Fund NBC shall be collected in the same manner as the DWR Bond Charge. Without any statutory language to the contrary this decision therefore finds that continuous DA customers should be excluded from paying the Wildfire Fund NBC. This also applies to any other customers currently exempted from the DWR Bond Charge, such as certain customers utilizing customer generation departing load (CGDL) as defined by D.03-04-030.[54]

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[51] D.02-11-022 at 60.

[52] TURN opening comments at 16-17; Joint CCAs opening comments at 6.

[53] EPUC reply comments at 3.

[54] Joint CCAs opening comments at 6; CLECA reply comments at 8.

6.2.3. Net Energy Metering Customers

While net energy metering (NEM) customers are not per se excluded from paying the DWR Bond Charge, NEM customers may substantially reduce their DWR Bond Charge payments by reducing their net usage of electricity. Customers taking service on the original NEM tariff as it existed before the creation of the successor NEM tariff in D.16-01-044 pay for the DWR Bond Charge on any net usage over the course of the year. Customers taking service on the NEM successor tariff created by D.16-01-044 (informally known as NEM 2.0) pay for the DWR Bond Charge on any net usage within a metered interval.[55]

TURN and other parties seek clarification from the Commission on how the Wildfire Fund NBC would apply to NEM customers, in particular whether the Wildfire Fund NBC would be a non-bypassable charge that would apply to NEM 2.0 customers in the same way as the DWR Bond Charge.

As with the discussion surrounding continuous DA customers, the statute states that the Wildfire Fund NBC should be collected in the same manner as the DWR Bond Charge. For that reason, large electrical corporations imposing the Wildfire Fund NBC on their customers shall apply the Wildfire Fund NBC to their NEM customers in the same manner as the DWR Bond Charge is currently imposed. Consistent with the Commission's previous treatment of NEM customers, the Commission may modify the calculation of the consumption on which non-bypassable charges are assessed for NEM customers.

[55] For residential customers the metered interval is one hour and for non-residential customers the metered interval is 15 minutes.

6.2.4. Exclusions for Customers of Regional Electrical Corporations

The language of Public Utilities Code Section 3289(a)(2) requires the Wildfire Fund NBC to be collected "in the same manner" as the DWR Bond Charge if the Commission directs "each electrical corporation to impose and collect" the Wildfire Fund NBC.

If a regional electrical corporation elects to participate in the Wildfire Fund and impose the Wildfire Fund NBC on its ratepayers, there is no current method of collecting the DWR Bond Charge for regional electrical corporation customers that can be used as a basis for determining the method for collecting the Wildfire Fund NBC. The language of Public Utilities Code Section 3289(a)(2) therefore does not guide the Commission in determining whether the current DWR Bond Charge exclusions for large electrical corporation customers should apply to regional electrical corporation customers.

The most reasonable solution is to apply the same customer exclusions to regional electrical corporation ratepayers as are applied to large electrical corporation ratepayers. This would avoid the result where, for example, CARE customers in SCE's territory would avoid paying the Wildfire Fund NBC while neighboring CARE customers in Bear Valley's territory would be required to pay the Wildfire Fund NBC. Such a result would be inequitable. For this reason, if a regional electrical corporation elects to participate in the Wildfire Fund and impose the Wildfire Fund NBC on its customers, the same Wildfire Fund NBC exclusions as apply to large electrical corporation customers shall apply to the regional electrical corporation's customers. For NEM customers of regional electrical corporations, the Wildfire Fund NBC shall apply in the same manner as other non-bypassable charges, such as the public purpose program (PPP) charge.

The Commission notes that this issue may be moot as all regional electrical corporations have indicated that they will not participate in the Wildfire Fund.

6.3. Establishing an Annual Wildfire Fund NBC Process

With respect to the existing DWR Bond Charge, the kWh sales forecasts and the annual revenue requirement are set during an annual proceeding. Such a model would be useful here as well in order to clarify on an annual basis the exact $/kWh charge that will be imposed on ratepayers of large electrical corporations.

The Commission keeps the instant proceeding open in order to consider the annual revenue requirement and sales forecast for the Wildfire Fund NBC in 2020. The final month in which the DWR Bond Charge will be collected is unknown at this time, but it may be as early as the second half of 2020. For these reasons, the Commission sets out the following process for designing and approving the Wildfire Fund NBC for 2020:

- In May 2020, DWR is requested to transmit to the Commission and the large electrical corporations a preliminary "Proposed Determination of Wildfire Fund Non-Bypassable Charge" for the remainder of 2020 with the following estimated information: 1) notice of the month of termination of the DWR Bond Charge based on the date of defeasance of the DWR Bonds, and the first month for imposition of the Wildfire Fund NBC, 2) the pro-rated revenue requirement consistent with this decision, the Rate Agreement, and AB 1054,[56] 3) the electricity sales forecast for all anticipated participating large electrical corporations for the months in 2020 when the Wildfire Fund NBC will be imposed, and 4) DWR's calculation of the resulting Wildfire Fund NBC for

[56] Water Code Section 80524(a).

customers subject to the Wildfire Fund NBC pursuant to this decision.

- In July 2020, or earlier if possible, DWR is requested to make its "Proposed Determination of Wildfire Fun Non-Bypassable Charge" final.
- The ALJ assigned to this proceeding will, via ruling, notify parties of receipt of the DWR's "Proposed Determination of Wildfire Fund Non-Bypassable Charge" and seek comment on the same.
- After receiving party comments the ALJ will draft a proposed decision adopting the Wildfire Fund NBC for the months in 2020 when the Wildfire Fund NBC will be imposed.

For every year after 2020, an annual Wildfire Fund NBC charge determination process shall be considered in future Commission decisions.

7. It is Just and Reasonable to Impose the Wildfire Fund NBC

The preceding discussion in this decision establishes the scope of the Commission's legal authority to create a new Wildfire Fund NBC, defines the statutorily mandated design of the Wildfire Fund NBC, and determines the revenue it shall collect. This allows the Commission to answer the final question raised in this proceeding, namely whether it is just and reasonable to impose the Wildfire Fund NBC on the customers of California's investor-owned electric utilities.

As an initial matter, the Legislature and the Governor determined that the creation of the Wildfire Fund and the Wildfire Fund NBC furthers state policy

goals and benefits ratepayers.[57] The legislative findings supporting this determination are as follows:

- That there is an increased risk of catastrophic wildfires and that there are increased costs to ratepayers as a result of that increased risk. These increased costs are attributable to the exposure of electrical corporations to financial liability resulting from wildfires that are caused by utility equipment.[58]
- That the creation of the Wildfire Fund will reduce costs to ratepayers in addressing utility-caused catastrophic wildfires.[59]
- That the establishment of the Wildfire Fund supports the credit worthiness of electrical corporations, and provides a mechanism to attract capital for investment in safe, clean, and reliable power for California at a reasonable cost to ratepayers.[60]

AB 1054 also added Section 80503(a) to the Water Code, which specified that the "development and operation of a program as provided in [Division 28 of the Wildfire Prevention and Recovery Act of 2019] is in all respects for the welfare and benefit of the people of the state, to protect the public peace, health, and safety, and constitutes an essential government purpose."

Based on these legislative determinations, and the record of this proceeding, the Commission determines that the creation and imposition of the Wildfire Fund NBC is just and reasonable as discussed in more detail below.

[57] AB 1054, Section 1(b).

[58] AB 1054, Section 1(a)(1), (2).

[59] AB 1054, Section 1(a)(3).

[60] AB 1054, Section 1(a)(4)&(5).

7.1. Public Policy Findings of the Legislature

The Commission notes that the Legislature made clear findings in AB 1054 that the public policy interests of the state of California are served by the Wildfire Fund and therefore the Wildfire Fund NBC. In particular, the Legislature found that it was a public policy goal to "attract capital for investment in safe, clean, and reliable power for California at a reasonable cost to ratepayers" by way of creating the Wildfire Fund.[61]

In a more general sense, when the Legislature crafts a law, such as AB 1054, it speaks for the people of California on matters of public policy. This determination cannot be supplanted by the Commission.

The Legislature has determined that it is in the public interest to establish the Wildfire Fund and create a detailed construct for managing future wildfire claims as defined by AB 1054. The Commission notes the Legislature's determinations, and finds that imposing the Wildfire Fund NBC is in the public interest as it supports the overall framework for managing future wildfire claims established by AB 1054. This finding supports this decision's determination that imposing the Wildfire Fund NBC is just and reasonable.

7.2. The Wildfire Insurance Fund Insulates Ratepayers from Liability Attached to Wildfires Caused by a Utility

An important element of the insurance framework of the Wildfire Fund established in Public Utilities Code Section 3292, and overlooked by several parties to this proceeding, is that the capital held by the Wildfire Fund to pay eligible claims for covered wildfires is contributed to by both ratepayers and

[61] *Id.*

shareholders. For example, in once scenario that Wildfire Fund could be capitalized approximately equally by participating electrical corporations' shareholders and bonds financed by a dedicated non-bypassable charge collected from ratepayers at a total amount of approximately $21 billion.[62] The amount of insurance products and cash financed from this $21 billion in proceeds will pay eligible wildfire claims where the electrical corporation is found to have acted prudently.[63]

AB 1054's scheme essentially provides an insurance fund that can insulate ratepayers from future recovery in rates for prudently incurred utility wildfire costs for which ratepayers would otherwise be responsible to pay in full. Some parties argue that ratepayers may be forced to pay for eligible claims already paid for by the Wildfire Fund.[64] As discussed more fully below, this argument is incorrect. This decision finds that the shareholder contributions to the insurance structure of the Wildfire Fund provides benefits to ratepayers.

The Commission finds that the directive of Public Utilities Code Section 451.1 that "the commission shall allow cost recovery if the costs and

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[62] DWR and the Wildfire Fund have the ability to choose from several different statutorily defined ways to treat the capital they receive; however this example shows how shareholder and ratepayers both contribute to the Wildfire Fund. *See* Ins. Code § 10089.7; Water Code § 80554(a).

[63] CCUE opening comments at 7-8; SDG&E opening comments at 7-8 ("[b]oth ratepayers and utilities benefit from the Wildfire Fund, as structured in AB 1054. If a utility is found to have acted prudently under [Pub. Util. Code] Section 451.1, it can tap the Wildfire Fund to pay for wildfire damages, and no reimbursements are due to the fund. [citation omitted] Prior to AB 1054, however, if the utility was deemed prudent, ratepayers would have had to pay for those wildfire damages in their entirety") (emphasis original).

