

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



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Order Instituting Rulemaking to Implement
Electric Utility Wildfire Mitigation Plans
Pursuant to Senate Bill 901 (2018).

Rulemaking 18-10-007
(Filed October 25, 2018)

**CONDITIONAL MOTION OF THE UTILITY REFORM NETWORK
FOR EVIDENTIARY HEARINGS**



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CONDITIONAL MOTION OF THE UTILITY REFORM NETWORK FOR EVIDENTIARY HEARINGS

Pursuant to the December 7, 2018 Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), The Utility Reform Network (TURN) submits this conditional motion for evidentiary hearings. As explained in this motion, TURN's request is conditional because the need for evidentiary hearings can be avoided if the Commission makes clear that its determination with respect to the utilities' wildfire mitigation plans (WMPs) will not pre-judge issues regarding the reasonableness for cost recovery of multi-billion dollar new programs described in the WMPs.

I. INTRODUCTION AND SUMMARY

TURN is in the unusual posture of submitting this motion in the hope that its conditional request for evidentiary hearings in this case will be denied. Instead, TURN's objective is that the Commission will confirm that the reasonableness determinations associated with WMP proposals will be appropriately made in each utility's upcoming rate case, such that hearings are unnecessary here.

However, in light of the requests made in the utilities' WMPs, TURN is compelled to file this motion to protect the due process rights of ratepayers under Public Utilities Code Sections 451 and 8386(g), which reserve the issue of the reasonableness of rate recovery for programs described in the WMPs to the utilities' rate cases. Contrary to those provisions, the utilities' WMPs, as currently framed, would appear to preempt key issues – related to the reasonableness of the scope, pace, and cost-effectiveness of the new programs – that are integral to the determination of the reasonableness of cost recovery for the new proposed programs. Specifically, the utilities propose that the Commission adopt as compliance requirements the

utilities' description of planned activities under their new programs.¹ In doing so, the utilities are effectively asking the Commission to make an implicit determination that those new programs, in the scope and pace described by the utilities, are reasonable and not subject to challenge or scrutiny in the rate cases that Section 8386(g) specifies as the appropriate forum for cost recovery issues.

The Commission should foreclose any outcome of this case that would result in such a pre-judgment of issues that are integral to the future determination of the reasonableness of costs for programs described in the WMPs. The Commission can do so by making clear that, for new programs that have not been addressed and found reasonable in a rate case, the Commission does not view the utilities' performance targets as compliance requirements. Rather, for purposes here, they serve as utility-proposed goals that will be reviewed more thoroughly for reasonableness in the utilities' rate cases, using the Commission's established rate case processes of testimony, discovery, evidentiary hearings and briefs. Meanwhile, pursuant to Section 8386(e), the utilities will be able to track the costs of these new programs for potential future recovery in a rate case.

If, however, the Commission contemplates adopting as compliance requirements new programs and associated activities described by the utilities, then TURN must reluctantly insist that the Commission order evidentiary hearings in this case. Such hearings would be needed to address the many disputed factual issues, described below, regarding the reasonableness of the programs proposed by the utilities based on a sufficient and meaningful record.

¹ For example, PG&E's WMP includes plans for enhanced vegetation management on 2,450 circuit miles and 150 miles of conductor and pole rebuild/replacement—estimated to cost more than \$500 million just in 2019.

TURN recognizes that the evidentiary hearings and associated testimony, discovery, and briefing that TURN conditionally requests cannot be concluded in the truncated period of time that the legislature has afforded for this case. This fact only underscores the point that Section 8386(g) reserves the issue of the reasonableness of cost recovery for new programs – and the associated development of the necessary evidentiary record – for utility rate cases.

II. THE EFFECT OF APPROVING THE UTILITIES' WILDFIRE MITIGATION PLANS, AS FRAMED BY THE UTILITIES, WOULD BE TO HAVE THE COMMISSION PRE-JUDGE ELEMENTS OF THE REASONABLENESS OF MULTI-BILLION DOLLAR NEW SPENDING PROGRAMS OF QUESTIONABLE NEED AND SCOPE

