BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

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In Attendance: PRESIDENT MARYBEL BATJER
COMMISSIONER LIANE M. RANDOLPH
COMMISSIONER MARTHA GUZMAN ACEVES
COMMISSIONER CLIFFORD RECHTSCHAFFEN
COMMISSIONER GENEVIEVE SHIROMA

ADMINISTRATIVE LAW JUDGE PATRICK DOHERTY, presiding

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

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SAN FRANCISCO, CALIFORNIA

OCTOBER 10, 2019 - 3:00 P.M.

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ADMINISTRATIVE LAW JUDGE DOHERTY: Let's be on the record. Good afternoon. This is the time and the place for Oral Argument in Rulemaking 19-07-017, which is to Consider Authorization of a Non-Bypassable Charge to Support California's Wildfire Fund. A Proposed Decision in this proceeding was served on September 23rd, 2019.

I'm Assigned Administrative Law Judge Patrick Doherty. I am here today to hear Oral Argument and maintain order in the auditorium. With me today are Commission President Batjer, Assigned Commissioner Rechtschaffen, Commissioner Randolph, Commissioner Guzman Aceves, and Commissioner Shiroma.

Before we begin, I just want to let you know in the event that we need to evacuate, there are two exits behind you: One is the door you came through, and the other is behind you to your left. In either case, after exiting the building, please make your way south along Van Ness Avenue, across McAllister Street, and then turn right after passing the Herbst Theater and War Memorial.

1 That will be our assembly point. I will call
2 911 in the event of an emergency.
3 We are being webcast today, and the
4 webcast will be archived online. We also
5 have a conference line open in listen-only
6 mode. For the benefit of those listening on
7 the phone or watching on the internet, please
8 speak clearly into the microphones.
9 A court reporter is transcribing
10 today's Oral Argument and a transcript will
11 be available. As a reminder, for the benefit
12 of our court reporter, please speak clearly
13 and directly into the microphones, and please
14 do not talk over one another. Please state
15 and spell your name at the beginning of your
16 allotted time.
17 Speaking of time, we only have 90
18 minutes for Oral Argument today, and in order
19 to ensure that each party receives an
20 opportunity to make their argument, I will
21 need to strictly enforce the time allotted to
22 each party. Our timekeeper will let you know
23 when you have one minute remaining and then
24 when your time's expired. Our timekeeper is
25 sitting down there at the end of the table.
26 We also have a timer at the bottom of dais to
27 assist you in managing your time. Please
28 finish your argument promptly when your time

has expired.

Parties are reminded that no handouts, charts, or other electronic documentary presentations are to be used during today's Oral Argument. Please keep your argument to issues within the scope of this proceeding. And speaking of which, I do also want to remind you that this Oral Argument is noticed for Rulemaking 19-07-017 and is not intended to address issues in other open proceedings at the Commission, even though some of the topics discussed today may touch upon issues related to those proceedings.

To avoid making an ex parte communication in other open ratesetting proceedings, please refrain from discussing topics at issue in those proceedings. Should you do so, Commission staff will reach out to you after this Oral Argument and ask you to file an ex parte communication notice if deemed necessary.

Are there any questions from the parties before we begin?

(No response.)

ALJ DOHERTY: Hearing none.

The first party with time to speak today is Michael Aguirre for Ruth Henricks.

Mr. Aguirre, you have five minutes.

ARGUMENT

BY MR. AGUIRRE:

Good afternoon, Honorable Members of the California Public Utilities Commission. My name is Michael Aguirre, and I represent Ruth Henricks.

I do solemnly swear that I will support and defend the Constitution of the United States. That I will bear true faith and allegiance to the Constitution of the United States.

Each of you, each of you Commissioners, and our ALJ, took that oath when you became admitted to your position. As state officials, clothed with the duty to enforce AB 1054, you are affecting an unconstitutional act against utility customers by making them pay $13.5 billion to indemnify a convicted corporate felon for fires caused by the convicted felon's violation of fire safety rules.

You are acting without due process of law in violation of the 14th Amendment. You're not doing any evidentiary hearings, no cross-examination, and you're making determinations of fact without any evidence.

Because you are violating the

1 Federal Constitution you swore to uphold, you
2 may be enjoined by a federal court for such
3 action.
4 What do you know? You know that
5 PG&E is a criminal, convicted of four
6 felonies for safety violations, and one of
7 obstruction of justice.
8 PG&E has engaged in a series of
9 safety violations. You know that because
10 that's in the legislation. PG&E has failed
11 to timely pay wildfire victims, and PG&E is
12 hiding out now in bankruptcy court.
13 You also know that the governor of
14 the State of California took over $200,000
15 from that convicted felon, PG&E, in and
16 around the same time that he was putting
17 together 1054.
18 What evidence is missing?
19 The law says that wildfires were
20 caused by utility equipment. They weren't
21 caused by utility equipment. They were
22 caused because PG&E and the other utilities
23 did not stay within the safety rules. The
24 law says that 1054 will reduce the cost to
25 ratepayers. There's no evidence of that.
26 Missing evidence also, Section
27 1-A-4, "The utilities need capital to fund
28 new investments to promote safety." There's

1 no evidence that they're going to do that.
2 "Ratepayers benefit from low utility capital
3 costs." That's not true either. How do we
4 know that?
5 How do we know that the
6 ratepayers -- if capital is more expensive
7 because the utilities violate the safety
8 rules and cause fires, why would customers
9 have to pay for that to begin with?
10 "The establishment of a Wildfire
11 Fund supports the creditworthiness of
12 electrical corporations." Again, another
13 assertion of fact with no evidence.
14 "The legislature claims its intent
15 is only to help electrical corporations that
16 are safe actors." That's not true either.
17 The primary beneficiary of this legislation
18 is an unsafe actor.
19 "The state has a substantial
20 interest according to the legislation in PG&E
21 having access to capital." The state has no
22 such interest.
23 How does the state have an interest
24 in a private corporation that's a monopoly
25 having access to capital?
26 The United States Constitution is
27 the supreme law of the land. And let me
28 quote from Article VI, Section 2: "And the

1 judges in every state shall be bound thereby,
2 anything in the laws of any State to the
3 contrary notwithstanding."
4 "No state shall deprive any person
5 of life, liberty, or property without due
6 process of law; nor deny to any person within
7 its jurisdiction the equal protections of the
8 laws."
9 You as a -- you as the Public
10 Utilities Commission, you in your
11 institutional capacity, you're responsible
12 for the mess we are in today because you did
13 not enforce the safety rules.
14 We came before you repeatedly and
15 asked you to expand the safety staff to
16 enforce the safety rules, and instead of
17 doing that, you wasted massive amounts of
18 time on regionalization, wasteful
19 regionalization, and you absorbed so much of
20 the time of the legislature.
21 Please, listen to these arguments.
22 Don't make us have to complete the case
23 before Judge Chen, and have you be the
24 subject of an injunction instead of you
25 coming to your senses and realizing that you
26 don't want to be part of something that's
27 unconstitutional. Get a legal opinion about
28 whether this legislation that you propose to

implement is constitutional as is being suggested. Thank you.

ALJ DOHERTY: Thank you, Mr. Aguirre.

Do any of the Commissioners have any questions for Ruth Henricks or her representative, Mr. Aguirre?

(No response.)

ALJ DOHERTY: Hearing none.

Our next party is Mr. William Abrams. You have 10 minutes.

ARGUMENT

BY MR. ABRAMS:

Q Thank you very much. Thanks very much for holding this important hearing. I think this discussion and this hearing is very timely, given what we're surrounded by and the environment in which this decision is being made.

I'm a wildfire survivor and the past few days have been very difficult and provide a lot of context for me related to this fund. So on Tuesday was the second anniversary of the 2017 wildfires, and I attended a memorial service for the 48 people who passed away in 2017. Very emotional time for everyone that was there, but there's a lot of hope that we will be able to learn from those experiences as we move forward.

Of course, that was followed by a lot of urgency around the power shutoff, and getting a lot of messages from folks who thought I might know more than I know about when the power might be back on or what the implications were.

Obviously, there's a lot of confusion around there, but what it brought home to me was this sort of degree to which we're having this conversation about a just and reasonable, when on its face, given this environment, it could be the furthest thing from just and reasonable.

So here I am at the memorial service, and it -- what I'm reminded is that in the future this fire happens; right? All these people here pay half, half of the costs for the fires. So my home burns down again; those people all pay half.

On its face, not just; not reasonable.

So why are we here? If it's so apparent that this is clearly not just and reasonable, why are we here?

I would argue that I think the reason why we're here is that there's a lot of process. There's a lot of bureaucracy - right - and things get lost.