[64] Cal Advocates opening comments at 12; SCE opening comments at 5; EPUC opening comments at 5-6.

expenses are just and reasonable" in a catastrophic wildfire proceeding is satisfied by the payment of costs prudently incurred by the electrical corporation that are paid from the Wildfire Fund. This means that "cost recovery" as defined by Public Utilities Code Section 451.1 has already occurred when the eligible wildfire claim is paid by the Wildfire Fund.

As discussed further below, this decision finds that ratepayers will not reimburse the Wildfire Fund for withdrawals used to pay prudently incurred eligible wildfire claims. This finding is consistent with Public Utilities Code Section 1701.8(b)(4)(A) defining the scope of a catastrophic wildfire proceeding to be whether the electrical corporation's costs and expenses are just and reasonable.

7.3. Financial Stability of Electrical Corporations and Reduced Financing Costs

The Wildfire Fund will likely improve electrical corporations' financial stability and lower their financing costs. Uncertainty about cost recovery for wildfire liabilities, led to credit rating downgrades for SCE and SDG&E in 2019.[65] These utilities accounted for these downgrades in applications seeking significant increases to their requested return on equity – a cost that is ultimately passed on to ratepayers.[66]

For example, SCE reports that in March 2018 it was able to issue a "low double A-rated" secured bond with an interest rate of 4.125%. In March 2019,

[65] CCUE opening comments at 6.

[66] SDG&E opening comments at 7, 11; SCE reply comments at 4, fn 11 ("[o]nce a [credit] downgrade has been issued it can take years to reverse, and SCE's customers will incur higher borrowing costs until the ratings agencies moved [sic] to restore SCE's ratings to prior levels"); *see also* Application 19-04-014, et al.

subsequent to SCE's credit rating downgrade, SCE was able to issue a "low single A-rated" secured bond with an interest rate of 4.875%. Even though the 30-year U.S. Treasury bond yield had declined 0.15% in that period of time, investors required an additional 0.75% in yield from SCE in exchange for financing SCE's debt. SCE asserts that increased costs to ratepayers from the March 2019 bond issuance as compared to the March 2018 bond issuance will be approximately $200 million over the life of the March 2019 bonds.[67]

Beyond the actual credit downgrades experienced by SCE and SDG&E, the utilities faced a threat of continuing downgrades in the future – and attendant increases in ratepayer costs to finance utility investments – absent a solution such as the structure imposed by AB 1054. SCE reports that the Moody's rating agency was "poised" to downgrade SCE even further in 2019; but that after passage of AB 1054 and SCE's notice of intent to participate in the Wildfire Fund, SCE's credit profile was apparently stabilized.[68] SDG&E also claims that after the enactment of AB 1054 a ratings agency revised its outlook on SDG&E to stable from negative and affirmed SDG&E's rating, noting that SDG&E would benefit from AB 1054 and reduce its credit risks.[69] TURN grants that while the extent to which AB 1054 lowers a utility's cost of capital is being litigated, "ratings agencies have all viewed AB 1054 as a credit positive for the utilities."[70]

Cal Advocates disagrees that the lack of a credit downgrade should be considered a ratepayer benefit, and instead reasons that the absence of an

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[67] SCE reply comments at 4-5.

[68] SCE opening comments at 3; SCE reply comments at 4.

[69] SDG&E reply comments at 9.

[70] TURN opening comments at 19.

improvement in the credit ratings of SDG&E and SCE after the passage of AB 1054 indicates that ratepayer costs are not being lowered.[71] In response to this argument, SDG&E and SCE point out that their asserted ratepayer benefit in this context is the prevention of a decline in credit ratings for SDG&E and SCE attributable to AB 1054 rather than an improvement in credit ratings.[72] SCE claims that "avoiding future credit downgrades will save customers money."[73]

These reduced risks of credit downgrades attributable to AB 1054 have the potential to result in reduced ratepayer costs in open Commission proceedings. SCE claims to have reduced their requested revenue requirement in their return on equity proceeding (Application (A.) 19-04-014) by $1 billion as a direct response to the establishment of the Wildfire Fund and SCE's participation in it.[74] PG&E similarly claims to have reduced their requested return on equity in A.19-04-015 from 16% to 12% due to the effect of AB 1054 and the potential Wildfire Fund NBC.[75] SDG&E states that it decreased its requested return on equity in A.19-04-017 from 14.3% to 12.38% in light of AB 1054's passage.[76] TURN and CLECA both argue against assuming that the positions of the

[71] Cal Advocates opening comments at 16-17.

[72] SDG&E reply comments at 8-9; SCE reply comments at 4.

[73] SCE reply comments at 5.

[74] *Id.*

[75] PG&E opening comments at 7, noting that their testimony in A.19-04-015 is subject to numerous assumptions and uncertainties.

[76] SDG&E reply comments at 8, fn 28.

electrical corporations reflect actual reductions in ratepayer costs, given that these proceedings are being actively litigated.[77]

No party disputed the factual assertions of SCE and SDG&E with respect to their actual and potential credit downgrades. No party disputed that credit agencies generally viewed AB 1054 as a positive development for the credit risks presented by SDG&E and SCE. TURN and CLECA argue that factual questions regarding a utility's cost of capital should be litigated in the appropriate proceeding.[78] While this argument by TURN and CLECA is noted, this decision holds that the credit ratings of SCE and SDG&E were generally stabilized by AB 1054, and all else being equal, the prevention of credit rating downgrades for electrical corporations reduces ratepayer costs.

The facts support a conclusion that the passage of AB 1054 and the existence of the Wildfire Fund have a positive impact of the credit risks of the state's electrical corporations and help to reduce ratepayer costs related to utility financing even if it is not possible to quantify the precise financial benefit to ratepayers.

7.4. Counterarguments

Several parties raised arguments against the Wildfire Fund NBC, claiming that it would not be just and reasonable to impose the charge for a variety of reasons. Each of these counterarguments is addressed below.

[77] CLECA reply comments at 9-10.

[78] TURN reply comments at 10; CLECA reply comments at 9-10.

7.4.1. Due Process

Several parties claimed that the process used to consider the issues in this proceeding is deficient and unlawful. These parties argue that the lack of due process means that this decision cannot find that the Wildfire Fund NBC is just and reasonable.

Cal Advocates notes that the usual timeframe for Commission proceedings considering ratesetting issues of this magnitude is 18 months, as opposed to compressed 90-day timeframe used in this proceeding.[79]

UCAN contends that not enough time is granted to parties to develop an evidentiary record to determine the quantity and nature of a non-bypassable charge that would be "appropriate" to levy on residential ratepayers.[80]

Ruth Henricks alleges various inadequacies with the process used in this proceeding, including: a lack of opportunity for parties to meaningfully consider the issues, a denial of evidentiary hearing, releasing a proposed Rate Agreement for party review eight days before the due date for opening comments, alleged deficiencies in the fact-finding process caused by taking official notice of state-sponsored reports,[81] and insufficient fact-finding in general.[82]

Wild Tree Foundation insists that the process used in this proceeding does not comply with the requirements of the California Constitution, the Constitution of the United States, the Public Utilities Code, and the Rules,

[79] Cal Advocates opening comments at 8, citing *Mathews v. Eldridge* (1976) 424 U.S. 319, 333.

[80] UCAN opening comments at 2-3.

[81] Henricks opening comments at 4.

[82] Henricks opening comments at 5, 19.

particularly with respect to takings, notice, and an opportunity to be heard.[83] Wild Tree Foundation also argues that the lack of evidentiary hearing, lack of record development, lack of legal briefing, and lack of meaningful opportunity to comment means there is an inadequate factual record to determine whether the Wildfire Fund NBC is just and reasonable.[84]

The OIR commencing this proceeding was made publicly available in advance of its consideration at a public meeting of the Commission on July 26, 2019. The agenda announcing that the OIR would be under consideration was published in advance on July 16, 2019. After the OIR was approved by the Commission, it was served on the service lists for dozens of Commission proceedings as well as multiple other parties and agencies that were judged to have an interest in the proceeding.[85]

The PHC was noticed in the OIR adopted on July 26, 2019 and on the Commission's Daily Calendar. Informal notices were also sent to the service lists for dozens of Commission proceedings. All entities present at the PHC were afforded the opportunity to comment on the proposed scope and schedule of the proceeding. There are 31 parties to this proceeding and many parties filed opening and reply comments. While the schedule is admittedly expedited compared to other Commission proceedings, parties were granted substantial notice of the proceeding and were afforded an opportunity to research and develop positions on scoped issues, prepare and submit opening comments, and then file a second round of responsive comments. Parties were able to present

[83] Wild Tree Foundation opening comments at 1-2.

[84] Wild Tree Foundation opening comments at 2, 5.

[85] Assigned Commissioner's Scoping Memo and Ruling at 10-13.

those issues they saw fit to address in their comments as well as respond to issues specifically called to their attention for comment. Parties were provided with a proposed Rate Agreement and a document from DWR for their review and discussion in their comments. Many of these parties took advantage of these opportunities and meaningfully engaged in the issues considered by this decision.

Further, parties concerned with the expedited process in this proceeding fail to demonstrate that there are any material issues of disputed fact that require evidentiary hearing, despite their claims to the contrary. For example, Wild Tree Foundation argues that the impact of the Wildfire Fund NBC on ratepayer bills is an issue of fact that requires greater deliberation than provided in this proceeding.[86] However, Wild Tree Foundation also points out that Public Utilities Code Section 3289 limits "what precisely [the Commission] can approve: it can approve a rate increase for large electrical corporations equal to an amount sufficient to fund the revenue requirement, as established pursuant to Section 80524 of the Water Code," and $0.005/kWh for regional electrical corporation customers."[87]

Wild Tree Foundation grants that there is no dispute as to the nature of the non-bypassable charge that can be approved (or not approved). Therefore, there is no material dispute about the approximate magnitude of the bill impact of such a charge. The Commission is aware of these potential bill impacts and considers them, as detailed below, in its approval of the Wildfire Fund NBC. The

[86] Wild Tree Foundation opening comments at 8-9.

[87] Wild Tree Foundation opening comments at 7.

Commission imposes the Wildfire Fund NBC in the same manner as the DWR Bond Charge in compliance with the law and to mitigate the bill impact of the imposition of the Wildfire Fund NBC.