The utilities' WMPs, particularly PG&E's and to a lesser extent SCE's, propose significant new programs that are extremely costly. As summarized at the February 13, 2019 workshop, PG&E is proposing up to \$2.3 billion of additional spending above what is previously included in rates, just for 2019.² This figure includes up to \$1.4 billion (\$1 billion capital and \$400 million expense) for additional inspections of facilities, \$325 million (all capital) for system hardening, and \$430 million (all expense) for vegetation management. SCE is proposing up to \$680 million (\$345 million capital and \$335 million expense) of programs for 2019,³ including new programs consisting of \$245 million (\$100 million capital and \$145 million expense) for enhanced overhead inspections, \$180 million (almost all capital) for covered conductors, and \$90 million (all expense) for enhanced vegetation management.⁴

² See Slide 11 of PG&E's 2/13/19 Workshop presentation. Attachment E to PG&E's WMP indicate that PG&E views only a very small amount of the \$2.3 billion total as currently included in rates. See the 7th column from the left in the table on pages AtchE-1 to AtchE-2. Here, TURN is only reporting, not endorsing, PG&E's position, as another issue is the extent to which PG&E's estimated costs relate to activities, such as inspection, that should already be covered by current rates.

³ See slide 17 of SCE's 2/13/19 Workshop presentation.

⁴ SCE's WMP, pp. 98-99.

The reasonableness of these new programs has never been addressed by the Commission, although this issue is a key focus of SCE's pending Grid Safety and Reliability Plan (GSRP) rate case (A.18-09-002) and PG&E's 2020 General Rate Case (A.18-12-009). Those rate cases provide a meaningful opportunity, consistent with established due process requirements, to address through testimony, discovery, evidentiary hearings and briefs, important issues relating to the reasonableness of cost recovery for those new programs. Those issues include whether the programs are needed, and whether the proposed scope and pace of the programs is reasonable. This is so particularly in light of the fact that certain of the programs appear directed at achieving the same, broad purpose of reducing wildfire ignitions in all circumstances, as opposed to focusing on preventing catastrophic wildfires that occur in dangerous weather conditions. Thus, the rate cases are designed and equipped to determine whether the proposed programs are a cost-effective use of ratepayer funds and will achieve sufficient risk reduction to make them worthwhile.

As framed, the utilities' WMPs have the potential to preempt the examination of the reasonableness of the proposed new programs in rate cases, by asking the Commission to adopt the activities proposed within these new programs as compliance targets. Such adoption of the proposed activities in the new programs as compliance requirements here would effectively preempt any challenge to the reasonableness of the new programs in SCE's GSRP, PG&E's GRC, or any other rate case. That is, if the Commission were to determine that the proposed work must be done as a matter of compliance, intervenors would have no opportunity to meaningfully raise later challenges to the reasonableness of the programs, as that question would implicitly already have been decided.

III. ISSUES RELATING TO THE NECESSITY, SCOPE AND PACE OF PROPOSED UTILITY PROGRAMS ARE KEY TO THE DETERMINATION OF WHETHER IT IS JUST AND REASONABLE TO ALLOW UTILITIES TO RECOVER COSTS IN RATES

The Commission's longstanding rate case practice makes it clear that the determination of whether the costs of a utility program are just and reasonable is essentially a two-step process, which can be broadly summarized as: (1) whether the program itself is necessary, reasonable in scope and pace, and otherwise cost-effective; and (2) if so, whether the costs to perform the scope of work that is found to be reasonable are themselves reasonable. The first step is often the most important and, as the utilities' WMPs are now framed, is in danger of being preempted.

The Commission has previously emphasized the importance of the first step in the Section 451 reasonableness analysis, even when the achievement of critical goals such as safety and reliability are at issue:

... our overarching policy is that PG&E must provide reliable electric service to its customers. However, that alone is insufficient reason for approving Cornerstone. We also have the obligation to ensure that rates are reasonable. Whether characterized as a policy or a basic ratemaking principle, for a capital program or project such as Cornerstone, there must be a compelling demonstration of need. A broad policy such as the desirability of maintaining or improving electric distribution reliability can only be implemented at the program or project level if there is demonstrated need for the particular programs or projects. PG&E has the burden to demonstrate such need for Cornerstone.⁵

In the above-quoted case, the Commission found that, instead of the \$2 billion program proposed by PG&E, only a \$400 million reliability improvement was needed because the evidence showed that "a significantly less costly program" could still achieve substantial reliability benefits.⁶

⁵ D.10-06-048, p. 16 (emphasis added).

⁶ *Id.*, p. 17.