1 Things like looking at this on its
2 face and the common sense thought around:
3 "Is this just or reasonable" gets lost, and
4 that's understandable to a large degree.
5 We are all on these wheels that are
6 turning and turning, and it's hard to make
7 sense of it all. Given that, you know, it's
8 hard for me to sort of speak directly to this
9 without an analogy, so I think it helps me to
10 take a step back and consider this in a
11 different context.
12 So, let's say, as an example, we're
13 talking about the transportation industry.
14 And, let's say, I own a company that delivers
15 food; right?
16 I'm the largest supplier of food
17 delivery in northern California; okay. And
18 food pretty much is an essential service;
19 right? So we need food. Got to eat.
20 And I have this delivery company -
21 right - and I'm driving the down road. I've
22 had a little bad time of it in the past few
23 years, and I've caused a lot of accidents;
24 right?
25 My company has killed 50 people in
26 2017. Killed over 100 people in 2018.
27 Caused a lot of destruction; right? But you
28 know what? I'm the big company in town, and,

sure, it might be safer; it might be better for the people if people shopped locally and locally sourced produce; right? It might be safer.

Sort of similar to how we're dealing with energy, and looking at, you know, it might be safer for us to get that energy source more locally; right?

But here we are, and let me tell you, I'm the biggest game in town; so you really need to support me.

All of this havoc that I've caused, it's really taken a hit to my credit. My credit -- I need your help to prop up my credit; right? That's what this is about.

Now, I know that other people's credit, the people out there, will be affected by this. They'll have a higher cost of living; right? Their credit might not be so well. In fact, some people are going to be denied insurance because of all this havoc that has been caused; right?

So in this case, no auto insurance. Because all this destruction that's been on the road for my food delivery truck, no auto insurance, but it's more important, because I know everyone needs food, that you support me as the company delivering this product.

It makes no sense - right - but that's what we're talking about here; right?

And on the other hand, let's say: Okay. In order for that to happen, you need to get a Certificate of Safety. So we have to make sure -- sure you got a driver's license, but now we're going to up the ante, and now you're going to have to have a Certificate of Safety to drive your trucks on the road.

Okay. So what does that certificate mean? Well, we're going to check the tires; make sure your tires work; right? We're going to make sure drivers aren't driving under the influence, but beyond that, you know, we're not going to measure the safety. There's going to be no return on safety. There's not going to be any measure of how much risk you've reduced. We're just going to check the tires, and move forward.

It's not reasonable. It's not just. This is what we're looking at. This is the type of decision we're trying to make here.

Let me give a few other reasons for why this has occurred in my company: There's been an independent audit of my company and what they've found is it's really not

1 executives like me who caused the problem.
2 It's really the managers down below, and if
3 only we had a better culture of safety and
4 was able to get that message down to our
5 managers, maybe we wouldn't cause so many
6 accidents. So don't blame us.
7 This is another argument. Doesn't
8 make sense.
9 I have been trying to chase this
10 down since the fires in October 2017. I've
11 gone to Sacramento and talked to the
12 legislators, talked to the authors of this
13 bill that is now before the committee.
14 And let me tell you, I think, when
15 they passed this bill, there wasn't a lot of
16 confidence in what goes on here; not a lot of
17 confidence in the CPUC; not a lot of
18 confidence in the parties that sit behind
19 this desk. It's unfortunate.
20 I think the CPUC, from the little
21 time I've been here, I think is doing an
22 honest job of trying to deal with what
23 they've been given. You know, how are you
24 going to deal with -- regulates a safety
25 culture? Not really possible, but this is
26 the charge.
27 I talked to the folks in
28 Sacramento, our legislators. They say, Well,

1 that decision is up to the CPUC. Similarly,
2 I go to the bankruptcy proceeding, which I've
3 tried to avoid; right. I didn't want to have
4 anything to do with that, but everyone points
5 there: Well, follow the money, and so I did.
6 And they are also punting to the
7 CPUC on this - right - look, this isn't up to
8 us. Has nothing to do with the bankruptcy
9 process. It's up to the CPUC. It's up to
10 you to make this determination.
11 Now, depending on who you ask, they
12 don't think you're going to rule on this.
13 They think that you're going to succumb to
14 the political pressure of which there is a
15 lot, a lot of political pressure, just to
16 come along to go along.
17 Please, please resist that
18 pressure. Look at it on its face. This is
19 not just. This is not reasonable.
20 Consider that the funds would only
21 cover half of the damages that were caused in
22 2017 and 2018.
23 Even with all this money being
24 kicked in, another fire occurs, now it's on
25 the backs of the states, on the backs of
26 ratepayers to cover burned-out homes?
27 Doesn't make sense. Doesn't make
28 sense if the burden of proof shifts with this

bill related to this fund: Now, we got to pay, and now we got to prove; right?

It's not where we should be headed. I just ask you that you please consider these implications. I'll save my remaining comments for the rebuttal.

Thank you.

ALJ DOHERTY: Thank you, Mr. Abrams.

Do any of the Commissioners have any questions for Mr. Abrams?

(No response.)

ALJ DOHERTY: Hearing none.

We'll move to our next party, the Utility Consumers Action Network. Mr. Lopez, you have two minutes.

ARGUMENT

BY MR. LOPEZ:

Thank you.

Good afternoon, your Honor, and Commissioners. UCAN will address the just and reasonable consideration.

While we contend there's no evidentiary record, no record at all to support satisfaction of the just and reasonable element, we would acknowledge that AB 1054 is an effort and ultimate legislation to further state in public policy, but as already referenced by our party here,

1 specifically, the goal was to help the IOUs
2 attract lower cost capital.
3 I'll tell you, UCAN is in the cost
4 of capital proceeding ourselves. It's not
5 clear to us that that's going to be
6 ultimately the result.
7 We do not believe the record, a
8 record, supports a determination that overall
9 costs to ratepayers are reduced. The
10 reasonableness of the non-bypassable charge
11 is hard-pressed to be met by reference, by
12 sheer reference, to legislative statements
13 and conclusions.
14 Ultimately, ratepayers will be on
15 the hook annually for, approximately, 900
16 million. Over the course, we're talking 10
17 billion to 13 billion has already been
18 referenced.
19 We believe the reasonableness is
20 sorely tested when considering the IOUs that
21 will receive ample liquidity to pay third
22 party claims, a cap on the disallowed
23 expenses, a new prudent management standard
24 in play, and now the presumption of meeting
25 that standard with the receipt of a safety
26 certification.]
27 We believe the reasonableness is
28 sorely tested when considering the IOUs that

will receive ample -- ample liquidity to pay third-party claims, a cap on the disallowed expenses, a new prudent management standard in play, and now, the presumption of meeting that standard with the receipt of the safety certification.

Should the Commission, however, in the proceeding conclude that the charge is just and reasonable, UCAN clearly supports the finding of the law that wildfire costs, paid by the wildfire fund and later found to be allowed, are to be solely borne by the wildfire fund, and that, and that alone, should constitute the only payment ratepayers would be required to make.

Lastly, the CP -- CPUC and in this proceeding should recognize that there needs to be coordination and planning with the subagencies which would be created to implement and carry this out. Findings of law and fact should be in this proceeding to identify resources and planning and staff education to meet that goal. Thank you.

ALJ DOHERTY: Thank you, Mr. Lopez.

Do any of the commissioners have any questions for Mr. Lopez?

COMMISSIONER GUZMAN ACEVES: Yes, just a clarification.

Which subagencies? Can you give us some examples that you're referring to? You can follow up in writing, if that's easier.

MR. LOPEZ: I apologize. I know there's the Office -- I apologize, Commissioner. I can't find it specifically in my notes. My understanding, though, is that there's subagencies created to enforce and carry and monitor the safety plans, the mitigation plans.

COMMISSIONER SHIROMA: The new Office of --

COMMISSIONER GUZMAN ACEVES: Right. Just asking for some clarification, because that office was given resources in the state budget.

MR. LOPEZ: The California Wildfire Safety Board and Office of Infrastructure Safety.

COMMISSIONER GUZMAN ACEVES: Yeah.

MR. LOPEZ: Excellent. Thank you very much, your Honor, Commissioner.

ALJ DOHERTY: Thank you, Mr. Lopez.

Are there any further questions?

(No response.)

ALJ DOHERTY: Hearing none, our next party is the Solar Energy Industries associated -- Association presented by

Ms. Armstrong.

ARGUMENT

BY MS. ARMSTRONG:

Yes. Good afternoon, Commissioners. As ALJ Doherty just said, my name is Jeanne Armstrong --

PRESIDENT BATJER: Could you hold the mic a little closer?

MS. ARMSTRONG: -- and I'm here on behalf of the Solar Energy Industries Association, or SEIA. SEIA is a national trade association of the U.S. solar industry, and we have participated in proceedings before this Commission for over 15 years to advance rate designs that will serve to enhance solar installations, or at the very least, not act as a deterrent.