Other issues related to the determination of whether the Wildfire Fund NBC is just and reasonable are legal in nature and require review and implementation of AB 1054 rather than a factual determination.[88] Party comments on the meaning and proper interpretation of AB 1054 are extensive. While formal briefing was not required in this proceeding, few restrictions were placed on the parties' ability to provide comments in a form of their choosing, and the majority of the party comments are substantially similar to legal briefing on issues of AB 1054 interpretation and implementation, and therefore provide a reasonable basis for the Commission's decision. For all these reasons, this decision finds that due process was provided in this proceeding.

7.4.2. Ratepayer Reimbursements of Wildfire Fund Withdrawals

Parties developed contradictory arguments regarding the potential obligation of ratepayers to reimburse the Wildfire Fund for eligible wildfire claims later found to be caused by a prudent utility.

SCE claims that ratepayers are required to reimburse the Wildfire Fund for wildfire costs that are subsequently determined by the Commission to be just

[88] For example, Wild Tree Foundation's assertion that a hearing is required to answer the question of whether continuous DA customers should pay the Wildfire Fund NBC (*see* Wild Tree Foundation reply comments at 7) is a question of statutory interpretation with respect to the meaning of the phrase "in the same manner as" as it appears in Pub. Util. Code § 3289(a)(2). An evidentiary hearing would not clarify the answer to this question any more than party comments.

and reasonable.[89] Cal Advocates makes a similar assertion that a utility may receive rate recovery for just and reasonable costs and therefore ratepayers will contribute twice to wildfire costs – once through the Wildfire Fund NBC and a second time to the utility for reimbursement to the Wildfire Fund for cost recovery authorized as just and reasonable.[90]

On the other hand, SDG&E posits that ratepayers do not reimburse the Wildfire Fund for costs found to be just and reasonable and that only utility shareholders are required to reimburse the Wildfire Fund for disallowed costs, up to a cap.[91] CCUE claims that the Wildfire Fund NBC insulates ratepayers from wildfire liabilities because costs will be recovered from the Wildfire Fund, not as expenses in rates, and thus the Wildfire Fund acts as an insurance policy to pay claims that would otherwise be paid by ratepayers.[92]

This decision's determination that the Wildfire Fund NBC is just and reasonable is based on several considerations, including the potential imposition of double payments by utility ratepayers for the same eligible wildfire claim.[93] This is a question that can be resolved by reference to the statute.

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[89] SCE opening comments at 3 (ratepayers "will only have to repay the Wildfire Fund if the costs are found to be just and reasonable").

[90] Cal Advocates opening comments at 12.

[91] SDG&E opening comments at 8.

[92] CCUE opening comments at 7-8.

[93] It would not be a "double" payment if ratepayers were required to reimburse the Wildfire Fund for an eligible wildfire claim later found to be just and reasonable. As a large portion of Wildfire Fund assets will come from utility shareholders, and given that funds from various utility ratepayers would be co-mingled, it is more accurate to say that a utility's ratepayers could be made to pay "more than once" for the same eligible claim if SCE and Cal Advocates are to be believed.

This decision concludes as a matter of law that AB 1054 does not require ratepayers to reimburse the Wildfire Fund or an electrical corporation for eligible wildfire claims paid by the Wildfire Fund that are later determined to be just and reasonable. As described below, this decision rejects the assertion that a utility would be allowed in a future proceeding to recover from ratepayers payments that the utility received to satisfy claims from the Wildfire Fund.

The interpretation of AB 1054 offered by Cal Advocates and SCE regarding reimbursement of the Wildfire Fund, and in particular Cal Advocates' assertions of the potential for double cost recovery, misread AB 1054 because they fail to distinguish between the Wildfire Liquidity Fund and the Wildfire Insurance Fund. These parties further insert their own interpretation of the statute when they make assumptions on the source of a utility's recovery of prudently incurred wildfire costs. In reading and implementing the statue, the Commission must interpret the statute as a whole and harmonize the various parts of the statute to ascertain the intent of the Legislature and effectuate the purpose of the law.[94]

AB 1054 sets forth two alternate paths to address catastrophic wildfire claims,[95] either through operation of the Wildfire Liquidity Fund pursuant to

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[94] *Alford v. Superior Court (People)* (2003) 29 Cal.4th 1033, 1040 ("Our role in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. Because the statutory language is generally the most reliable indicator of that intent, we look first at the words themselves, giving them their usual and ordinary meaning. We do not, however, consider the statutory language in isolation, but rather examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts") (internal citations omitted).

[95] Catastrophic wildfire claims are those third-party claims for damages against an electrical corporation resulting from wildfire ignited on or after July 12, 2019, caused by an electrical corporation as determined by the governmental agency responsible for determining causation,

Footnote continued on next page

section 3291, or the Wildfire Insurance Fund pursuant to section 3292. Here we are concerned with the Wildfire Insurance Fund, not the Wildfire Liquidity Fund, as the large electrical corporations have indicated their choice or intention to participate in the Wildfire Insurance Fund.[96] Therefore, when this decision refers to the Wildfire Fund it is referring to the Wildfire Insurance Fund established pursuant to Public Utilities Code Section 3292.

When the Wildfire Fund is operative, AB 1054 allows a utility to access the Wildfire Fund to pay eligible wildfire claims quickly, and then commence a proceeding at the Commission (hereinafter a catastrophic wildfire proceeding) that, among other things, determines what amount, if any, utility shareholders must return to the Wildfire Fund as a reimbursement. When the Wildfire Fund is operative, a utility is only required to reimburse claims paid by the Wildfire Fund for "costs and expenses the commission determined were disallowed pursuant to Section 1701.8" subject to a cap.[97]

Costs and expenses initially paid for by the Wildfire Fund, and that the Commission later deems just and reasonable in a catastrophic wildfire proceeding, are not subject to reimbursement to the Wildfire Fund. The Commission therefore concludes as a matter of law that these costs and expenses

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exceeding electrical corporation's insurance coverage or $1 billion in aggregate in any calendar year, whichever is greater. Pub. Util. Code §§ 1701.8(a)(1), 3280(f).

[96] SCE Notice re Initial Contribution to the Wildfire Fund, served September 11, 2019; SDG&E Notice of Initial Contribution to the Wildfire Fund, served September 11, 2019; PG&E Notice Concerning Its Initial Contribution to the Wildfire Fund, served September 11, 2019. Per the terms of Pub. Util. Code § 3291(g), once the large electrical corporations make timely payment of initial contributions pursuant to Pub. Util. Code § 3292, the Wildfire Liquidity Fund is rendered inoperative as a liquidity fund, and the Wildfire Liquidity Fund becomes the Wildfire Insurance Fund.

[97] Pub. Util. Code § 3292(h).

initially paid for by the Wildfire Fund, and later determined to be just and reasonable in a catastrophic wildfire proceeding by the Commission, are to be exclusively borne by the Wildfire Fund while the Wildfire Fund is operational. Accordingly, the utility recovers the eligible wildfire claims from the Wildfire Fund, not ratepayers, if the Commission determines the utility acted prudently. This interpretation follows the plain language of AB 1054.[98]

This reading of the statute is fully consistent with the legislative history. An analysis prepared for the Assembly Committee on Utilities and Energy states: "[s]pecifically, participating electrical [corporations'] expenses deemed just and reasonable would be recovered from the fund, while costs not deemed just and reasonable would be capped up to an amount equivalent to a cap on 20 percent of the [electrical corporation's] transmission and distribution equity rate base..."[99] Other extrinsic aids also corroborate this reading of the statute.[100]

AB 1054 also established a new type of commission proceeding – a catastrophic wildfire proceeding – to govern utility applications to recover costs and expenses if the utility has drawn amounts from the Wildfire Fund to pay eligible claims.[101] Public Utilities Code Section 1701.8 directs a utility that has

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[98] The Legislature chose this path for the now inoperative Wildfire Liquidity Fund. *See* Pub. Util. Code § 3291(d). The lack of such a provision for the Wildfire Insurance Fund is dispositive on its own and the contrasting treatment in the statute confirms this decision's interpretation.

[99] Assembly Committee on Utilities and Energy for hearing date of July 10, 2019, Analysis at 14. *See also* Senate Committee on Energy, Utilities and Communications for hearing date of July 8, 2019, Analysis at 15; Senate Rules Committee third reading, Analysis at 10.

[100] Office of Planning and Research, Final Report of the Commission on Catastrophic Wildfire Cost and Recovery (June 17, 2019), Appendix II at 14 ("all wildfire expenses will be recovered from the fund, not as expenses in rates").

[101] Pub. Util. Code §§ 451.1(d), 1701.8.

received payments from the Wildfire Fund for third-party damage claims to file an application pursuant to Public Utilities Code Section 451.1 (for covered wildfires) within specific time periods. Section 1701.8 establishes a procedural vehicle for determining whether costs paid from the Wildfire Fund must be paid back to the Wildfire Fund by utility shareholders, or are recovered from the Wildfire Fund itself under Public Utilities Code Section 3292. The catastrophic wildfire proceeding, as indicated by the legislatively determined scope, does not itself authorize rate recovery of wildfire costs paid by the Wildfire Fund. Public Utilities Code Section 451.1 establishes specific standards for the Commission's review of the utility's conduct in an application to recover costs and expenses arising from a "covered wildfire"[102] that supplant the Commission's ordinary just and reasonable standard set forth in Public Utilities Code Section 451.[103] While Public Utilities Code Section 451.1 directs that the Commission "shall allow cost recovery if the costs and expenses are just and reasonable,"[104] this must be read in the context of Public Utilities Code Section 1701.8 itself. Public Utilities Code Section 1701.8(b)(4)(A) requires that the scoping memorandum issued in the catastrophic wildfire proceeding "states that the scope of the proceeding shall be

[102] Covered wildfire includes any wildfire ignited on or after July 12, 2019 and caused by the utility. *See* Pub. Util. Code § 1701.8(a)(2).

[103] Pub. Util. Code § 451.1(a)(1) (defining a covered wildfire); Pub. Util. Code § 451.1(b) (enumerating standards for evaluating the conduct of the utility to determine if costs and expenses are just and reasonable); Pub. Util. Code § 451.1(c) (establishing a burden of proof); Pub. Util. Code § 451.1(e) (noting that Pub. Util. Code § 451.1 shall direct the Commission's evaluation of application for recovery of costs and expenses arising from a covered wildfire).

[104] As previously determined in this decision, if an eligible wildfire claim is paid out of the Wildfire Fund then the electrical corporation has already received "cost recovery" for that claim and may not seek ratepayer reimbursement for that claim in a catastrophic wildfire proceeding.

whether the electrical corporation's costs and expenses for the covered wildfire are just and reasonable pursuant to Section 451 or 451.1, as applicable."

Accordingly, the Wildfire Fund NBC authorized by this decision, which will be in an amount sufficient to support the annual revenue requirement established by this decision, constitutes the only payments ratepayers will be required to make for eligible wildfire claims paid from the Wildfire Fund.

7.4.3. Alleged Disincentives for Safe Utility Operation

Several parties asserted that the imposition of the Wildfire Fund NBC and its support for the Wildfire Fund would reduce the incentives for electrical corporations to maintain safe infrastructure.[105] On this basis they argue that the Wildfire Fund NBC is not just and reasonable. These arguments generally asserted that the Wildfire Fund, through its provision of ratepayer funds for timely resolution of eligible wildfire claims, reduces an electrical corporation's incentives to safely manage its systems.

Specifically, Ruth Henricks and Cal Advocates refer to the Commission's rejection of a previous application for a utility balancing account to settle wildfire claims, and its findings concerning the safe operation of utility infrastructure, as evidence that the Commission has considered this dynamic in the past and relied on it to reject a ratepayer-backed wildfire insurance fund.[106]

Party comments accurately distinguish the Wildfire Fund from the balancing account proposed by A.09-08-020 for several reasons. First, the

[105] Wild Tree Foundation PHC statement at 8; Henricks PHC statement at 6-7; UCAN PHC statement at 4-5; Wild Tree Foundation opening comments at 9; Henricks opening comments at 15; Cal Advocates opening comments at 13-15.

[106] Henricks opening comments at 13-15; Cal Advocates opening comments at 13-15.

Wildfire Fund will be capitalized by ratepayer funds and shareholder funds, meaning that a utility's shareholders are contributing to the financial settlement of claims paid by the Wildfire Fund, regardless of whether they could have been fully recovered in rates absent AB 1054. The balancing account at issue in A.09-08-020 would only have made ratepayers liable for wildfire costs.[107] This distinguishing feature of the Wildfire Fund also mitigates the arguments made by some parties that the Wildfire Fund will incent unsafe behavior by the electrical corporations. Because the Wildfire Fund makes shareholders pay for claims even if they were prudently incurred costs, the Wildfire Fund does not present the same issue of concern as the balancing account at issue in A.09-08-020.[108]

SCE lists several features of the Wildfire Fund framework that create incentives for electrical corporations to safely manage their systems. These include shareholder reimbursement of the Wildfire Fund in the event an electrical corporation's behavior is found to be imprudent, combined shareholder contributions to the Wildfire Fund in the amount of $10.5 billion (assuming PG&E's participation), elimination from an electrical corporation's equity rate base of the first $5 billion worth of wildfire risk mitigation capital investments, ongoing investments in safety measures as required by approved wildfire mitigation plans, and prohibitions on diversion of authorized revenues to implement wildfire mitigation plans.[109]

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[107] *See generally* SDG&E reply comments at 5; CCUE reply comments at 9.

[108] SDG&E reply comments at 3-4; CCUE reply comments at 7.

[109] SCE reply comments at 2.

SCE highlights that the risk of shareholder reimbursement of the Wildfire Fund, even if capped, incents safe behavior, stating that the "risk of reimbursing the Wildfire Fund for billions of dollars with no recovery from customers creates a powerful incentive for [electrical corporations] to reduce wildfire risk as rapidly and effectively as possible."[110]

The position of SCE and other parties is logical and demonstrates that there is shareholder liability for eligible wildfire claims paid by the Wildfire Fund that are incurred through either prudent or imprudent utility behavior. This decision therefore does not agree with parties that argue the Wildfire Fund is similar to a solely ratepayer-backed balancing account that may disincentivize safe utility operation.

There are numerous elements of AB 1054 beyond the Wildfire Fund that will keep utility shareholders motivated to ensure safe operation. Among other things, under AB 1054 utilities must comply with detailed wildfire mitigation plans, as well as enhanced safety requirements developed by the new wildfire safety division. Moreover, in order to participate in the Wildfire Fund, utilities must demonstrate that they are in compliance with the findings of its most recent safety culture assessment, and also that they have an executive compensation scheme in place that is tied to their safety performance. Importantly, the Commission's enforcement powers are not curtailed by AB 1054 and therefore the Commission may impose penalties on a utility, to be paid by its shareholders, for violations of safety rules and Commission orders.

[110] *Id.*

For all of these reasons the Commission disagrees with the proposition that establishing the Wildfire Fund NBC diminishes incentives for a utility to operate and maintain its system in a manner that mitigates the risk of catastrophic wildfires.

7.4.4. Bill Impacts of the Wildfire Fund NBC

Several parties correctly point out that the Wildfire Fund NBC creates a bill impact for ratepayers that would not exist absent imposition of the Wildfire Fund NBC.[111] However, the Commission notes that a future catastrophic wildfire in the absence of AB 1054 may have increased ratepayer costs as well.

It is also true that the Wildfire Fund NBC is designed to collect an equivalent level of revenue as the current DWR Bond Charge. For that reason, one can also regard the impact of the Wildfire Fund NBC on a customer's bill as neutral. In fact, this was how the Legislature viewed the bill impact of Wildfire Fund NBC.

CforAT in its comments speaks to the necessity for the Commission to consider the impact on future customer bills if the Wildfire Fund NBC is not approved. It is possible that the future holds more catastrophic wildfires than previously seen, and significant bill impacts for utility ratepayers in the absence of a mechanism to dispose of wildfire claims quickly and keep costs of capital to a reasonable level. Earlier in this decision the Commission described these and other ratepayers benefits attributable to the Wildfire Fund NBC when finding it just and reasonable.

[111] CforAT opening comments at 4; TURN reply comments at 1; Cal Advocates opening comments at 17; EPUC opening comments at 4-6.

In any event, even though it is evident the Wildfire Fund NBC is an incremental charge compared to the expiration of the DWR Bond Charge and the absence of the Wildfire Fund NBC, the Wildfire Fund NBC is reasonable as the benefits for ratepayers of participating utilities outweigh the incremental charge.

7.4.5. Controls on Administrative Costs and Expenses

Some parties sought to ensure that ratepayers do not pay more than is necessary to support the bonds eventually issued by DWR. In particular, UCAN sought an audit of DWR administrative expenses to ensure that they were reasonable.

Parties are correct that interest rates are a key variable for determining annual payments needed to fund a lump sum contribution to the Wildfire Fund. However, that analysis is not relevant here where the Commission's responsibility is to consider a revenue requirement based on historic collections rather than estimated future costs.

Furthermore, AB 1054's mandate does not allow the Commission to set a revenue requirement other than that defined by Water Code Section 80524. For that reason, even if a given year's financing and administrative costs related to DWR's bond issuance are lower than the annual revenue requirement authorized, there can be no adjustment of the collections for that year. The revenue requirement for the Wildfire Fund NBC would remain the same. This is in contrast to the current DWR Bond Charge methodology which, as noted by CLECA, allows for annual adjustments to the revenue requirement to account for lower or higher expenses.

The unavoidable construction of AB 1054 is that once the revenue requirement is set by this decision it cannot be changed until 2036.[112] The static revenue requirement will be used to issue, service, and administer up to $10.5 billion of DWR bonds to support the Wildfire Fund.[113] AB 1054 describes several forms of financial and administrative expenses that may be incurred in support of the bond issuance.[114] AB 1054 also dictates that after DWR has satisfied these various purposes, it will transfer any remaining revenue requirement to the Wildfire Fund.[115] Public Utilities Code Sections 3281 – 3288 specify how the fund will be administered and capitalized, and legislative reporting requirements. Thus, the Legislature has already determined the use of any collections from ratepayers. While parties may be concerned about this issue, the Legislature considered how to address it when crafting AB 1054.

8. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Doherty in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

[112] Water Code § 80544(b).

[113] Water Code § 80540(b).

[114] Water Code § 80544(a)(1)-(5).

[115] Water Code § 80544(a)(6); Water Code § 80550(b).

9. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Patrick Doherty is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The regional electrical corporations have notified the Commission that they do not intend to participate in the Wildfire Fund.

2. The existing DWR Bond Charge is collected on a dollar per kWh basis and this charge has averaged approximately half a cent per kWh over the last several years.

3. All customers in all customer classes are required to pay the DWR Bond Charge on an equal cents per kWh basis, with some exceptions.

4. The DWR Bond Charge revenue allocation method assigns the costs of the DWR Bond Charge to each class proportionate to a class's share of the utility's kWh sales in a given year.

5. The DWR Bond Charge is not collected from several types of customers including CARE residential customers, Medical Baseline residential customers, and continuous DA customers.

6. The Legislature has determined that it is in the public interest to establish the Wildfire Fund and create a detailed construct for managing future wildfire claims as defined by AB 1054.

7. The Wildfire Fund is designed to be capitalized with contributions from both ratepayers and shareholders.

8. AB 1054's scheme essentially provides an insurance fund that can insulate ratepayers from future recovery in rates for prudently incurred utility wildfire costs for which ratepayers would otherwise be responsible to pay in full.

9. Uncertainty about cost recovery for wildfire liabilities, led to credit rating downgrades for SCE and SDG&E in 2019.

10. Beyond the actual credit downgrades experienced by SCE and SDG&E, the utilities faced a threat of continuing downgrades in the future – and attendant increases in ratepayer costs to finance utility investments – absent a solution such as the structure imposed by AB 1054.

11. Credit agencies generally viewed AB 1054 as a positive development for the credit risks presented by SDG&E and SCE.

12. The credit ratings of SCE and SDG&E were generally stabilized by AB 1054, and all else being equal, the prevention of credit rating downgrades for electrical corporations reduces ratepayer costs.

13. The passage of AB 1054 and the existence of the Wildfire Fund have a positive impact on the credit risks of the state's electrical corporations and will help to reduce ratepayer costs related to utility financing even if it is not possible to quantify the precise financial benefit to ratepayers.

14. The Wildfire Fund NBC creates a bill impact for ratepayers that would not exist absent imposition of the Wildfire Fund NBC, although it is also true that the Wildfire Fund NBC is designed to collect an equivalent level of revenue as the current DWR Bond Charge.

15. The large electrical corporations have indicated their choice or intention to participate in the Wildfire Insurance Fund.