The Commission's decision in SCE's 2012 GRC further shows the centrality of the first step analysis to satisfying Section 451's just and reasonable requirement:

We confirm that the Commission's mandate is specific and requires a balancing of interests to authorize rate recovery only for those just and reasonable costs necessary for safe and reliable service. This requires a hard look at each proposed expense, *including whether it is necessary during the coming rate case cycle* and is appropriately calculated. . . .

Generally, requests for additional funds have to be justified or established as reasonable by comparison to other alternatives. For example, it is not enough for the utility to merely assert that equipment failures would occur or safety would be compromised absent approval of a certain expense.

Ratepayers are entitled to the Commission's sharp eye and consideration of other options before committing their hard-earned cash. Therefore, we have neither accepted all requests nor adopted across-the-board percentage reductions. Instead, the decision is the result of scrutinizing each request according to the standards and policy articulated here.⁷

As yet another example, PG&E's 2014 GRC decision contains an excellent discussion of the necessary analysis that must happen in a rate case to satisfy the just and reasonable requirement, an analysis that is at risk of being preempted in this case:

PG&E should demonstrate that it compared the cost of alternative approaches to performing the work activity and that the proposed approach is the most cost-effective. *The burden is on PG&E to establish that its proposed work activities are necessary, and that it has prudently examined alternatives before receiving ratepayer funding.* PG&E's policy witnesses agreed in principle that, for all proposed programs, even those justified on the basis of safety, *PG&E's GRC showing must demonstrate both (1) the need for and reasonableness of PG&E's proposed programs, supported in most cases by a well explained cost-benefit analysis; and (2) that the proposed approach is the most cost-effective method available to the utility.* We have reviewed PG&E's showing to determine if it has demonstrated that the overall benefits justify the additional costs expected to be incurred We have carefully evaluated PG&E's justifications of costs both in terms of quantified cost savings and qualitative benefits that PG&E did not or could not quantify. We have also considered the basis for objections to approval of cost increases as raised by various opposing parties. In weighing the qualitative benefits in relation to costs, however, it is not enough merely for

⁷ D.12-11-051, pp. 9-10 (emphasis added).

PG&E to make assertions that benefit will result. In addressing PG&E's proposals, as discussed throughout this decision, given the limitations in PG&E's cost/benefit showing, we have used our best judgment to weigh both the quantitative and qualitative benefits in relation to the costs involved for each program or project. In many cases, based on our weighing of overall benefits versus costs, we approve funding for the new or expanded programs proposed by PG&E. *In other cases, we approve program funding, but reduce the level of funding below what PG&E requested or based on a more extended time schedule. In other cases, we decline to approve any funding for certain programs where we find that the claimed benefits do not justify the costs to ratepayers.*⁸

In sum, ample Commission precedent demonstrates that a key element of the just and reasonable determination is whether the utility's proposed programs are necessary, reasonable in scope and pace, and otherwise cost effective. As the above quotes show, the Commission has not hesitated to reject entire programs, or portions thereof, when the utility has failed to meet these requirements.

IV. SB 901 RESERVES TO RATE CASES THE DETERMINATION OF WHETHER THE PROPOSED NEW WMP PROGRAMS AND THEIR ASSOCIATED COSTS ARE JUST AND REASONABLE

Section 8386(g) contains two important sentences that, read together, make clear that the legislature intended that rate cases would continue to be the forum in which the first step of the reasonableness analysis (as discussed in Section III above) would take place for new programs proposed in WMPs.

Section 8386(g) states:

(g) The commission shall consider whether the cost of implementing each electrical corporation's plan is just and reasonable in its general rate case application. Nothing in this section shall be interpreted as a restriction or limitation on Article 1 (commencing with Section 451) of Chapter 3 of Part 1 of Division 1.

⁸ D.14-08-032, pp. 28-29.

The first sentence explicitly requires that the issue of whether the costs associated with a utility's WMP are just and reasonable "shall" be reserved for the utility's general rate case. As explained in Section III, central to this determination is whether any new proposed programs are necessary, reasonable in scope and pace, and otherwise cost-effective.

The second sentence strongly reinforces this point, by specifying that nothing in Section 8386 may be interpreted in a way that would restrict or limit any provision in the prescribed article of the Public Utilities Code, which includes Section 451. That section provides in relevant part:

All charges demanded or received by any public utility . . . for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. *Every unjust or unreasonable charge demanded or received for such product or commodity or service is unlawful.* (Emphasis added).