Currently, solar customers, under the net energy metering tariff, pay non-bypassable charges; therefore, they pay the DWR bond charge that would have rolled off in another year or so, which would have made solar more attractive to people. The less non-bypassable charges they pay, the better economic prospect. However, given the fact that the legislature -- you can argue whether it was good or bad or indifferent, but they believed that AB 1054 was a way to

1 help the state forward to address the -- the
2 wildfire issues that have been so rampant
3 over the past few years, and they created a
4 construct for which the Commission could act
5 to approve the wildfire fund surcharge.
6 I believe the Commission is just
7 playing the hands they were dealt, and as
8 long as they -- SEIA believes that as long as
9 they stick within the confines of the statute
10 that they have the authority and -- to pass
11 the -- the wildfire fund surcharge. But, for
12 SEIA, the key was to stick within the
13 confines of the statute, and make sure that
14 the wildfire fund surcharge is collected in
15 the same manner as the DWR bond surcharge is
16 currently collected, which is on a -- a per
17 kilowatt-hour basis.
18 Given the construct of the statute
19 and what we believe was the Commission's
20 authority to approve the surcharge, SEIA
21 didn't submit opening comments in this
22 proceeding, but once certain parties came up
23 with innovative ways for the Commission to
24 interpret the statute with respect to how the
25 sur- -- surcharge should be collected, we
26 felt we needed to -- to enter the fray,
27 especially as there were insinuations that
28 solar customers on net energy metering

1 tariffs wouldn't be shoulder -- shouldering
2 their share of the surcharge funds.
3 SEIA appreciates the proposed
4 decision in that it emphatically stated that
5 there was no ambiguity in the statute with
6 respect to the ways that the sur- --
7 surcharge fund should be collected, and that
8 proposals such as SDG&E's fixed charge for
9 collection of the surcharge funds are simply
10 not compliant with the statute. SEIA
11 believes that the PD could be improved upon
12 by a statement that, absent a change in the
13 statute, the Commission is confined now and
14 in the future to collecting the surcharge in
15 the exact same way as a DWR bond charge is
16 collected today.
17 Regarding assertions made directly
18 by some commenters and implied by others that
19 customers who exercise their right to install
20 solar and take service under the net energy
21 metering -- net energy metering tariff are
22 somehow placing more of the wildfire fund
23 burden on other ratepayers, well, that's
24 simply not accurate. NEM customers pay
25 non-bypassable charges, which will include
26 the wildfire fund surcharge, on any
27 electricity they consume from the grid in
28 each metered interval, which for residential

1 customers is every hour. Non-NEM customers
2 will also pay the wildfire fund surcharge for
3 any electricity they take from the grid in
4 every hour. In that manner, NEM and non-NEM
5 customers will be contributing to the
6 wildfire fund in the same way.
7 Thank you for your time this
8 afternoon.
9 ALJ DOHERTY: Thank you, Ms. Armstrong.
10 Do any of the commissioners have any
11 questions for Ms. Armstrong?
12 (No response.)
13 ALJ DOHERTY: Hearing none, we'll next
14 hear from the Utility Reform Network.
15 Ms. Torres, you have five minutes for opening
16 arguments.
17 ARGUMENT
18 BY MS. TORRES:
19 Thank you.
20 Good afternoon, Commissioners and
21 ALJ Doherty. I'm Elise Torres with TURN. As
22 most of you probably know, TURN supported AB
23 1054, which was a difficult decision for our
24 organization, but one that was made because
25 we received assurances from the bill's
26 authors that the wildfire fund charge would
27 not increase electric bills, and that utility
28 shareholders would be required to make an

1 equal contribution to the wildfire fund.
2 It's your job to ensure that these principles
3 are upheld in this proceeding. While AB 1054
4 contains many specific directives regarding
5 the implementation of the wildfire fund and
6 the charge, ultimately, the statute leaves it
7 to the Commission to determine if the
8 imposition of the charge is just and
9 reasonable. I encourage you to consider this
10 most important responsibility as you evaluate
11 the proposed decision to ensure the wildfire
12 fund charge is imposed in a manner that is
13 fair to all ratepayers.
14 I also remind you that ratepayers
15 are and will continue to pay for billions of
16 dollars in fire mitigation work and other
17 cost increases as the result of the past
18 wildfires. The events of this week also
19 remind us that ratepayers are being forced to
20 pay for personal losses from power safety
21 shutoffs that are designed to reduce the risk
22 of wildfires. All of these costs are on top
23 of what are already some of the highest
24 electricity rates in the country.
25 TURN supports the proposed decision
26 in most respects and appreciates ALJ
27 Doherty's and other parties' efforts in
28 tackling a very complicated set of issues in

a short timeframe. However, the proposed decision must be modified in three ways to ensure that imposition of the charge is just and reasonable.

First, the charge should only collect from ratepayers the amounts absolutely necessary to support the DWR charge fund. Under the amendments to 1054 made by AB 1513, any money left over in the wildfire fund when it is terminated will not be returned to ratepayers. This highlights the need to limit any over-collection. One way to limit over-collections is to hold off on issuing this final decision until the terms of the bond issuance are known. Another way is to require that any interest earned on debt reserves to support the bond are credited against the revenue requirement in the following year, thus reducing the amount of the charge collected from ratepayers.

The second change to the proposed decision is to ensure the non-bypassable charge is collected from all ratepayers, except for low-income and medical baseline customers. The exemption for continuous direct access customers in the proposed decision has no rational basis, violates cost

1 causation principles, and was not
2 contemplated by the legislature. While the
3 statute does say the charge should be
4 collected in the same manner as the DWR
5 charge, the Commission should remember that
6 every kilowatt-hour the charge is not
7 collected on will result in a higher rate for
8 other ratepayers.
9 Finally, in light of AB 1513, and
10 as it appears there will not be a proceeding
11 opened to specifically address shareholder
12 contributions to the wildfire fund, TURN
13 expects that the Commission will issue
14 important directives regarding shareholder
15 contributions in this proceeding either in
16 the final decision or in a future phase of
17 this proceeding.
18 Under the proposed decision,
19 ratepayers will pay over 13 and a half
20 billion dollars to support the wildfire fund.
21 The Commission must ensure that the utility
22 shareholders make commiserate contribution.
23 The utilities must be prevented from passing
24 on to ratepayers any financing or capital
25 costs associated with their wildfire fund
26 contributions. The proposed decision should
27 include a directive to the utilities to track
28 their initial and annual contributions to the

fund and any associated financing or capital costs, and demonstrate that these costs will not be recovered from ratepayers. Additionally, the substantial benefits of the state tax deduction that the utilities will receive from their contributions to the wildfire fund should be flowed through to ratepayers as a revenue requirement reduction. TURN is troubled that none of this is discussed in the proposed decision, and that there doesn't appear to be a forum to consider this at the Commission at this time. The justness and reasonableness of this charge imposed on ratepayers cannot be evaluated without also considering shareholder contributions.

TURN encourages the Commission to modify the proposed decision to ensure all ratepayers contribute to the wildfire fund, that only the amounts absolutely necessary to support the fund are collected, and that there's parity between ratepayer and shareholder contributions. Thank you.

ALJ DOHERTY: Thank you, Ms. Torres.

Do any of the commissioners have any questions for Ms. Torres?

COMMISSIONER GUZMAN ACEVES: Yeah. I have a clarifying question. I don't know if

I missed this, your second point. So the first point was on the interest earned, and then you went on to your second point. Could you repeat that?

MS. TORRES: Yes. The DWR bond charge is currently not collected from CARE, medical baseline and continuous direct access customers, and that's because they didn't take power service from the utilities during the energy crisis, and so the proposed decision interprets the language of collecting in the same manner as exempting all three of those categories of customers. However, the legislature did not specifically contemplate the continuous DA customers being exempt, and TURN is concerned that the less customers that are paying into the fund, the more the charge will be for the rest of the customers.

COMMISSION RECHTSCHAFFEN: So did you say when the -- you said the legislature didn't contemplate it. I first heard you say they specifically thought about it and said, "We want to make -- we want to include continuous direct access providers even though they weren't included originally." But, now you're saying they just didn't think about it one way or the other. Is that an

accurate representation of your position?

MS. TORRES: My understanding is -- from reading three of the bill analyses is that in three different committees, they contemplated exempting medical baseline and CARE customers from this charge, but they did not contemplate continuous DA customers, so it wasn't specifically discussed, from my understanding. I wasn't at all the hearings.

COMMISSIONER GUZMAN ACEVES: And where does NEM fall in there?

MS. TORRES: NEM is a separate issue. Yeah.

ALJ DOHERTY: Are there any further questions for Ms. Torres?

(No response.)