Conclusions of Law

1. The broad powers granted to the Commission by Public Utilities Code Section 701, and the Legislature's endorsement of the Commission's authority under that statute to impose the Wildfire Fund NBC, grant the Commission jurisdiction and authority to impose the Wildfire Fund NBC.

2. By referring to Public Utilities Code Section 701, Public Utilities Code Section 3289(a)(1) directs the Commission to apply its broadest discretion and authority when determining if it is just and reasonable to impose the Wildfire Fund NBC.

3. Any Wildfire Fund NBC collections from regional electrical corporation ratepayers shall be treated separately from the annual revenue requirement for the Wildfire Fund NBC established in Water Code Section 80524(a) and are not covered by the Rate Agreement between DWR and the Commission.

4. AB 1054 is clear that the annual revenue requirement for the Wildfire Fund NBC must be based on historic collections made by DWR for the DWR Bond Charge.

5. As a matter of law, the ratepayers of an electrical corporation that is not participating in the Wildfire Fund should not pay the Wildfire Fund NBC.

6. In setting a total annual revenue requirement for the Wildfire Fund NBC the Commission must take into account only the large electrical corporations that are eligible and elect to participate in the Wildfire Fund.

7. AB 1054 contains no provision that allows a large electrical corporation to change its status as a participating utility and as a result the commitment to make annual contributions contained in the statute must be implemented as a binding commitment.

8. The Commission's determination that it will exercise its authority to impose the Wildfire Fund NBC on the ratepayers of electrical corporations participating in the Wildfire Fund, and that the imposition of such a charge is just and reasonable, triggers a provision of Water Code Section 80524(b) that requires the Commission to enter into an agreement with DWR with respect to

the revenue requirement and the Wildfire Fund NBC that shall have the force and effect of an irrevocable financing order.

9. The Rate Agreement attached to this decision complies with the requirements of Water Code Section 80524(b) and other applicable law.

10. The proposed Rate Agreement as submitted to the parties in the ALJ ruling of August 21, 2019, and as modified to make some technical changes, complies with the requirements of Water Code Section 80524(b) and other applicable law.

11. Rate Agreement Sections 1, 4.1(a) and 4.1(b) provide for the proper administration of the revenue requirement.

12. Rate Agreement Section 4.1, as a whole, provides for notification of the Commission and subsequent action to comply with Water Code Section 80524(b).

13. Rate Agreement Sections 5.1(a) and 5.1(b) contain a rate covenant and Section 5.1(c) states that those sections shall have the force and effect of a financing order.

14. AB 1054 specifies that if the Wildfire Fund NBC is adopted then it should be collected "in the same manner as" the current DWR Bond Charge, and the term "in the same manner" means that the Wildfire Fund NBC should be collected in no different a manner than the DWR Bond Charge.

15. Collecting the Wildfire Fund NBC as a fixed charge (presumably on a dollar per customer/month basis) would not collect the charge in the same manner as the DWR Bond Charge.

16. Maintaining the revenue allocation for the Wildfire Fund NBC so that it is identical to the existing revenue allocation for the DWR Bond Charge is equitable and conforms with the statute's instructions to collect the Wildfire Fund NBC in the same manner as the DWR Bond Charge.

17. CARE and Medical Baseline residential customers should be excluded from paying the Wildfire Fund NBC.

18. Continuous DA customers should be excluded from paying the Wildfire Fund NBC.

19. Any other customers currently exempted from the DWR Bond Charge, such as certain customers utilizing CGDL as defined by D.03-04-030, should be excluded from paying the Wildfire Fund NBC.

20. The Legislature and the Governor determined that the creation of the Wildfire Fund and the Wildfire Fund NBC furthers state policy goals and benefits ratepayers.

21. The creation and imposition of the Wildfire Fund NBC is just and reasonable.

22. When the Legislature crafts a law, such as AB 1054, it speaks for the people of California on matters of public policy.

23. Imposing the Wildfire Fund NBC is in the public interest as it supports the overall framework for managing future wildfire claims established by AB 1054.

24. The shareholder contributions to the Wildfire Fund provide benefits to ratepayers.

25. The directive of Public Utilities Code Section 451.1 that the Commission shall allow cost recovery if a utility's costs and expenses are just and reasonable in a catastrophic wildfire proceeding is satisfied by the payment of costs prudently incurred by the electrical corporation that are paid from the Wildfire Fund.

26. "Cost recovery" as defined by Public Utilities Code Section 451.1 has already occurred when an eligible wildfire claim is paid by the Wildfire Fund.

27. The determination that the Wildfire Fund NBC is just and reasonable is based on several considerations, including the elimination of the potential imposition of double payments by utility ratepayers for the same eligible wildfire claim.

28. AB 1054 does not require ratepayers to reimburse the Wildfire Fund or an electrical corporation for eligible wildfire claims paid by the Wildfire Fund that are later determined to be just and reasonable.

29. Costs and expenses initially paid for by the Wildfire Fund, and that the Commission later deems just and reasonable in a catastrophic wildfire proceeding, are not subject to reimbursement to the Wildfire Fund.

30. Public Utilities Code Section 1701.8 directs a utility that has received payments from the Wildfire Fund for third-party damage claims to file an application pursuant to Public Utilities Code Section 451.1 (for covered wildfires) within specific time periods.

31. Public Utilities Code Section 1701.8 establishes a procedural vehicle for determining whether costs paid from the Wildfire Fund must be paid back to the Wildfire Fund by utility shareholders, or are recovered from the Wildfire Fund itself under Public Utilities Code Section 3292.

32. The catastrophic wildfire proceeding, as indicated by the legislatively determined scope, does not itself authorize rate recovery of wildfire costs paid by the Wildfire Fund.

33. The Wildfire Fund NBC authorized by this decision, which will be in an amount sufficient to support the annual revenue requirement established by this decision, constitutes the only payments ratepayers will be required to make for eligible wildfire claims paid from the Wildfire Fund.

34. The Wildfire Fund NBC is reasonable as the benefits for ratepayers of participating utilities outweigh the incremental charge.

35. AB 1054's mandate does not allow the Commission to set a revenue requirement other than that defined by Water Code Section 80524.

36. Pursuant to AB 1054, once the revenue requirement is set by this decision it cannot be changed until 2036.

37. AB 1054 describes several forms of financial and administrative expenses that may be incurred in support of the bond issuance. AB 1054 also dictates that after DWR has satisfied these various purposes, it will transfer any remaining revenue requirement amount left to the Wildfire Fund.

O R D E R

IT IS ORDERED that:

1. Once a large electrical corporation has made its commitment to participate in the Wildfire Fund, then it shall continue to participate in the Wildfire Fund and shall fully satisfy the statutorily required shareholder contributions.

2. Each large electrical corporation that is eligible and elects to participate in the Wildfire Fund shall impose the Wildfire Fund non-bypassable charge in an amount determined necessary to collect the revenue requirement authorized by this decision.

3. The total annual revenue requirement for the Wildfire Fund non-bypassable charge shall be set at the sum, not to exceed $902,400,000, of the following amounts historically collected from customers of each large electrical corporation that is eligible and elects to participate in the Wildfire Fund: $404,600,000 for historic collections if Pacific Gas and Electric Company

participates in the Wildfire Fund, $408,200,000 for historic collections if Southern California Edison Company participates in the Wildfire Fund, and $89,600,000 for historic collections if San Diego Gas & Electric Company participates in the Wildfire Fund.

4. Pursuant to Water Code Section 80524(a), the annual revenue requirement for the Wildfire Fund non-bypassable charge shall expire at the end of the year 2035.

5. The Wildfire Fund non-bypassable charge shall be collected by the large electrical corporations on a dollar per kilowatt-hour basis to conform with the directive of Public Utilities Code Section 3289(a)(2).

6. The Wildfire Fund non-bypassable charge shall use the same revenue allocation as the Department of Water Resources Bond Charge.

7. All customers of a large electrical corporation that is eligible and elects to participate in the Wildfire Fund shall pay the same amount per kilowatt-hour for the Wildfire Fund non-bypassable charge, unless that customer is excluded from paying the Wildfire Fund non-bypassable charge.

8. The Wildfire Fund non-bypassable charge shall not be collected from customers of large electrical corporations that are California Alternate Rates for Energy residential customers.

9. The Wildfire Fund non-bypassable charge shall not be collected from customers of large electrical corporations that are Medical Baseline residential customers.

10. Customers that have been taking direct access service continuously both before and since January 17, 2001 in the Pacific Gas and Electric Company and Southern California Edison Company service territories shall not pay the Wildfire Fund non-bypassable charge.

11. Customers that have been taking direct access service continuously both before and since February 7, 2001 in San Diego Gas & Electric Company's service territory shall not pay the Wildfire Fund non-bypassable charge.

12. Customers utilizing customer generation departing load that are currently exempted from paying the Department of Water Resources Bond Charge per Decision 03-04-030 shall not pay the Wildfire Fund non-bypassable charge.

13. Any customers currently exempted from paying the Department of Water Resources Bond Charge shall not pay the Wildfire Fund non-bypassable charge.

14. For any regional electrical corporation that voluntarily imposes a Wildfire Fund non-bypassable charge on its customers, that Wildfire Fund non-bypassable charge shall be one-half cent per kilowatt-hour.

15. If a regional electrical corporation elects to participate in the Wildfire Fund and impose the Wildfire Fund non-bypassable charge (NBC) on its customers, the same Wildfire Fund NBC exclusions as apply to large electrical corporation customers shall apply to the regional electrical corporation's customers.

16. The Rate Agreement between the Department of Water Resources and the California Public Utilities Commission contained in Attachment A of this decision is adopted by the Commission pursuant to Water Code Section 80524(b).

17. The Executive Director of the California Public Utilities Commission shall sign the Rate Agreement on behalf of the Commission. Once the Department of Water Resources has signed the Rate Agreement, the Department of Water Resources may serve a copy of the executed Rate Agreement on the service list of this proceeding. The Commission's General Counsel shall retain the Commission's copies of the original executed Rate Agreement.

18. Once all parties to the Rate Agreement have signed the Rate Agreement, Sections 5.1(a) and 5.1(b) of the Rate Agreement, and only those Sections, shall

have the force and effect of an irrevocable financing order issued by the Commission pursuant to Public Utilities Code Section 840 et seq.

19. The instant proceeding remains open in order to consider the annual revenue requirement and sales forecast for the Wildfire Fund non-bypassable charge in 2020.

