

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

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

FILED  
PUBLIC UTILITIES COMMISSION  
JANUARY 10, 2019  
SAN FRANCISCO, CALIFORNIA  
RULEMAKING 19-01-006

**ORDER INSTITUTING RULEMAKING**

**Summary**

The Commission opens this Order Instituting Rulemaking (OIR) to implement the provisions of Senate Bill (SB) 901<sup>1</sup> related to Public Utilities Code Section 451.2. This OIR will adopt criteria and a methodology for use by the Commission in future applications for cost recovery of wildfire costs. However, this OIR will not adopt a specific financial outcome for purposes of cost recovery in a future wildfire cost recovery application by a utility.

**1. Background**

Devastating wildfires have become a regular occurrence in California. These wildfires have grown increasingly larger and more intense over the last several decades, resulting in loss of life and property, ecological devastation, increases in future fire risk, and the accumulation of significant costs. In

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<sup>1</sup> Stats. 2018, Ch. 626.

response, SB 901 attempts to address these new challenges by directing actions in several areas.<sup>2</sup>

One such area is wildfire cost recovery. Section 451.2(a) describes how the Commission will review applications by electrical corporations that request recovery of costs and expenses from wildfires in 2017. In addition, Section 451.2(b) requires the Commission to “determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service...” and to make disallowances of costs and expenses reviewed pursuant to Section 451.2(a) by taking that amount into consideration. In undertaking the adoption of criteria and a methodology to determine the maximum amount the corporation can pay, the Commission is mindful of both the finite resources of ratepayers in California,<sup>3</sup> and the importance of maintaining financially viable utilities to provide safe and reliable service.

In this proceeding the Commission will adopt criteria and a methodology for the implementation of Section 451.2 in future utility applications for recovery of costs resulting from a wildfire. The criteria and methodology adopted in this proceeding may be invoked in future applications for cost recovery pursuant to Section 451.2(a). This proceeding will not adopt any specific financial outcome for future applications per Section 451.2.

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<sup>2</sup> Many of the actions directed to be taken by Senate Bill (SB) 901 are outside the purview of this Commission, such as changes to timber harvest plans, and are not addressed in this Order Instituting Rulemaking (OIR). Additional aspects of SB 901 within the Commission’s jurisdiction will be addressed in separate proceedings, including Rulemaking (R.) 18-10-007, the Order Instituting Rulemaking to Implement Electric Utility Wildfire Mitigation Plans Pursuant to SB 901 (2018).

<sup>3</sup> The Commission opened a rulemaking on affordability (R.18-07-006) in July 2018.

## **2. Preliminary Scoping Memo**

The Commission will conduct this rulemaking in accordance with Article 6 of the Commission's Rules of Practice and Procedure, "Rulemaking."<sup>4</sup> As required by Rule 7.1(d), this OIR includes a preliminary scoping memo as set forth below, and preliminarily determines the category of this proceeding and the need for hearing.

## **3. Proceeding Scope**

This proceeding is limited to the implementation of Section 451.2 of the Public Utilities Code. The scope of this proceeding does not include the consideration of cost recovery for any specific fire event. The Commission's approval of criteria and a methodology in this proceeding is not a determination of the reasonableness of any type of costs.

The primary focus of this proceeding will be on the language of Sections 451.2(a) and (b), which state:

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

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<sup>4</sup> All references to "Rules" are to the Commission's Rules of Practice and Procedure unless otherwise indicated.

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

Consistent with Section 451.2(a), the determination of what costs and expenses are just and reasonable must be made in the context of an application for the recovery of specific costs related to the 2017 wildfires. In this rulemaking, we will focus on criteria and a methodology to inform determinations of the maximum amounts that an electrical corporation can pay for costs that may be disallowed in applications under Section 451.2(a). The aim of this proceeding will be to develop criteria and methods to determine "the maximum amount an [electrical] corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe service."

To assist us in identifying the criteria and methodology to be used in this determination, parties are encouraged to provide preliminary comments on the following questions:

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

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

#### **4. Initial Comments and Proposals**

Parties may file comments on this OIR by February 11, 2019. Comments should include answers to the questions included in Section 2.1, above, including the commenter’s views on the meaning of the provisions listed in Section 451.2. Parties are encouraged to include in their comments proposed methodologies for determining “the maximum amount [an electrical corporation] can pay” as provided in Section 451.2(b).

**5. Categorization; *Ex Parte* Communications; Need for Hearing**

Rule 7.1(d) of the Commission’s Rules of Practice and Procedure requires that an order instituting rulemaking preliminarily determine the category of the proceeding and the need for hearing. As a preliminary matter, we determine that this proceeding is categorized as ratesetting. Accordingly, *ex parte* communications are subject to the restrictions and reporting requirements set forth in Article 8 of the Rules.

We are also required to preliminarily determine if hearings are necessary. Because the issues identified in the scope are primarily legal and policy issues, we preliminarily determine that hearings are not necessary.

**6. Preliminary Schedule**

The schedule for initial activities in this proceeding is as follows:

**SCHEDULE**

<b>EVENT</b>	<b>DATE</b>
Opening comments on OIR filed and served	February 11, 2019
Prehearing conference	February 20, 2019
Reply comments filed and served	February 25, 2019
Scoping memo	March 2019

The prehearing conference (PHC) will be held for the purposes of (1) taking appearances, (2) discussing schedule and process, and (3) informing the scoping memo. The PHC shall be held beginning at 2 p.m. on February 20, 2019, in the Commission Courtroom, 505 Van Ness Avenue, San Francisco, California.