ALJ DOHERTY: Okay. Hearing none, thank you, Ms. Torres.

Let's be off the record.

(Recess.)

ALJ DOHERTY: Let's be back on the record.

The next party in line is the California Large Energy Consumers Association. Ms. Sheriff, you have five minutes for opening argument.

ARGUMENT

BY MS. SHERIFF:

1 Thank you, your Honor. Thank you,
2 Commissioners. I appreciate the opportunity
3 to speak today on behalf of the California
4 Large Energy Consumers Association, or CLECA.
5 My name is Nora Sheriff.
6 CLECA is an organization of large
7 power customers in Edison and PG&E's service
8 territory. The members are in the cement,
9 steel, industrial gas, beverage, pipeline,
10 cold storage and mining industries. They are
11 bundled customers, direct access customers,
12 customers of community choice aggregators.
13 Some have on-site renewable generation. They
14 will all pay this charge. And because they
15 are energy-intensive, meaning they use a lot
16 of power, they will pay significantly due to
17 the equal cents per kilowatt-hour rate
18 design.
19 Now, CLECA understands the proposed
20 decision's legal analysis. It's difficult to
21 argue with the plainly-stated clear statutory
22 language, although I'm sure some of my
23 colleagues will do so, and have done so. I
24 do not see much statutory flexibility here,
25 so my focus is more pragmatic. I want to
26 know what will you, Commissioners, do to
27 mitigate the impact of this rate on
28 customers? I have three suggestions for you,

1 but before I share my suggestions, I want to
2 emphasize a few things first.
3 Your broad jurisdiction over the
4 investigator-owned utilities is matched by a
5 deep obligation to ratepayers to ensure that
6 the charges they pay are just and reasonable,
7 and AB 1054 clearly obligates you to make a
8 just and reasonableness determination on the
9 revenue requirement. You should recognize
10 that the catastrophic utility wildfires for
11 which AB 1054 seeks to address have not yet
12 occurred, and the associated wildfire cost,
13 the damages, to be covered by the wildfire
14 fund have not yet been incurred. The
15 financing terms, the wildfire bonds, are not
16 yet known. The extent of any fire damage the
17 financial market conditions at the time of
18 the bond's issuance, the financing terms,
19 potential refinancing of the bonds will all
20 impact the necessary revenue requirements.
21 And AB 1054 gives the Department of Water
22 Resources the ability to issue fewer, to
23 issue less than the $10.5 billion in bonds.
24 So what if? What if, due to broad
25 frequent public safety power shutoffs, there
26 are no more utility catastrophic wildfires
27 this year? What if there are very, very few
28 next year, or none? What if utility-caused

1 wildfires become much smaller, have far less
2 damage? What if the system hardening that
3 the ratepayers are paying for now also reduce
4 the risk, and we don't see catastrophic
5 utility wildfires? What if the bond issuance
6 is actually less than $10.5 billion? What if
7 the financing terms are incredibly favorable,
8 and the costs are far less?
9 Ratepayers are paying for prior
10 wildfire damages. In some cases, they may be
11 forced to pay for wildfire damages caused by
12 unjust and unreasonable utility actions.
13 Ratepayers are paying for system hardening
14 costs in the billions. Ratepayers are paying
15 for the cost of de-energization, both the
16 utility cost to turn off their power and
17 their own business cost, their own personal
18 cost. They're paying. Once you approve it,
19 this charge will add on between 10.5 to
20 possibly $13 billion in costs on ratepayers
21 for years and years to come.
22 My first suggestion to you is use
23 your discretion to issue a decision now that
24 finds it will be appropriate to exercise your
25 authority and set the revenue requirement at
26 a future date, when we know the outcome of
27 PG&E's bankruptcy, when we have a better idea
28 of the financing terms and the market

conditions, and after we've gone through a fire season with PSPS. The charge cannot be imposed until after the bond charge is done. We have at least a year, maybe longer, for that. The PD states that the reduced risks of the credit downgrades attributable to AB 1054 have the potential to result in reduced ratepayer costs in open Commission proceedings.

My second suggestion is that you make that happen. In every proceeding possible, reduce the costs to ratepayers, particularly in the cost of capital, bringing me to my third suggestion.

CLECA, with TURN, suggested that the impact of AB 1054 on the utilities' credit rating be litigated in the cost of capital proceeding, not here. The PD holds credit ratings of Edison and San Diego were generally stabilized by 1054, and all else being equal, the prevention of credit rating downgrades for electrical corporations reduces ratepayer costs. All else is not equal. We cannot assume ceteris paribus here. There is a five -- half a cent per kilowatt-hour thumb on the scale for that. So --

ALJ DOHERTY: Thank you, Ms. Sheriff.

I believe your time is expired.

MS. SHERIFF: May I finish my last suggestion?

ALJ DOHERTY: Go for it.

MS. SHERIFF: Keep -- keep this proceeding open to look closely at the shareholder contributions, to the financing costs, to the operating costs and how they're paid, make sure they're not paid by ratepayers, and keep cost of capital open so you can look at the PG&E cost of capital after they exit bankruptcy and the utilities' ability to access the financial markets with AB 1054.

ALJ DOHERTY: Thank you.

MS. SHERIFF: Have an actual factual determination. Thank you.

ALJ DOHERTY: Thank you, Ms. Sheriff.

Do any of the commissioners have any questions for Ms. Sheriff?

(No response.)

ALJ DOHERTY: All right. Hearing none, the next party is the Center for Accessible Technology. Ms. Kasnitz, you have five minutes for opening argument.

ARGUMENT

BY MS. KASNITZ:

Thank you, your Honor,

Commissioners. I'm Melissa Kasnitz with the Center for Accessible Technology. I represent the interests of disabled customers of utilities regularly before the Commission. Thank you for having me here today to talk about the proposed creation of the wildfire fund.

While that's the proposal that brings us before the Commission today, I want to be clear that I think it's deeply inappropriate that we're here to talk about the allocation of hundreds of millions of dollars of ratepayer money intended to support the financial stability of California's IOUs in order to sustain their ability to raise capital in financial markets at the very time that hundreds of thousands of people are huddled in the dark without power. This is neither just nor reasonable. PG&E has turned off power throughout extensive regions of its territory. Southern California Edison is threatening to do the same. And as has been previously predicted, PG&E has externalized both the risks and the costs of the hazards facing its system by turning off the power and leaving customers to fend for themselves.

But, the question before us today

is whether it's just and reasonable to collect yet more from the ratepayers. Experts are estimating that the costs of PG&E's ongoing outage may hit $2 billion, with a "B," and I'm sure that does not include the lost productivity over the last two days of people frantically trying to get information about what was taking place. These costs would not be covered by the wildfire fund. No one is addressing the need for financial stability for customers.

Even as the power remains off, fires from non-utility sources have erupted, and the ability to inform the public has been compromised. Information suggests that firefighters in Moraga last night had to go door-to-door because there was no way to inform customers that they needed to evacuate. But, the question here is whether the IOUs need financial stability.]

The City of Berkeley, home to the independent living movement put out the so-called plan for medically-fragile residents affected by the deliberate outage of PG&E. The plan was for people to use their own resources to leave the affected area. That's it. That was the plan. No information was provided on how people could

take action if hay didn't have the resources to do so. But the IOUs want financial stability and favorable terms in the capital markets.

I personally spent hours trying to figure out if I was going to be impacted by the power outage. I filled by my gas tank; I drove my reliable car to the store; I spent over a hundred dollars purchasing supplies, on top of a reasonably well-stocked emergency kit that I already had at home. I was able to do all of that without worrying whether I would be able to feed my children and pay for my other necessities. Many people don't have those luxuries.

Statics say the majority of households in the U.S. cannot absorb an unexpected $500 cost. The people in this room are too likely to ignore the people who live on the financial edge, who can't simply stock up, leave town, or miss a day of work without sacrificing other necessities or putting themselves at risk of harm. But the IOUs want financial stability.

It’s not just financial resources that are constrained. I've seen reports of fragile people in areas without power where the only people looking out for their

interests appear to be volunteers with Meals on Wheels. These are isolated people with limited resources and limited access to information. We have no idea how many of them just spent the night alone, in the dark, not knowing what was happening. But the IOUs want financial stability.

Today, I put on my nice suit, I drove my reliable car to come talk to you able financial stability for electric utilities. But I'm not the one you should be listening to. You should be listening to the fear and anguish of a parent whose child needs a ventilator and who doesn't know how they're going to keep their child safe at night. The people losing wages because their place of employment is closed, and they don't know if they will be able to pay their rent. The people who have nowhere to go, no way to get there, or being told they're on their own, if they are told anything at all.

I understand the policy makers in Sacramento have given direction and that the commission is following through to put up ratepayer money to keep the capital markets happy. But the policy makers should be ashamed. I'm ashamed of my part in this. And I'm angry that this is what we're doing

today.