20. An electrical corporation shall not recover from ratepayers amounts that were already recovered by the electrical corporation from the Wildfire Fund.

21. Rulemaking 19-07-017 remains open.

This order is effective today.

Dated _____, at Redding, California.

ATTACHMENT A

~~PROPOSED~~ RATE AGREEMENT

By and Between

STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

and

STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION

Dated as of ~~October~~ _____, 2019

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RATE AGREEMENT, dated as of ~~October~~ _____ ___, 2019, by and between **STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES** and **STATE OF CALIFORNIA PUBLIC UTILITIES COMMISSION**.

The parties mutually agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. The terms set forth in this Section shall have the meanings ascribed to them herein for all purposes of this Agreement unless the context clearly requires otherwise. Words in the singular shall include the plural and words in the plural shall include the singular where the context so requires.

"***Act***" shall mean The Wildfire Prevention and Recovery Act of 2019 as amended from time to time.

"***Agreement***" shall mean this Rate Agreement, as from time to time hereafter amended or supplemented in accordance with the provisions hereof.

"***Bonds***" shall mean bonds, notes or other evidences of indebtedness issued or incurred pursuant to Section 80540 of the Water Code, including, refunding bonds issued in accordance with Section 80540 of the Water Code.

"***Bond Related Parties***" shall mean (i) the Department, its agents, officers, employees or consultants, (ii) owners or beneficial owners of the Bonds, (iii) any Fiduciary, (iv) any municipal bond insurance company, bank or other financial institution or organization, including their participants, that (A) provides credit support or liquidity for some or all of the Bonds, including but not limited to, pursuant to letters of credit, bond insurance, guarantees, debt service reserve fund surety bonds, lines of credit, revolving credit agreement, reimbursement agreements, and standby bond purchase agreements, (B) provides other financial instruments entered into in connection with the Bonds, including but not limited to, pursuant to investment agreements, hedges, interest rate swaps, caps, options and forward purchase agreements, (C) provides services relating to the remarketing of the Bonds, including but not limited to, pursuant to remarketing agreements, dealer agreements and auction agent agreements, or (D) any other person having a lien on or security interest in bond proceeds or revenues received by the Department for deposit in the Department of Water Resources Charge Fund as consideration for providing financial products or services in connection with the Bonds, and (v) any collateral, paying, or other agent with respect to the Bonds.

"***Charge Fund***" shall mean the Department of Water Resources Charge Fund established by the Act.

"***Commission***" shall mean the State of California Public Utilities Commission and any board, commission, department, corporation, authority or officer succeeding to the functions thereof, or to whom the powers conferred on the Commission by the Act shall be given by law.

"***Department***" shall mean the State of California Department of Water Resources.

"***DWR Bond Charges***" shall mean collected charges imposed pursuant to the bond related revenue requirements established by the Department under Section 80110 of Division 27 for the period from January 1, 2013, through December 31, 2018 at the rates adopted by the Commission and allocated to the electric customers of PG&E, SCE, and SDG&E.

"***Electrical Corporation***" shall have the meaning ascribed thereto in Section 218 of the Public Utilities Code, including any successor and assign thereof.

"***Fiduciary***" shall mean any Trustee, any bond registrar and any paying agent in connection with Bonds pursuant to the Financing Documents, and their respective successors and assigns.

"***Financing Documents***" shall mean any resolution, indenture, trust agreement, loan agreement, revolving credit agreement, reimbursement agreement, standby purchase agreement or other agreement or instrument adopted or entered into by the Department authorizing, securing, enhancing, or hedging the Bonds, including any bond offering documents, as from time to time amended or supplemented in accordance therewith. Copies of all Financing Documents shall be provided to the Commission.

"***Large Electrical Corporation***" shall mean an electrical corporation with 250,000 or more customer accounts within the State that has met the requirements of Sections 3292(a) and 3292(b)(1) or Section 3292(d) of the Public Utilities Code.

"***Nonbypassable Charges***" shall mean a charge imposed by the Commission, by order in conjunction with this Agreement, upon customers in each of the Service Areas of any Large Electrical Corporation that is eligible and elects to participate in the Wildfire Fund or any of their respective successors, such charge to be revised from time to time by the Commission in accordance with Section 80524(b) of the Water Code and Section 3289 of the Public Utilities Code; provided that the Nonbypassable Charges shall be imposed upon such customers in each Service Area at all times required by this Agreement, the Commission and the Act.

"Program Related Costs" shall mean the following payments of, or deposits or other provision to be made by, the Department under Financing Documents or the Act in accordance with Section 80524(a) and 80544 of the Water Code:

(i) the amounts necessary to pay the principal of, and premium, if any, and interest on, all Bonds as and when the Bonds shall become due,

(ii) the amounts necessary to make payments under any contracts, agreements, or obligations entered into by the Department pursuant to the Act, in the amounts and at the times they shall become due,

(iii) reserves in such amount as may be determined by the Department from time to time to be necessary or desirable,

(iv) consistent with Section 3288 of the Public Utilities Code, repayment of loans made from the Surplus Money Investment Fund to the Wildfire Fund, and

(v) the administrative costs of the Department incurred in administering Division 28 of the Water Code.

"***Revenue Requirement***" shall mean the revenue requirement for each year or, with respect to the first year and last year, the pro rata portion of the year, as set forth in Section 80524(a) of the Water Code and calculated as agreed and set forth in Article IV.

"Revenue Requirement Period" means each annual period from January 1 through December 31 until January 1, 2036.

"***Service Area***" shall mean the geographic area in which an Electrical Corporation distributes electricity.

"***State***" shall mean the State of California.

"***Trustee***" shall mean any bank or trust company, or the State Treasurer, appointed as trustee, co-trustee or collateral agent in connection with the Bonds or bond related obligations pursuant to the Financing Documents, and its successors and assigns.

"***Wildfire Fund***" shall mean the fund created pursuant to Section 3284 of the Public Utilities Code.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of Department. The Department makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a department within the Resources Agency of the State, validly existing under the Constitution and laws of the State, and has full power and authority to execute, deliver and perform and observe all of the terms and provisions of this Agreement.

(b) The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Department.

(c) This Agreement is a legal, valid and binding agreement of the Department and is enforceable against the Department in accordance with its terms.

Section 2.2 Representations and Warranties of Commission. The Commission makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) It is a commission of the State, validly existing under the Constitution and laws of the State, and has full power and authority to execute, deliver and perform and observe all of the terms and provisions of this Agreement.

(b) The execution, delivery and performance of this Agreement, have been duly authorized by all necessary action on the part of the Commission.

(c) This Agreement is a legal, valid and binding agreement of the Commission and is enforceable against the Commission in accordance with its terms.

ARTICLE III
PURPOSES OF THE AGREEMENT

Section 3.1 Funding of the Wildfire Fund; Agreement for Bond Issuance. The Department and the Commission agree that this Agreement is executed to facilitate the funding of the Wildfire Fund. The Department and the Commission further agree that, to the extent the Department issues Bonds, this Agreement is executed to facilitate the issuance of Bonds.

Section 3.2 No Indebtedness. Nothing contained in the Agreement shall be deemed to create or constitute a debt or liability of the State or of any political subdivision thereof, or a pledge of the full faith and credit or taxing power of the State or of any such political subdivision.

Section 3.3 No Pecuniary Liability of Commission. Nothing in this Agreement shall be deemed to create any pecuniary liability of the Commission, its Commissioners, employees or agents to any person, the sole remedy for any default, breach or other nonperformance by the Commission hereunder being the exercise of remedies specifically afforded hereunder and under the Act.

ARTICLE IV
REVENUE REQUIREMENTS

Section 4.1 Revenue Requirements.

(a) Determination of Revenue Requirement. The Department agrees to cooperate with and assist the Commission in its determination of the Revenue Requirement established by Section 80524 of the Water Code. The Commission agrees to adopt the Revenue Requirement which shall remain in effect until January 1, 2036. The Department and the Commission agree that the annual Revenue Requirement shall be equal to the average annual amount of collections by the Department with respect to the DWR Bond Charges imposed for the period from January 1, 2013 through December 31, 2018 on customers of each Large Electrical Corporation that is eligible and elects to participate in the Wildfire Fund.

(b) Determination of Nonbypassable Charges. The Department agrees to cooperate with and assist the Commission in its determination, at least annually, of the Nonbypassable Charges. Pursuant to Section 3289 of the Public Utilities Code, the Commission

shall impose the Nonbypassable Charges in an amount sufficient to fund the Revenue Requirement.

(c) Review of Sufficiency. The Department shall, at least annually, and more frequently as deemed reasonably necessary or appropriate by the Department or the Commission, conduct a review and determine if the amount collected by the Nonbypassable Charges is forecasted to be sufficient to meet the Revenue Requirement. If any such annual or more frequent review indicates that collections received by the Department with respect to the Revenue Requirement are, or will be, insufficient to meet the Revenue Requirement, and the Department so notifies the Commission, the Commission shall take necessary action to cure or avoid any such deficiency, including adjustment of existing, and the calculation and imposition of additional, Nonbypassable Charges. To the extent that the Department has not provided a notice to the Commission of any deficiency within the time periods required by the next succeeding paragraph for any reason and the Commission determines based on the record before it, that Nonbypassable Charges are not sufficient to meet the Revenue Requirement, the Commission may modify the Nonbypassable Charges to cover such shortfall on an interim basis pending receipt of a notice of a deficiency from the Department.

The Department shall notify the Commission each year by November 1st of the annual collections received by the Department with respect to the Revenue Requirement and the amount of excess or deficiency in collections above or below the Revenue Requirement and the Commission will undertake within 60 days to adjust the Nonbypassable Charges in the subsequent year to reflect any excess or deficiency.

Within any Revenue Requirement Period if the Department forecasts that the Revenue Requirement will not be met and that the collections will not be sufficient to fund the Revenue Requirement, then the Department shall notify the Commission in writing within 20 days of such determination, and the Commission shall act within 30 days of such notification to increase the Nonbypassable Charges so that amounts collected during that period are sufficient to fund the Revenue Requirement.