Thus, nothing in the provisions of Section 8386 is intended to abridge the fundamental principle that only costs that have been found to be just and reasonable may be included in rates, as well as the powerful corollary principle that the inclusion in rates of costs that are not just and reasonable is unlawful. As Section III shows, the determination of whether costs are just and reasonable requires a thorough analysis of whether a program and its associated costs are necessary, reasonable in scope and pace, and otherwise cost-effective. In accordance with the first sentence of Section 8386(g), the commission "shall" conduct this analysis in the utility's rate case, not in the abbreviated WMP case.

V. THE COMMISSION SHOULD CLARIFY THAT, CONSISTENT WITH SECTIONS 8386(g) AND 451, IT DOES NOT INTEND ITS ADOPTION OF ANY ELEMENT OF A UTILITY WMP TO CONSTITUTE PRE-JUDGMENT OF THE REASONABLENESS OF ANY NEW PROGRAMS

As explained above, the utilities' framing of their WMPs could lead to a potential outcome that is directly contrary to Sections 8386(g) and 451 – a prejudgment based on an inadequate record in this case that the utilities' new programs and associated activities are reasonable and appropriate for cost recovery, instead of reserving that issue for the utilities' rate cases. Such an outcome would circumvent the requirements of Sections 8386(g) and 451 and constitute legal error.

To avoid such legal error, the Commission must follow the directive of the second sentence of Section 8386(g) and interpret Section 8386 in a way that does not limit or restrict the Commission's considered determination, based on an adequate record built on due process, of whether costs of new programs in the WMPs are just and reasonable. The Commission can do so by making clear that, for new programs that have not been addressed and found reasonable in a rate case, the Commission does not view or adopt the utilities' performance targets as compliance requirements. Rather, any approval here merely accepts them as utility-proposed goals that will be reviewed more thoroughly for reasonableness in the utilities' rate cases, using the Commission's established rate case processes of testimony, discovery, evidentiary hearings and briefs. Meanwhile, pursuant to Section 8386(e) and (h), the utilities will be able to track the costs of these new programs for potential future recovery in a rate case.

TURN believes that reconciling the compliance-related provisions of Section 8386 with the requirements of Section 8386(g) would be a productive issue for a public discussion among the Commission and parties. TURN is therefore pleased to see that the tentative topics for workshops on February 26 and 27 include the meaning of Commission approval of WMPs, a

topic which fully embraces the issues presented by this motion. TURN is hopeful that there can be a meeting of the minds that establishes meaningful compliance requirements, while not preempting or unduly limiting the rate case determination of whether new utility programs are just and reasonable and entitled to cost recovery from ratepayers.

VI. IF THE COMMISSION INTENDS TO ADOPT NEW PROGRAMS AS COMPLIANCE REQUIREMENTS, EFFECTIVELY PRE-JUDGING THE REASONABLENESS OF THOSE PROGRAMS, THEN IT MUST PROVIDE FOR EVIDENTIARY HEARINGS THAT PERMIT FULL EXPLORATION OF THE REASONABLENESS ISSUES

As explained above, Section 8386(g) requires the Commission to interpret Section 8386 in a way that ensures that the determination of the reasonableness of new utility programs described in the WMPs and their associated costs is reserved for the utilities' general rate cases. However, if the Commission's view is that the outcome here would establish any element of the reasonableness of new utility programs for cost recovery purposes, such that the element would not be subject to review in the utility's next GRC, then TURN reluctantly must request evidentiary hearings in this case. In effect, the process and record development that the Commission usually requires in rate cases would need to be provided here in order to protect ratepayers' right to a utility demonstration that the programs and their costs are just and reasonable before they can be included in rates.

As the Commission well knows, the rate case process requires several steps in order to provide an adequate record for the Commission's decision.

- First, utilities are required to justify the reasonableness of their programs and associated costs in initial testimony and workpapers that must satisfy their burden of proof under Sections 451 and 454. No such testimony or workpapers have been filed in this case.

- After adequate time for discovery, usually months in major utility rate cases, intervenors serve their testimony providing their analysis and recommendations regarding the utilities' proposed programs and associated costs.
- Utilities then have an opportunity to submit rebuttal testimony.
- Evidentiary hearings are held.
- Opening and reply briefs are submitted based on the evidentiary record.

The testimony and evidentiary hearings required here would need to address numerous material issues of disputed fact that arise with respect to the new programs proposed in the utilities' WMPs. For example, the following issues are common to all of the proposed programs:

- Whether the proposed program is necessary;
- The extent to which past catastrophic wildfires are the result of failure to comply with existing requirements or to engage in prudent maintenance practices, such that remedying these failures would completely or significantly reduce the risk of catastrophic utility-caused wildfires;
- Whether the proposed scope and pace of work are reasonable;
- Whether the proposed program reasonably targets the work to the most appropriate facilities and geographic areas;
- Whether the incremental risk reduction benefits of the proposed program compared to current compliance requirements are reasonable in relation to the costs;
- Whether the incremental risk reduction benefits of deploying multiple programs that are designed to reduce the same risk justify the costs of such overlapping programs (e.g., covered conductors and enhanced vegetation management);
- Whether the utility adequately considered all reasonable alternatives to the proposed program, including variations in scope and pace, and whether the utility can justify its proposed program in relation to those alternatives;

- Whether the individual programs and the overall portfolio of programs are justified by a reasonable quantitative risk analysis, which in turn leads to numerous sub-issues, including:
 - Whether the analysis defines the risk to be addressed in a reasonable manner⁹;
 - Whether the “consequences of failure” analysis is based on a reasonably specified multi-attribute value function that captures the full range of consequences with appropriate attributes and appropriate weights for those attributes;
 - Whether the pre-mitigation risk score is based on a reasonable methodology, including reasonable data for likelihood of failure and consequences of failure, and reasonable subject matter expert judgment when data are not available;
 - Whether the post-mitigation risk score is based on a reasonable methodology, including reasonable data for likelihood of failure and consequences of failure, and reasonable subject matter expert judgment when data are not available;
 - Whether the utility’s risk analysis is sufficiently granular (broken down into sufficient tranches) to take into account differences in risk posed by variances in asset condition, condition and nature of vegetation, and variations in weather -- an analysis which is critical for ensuring that mitigations are targeted when and where they are most needed;
 - Whether the utility has reasonably calculated risk reduction per dollar spent for each tranche of the analysis for each mitigation, including whether it has properly matched the full range of risk reduction benefits to the cost used for the analysis.

As stated, the foregoing list of issues is generally stated and applies to all of the proposed WMP programs. In addition, for each program there are specific issues of disputed fact that need to be addressed. Just as one example, with respect to enhanced vegetation management programs, specific disputed issues would include: whether the incremental risk reduction benefits of exceeding the clearance requirements recently mandated in D.17-12-024 justify the costs; and whether past ignitions causing catastrophic wildfires were caused by non-compliance

⁹ As an example, the utilities define the risk as ignitions caused by utility facilities at any time or place, whereas TURN believes the immediate risk that needs to be addressed is the risk of ignitions occurring in dangerous weather conditions and leading to catastrophic wildfires.

with existing requirements and would have been avoided by the proposed enhanced vegetation management program.

To address these numerous issues in a process that would provide the necessary record development equivalent to a rate case would require extending the schedule by six months or more. The current schedule, which would not require any utility testimony or workpapers and would require intervenors to submit their testimony on March 4, 2019, is obviously insufficient to develop the record necessary for a determination of whether the utilities have demonstrated that their new programs are just and reasonable under Section 451. This fact only serves to reinforce the legislature's direction in Section 8386(g) that the issue of the reasonableness of cost recovery for new programs is to be reserved for utility rate cases, in which a sufficient record can be developed.

VII. CONCLUSION

For the reasons set forth above, the Commission should clarify that, in accordance with Section 8386(g) and Section 451, its decision in this case will not result in a pre-judgment of any issue that is integral to a determination of the reasonableness of costs for programs described in the WMPs. Instead, consistent with those statutory provisions, the review and determination of the reasonableness of any new proposed programs should be reserved for utility rate cases. However, if the Commission has a different view and believes that it needs to make an explicit or implicit finding in this case concerning the reasonableness of new utility programs for cost recovery purposes, then the Commission must establish a process and schedule for testimony, discovery, evidentiary hearings, and briefing, equivalent to the process that the Commission routinely follows in rate cases.

Dated: February 20, 2019

Respectfully submitted,

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