I don't pretend that may anger or my shame or the horrifying optics of talking about the cost of capital at the same time that people are languishing without power will change anything. But I can call it out.

Thank you

ALJ DOHERTY: Thank you, Ms. Kasnitz.

Do any of the Commissioners have any questions for Ms. Kasnitz?

Commissioner Rechtschaffen.

COMMISSIONER RECHTSCHAFFEN: Ms. Kasnitz, I understand the deep concern and how emotional this issue is and having this proceeding at the time that the power shutoffs. And we greatly value your advocacy throughout our proceedings on the part of very vulnerable and otherwise unrepresented constituents.

Without detracting from that, you have been on record -- C for AT has been on record as generally supporting the proposed decision. And I just wanted to ask you, is that -- are you retract -- retreating from that? Or is it just too -- you just wanted us to be aware of the devastating effects of the power shutoffs while we're doing this?

But we are here to talk about the

PD. So I just wanted to ask you, because you just filed the comments yesterday saying that you generally support the PD, including the revenue requirement and the proposed method for the wildfire charge allocation.

MS. KASNITZ: Given that the -- given the clarity, as I understand it, that this wildfire fund is going to happen, I believe that is PD does a skillful job of sticking to the statutory requirements; doing things like allocating what charges belong to who, and the understanding of non-bypassable charge. The determination that this fund is going to happen, to me, has not seemed to dispute. And I focused on whether it is being done appropriately and keeping with the terms of the statute that's in front of us.

The big picture here is to ratepayers and the affordability of charges and the push to require other people to spend resources are highlighted right now in a way that cannot easily be separated from the issues of statutory interpretation. I believe that the PD reasonably interprets the terms of the statute in front of the Commission while not dealing responsibly in the bigger picture with how utility customers and the utilities are being asked to deal

with wildfires at large.

COMMISSIONER RECHTSCHAFFEN: Thank you.

ALJ DOHERTY: Thank you.

Are there any other questions for Ms. Kasnitz?

(No response.)

ALJ DOHERTY: Okay. Hearing none, we will move on to our next party, the Energy Producers and Users Coalition.

Our representative, Ms. Kahl, you have five minutes for opening argument.

ARGUMENT

BY MS. KAHL:

Thank you, your Honor.

President Batjer, Commissioners and Administrative Law Judge Doherty, thank you for the opportunity to address you today on this issue.

I'm here for the Energy Producers and Users Coalition. They are large electricity users who rely on bundled utility service and, to varying degrees, customer generation, typically in the form of combined heat and power. I want to talk about two issues. The fist is the reasonableness of the charge. And the second is the applicability of the charge.

First, with respect to the

reasonableness, I do echo the comments that have already been made by TURN, Mr. Abrams, CLECA, and no doubt will be made by others. It’s a really important job that the Commission has here in evaluating the reasonableness of this charge. And for that reason, EPUC asked you in their comments to look at this in context.

From our perspective, AB 1054 puts the lie and share of responsibility on ratepayers for wildfire damages. They contribute to the wildfire fund, which is what we're talking about now. If the fund depletes or exhausts, ratepayers are fully on the hook under the statute. And they are also responsible for the cost of billions of dollars of infrastructure to mitigate the risk of wildfires. So they have a substantial future of rate increases ahead of them.

And for that reason, we ask you, take a look at the bigger picture before you determine whether this half a cent is reasonable. And, unfortunately, the PD overlooks this argument, which I think is a very important argument. And it appears that the pace of this proceeding and the way that the PD is crafted suggests that what you're

1 doing is carrying out a political mission,
2 rather than taking responsibility to say
3 looking at everything I know, is this a
4 reasonable charge.
5 And so while we understand that
6 it’s politically unlikely that you'll grant
7 us our wish and put this in a broader context
8 and truly evaluate the reasonableness by
9 looking at the breadth of charges ratepayers
10 will face, I would be remiss not to say that
11 I don't believe that you can determine the
12 reasonableness of the charge without looking
13 at the overall effects on customers. And as
14 Ms. Sheriff requested, I do ask that when
15 you're looking at your other cases in which
16 you do have full discretion, please do
17 consider what you're doing here.
18 Second, with respect to
19 applicability of the charge, assuming you're
20 going to adopt a charge, EPUC supports the
21 PD's resolution. Basically, the PD has taken
22 the at statute quite literally and applied it
23 in the same manner as the DWR charge is
24 applied today. And that is a very
25 straightforward, unambiguous, and simple way
26 to do it. And we support that.
27 Is it everything we would have
28 liked to see? No. But it’s a reasonable

approach to the problem. And what we're concerned about is there are parties who are attempting to chip away at that applicability and say "Well, we like the way that the existing charge applies here, but not there. So please," you know, "modify it just slightly." And we think there's a big risk to doing that.

As I said, the PD is clean. Once you start walking away from that and trying the interpret around it, you run the risk of running into other arguments. For example, the PD does not adopt a principle that has been adopted with respect to every other departing load charge since the mid-90s. And that is prospective application.

Typically, if a charge is applied, it is applied to people who are on the grid at the time notice is given. And in this case, it would be July 12th, 2019. And if you depart thereafter, the charge goes with you. That's how things have been applied. So if I leave tomorrow, and I put in customer generation, I get that charge.

The PD does not adopt that principle. And EPUC is not advocating modification of the PD in that respect, just saying that if you start working around the

edges trying to interpret what "sane manner" means, you're opening yourself up to other kinds of arguments and other discussions about what that means. So we encouraged you to adopt the PD's straightforward approach to this.

Finally, I just wanted to point out that the PD on page 28 suggests that EPUC sought to maintain the exemption for continuous DA customers. And it cites to our reply comments on page 3. If you turn to our reply comments on page 3, you'll see we were not talking about continuous DA. But we were talking about customer generation departing load which, again, is EPUC's focus in this case.

So, in sum, we support the PD as written. We wish you would have taken more time to think about the overall consequences of the decision, but encourage you to do that going forward in all other cases that come before you.

Thank you.

ALJ DOHERTY: Thank you, Ms. Kahl.

Do the Commissioners have any questions for Ms. Kahl?

(No response.)

ALJ DOHERTY: Hearing none.

1 Next party is the Joint Community
2 Choice Aggregators. Mr. Blaising, you have
3 five minutes for opening argument.
4 ARGUMENT
5 BY MR. BLAISING:
6 Thank you, your Honor. Thank
7 you Commissioners for your participation. My
8 name is Scott Blaising, and I represent the
9 Joint Community Choice aggregators.
10 At the outset, let me go off script
11 here and thank Ms. Kasnitz for her comments.
12 It really put things in perspective as
13 someone who doesn't live or work in an area
14 that's impacted. I appreciate the
15 perspective. And it does bring new light to
16 this issue. So, thank you.
17 The Joint CCAs have actively
18 participated in this proceeding by providing
19 opening and reply comments. And the
20 principle purpose of this effort was to
21 ensure fair cost allocation with respect to
22 the wildfire fund non-bypassable charge or
23 wildfire NBC. Set forth as an issue in this
24 proceeding is a determination by the
25 Commission as to what the following phrase
26 from Assembly Bill 1054 means in the context
27 of wildfire NBC; specifically, Wildfire NBC,
28 quote, "Shall be collected in the same manner

1 as that for payments made historically under
2 the DWR bond charge."
3 Joint CCAs have reviewed the
4 proposed decision written by Judge Doherty.
5 Judge Doherty is to be commended for writing
6 a sound, well-reasoned, analytically solid
7 Proposed Decision in most respects. On the
8 issue of principal interest to the joint
9 CCAs, the Proposed Decision is surprisingly
10 deficient in analytical reasoning. In fact,
11 the Proposed Decisions's entire analysis and
12 conclusions are summed up in three sentences.
13 First, the Proposed Decision
14 summarily concludes as follows, quote:
15 The Commission holds to determine
16 the same manner means that the
17 wildfire fund NBC should be
18 collected in no different manner
19 than the DWR bond charge.
20 In support of this, the Proposed
21 Decision goes on with two additional
22 sentences by way of analysis, quote:
23 Whatever the of the arguments for
24 imposing the wildfire fund on
25 continuous direct access customers,
26 the statute states that the wildfire
27 fund NBC shall be collected in the
28 same manner as the DWR bond charge.

1 Without any statutory language to
2 the contrary, this decision
3 therefore finds that continuous DA
4 customers should be excluded from
5 paying the wildfire fund NBC.
6 Unlike other areas of the proposed
7 decision where the Proposed Decision review's
8 legislative history and balances public
9 policy, the Proposed Decision seems to give
10 the impression, in this context, of cost
11 allocation the Commission's hands are tied
12 because of AB 1054. We do not believe that
13 the Commission's hands are tied in the
14 respect.
15 Similar to other areas in the
16 Proposed Decision, the Commission is free,
17 actually obligated, to provide a broader
18 analysis of the phrase, quote, "In the same
19 manner." This is so because under Commission
20 precedent and legal principles as reflected
21 elsewhere in the Proposed Decision, the
22 Commission's preeminent goal is to ascertain
23 and effectuate the purpose of the legislature
24 in AB 1054. In doing so, the Commission
25 should not, quoting elsewhere from Proposed
26 Decision, "Examine language in isolation."
27 We for a broader review.
28 In light of this, two aspects must

1 be examined with respect to exemptions to the
2 wildfire NBC. And in this respect, we echo
3 the comments that were previously provided by
4 TURN with respect to legislative history.
5 With respect to this history, the Joint CCAs
6 in their comments pointed to legislative
7 analyses, especially with 1054, which made
8 clear that in examining the DWR bond charge
9 exemption, the legislature was repeatedly
10 informed of only two exemptions, one to
11 low-income customers and another medical
12 baseline customers. No other exemptions were
13 discussed.
14 With respect to public policy, the
15 primary policy and views that of cost
16 caution. Under principals of cost causation,
17 all customers that use the investor-owned
18 utilities' transmission and distribution
19 system should pay the wildfire NBC. In this
20 regard, we believe that TURN rightly sumps up
21 the issues and that continuous DA customers
22 are served by IOU lines and should therefore
23 pay.
24 Let me, in conclusion, make one
25 point. In its reply comments Energy
26 Producers and Users Collision asserts that
27 the Joint CCAs proposed to apply the charge
28 for the first time to customers departing

decades ago, end quote. This is not the Joint CCAs' position. To the extent that customers have departed, historically, they should not be charged because there's no basis for the charge. There's no use of the transmission system. But as Ms. Kahl noted, to the extent perspectively that customers depart from this date, from the date of AB 1054 going forward, they should be expose to the charge.

Thank you.

ALJ DOHERTY: Thank you, Mr. Blaising.

Do any of the Commissioners have any questions for Mr. Blaising?

Next party is the Western States Petroleum association.

MR. ALCANTAR: Thank you, your Honor.

ALJ DOHERTY: You have five minutes for opening argument.

ARGUMENT

BY MR. ALCANTAR:

I appreciate that. I won't take that time. Commissioners, thank you for the opportunity to be here today. My name is Michael Alcantar, A-l-c-a-n-t-a-r.

I represent the Western States Petroleum Association in this proceeding. And given Mr. Blaising's just-completed

1 comments, I think there are areas of greater
2 agreement than I anticipated starting here
3 today. But I do want to point out that from
4 my perspective and the years I've been here,
5 there fortunately rare occasions when we can
6 come before this Commission and say we agree
7 with something you've done. And today is one
8 of those days, so it is worthy of note.
9 The agreement is what the PD does
10 in its analysis of what it means to impose
11 the new DWR charge in the same manner as the
12 existing DWR charge. I can sit here and
13 agree with Mr. Blaising that we ought target
14 direct access customers. That would be
15 inappropriate. It would be wrong. It’s what
16 the statute says. And that's what the PD
17 gets right. And we appreciate that rigger
18 that went into making the decision. We think
19 that feature needs to be protected, retained,
20 and completed as provided.
21 It is neither the province of
22 intervenors, nor of the Commission to ignore
23 the legislative directives on this point. If
24 we want to return to the legislature to
25 starting asking them which exemption or which
26 provision they wish the strike, we could do
27 that. But it is not a province for here.
28 The interesting part about TURN's

argument, and to an extent Mr. Blaising's, is what we would be going by failing to follow that standard that's adopted in the PD is creating rate increases for those customers going forward. Those very customers that are exempted today would receive these charges. That's also a principle of this statute not to impose a rate increase on customers.

I'm going to concede the rest of my time. And thank you for the occasion to be here.

ALJ DOHERTY: Thank you.

Do any Commissioners have any questions for Mr. Alcantar?

(No response.)

ALJ DOHERTY: Okay. Hearing none, let’s be off the record.

(Off the record.)

ALJ DOHERTY: Let’s be back on the record.

So the next party I have is the Coalition of California Utility Employees. Mr. Graf, you have five minutes for opening argument.

ARGUMENT

BY MR. GRAF:

Thank you, your Honor. Good afternoon, Commissioners. My name is Andrew

1 Graf representing the Coalition of California
2 Utility Employees. We are a coalition of
3 labor unions whose 35,000 members work at
4 nearly all California utilities.
5 CUE recognizes that the Commission
6 is taking significant steps to address the
7 very real wildfire threat. We are in a
8 pivotal moment in time where California must
9 find unique solutions to ensure that
10 electrical utilities can combat wildfire
11 risks while protecting wildfire victims,
12 ratepayers, and utility workers.
13 All three at large investor-owned
14 utilities provided notice of their initial
15 contribution to the AB 1045 wildfire fund.
16 The IOUs $10.5-billion shareholder
17 contribution is extraordinary and
18 unprecedented. The remaining $10.5 billion
19 of the insurance fund will be collected from
20 ratepayers through the non-bypassable charge
21 at issue here.
22 CUE strongly supports the
23 imposition of the non-bypassable charge. The
24 Proposed Decision correctly determines that
25 the Commission has they authority under
26 Public Utility Code Section 701 to impose the
27 non-bypassable charge. The Proposed Decision
28 also correctly concludes that the

non-bypassable charge is just and reasonable.

The benefits of the wildfire fund are significant. Legislature already found that the public policy interests of California are served by the wildfire fund and, by extension, the non-bypassable charge.]

They found that the creation of an insurance fund will reduce costs to ratepayers. As explained by the Proposed Decision, the Wildfire Fund insulates ratepayers from liability because wildfire expenses are recovered from the fund, not as expenses and rates.

The legislature also already found that the insurance fund supports the creditworthiness of IOUs, which helps attract capital investment at a reasonable cost to ratepayers. As emphasized by the Proposed Decision, the creation of a Wildfire Fund has contributed to the financial stability of the IOUs, which in turn reduces rates, ratepayer costs, related to utility financing.

The Proposed Decision also adequately addresses the concerns by parties opposing the non-bypassable charge. With respect to due process, although the schedule for the proceeding is expedited, it was

1 conducted consistent with the mandates of
2 AB 1054.
3 The parties were afforded
4 opportunity to develop the record through
5 written comments, and parties objecting to
6 the charge failed to demonstrate any material
7 issues of disputed fact.
8 The Proposed Decision also correctly
9 determines that the fund does not reduce
10 incentives for the utility to operate safety.
11 AB 1054 prohibits utilities from recovering
12 from ratepayers any payments that the utility
13 received to satisfy claims from the fund.
14 The law creates a new proceeding to
15 determine what amount, if any, utility
16 shareholders must return to the fund if the
17 utility is found to have acted imprudently.
18 Costs and expenses, initially paid
19 for by the fund and later determined not to
20 be just and re- -- determined to be just and
21 reasonable are exclusively borne by the fund
22 while it is operational; not by ratepayers.
23 The Proposed Decision also correctly
24 distinguishes between the Wildfire Fund and
25 the Wildfire Expense Balancing Account,
26 previously rejected by the Commission.
27 Unlike the WEBA application, the
28 Wildfire Fund is capitalized by ratepayer

1 funds and shareholder funds, as well as IOUs
2 must reimburse the fund if they are found to
3 have acted imprudently.
4 They've invested $5 billion in
5 wildfire mitigation without any rate of
6 return. They must continue to make ongoing
7 investments to wildfire safety measures and
8 cannot divert those authorized revenues, and
9 they can be assessed penalties for safety
10 violations.
11 The PD also finds that the impact of
12 the non-bypassable charge on customer bills
13 is net neutral because it is an extension of
14 the existing DWR charge.
15 Other ratepayer bills may be lowered
16 if the charge is not implemented. The
17 absence of the charge may also encourage
18 ratepayer costs.
19 In summary, the Proposed Decision
20 demonstrates ratepayers obtain significant
21 benefits in exchange for their contribution
22 to the Wildfire Fund.
23 CUE strongly supports the imposition
24 of the non-bypassable charge to ensure and
25 adequately capitalize insurance fund that
26 will protect wildfire victims, ratepayers,
27 and utility workers.
28 We, again, thank the Commission for

its thoughtful and timely consideration of this matter, and we urge the Commission to adopt the Proposed Decision.

ALJ DOHERTY: Thank you, Mr. Graf.

Do any Commissioners have any questions for Mr. Graf?

(No response.)

ALJ DOHERTY: Hearing none.

We now have three parties that will share 10 minutes for Rebuttal Argument: PG&E, Southern California Edison and SDG&E.

Mr. Warner, you have 10 minutes to begin.

REBUTTAL ARGUMENT

BY MR. WARNER:

Thank you, your Honor. I will only take a minute or so and defer to my colleagues. I'm Chris Warner. I'm Chief Counsel for PG&E. I'm representing PG&E today. I appreciate the opportunity.

A very short couple comments: PG&E supports the Proposed Decision. We believe it's very well reasoned and supported by the record in a couple key areas. One area, of course, is the special status of PG&E's customers and PG&E's eligibility and participation in the Wildfire Fund under the terms and requirements of AB 1054.

We believe that PG&E makes clear that PG&E's customers are protected against charges under the fund until such time as we are eligible to participate, which we fully hope to be by the date in the statute.

Secondly, the Proposed Decision does a very good job in our opinion of basically stating the guidance provided by the legislature, which does have plenary power to guide this Commission, Constitutional agency, with regard to how to implement the Wildfire Fund and charge.

And the PD, in our opinion, makes a very good record in terms of the legislative authority, and the guidance from the legislature in determining the just and reasonableness of the charge.

Finally, third, in terms of due process, as many of the other parties before you today, as are parties that in many, many proceedings in which PG&E has participated, they have actively participated on cost allocation and rate design issues, particularly the parties directly representing groups of customers here today.

They may not always agree, but it is clear from the record, again, stated by the PD, that those parties have had extensive

opportunity, even under the expedited schedule, to provide their positions on the justness and reasonableness of the charge.

So from PG&E's perspective, there is no due process issue here. In fact, it's well-understood that a Commission can evaluate the record without the need for evidentiary hearings, and the PD makes that clear. I defer the rest of my time to my colleagues.

REBUTTAL ARGUMENT

BY MR. CHEN:

Good morning, Commissioners. Gary Chen, Southern California Edison. I'd just like to express Southern California Edison's support for the Proposed Decision. That's all.

REBUTTAL ARGUMENT

BY MR. LYONS:

Good afternoon, Judge Doherty, and Commissioners. My name is Chris Lyons. I represent San Diego Gas & Electric Company. SDG&E also supports the Proposed Decision and we believe it's very well-reasoned.

The key issue here really today and in the scope of this proceeding is the justness and reasonableness of the charge. We believe it is just and reasonable.

One small point I would like to make -- we discuss it at length in our comments, but one point I'd like to make, and I think that the PD correctly picked up on it is there's been a big change in terms of what happens if there's a utility-caused wildfire and the utility is found to have acted prudently.

In the past, what would have happened is ratepayers would have paid 100 percent of those costs. Now, with AB 1054, ratepayers are contributing to those costs through the Wildfire Fund, but so are IOUs through their contribution. So the ratepayer contribution is significantly less than it otherwise would have been.

I'd also like to make one other point. The one area where we do take issue with the Proposed Decision in which there's been a lot of discussion today is with respect to the phrase "in the same manner" and the rate design issues.

The PD used that phrase to reject SDG&E's argument in Section 6 of the Proposed Decision regarding how to design rates for this. We think by doing that, the Proposed Decision erroneously read out of the statute the fact that the charge -- the legislature

drafted the charge to be non-bypassable.

We will be making this point in our comments on the Proposed Decision, but we believe, as the Commission looks at this issue, they should attempt to harmonize the phrase as "non-bypassable" and in the same manner, that there are plenty of ways to do that. Thank you.

ALJ DOHERTY: Thank you, Mr. Lyons.

Do any of the Commissioners have any questions for any of the joint utilities?

(No response.)

ALJ DOHERTY: Hearing none.

Our next party is Michael Aguirre for Ruth Henricks. You have eight minutes for Rebuttal Argument.

REBUTTAL ARGUMENT

BY MR. AGUIRRE:

Thank you very much.

So I'd like to give you a little bit of the background in how I got involved in this. I'm a former City Attorney of San Diego, Former Assistant U.S. Attorney to the United States -- Assistant U.S. Attorney to the Justice Department, Assistant Counsel to the U.S. Senate's Permanent Subcommittee on Investigations.

I got involved in the proceedings in

1 2009 when SDG&E, PG&E, and SCE came forward
2 to do the first Wildfire Fund. And they --
3 that was pushed down and not accepted because
4 we showed that it wasn't necessary, and
5 SDG&E, then, right at the last moment, in
6 their rebuttal testimony came forward and
7 said, oh, they wanted their 2007 money, and
8 we were able to stop that.]
9 And we were able to stop that. It
10 was very hotly contested. We were able to
11 stop that. And that was in 2012. That's
12 when -- December 2012.
13 After that happened, SDG&E got
14 tremendous religion. They radically changed
15 their fire protection programs. And let's
16 think about it. They haven't had a fire in
17 San Diego since 20 -- or since 2007, so over
18 12 years now. The other two utilities didn't
19 pay any attention, and we became very
20 concerned, and so we put together a report
21 emphasizing the fact that the Commission
22 wasn't enforcing the safety rules, and it was
23 causing people's lives; San Bruno and the
24 Butte fire. And no matter what we did, we
25 couldn't get anyone to pay attention to the
26 fact that they were not going to expand the
27 safety staff. It was interesting to see the
28 head of the safety section the other day

1 during our fire mitigation workshop come out
2 and really say, "Hey, you know what? I don't
3 have any staff." So because they didn't have
4 any staff, they didn't have any enforcement.
5 And -- but, low and behold, in August of
6 2017, two courageous administrative law
7 judges came forward and said, "Hey, SDG&E,
8 you're not going to get your money." We
9 tried the case in January, showed that SDG&E
10 was not in compliance with General Order 95,
11 and there -- they were disallowed. They
12 weren't allowed to get their $379 million.
13 That is the way you stop wildfires, I mean
14 because we have proof right there; no more
15 wildfires in San Diego, because they didn't
16 get their money.
17 PG&E then swung into action, and
18 did some crazy things, along with SCE, and
19 actually jumped into the case, tried to take
20 over the case. Eventually -- and
21 Commissioner Randolph will remember,
22 eventually, the -- and, in fact, Commissioner
23 Randolph was very deeply involved in that,
24 and SDG&E was stopped, PG&E was stopped, SCE
25 was stopped. And then they went to the
26 appellate court. We beat them there. They
27 went to the Supreme Court of California. We
28 beat them there. And then just this last

1 Monday, low and behold, we beat them in the
2 U.S. Supreme Court. They had Jones Day, you
3 know, big powerful law firms, amicus briefs,
4 the kind of power move. Why? To get -- to
5 get rid of the prudent standard. They don't
6 want that prudent standard for fires before
7 July 2019. That prudent standard still is in
8 effect for fires before July 2019.
9 And so now, you've got the
10 situation with PG&E having two fires, SCE
11 having one fire. Actually, PG&E has three
12 fires, three -- three year fires, '17 -- '15,
13 '17 and '18, that they're not going to be
14 able to wiggle out of. So then they come
15 back and they say, "Well, look, here's what
16 we're going to do." The convicted felon --
17 now, I don't know why that is. None of you
18 seem to be interested in the fact that
19 they're a convicted felon. That means that
20 they knowingly, beyond any reasonable doubt,
21 intentionally, knowingly, willfully violated
22 the safety rule -- safety rules and -- that
23 killed people, including one woman who worked
24 for the CPUC in ORA. I don't know why that
25 doesn't make any difference to you. They're
26 convicted felons, and that convicted felon,
27 while on probation, went to the governor and
28 paid him $200,000 to help him get elected.

1 And you know what happened in the first part
2 of 2019? Meeting after meeting after meeting
3 after meeting in the governor's office in
4 secret with PG&E's board of directors,
5 various offices of PG&E. When they weren't
6 meeting with PG&E and the officers, they were
7 meeting with PG&E's law firm -- or labor
8 union. We know this because we got all the
9 calendars through the Public Information Act.
10 Now, they then paid off the
11 governor. Sorry to say, but that's what they
12 did. They made massive campaign
13 contributions to the legislature. When you
14 went to the legislature -- when you went to
15 the legislature and you saw the proceedings,
16 there were three committee hearings. Burke,
17 Holden and Mayes made the same exact
18 presentation. They said crazy things to the
19 legislature. They said, "You have to do this
20 or they're going to turn off the
21 electricity." They're not going to turn off
22 the electricity. It had nothing to do with
23 reality, and the -- and the message points
24 were in complete disagreement.
25 Now, that is unconstitutional. And
26 what you have to understand -- and one of the
27 persons here said, "Oh, well, you know, this
28 is fate accompli. All you can do is carry

1 forward what the legislature says." When you
2 know that there's an unconstitutional act,
3 state officials can be enjoined from
4 enforcing a law that was in violation of the
5 Federal Constitution. Please do us a favor,
6 and look at Ex Parte Young, 209 U.S. 123,
7 still good authority, 1908, good Ninth
8 Circuit authority, is doing that.
9 So here -- here's what's going to
10 happen. This is my prediction, one of two
11 things. Either you'll go back and you'll
12 say, "You know what, Heracles, I need you to
13 get us an independent judgment about is this
14 really constitutional here? Can we really
15 give a convicted felon this kind of
16 protection, you know, for fires that haven't
17 happened because we want to help their credit
18 rating? Is that -- and then deny due
19 process?" They say, "Well, we don't need due
20 process." You can't make up a fact. You
21 can't decide a fact without an evidentiary
22 hearing. How do you know what the facts are?
23 You have to hear both sides. That's
24 fundamental. You can't do that.
25 Okay. So one thing you could do is
26 say, "Heracles, get us a legal opinion, and
27 see if it's constitutional. If there's any
28 doubts, let's have evidentiary hearings."

1 You know, when we had an evidentiary hearing
2 in SDG&E, which they didn't want, we were
3 able to show that they weren't prudent. They
4 didn't get their money. Okay? It changed
5 the course of history. That's why we're here
6 today. Those two administrative law judges
7 that decided that SDG&E wasn't going to get
8 its $379 million, they did something that
9 sent shock waves through PG&E and SCE. Why?
10 Because they're sitting on massive
11 liabilities because they hadn't done the work
12 they were supposed to do in complying with
13 the safety rules.
14 So you ask for the legal opinion.
15 You find out, "Hey, you know what? You
16 really do need evidentiary hearings. Let's
17 have them." You go back to the legislature
18 and say, "Hey, Legislature, we need to do
19 some evidentiary hearings. We can't just --"
20 Commissioner Rechtschaffen, you're a Yale
21 graduate, distinguished graduate from law
22 school. You know what is required for due
23 process. And if you vote for this, you are
24 turning your back on the fairness that your
25 very name stands for, and you know it stands
26 for the seeker of justice. You have -- you
27 have to move forward and find out if this is
28 constitutional.

The other possibility is it just turns into a complete mess, Judge Chen issues the injunction, we take everybody's deposition, and we're now litigating this thing for the next several years.

You know, we were right on San Onofre, and we renegotiated a 775 million-dollar improvement to that deal, and we're right on this. Please sincerely listen to what I have to say. Thank you.

ALJ DOHERTY: Thank you, Mr. Aguirre.

Do any of the commissioners have any questions for Mr. Aguirre?

(No response.)

ALJ DOHERTY: Hearing none, our final party is Mr. Abrams. You have ten minutes for rebuttal argument.

REBUTTAL ARGUMENT

BY MR. ABRAMS:

Thank you. I think part of what's being discussed here is this notion of shared responsibilities, and I think that's part of what the sentiment was in terms of putting together this fund, and I fully support shared responsibilities. Certainly, in the face of climate change and broader environmental impacts, we are all in this together. And the reason why I'm here today

1 is because I take those responsibilities
2 seriously, and so do my neighbors that
3 surround me. Our responsibilities are to
4 harden our homes, are to make sure that we
5 have a defensible space, because we know from
6 these fires that what we do for our homes
7 affects our neighbors. That's our
8 responsibility. But, that's very different
9 than this. So if my -- if I go ahead, and my
10 neighbor's house -- and I burn down my
11 neighbor's house, I don't expect everybody in
12 the neighborhood to chip in for that. These
13 are not the same thing. We have shared
14 responsibilities, and then we have our own
15 responsibilities. The damages that the
16 utilities cause are their responsibilities.
17 That shouldn't be a question. That's
18 reasonable, and that's what's just.
19 So one of the things that I looked
20 at as I looked at this piece of legislation
21 here is I compared it to how my neighbors are
22 reacting and what I'm hearing from fellow
23 wildfire survivors. One of the things that
24 strikes me in terms of the delta here is --
25 is, you know, residents and folks are
26 weighing in on whether they should become a
27 claimant to the PG&E bankruptcy. And there's
28 a lot of mixed emotions around that. People

are concerned. If I get a check, does that mean that my neighbors won't, somebody who's worse off than me, somebody who lost loved ones in the fire? Does that mean that we're going to have less mitigation because I take a check? That's the degree to which our residents -- our understanding what just and reasonable means.

This is in stark contrast to what the utilities are asking for here. Everyone and anyone, they're happy to get a handout, nothing on top of that that we get in return; makes no sense.]

Is it just and reasonable that we're considering the credit rating of the IOUs, but we're not considering the credit rating of the individuals who are impacted? That is not just and reasonable. We're not considering the cost-of-living increases, we're not considering how it affects our credit. And let me tell you, it does.

As someone whose house was burned down by PG&E, as I look around for other homes, I'm getting denied insurance because of that claim. It’s got nothing to do with me, personally. I had a claim. I don't get insurance. And it’s getting harder and harder and harder. Nothing in this considers

1 those implications. Nothing. It’s not fair.
2 It’s not just. It’s not reasonable.
3 Now, as we look further, I just
4 wanted to sort of quote the AB 1054 bill
5 here. So one of the statements is, "The
6 establishment of the wildfire fund supports
7 the credit worthiness of electrical
8 corporations and provides a mechanism to
9 attract capital for investment in safe,
10 clean, and reliable power for California at a
11 reasonable cost to ratepayers.
12 So let’s break that down.
13 Creditworthiness, might help a little bit.
14 But, overall, these credit agencies are
15 looking at the environment in which they
16 operate. The environment that they're
17 operating in is getting worse. They are not
18 taking the steps to mitigate the risks.
19 That's what the credit agencies look at above
20 all else. Artificially propping this up may
21 help very managerially. Won't help a lot.
22 You don't have to be in that business to know
23 this isn't going to do that.
24 Let’s break it down further. Now
25 we're talking about the reliability. I don't
26 have power. I know many other people don't
27 have power. It’s reliable? That's what
28 we're paying for? No. That's not happening.

1 These are clearly not reasonable costs,
2 clearly not reasonable. And it’s clearly not
3 just. I'm not an attorney, but it’s clear to
4 me.
5 What I would ask all of you to do,
6 just in terms of how you would consider this,
7 I got kids at home -- I'm sure many of you
8 do. If you don't, you can borrow mine. Go
9 home to them tonight, talk to them about
10 this. Try to explain to them how this is
11 just and reasonable.
12 I had to explain it to my 11-year
13 old. I said, "Hey, here's what daddy is
14 doing today. You know, our house got burned
15 down. Next time our house burns down and
16 there's a company responsible for it, all of
17 our neighbors pay, your friends pay,
18 everybody pays, because PG&E burned our house
19 down the next time it happens."
20 And he looked at me so strangely.
21 "Huh? Everybody has to pay when they did
22 it?" "Well, think about your toys. If
23 somebody broke your toys, you know what, turn
24 to all your classmates, they would all have
25 to chip in." Figure out some way to try to
26 explain this to a kid. If you can't explain
27 this to a kid in a way where they say, "Huh,
28 all right. That's fair. That's reasonable,"

then you haven't hit the mark. And none of this explanation and cover gets it done. It is not just and reasonable. These are simple terms.

Let me help a little bit with these definitions. Just: Fair, moral rightness, a scheme or a system of law in which every person receives his, her, its due from the system, including all rates both natural and legal. As I looked this up, there was a note below that said "One problem with this is that often attorneys and judges and legislators often get more caught up in procedure than achieving these just outcomes. I submit to you that's what's going on here. We're losing sight of what that is.

Now, let’s turn to reasonableness. Definition: Law, just, rational, appropriate, ordinary, or usual in the circumstances. It may refer to care, cause, or compensation. I submit to you this is not just. This is not reasonable on its face or any way you could look at it.

Thank you.

ALJ DOHERTY: Thank you, Mr. Abrams.

Do any of the Commissioners have any questions for Mr. Abrams.

COMMISSIONER RECHTSCHAFFEN: I don't

have any questions. I just want to thank you again for participating, especially given that you're out of your house. And I want to compliment you for all the participation in all of our proceedings. Your participation has been extremely valuable. So thank you very much, Mr. Abrams.

ALJ DOHERTY: Do any Commissioners have any closing thoughts or comments?

(No response.)

ALJ DOHERTY: Hearing none, this oral argument is completed. We are adjourned.

Let's go off the record.

(Whereupon, at the hour of 4:31 p.m. this matter having been concluded, the Commission then adjourned.)

* * * * *

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

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I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE EVENTS OF THE MATTER OR THE OUTCOME OF THE PROCEEDING.

EXECUTED THIS OCTOBER 17, 2019.

KPowers

KARLY POWERS
CSR NO.#13991

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE

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REBEKAH L. DE ROSA
CSR NO. 8708

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