(d) Information. In any review of the adequacy of the Nonbypassable Charges, the Department shall include the amount required to be recovered in the applicable period and shall set forth amounts projected to be required to be collected during subsequent periods. The review of the adequacy of the Nonbypassable Charges in any period shall take into account any deficiency or any surplus in amounts recovered in earlier periods. The Department's at least-yearly notification to the Commission of the amounts needed to be collected from the Nonbypassable Charges shall include a statement containing the Department's projections (with reasonable detail) of the following information for each month during the period covered by the Revenue Requirement:

(i) the beginning balance of funds on deposit in the Charge Fund, including the amounts on deposit in each account and subaccount of the Charge Fund;

(ii) the amounts necessary to pay or provide for the payment of all Program Related Costs as and when the same shall become due and the amount of Nonbypassable Charges to be collected for such purpose; and

(iii) any other information reasonably requested by the Commission in its proceedings implementing a Revenue Requirement.

ARTICLE V
CHARGE COVENANT

Section 5.1 Charge Covenant.

(a) The Commission hereby covenants and agrees to calculate, revise and impose from time to time, Nonbypassable Charges sufficient to provide moneys so that the amounts available for deposit in the Charge Fund from time to time are at all times sufficient to fund the Revenue Requirement.

(b) As provided by and authorized by the Act, including by reference to Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the California Public Utilities Code, the Nonbypassable Charges authorized by Commission Order and the right of the Department to receive the Nonbypassable Charges as provided in this Agreement shall be property of the Department for all purposes under California law. After the transfer of moneys by the Department to, and deposited in, the Wildfire Fund in accordance with the Act such moneys are not property of the Department following such transfer and deposit, nor shall the Department have any residual interest in any money or investments in the Wildfire Fund.

(c) As authorized by Section 80524(b) of the Water Code by reference to Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the California Public Utilities Code, Sections 5.1(a) and 5.1(b) of this Agreement shall have the force and effect of a "irrevocable financing order" adopted thereunder and shall be enforceable in accordance with the terms hereof, including, without limitation, in circumstances in which the Department has breached its obligations under this Agreement or in respect of the Financing Documents.

ARTICLE VI
COVENANTS OF THE COMMISSION

Section 6.1 Compliance with Agreement.

(a) The Commission hereby covenants with the Department that the Commission shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Act and this Agreement.

(b) The Commission hereby covenants that, so long as any Bonds shall be outstanding, it will not take any action, or fail to take any action, which, if taken or not taken, as the case may be, would adversely affect the tax-exempt status of the interest payable on Bonds then outstanding, the interest on which, at the time of issuance thereof, was exempt from federal

income taxation or not includable in gross income for purposes of federal income taxation. In furtherance of the foregoing, the Commission agrees to act with respect to those matters within its control that could adversely affect the exclusion of interest on such tax-exempt Bonds from gross income for purposes of federal income taxation.

(c) The Nonbypassable Charges shall be established by the Commission without regard to the levels or amounts of any particular rates or charges authorized by the Commission to be charged by any Electrical Corporation for electrical power sold by such Electrical Corporation.

Section 6.2 Liens. Until all Nonbypassable Charges have been collected in full in accordance with Section 3289 of the Public Utilities Code, the Commission, to the extent it has the power to do so, shall not permit to be created any purported lien upon or pledge of the Nonbypassable Charges except any lien and pledge thereon created by or pursuant to the Act as security for the enforcement of the Department's obligations entered into pursuant thereto.

ARTICLE VII
COVENANTS OF THE DEPARTMENT

Section 7.1 Deposit and Allocation of Revenues. The Department hereby covenants and agrees that all revenues received by the Department from the Nonbypassable Charges shall be deposited in the Charge Fund and allocated in accordance with Section 80544(a) of the Water Code. Without limiting the generality of the foregoing, the Department further covenants and agrees that, in accordance with Section 80544(a) of the Water Code, that the Department will, after meeting the purposes of paragraphs (1) to (5), inclusive, of such Section 80544(a), allocate or cause to be allocated any remaining Revenue Requirement amount to the transfer to the Wildfire Fund.

Section 7.2 Department Participation. Consistent with the limitations set forth in Division 28 of the Water Code, upon the request of the Commission, the Department will participate in any Commission proceedings, including providing witnesses, attending public hearings and providing any other materials necessary to facilitate the Commission's completion of its proceedings, taken in connection with the establishment of the Nonbypassable Charges by the Commission.

Section 7.3 Compliance with Agreement.

(a) The Department hereby covenants with the Commission that the Department shall take all such actions or refrain from taking all such actions, as the case may be, so as to comply with the terms and provisions of the Act and this Agreement, including but not limited to, complying with the legal requirements referenced in Article IV and the requirement to review the sufficiency of Nonbypassable Charges to meet the Revenue Requirement at least annually.

(b) The Department hereby covenants that, so long as any Bonds shall be outstanding, it will not take any action, or fail to take any action, which, if taken or not taken, as the case may be, would adversely affect the tax-exempt status of the interest payable on Bonds then outstanding, the interest on which, at the time of issuance thereof, was exempt from Federal

income taxation or not includable in gross income for purposes of federal income taxation. In furtherance of the foregoing, the Department agrees to act with respect to those matters within its control that could adversely affect the exclusion of interest on such tax-exempt Bonds from gross income for purposes of federal income taxation.

Section 7.4 Charges. The Department acknowledges the Commission's exclusive authority to set the Nonbypassable Charges among customer classes and for each Large Electrical Corporation that is eligible and elects to participate in the Wildfire Fund and to determine the extent or timing of Nonbypassable Charges that may be required in the future, consistent with the Commission's obligations in this Rate Agreement and the Act.

Section 7.5 Department Audits. The Department shall provide to the Commission when available a copy of each audited annual financial statements for the Charge Fund.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

Section 8.1 Events of Default. An "event of default" or a "default" shall mean, whenever they are used in this Agreement, a failure of the Commission to calculate and impose Nonbypassable Charges in accordance with Article V.

Section 8.2 Remedies.

(a) Whenever any event of default shall have occurred and be continuing, and written notice of the default shall have been given to the Commission by the Department and the default shall not have been cured within 30 days, the Department may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Commission under Article V.

(b) Whenever any event shall have occurred and be continuing, such that either the Commission or the Department is not in compliance with any covenant or obligation of this Agreement, and written notice of the breach of such covenant or obligation shall have been given to either the Commission or the Department by the other party and the breach shall not have been cured within 30 days, both the Commission or the Department may take whatever action at law or in equity that may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant under this Agreement. In addition, whenever any such event shall have occurred and be continuing such that either the Commission or the Department is not in compliance with any covenant or obligation of this Agreement, and the California Catastrophe Response Council provides notice of such breach to the Commission or the Department and the breach shall not have been cured within 120 days, the California Catastrophe Response Council may take whatever action at law or in equity that may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant under this Agreement and to such extent the California Catastrophe Response Council shall be considered a third party beneficiary of this Agreement.

Section 8.3 Consent to Assignment.

(a) The Commission consents to the collateral assignment by the Department to the Trustee for the benefit of the Bond Related Parties, as such, of the covenants of the Commission contained in Article V; provided, however, that any rights so granted to the Trustee shall not be greater than the rights of the Department under such Sections of this Agreement, and such right on the part of the Trustee to enforce such covenants shall only commence after the Department has both defaulted under its obligations contained in the Financing Documents and has failed to enforce such covenants in accordance with the terms of this Agreement. Prior to exercising any rights granted to the Trustee in accordance with this Section 8.3, the Trustee shall be required to (i) give prior written notice within the time period required in Section 8.3(b) below, (ii) certify to the Commission that an event of default, other than an event of default predicated solely on the Commission's failure to act hereunder, has occurred under the Financing Documents and (iii) comply or cause the Department to comply with the provisions of this Agreement relating to the Department's rights, duties and obligations hereunder.

(b) In addition to the requirements of Section 8.3(a) for exercising its rights hereunder, the Trustee shall give the Commission 30 days prior written notice of the exercise by the Trustee of any of the Department's rights under Section 5.1.

ARTICLE IX
TERMINATION

Section 9.1 Termination. The Agreement shall terminate, and the covenants and other obligations contained in the Agreement shall be discharged and satisfied, when (i) all Nonbypassable Charges have been collected, or (ii) January 1, 2036, whichever is later.

ARTICLE X
AMENDMENTS

Section 10.1 Amendments to Agreement. No amendment to the Agreement shall be effective unless it is in writing and signed by each of the parties hereto, provided, however, on or after the issuance of the Bonds, Sections 5.1(a) and (b) may not be amended.

ARTICLE XI
MISCELLANEOUS

Section 11.1 No Waiver. No failure to exercise, and no delay in exercising by the parties hereto, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any right, power or privilege. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law, including the Act.

Section 11.2 Notices. All notices, requests and other communications under this Agreement shall be deemed to have been duly given if in writing and delivered personally or by certified mail (a) to the Department at 1416 9th Street, 11th Floor, Sacramento, California

95814, attention: Director; (b) to the Commission at 505 Van Ness Avenue, San Francisco, California 94102, attention: Executive Director and General Counsel; or such other address as the Department, or the Commission, as the case may be, shall hereafter designate by notice in writing to the other party.

Section 11.3 Severability. In the event that any one or more of the provisions contained in the Agreement is or are invalid, irregular or unenforceable in any respect, the validity, regularity and enforceability of the remaining provisions contained in this Agreement shall be in no way affected, prejudiced or disturbed thereby.

Section 11.4 Headings. The descriptive headings of the several articles of the Agreement are inserted in the Agreement for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions of the Agreement.

Section 11.5 Governing Law. The Agreement shall be governed by, and construed in accordance with, the Constitution and laws of the State of California, without regard to the provisions thereof regarding conflicts of law.

Section 11.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Date of Agreement. The date of this Agreement shall be for identification purposes only. This Agreement shall become effective immediately upon execution and delivery by the parties hereto.

Section 11.8 Third Party Beneficiaries. Nothing in this agreement express or implied shall be construed to give any person or entity, other than the parties hereto, the California Catastrophe Response Council and the Bond Related Parties, any legal or equitable right, remedy, or claim under or in respect of the agreement or any covenants, agreements, representations, or provisions contained herein.

Section 11.9 No Implied Waivers. Nothing in this Agreement shall be construed to limit the rights of the Commission or the Department to assert any rights it may have with respect to any contract entered into by the Department with respect to its obligations under the Act, or to contest in any proceeding the legality or effect of any contract entered into by the Department with respect to its obligations under the Act.

Section 11.10 No Assignment. Except as set forth in Section 8.3, neither the Department nor the Commission shall assign any of its rights or delegate any of its duties under this Agreement without the express written consent of the other party hereto, provided, however, if, with respect to either party, another governmental entity is created or designated by law to carry out the rights, powers, duties and obligations of such party, then such party may, if required by such law, transfer and assign its right, title and interest in this Agreement to such successor, provided, that such successor entity is permitted by law to assume such party's obligations under this Agreement and agrees in writing to be bound by the terms of this Agreement.

IN WITNESS WHEREOF, the Department has caused this Agreement to be executed in its name by the Director of Water Resources and the Commission ~~by the affirmative vote of the Commission (Decision No. __-__-___)~~ has caused this Agreement to be executed in its name by **the Executive Director pursuant to the vote of** those Commissioners who constituted a majority of the Commission when it approved this agreement, all as of the date first above written.

STATE OF CALIFORNIA
DEPARTMENT OF
WATER RESOURCES

By: .
Director of Water Resources

STATE OF CALIFORNIA PUBLIC
UTILITIES COMMISSION

By: .
Executive Director

Summary report: **Litera® Change-Pro for Word 10.7.0.7 Document comparison done on 9/23/2019 2:01:50 PM**	
Style name: PW Basic	
Intelligent Table Comparison: Active	
Original DMS: iw://US/US1/13089019/3	
Modified DMS: iw://US/US1/13089019/4	
Changes:	
Add	4
~~Delete~~	5
~~Move From~~	0
Move To	0
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	9

(End of Attachment A)

Attachment B

Relevant California Public Utilities Code (PUC) Sections:

PUC Sec. 451.1 (b):

When determining an application by an electrical corporation to recover costs and expenses arising from a covered wildfire, the commission shall allow cost recovery if the costs and expenses are just and reasonable. Costs and expenses arising from a covered wildfire are just and reasonable if the conduct of the electrical corporation related to the ignition was consistent with actions that a reasonable utility would have undertaken in good faith under similar circumstances, at the relevant point in time, and based on the information available to the electrical corporation at the relevant point in time. Reasonable conduct is not limited to the optimum practice, method, or act to the exclusion of others, but rather encompasses a spectrum of possible practices, methods, or acts consistent with utility system needs, the interest of the ratepayers, and the requirements of governmental agencies of competent jurisdiction. Costs and expenses in the application may be allocated for cost recovery in full or in part taking into account factors both within and beyond the utility's control that may have exacerbated the costs and expenses, including humidity, temperature, and winds.

PUC Sec. 701:

The Commission may supervise and regulate every public utility in the State and may do all the things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

PUC Sec. 1701.8(b):

The following procedures and standards apply to a catastrophic wildfire proceeding:

(1) (A) An electrical corporation may file an application pursuant to Section 451 or 451.1, as applicable, at any time after it has paid, or entered into binding commitments to pay, all or, if authorized by the commission for good cause, substantially all third-party damage claims, including payments made pursuant to judgments or settlement agreements related to a covered wildfire. Except as authorized by the commission for good cause, before filing the application, the

electrical corporation shall exhaust all rights to indemnification or other claims, contractual or otherwise, against any third parties, including collecting insurance proceeds, related to the covered wildfire.

(B) If an electrical corporation has received payments from the Wildfire Fund for a third-party damage claim for the covered wildfire, the electrical corporation shall file an application to recover the costs pursuant to subparagraph (A) no later than the earlier of the following:

(i) The date when it has resolved all third-party damage claims and exhausted all right to indemnification or other claims, contractual or otherwise, against any third parties, including collecting insurance proceeds, related to the covered wildfire.

(ii) The date that is 45 days after the date the administrator requests the electrical corporation to make such an application.

(2) The president of the commission, upon the initiation of a catastrophic wildfire proceeding by the filing of an application pursuant to paragraph (1), shall assign a commissioner to act as the presiding officer in the proceeding and an administrative law judge to assist in conducting the proceeding.

(3) Within 15 days of the filing date of the application, the commission shall notice a prehearing conference, which shall be held within 25 days of the filing date.

(4) (A) Within 30 days of the filing date of the application, the assigned commissioner shall prepare and issue, by order or ruling, a scoping memorandum that states that the scope of the proceeding shall be whether the electrical corporation's costs and expenses for the covered wildfire are just and reasonable pursuant to Section 451 or 451.1, as applicable.

(B) The scoping memorandum shall establish a schedule for the proceeding, including the date of issuance of a proposed decision that is no later than 12 months after the filing date of the application.

(C) The assigned commissioner may extend the time established in the scoping memorandum for the date of issuance of a proposed decision by up to six months upon a showing of good cause.

(5) Notwithstanding any other law, the commission may meet in closed session at any point during the pendency of the catastrophic wildfire proceeding with a

three-day notice to the public if the commission establishes a quiet period pursuant to paragraph (6) of subdivision (h) of Section 1701.3.

PUC Sec. 3289:

3289. (a) (1) No later than July 26, 2019, the commission shall initiate a rulemaking proceeding to consider using its authority pursuant to Section 701 to require each electrical corporation, except a regional electrical corporation that chooses not to participate in any fund pursuant to Chapter 3 (commencing with Section 3291), to collect a nonbypassable charge from ratepayers of the electrical corporation to support the fund, including the payment of any bonds issued pursuant to Division 28 (commencing with Section 80500) of the Water Code, as follows:

(A) For a large electrical corporation, a charge in an amount sufficient to fund the revenue requirement, as established pursuant to Section 80524 of the Water Code.

(B) For a regional electrical corporation, the amount equal to one-half cent per kilowatt-hour ($0.005/kWh).

(2) If the commission determines that the imposition of the charge described in paragraph (1) is just and reasonable, and that it is appropriate to exercise its authority pursuant to Section 701 to do so, the commission shall direct each electrical corporation to impose and collect that charge commencing in the month immediately following the month in which the final imposition of the revenue requirement with respect to bonds previously issued pursuant to Division 27 (commencing with Section 80000) of the Water Code is made. The charge shall be collected in the same manner as that for the payments made to reimburse the Department of Water Resources pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(b) Notwithstanding any other law, no later than 90 days after the initiation of the rulemaking proceeding, the commission shall adopt a decision regarding the imposition of the charge.

(c) Notwithstanding Section 455.5 or 1708, or any other law, the commission shall not revise, amend, or otherwise modify a decision to impose a charge made pursuant to this section at any time prior to January 1, 2036.

PUC Sec. 3292(b)(2):

For a regional electrical corporation, it has voluntarily established a charge required by the commission pursuant to Section 3289. This charge shall be included on monthly bills for customers. Collections on that charge shall be remitted, on a monthly basis, to the administrator for deposit into the fund.

PUC Sec. 3292(h):

(1) Except as provided in paragraph (2), within six months after the commission adopts a decision in an application filed pursuant to Section 1701.8, the electrical corporation shall reimburse the fund for the full amount of costs and expenses the commission determined were disallowed pursuant to Section 1701.8.

(2) (A) The obligation of an electrical corporation to reimburse the fund shall be the lesser amount of subparagraph (B) or (C).

(B) The costs and expenses disallowed pursuant to Section 1701.8.

(C) The amount determined pursuant to clause (i) minus the amount determined pursuant to clause (ii).

(i) Twenty percent of the electrical corporation's total transmission and distribution equity rate base, including, but not limited to, its Federal Energy Regulatory Commission (FERC) assets, as determined by the administrator for the calendar year in which the disallowance occurred.

(ii) The sum of (I) the amounts actually reimbursed to the fund for costs and expenses that were disallowed pursuant to Section 1701.8 during the measurement period, added to (II) the amount of any reimbursements to the fund owed by the electrical corporation for costs and expenses disallowed during the measurement period that have not yet been paid.

(iii) For purposes of this subparagraph, "measurement period" means the period of three consecutive calendar years ending on December 31 of the year in which the calculation is being performed.

(D) The administrator shall publish calculations of the amounts determined pursuant to subparagraphs (B) and (C) on or before January 1 of each calendar year for each electrical corporation.

(E) Except as provided in paragraph (3), the electrical corporation shall not be required to reimburse the fund for any additional amounts in any three-calendar-year period.

(F) The limitation set forth in this section shall apply only so long as the fund has not been terminated pursuant to subdivision (i).

(3) Paragraph (2) does not apply under either of the following circumstances:

(A) If the administrator determines that the electrical corporation's actions or inactions that resulted in the covered wildfire constituted conscious or willful disregard of the rights and safety of others.

(B) If the electrical corporation fails to maintain a valid safety certification on the date of the ignition

Relevant Water Code Sections:

Water Code Sec. 80524(a):

The revenue requirement for each year or, with respect to the first year and last year, the pro rata portion of the year, shall be equal to the average annual amount of collections by the department with respect to charges imposed pursuant to the revenue requirements established by the department under Section 80110 for the period from January 1, 2013, through December 31, 2018. The revenue requirement shall remain in effect until January 1, 2036

Water Code Sec. 80524(b):

If, pursuant to Section 3289 of the Public Utilities Code, the commission makes a just and reasonable determination with respect to the revenue requirement, then the commission shall enter into an agreement with the department with respect to charges under Section 3289 of the Public Utilities Code with respect to the revenue requirement, and that agreement shall have the force and effect of an irrevocable financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission. The agreement and financing order shall provide for the administration of the revenue requirement, including provisions to the effect that (1) the department shall notify the commission each year of the annual collections received by the department with respect to the revenue requirement and the amount of any excess or deficiency in collections above or below the revenue requirement and that the commission shall adjust charges in the subsequent year to reflect any such excess or deficiency, and (2) during any revenue requirement period if the department forecasts that the revenue requirement for that period will not be met and that collections will not be sufficient to fund any of the amounts in paragraphs (1) to (5), inclusive, of Section 80544, then the department shall notify the commission in writing and the commission shall act within 30 days to increase charges so that the amounts collected during that period are sufficient to meet those obligations. For avoidance of doubt, no such adjustment to charges by the commission shall affect in any respect the commission's just and reasonable determination with respect to the revenue requirement.

Water Code Sec. 80540(a):

The department may incur indebtedness and issue bonds as evidence thereof solely for the purposes of supporting the Wildfire Fund and other related expenses incurred by the department pursuant to this division, provided that bonds may not be issued in an amount the debt service on which, to the extent payable from the fund, is estimated by the department to exceed the amounts estimated to be available in the fund for their payment.

Water Code Sec. 80540(b):

The department may authorize the issuance of bonds, excluding any notes issued in anticipation of the issuance of bonds and retired from the proceeds of those bonds, in an aggregate amount up to ten billion five hundred million dollars ($10,500,000,000).

(End of Attachment B)