The Assigned Commissioner or the assigned Administrative Law Judge (ALJ) may change the schedule to promote efficient and fair administration of this proceeding.

If there are any workshops or other public meetings in this proceeding, notice of such workshops will be posted on the Commission's Daily Calendar to inform the public that a decision-maker or an advisor may be present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

## **7. Respondents**

Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), Liberty Utilities (Liberty), Bear Valley Electric Service (Bear Valley), and Pacific Power, a division of PacifiCorp, are named as respondents to this proceeding.

## **8. Financial Consulting**

Due to the technical nature of the issues raised by Section 451.2(b), the Commission may require outside financial consulting expertise to support decisionmakers and advisory staff. The respondents are herein directed to reimburse the Commission up to \$2 million for any advisory consulting contracts required by the Commission's Energy Division in support of this rulemaking. If the Commission determines that outside consulting services are needed, we expect those consultants to be hired and managed solely by the Commission.

## **9. Service of OIR**

This OIR shall be served on all respondents. In addition, in the interest of broad notice, this OIR will be served on the official service lists for the following proceedings:

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

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

In addition, in the interest of broad notice, this OIR will be served on the following agencies named in SB 901:

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

Service of the OIR does not confer party status or place any person who has received such service on the Official Service List for this proceeding, other than respondents. Instructions for obtaining party status or being placed on the official service list are given below.

#### **10. Filing and Service of Comments and Other Documents**

Filing and service of comments and other documents in the proceeding are governed by the Commission's Rules of Practice and Procedure.

#### **11. Addition to Official Service List**

Addition to the official service list is governed by Rule 1.9(f) of the Commission's Rules of Practice and Procedure.

Respondents are parties to the proceeding (*see* Rule 1.4(d)) and will be immediately placed on the official service list.

Any person will be added to the "Information Only" category of the official service list upon request, for electronic service of all documents in the

proceeding, and should do so promptly in order to ensure timely service of comments and other documents and correspondence in the proceeding.

(See Rule 1.9(f).) The request must be sent to the Process Office by e-mail ([process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov)) or letter (Process Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California 94102). Please include the Docket Number of this rulemaking in the request.

Persons who file comments on this OIR become parties to the proceeding (see Rule 1.4(a)(2)) and will be added to the “Parties” category of the official service list upon such filing. *In order to assure service of comments and other documents and correspondence in advance of obtaining party status, persons should promptly request addition to the “Information Only” category as described above; they will be removed from that category upon obtaining party status.*

## **12. Subscription Service**

Persons may monitor the proceeding by subscribing to receive electronic copies of documents in this proceeding that are published on the Commission’s website. There is no need to be on the official service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission’s website at <http://subscribecpuc.cpuc.ca.gov/>.

## **13. Intervenor Compensation**

Intervenor Compensation is permitted in this proceeding. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must file a timely notice of intent to claim intervenor compensation.

(See Rule 17.1(a)(2).) Intervenor compensation rules are governed by §§ 1801 *et seq.* of the Public Utilities Code. Parties new to participating in Commission proceedings may contact the Commission’s Public Advisor.

#### **14. Public Advisor**

Any person or entity interested in participating in this rulemaking who is unfamiliar with the Commission's procedures should contact the Commission's Public Advisor in San Francisco at (415) 703-2074 or 1-(866) 849-8390 or e-mail [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov). The TTY number is 1-(866) 836-7825.

### **O R D E R**

**IT IS ORDERED** that:

1. This Order Instituting Rulemaking is adopted pursuant to Senate Bill 901, Stats. 2018, Ch. 626 and Rule 6.1 of the Commission's Rules of Practice and Procedure.
2. The preliminary categorization is ratesetting.
3. The preliminary determination is that a hearing is not needed.
4. The preliminary scope of issues is as stated above.
5. A prehearing conference is set for February 20, 2019 at 2 p.m. at the Courtroom, 505 Van Ness Avenue, San Francisco, California.
6. The preliminary schedule for the proceeding is set forth in Section 3, and is subject to revision by the assigned Commissioner or assigned Administrative Law Judge, as appropriate.
7. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities, Bear Valley Electric Service and Pacific Power, a division of PacifiCorp, are respondents to this proceeding.
8. The utility respondents to this rulemaking shall reimburse the Commission for any consulting contracts, up to \$2 million, for advisory support on the scope of this rulemaking.

9. Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Liberty Utilities, Bear Valley Electric Service, and Pacific Power, a division of PacifiCorp shall, and any other person may, file and serve opening comments of not more than 25 pages responding to this OIR not later than February 11, 2019. Comments on this OIR should address the scope and schedule of this proceeding and its potential interaction with other related proceedings, as well as responses to the questions posed in Section 2.1. These comments may include a proposed methodology for the Commission to consider for determining “the maximum amount [a] corporation can pay...” under Section 451.2(b)

10. Parties may file reply comments on this Order Instituting Rulemaking not later than February 25, 2019.

11. The Executive Director will cause this OIR to be served on all respondents and on the service lists for the following Commission proceedings: Rulemaking 15-05-006, Application (A.) 15-09-010, A.17-07-011, A.18-04-001, and A.18-09-002, and Rulemaking 18-10-007. In addition, the Executive Director will cause this Order Instituting Rulemaking to be served on the following agencies of the State of California: California Energy Commission, State Air Resources Control Board, California Infrastructure and Economic Development Bank, and California Office of Planning and Research.

12. Any party that expects to claim intervenor compensation for its participation in this Rulemaking must timely file its notice of intent to claim intervenor compensation. (*See* Rule 17.1(a)(2).)

This order is effective today.

Dated January 10, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners