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

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

Rulemaking 19-01-006
(Filed Jan. 10, 2019)

**REPLY COMMENTS OF SMALL BUSINESS UTILITY ADVOCATES ON THE
ORDER INSTITUTING RULEMAKING TO IMPLEMENT PUBLIC UTILITIES CODE
SECTION 451.2 REGARDING CRITERIA AND METHODOLOGY FOR WILDFIRE
COST RECOVERY PURSUANT TO SENATE BILL 901**

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February 25, 2019

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I. INTRODUCTION

Pursuant to the Order Instituting Rulemaking to Implement Public Utilities Code Section 451.2 Regarding Criteria and Methodology for Wildfire Cost Recovery Pursuant to Senate Bill 901 (“OIR”) Small Business Utility Advocates (“SBUA”) submits the following reply comments. On February 11, 2019 SBUA submitted comments on the OIR proposing metrics the cost-recovery methodology should include and highlighting the need to minimize service interruptions and avoid unreasonable rate increases. The following comments focus on the need to limit this proceeding to the scope articulated by the Legislature and respond to comments submitted by San Diego Gas & Electric Company (“SDG&E”), Pacific Gas & Electric Company (“PG&E”), and The Utility Reform Network (“TURN”).

II. DISCUSSION

a. The Legislature Limited Section 451.2 to Wildfires with an Ignition Date in 2017.

Both the plain meaning of the text and the overall statutory language indicate that 451.2 is limited to wildfires with ignition dates in 2017. The language in section 451.2 limits cost

recovery applications to damage caused by “a catastrophic wildfire with an ignition date in the 2017 calendar year[.]”¹ The plain meaning of the text directs the Commission to limit this proceeding to wildfires with an ignition date in 2017. The statutory language also supports this conclusion. According to the Senate Floor Analysis of Senate Bill (“SB”) 901,

Specifically, this bill authorizes the CPUC to consider 12 factors to determine whether the expenses are allowed or disallowed for recovery for wildfires occurring after December 31, 2018, these include consideration of the conduct of the utility. This bill also specifies that for applications by an electrical corporation to recover costs and expenses arising from catastrophic wildfires ignited in 2017, the CPUC is required to determine just and reasonableness without specifying the 12 enumerated factors identified for the fires in 2019 and beyond.²

This language indicates that the Legislature intended to set cost-recovery mechanisms for wildfires with ignition dates in 2017 or after January 1, 2019, reflecting a legislative determination to purposefully leave out wildfires with ignition dates in 2018 from the cost recovery mechanisms adopted in SB 901.

Though the reason for leaving wildfires with ignition dates in 2018 is not clear, it is hard to imagine that the Legislature left out an entire year due to oversight. In fact, the House Floor Analysis recognizes that 2017 was the most destructive wildfire season and that “the tragedies and devastation have continued to break records in 2018[.]” and even goes on to reference the Carr, Mendocino Complex, Ferguson, and Cranston fires by name.³ This means that the Legislature was well aware of the harm the fires with ignition dates in 2018 had and would continue to cause, and decided to leave them out of the SB 901 cost recovery mechanisms. Therefore, the Commission should find that section 451.2 applies only to fires with ignition dates in 2017.

¹ Cal. Pub. Util. Code § 451.1(a). Unless otherwise noted, additional Code references refer to the Public Utilities Code.

² SB 901, Senate Floor Analysis, Aug. 31, 2018, at 14.

³ SB 901, House Floor Analysis, Aug. 30, 2018, at 5.

b. Reply to SDG&E's Comments

In its opening comments, SDG&E suggests that “the Commission should clarify that it will deem a utility prudent for cost recovery purposes if it is found to have substantially complied with its Wildfire Mitigation Plan.”⁴ However, this approach conflicts with section 451.1 which enumerates 12 factors the Commission should consider in determining whether to allow cost recovery, of which compliance with the Mitigation Plans is only a subpart of one of the factors.⁵ The ninth factor directs the Commission to consider “[t]he electrical corporation’s compliance with regulations, laws, commission orders, and its wildfire mitigation plans prepared pursuant to Section 8386, including its history of compliance.”⁶ This factor alone indicates that compliance with Mitigation Plans does not automatically mean the utility behaved prudently. Moreover, section 451.1 indicates that the Commission may consider any “[o]ther factors the commission finds necessary to evaluate the reasonableness of the costs and expenses[.]”⁷ Even if the Legislature had not specifically indicated that the Commission should consider various other factors in addition to the Mitigation Plans, SDG&E’s position is improper because the Mitigation Plans set bare minimum requirements for activities the utilities need to start engaging in and not a ceiling. Complying with the bare minimum should not be the standard for prudence in high stake situations such as wildfire mitigation.

SBUA also disagrees with SDG&E’s position that the Commission should authorize securitized funding of wildfire costs.⁸ The Commission should authorize securitization only after making the following two determinations: (i) that cost recovery is proper and (ii) what amount

⁴ Initial Comments of San Diego Gas & Electric Company (U 902-E) on 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) (“Section 451.2 OIR”) dated January 10, 2019 (“SDG&E Comments on OIR”), at 14-15.

⁵ See § 451.1(a).

⁶ § 451.1(a)(9).

⁷ § 451.1(a)(12).

⁸ SDG&E Comments on OIR, at 18.

the utility may recover from its customers. Securitization should not precede these determinations because cost recovery may not be proper in certain circumstances. SDG&E's approach would essentially render section 451.1 moot because the Commission would authorize shifting the financial burden to ratepayers prior to conducting the cost recovery analysis.

In addition, SBUA disagrees with SDG&E's positions regarding the weight given to creditworthiness and the amount of latitude merited to utilities in bankruptcy. While SBUA agrees that it is generally in the public interest to restore the utilities' investment grade credit ratings,⁹ the public also has an interest in ensuring that the utilities remain financially liable for damages caused by their negligence or failure to comply with Commission directives or state law. SDG&E's position would essentially force the Commission to charge customers for most of the costs of utility imprudence, which is not a desired outcome and would conflict with the mandate in section 451.2 to limit cost recovery to only costs that are just and reasonable.¹⁰ SDG&E's position is based on language included in the D.03-12-035, which resolved PG&E's prior bankruptcy. However, the latitude afforded to PG&E then was due to that bankruptcy being caused by market manipulation of a third party. In comparison, evidence indicates that the utilities' failure to adequately prepare to known conditions and conduct necessary maintenance to their infrastructure caused or exacerbated the 2017 wildfires and their devastation. This means that unlike in 2001 where the Commission provided PG&E with latitude in its bankruptcy filing, similar latitude is not merited in bankruptcy filings in connection to wildfires.

c. Reply to PG&E's Comments

According to PG&E, utilities should maintain an investment-grade rating such that "after the payment of the claims costs for which the utility is responsible, the utility would remain

⁹ *Id.* at 16.

¹⁰ § 451.2(a).

solidly investment grade, albeit at a lower rating (i.e., BBB).”¹¹ PG&E further states that “the Commission should enable PG&E to achieve the minimum investment-grade rating upon emergence” from its plan of reorganization and that the Commission should put PG&E in a position to build its credit rating at least two or three notches above the BBB rating over time.¹² While SBUA recognizes the importance of maintaining a BBB rating, SBUA disagrees that the Commission should allow this to occur as soon as possible. Prior to returning to a BBB rating, PG&E needs to pay off its liabilities.

PG&E also suggest that the ability to pay dividends is necessary to ensure a utility can access capital markets to finance capital expenditures and respond to unanticipated events.¹³ SBUA disagrees that paying dividends would be proper when a utility has substantial outstanding liability owed to the public. Building credit rating to grades above the minimum as well as paying dividends should be suspended until the utility has paid off its liabilities in connection to wildfire claims.

d. Reply to TURN’s Comments

SBUA supports TURN’s proposals and offers minor modifications for clarification purposes. SBUA suggest clarifying the second point regarding cash-flow mitigation measures and define “cost-effective” to mean “reducing total cash flow requirements through he claims payment period.”¹⁴ TURN also proposes two benchmarks for when a stress test analysis should be required, with the second benchmark proposing that a stress test not be initiated until the utility’s credit rating has reached the lowest level for investment.¹⁵ However, waiting until the

¹¹ Opening Comments of Pacific Gas and Electric Company (U 39 E) on Order Instituting Rulemaking (“PG&E Comments on OIR”), at 8.

¹² *Id.* at 9.

¹³ *Id.* at 10.

¹⁴ Opening Comments of The Utility Reform Network on the Order Instituting Rulemaking (“TURN Comments on OIR”), at 9-10.

¹⁵ *Id.* at 12-13.

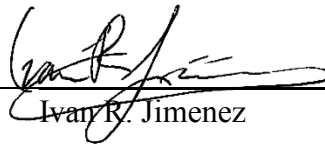
rating has dropped this low would likely produce undesired results. A stress test is a lengthy process so waiting until the credit rating has dropped to the lowest level would likely mean that the stress test would not be completed until after the credit rating has dropped below the lowest level for investment. SBUA suggests that the second benchmark be modified to: “whether the utility’s credit rating is at risk of falling below investment grade if the stress test is further delayed.”

III. CONCLUSION

SBUA thanks the Commission for the opportunity to submit these comments and looks forward to engaging with parties on how to best implement section 451.2.

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Respectfully Submitted,

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