

**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).

R.18-10-007
(Issued October 25, 2018)

COMMENTS ON WILDFIRE MITIGATION PLANS

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I. INTRODUCTION AND SUMMARY

Pursuant to the Assigned Commissioner's Scoping Memo and Ruling in this proceeding and the schedule for submission of comments without hearings, the California Farm Bureau Federation ("Farm Bureau")¹ provides its Comments on the utilities' Wildfire Mitigation Plans. The Comments adhere to the common briefing outline agreed to among the parties and submitted to ALJs Thomas and Allen on March 8, 2019. Farm Bureau recognizes the challenges all participants to this proceeding face in addressing the issues raised by the Wildfire Mitigation Plans ("WMPs") under the time schedule which must be adhered to and appreciates the Commission's clear directions about how to effectively address them. Since these are the first WMPs filed in what will be recurring ones in years to come, it is recognized that this will not be the last opportunity to address necessary paths forward for appropriately managing utility infrastructure in high fire threat districts. These comments conform to that understanding.

Farm Bureau supports appropriate and effective steps to manage the increasing impacts of wildfires in the state. Our members throughout the state have been affected directly and indirectly by the wildfires, both as ratepayers and as residents of impacted communities. We recognize that the WMPs are one part of a multi-faceted strategy to address the wildfires that have increased throughout the state. Although we provide limited comments and perspective about specific programs proposed for implementation,

¹ The California Farm Bureau Federation is California's largest farm organization, working to protect family farms and ranches on behalf of its nearly 36,000 members statewide and as part of a nationwide network of more than 5.5 million members. Organized 100 years ago as a voluntary, nongovernmental and nonpartisan organization, it advances its mission throughout the state together with its 53 county Farm Bureaus.

most of our comments are focused on the ramifications from the Commission's approval of the plans for purposes of cost recovery and adherence to expected performance.

These comments address four sections of the common briefing outline as follows:

- Recovery of WMP cost expenditures and the effect, if any, of compliance with the WMPs on the prudence standard addressed in the Meaning of Plan Approval section.
- Recognition of other important ongoing statewide activities related to wildfire management addressed in the Overall Objectives and Strategies section.
- Farm Bureau's perspective on utility vegetation management programs addressed in the Wildfire Prevention Strategy and Programs section.
- Support for a scheduled staggering of future WMP filings addressed in the Recommendations for Future WMPs section.

II. 1. MEANING OF PLAN APPROVAL

Section 8386 of the Public Utilities Code provides direction about the interplay between the tracking and recovery of WMP costs. The utility advice letters establishing the memorandum accounts pursuant to SB 901² recognize that entry of the costs into the memorandum accounts does not assure full recovery, as the costs will be subject to Commission scrutiny in a later proceeding. The implications of the approval of the WMPs pose cost impacts to ratepayers both as a planning tool and as a measure of compliance

² See for example Southern California Edison Company AL 3936-E, January 18, 2019; San Diego Gas and Electric Company 3333-E, January 16, 2019; and Pacific Gas and Electric Company 5419-E, November 1, 2018.

for assessment of proper management of its system. While Farm Bureau addresses both, consideration of the certainty over the cost recovery of the WMPs as a planning tool is set out first.

A. Recovery of WMP Costs

There should be no debate that it is in the best interests of all stakeholders for the process outlined by the Legislature related to the WMPs to succeed. Success requires that there are substantive, strategic measures implemented at cost levels manageable for the ratepayers to sustain on an ongoing basis, which measures result in consistent improvements. The Legislature set-up that process by requiring consideration of whether the cost of implementing each utilities' WMP is just and reasonable in the applicable general rate case application, with the costs for implementation tracked in a memorandum account.³ The Order Instituting Rulemaking in this proceeding did not deviate from the firm directive that approval of the WMPs would not be a substitute for any review in a general rate case but recognized the potential cost implications of the proposals had to be weighed. ⁴ In fact, in establishing the templates for the WMPs cost estimates were required to weigh the cost implications.⁵

However, some of the utilities' interpretations of the language and directives suggest a more definitive outcome from an approval of the WMPs by representing that: "For cost recovery purposes, demonstrating substantial compliance with the Commission-approved Plan requirements should facilitate the Commission's subsequent just and

³ Public Utilities Code subsections 8386(e), (g) and (j)

⁴ Order Instituting Rulemaking, October 25, 2018, page 4

⁵ Administrative Law Judge's Ruling on Wildfire Mitigation Plan Template, and Adding Additional Parties as Respondents, January 17, 2019, page 2.

reasonable review.”⁶ As explained in a different context, the WMPs are viewed as setting up a base case such that: “ The Commission’s review of the costs incurred by the utilities in those proceedings should confirm that actual costs were incurred for the Commission-approved programs and were consistent with the cost estimates offered by the utilities as measured by a reasonableness band. To the extent the costs for a specific program exceed the estimates provided in this proceeding, the utility should be able to offer evidence that the costs are reasonable.”⁷ That approach demonstrates an inclination to treat the cost estimates as budgets for the programs, whereby approval of the WMPs assures recovery up to the budget item and only excesses beyond the budgets are subject to scrutiny, which is not supportable by statutory direction.

If the process the Legislature established created limited uncertainty about cost recovery, it was done in order that specified programs would commence as soon as possible yet ensure the Commission would exercise its full oversight over the costs. The cost estimates in the WMPs provide a context to the programs, but without the precision that would normally accompany funding requests for programs. Even without a determination on cost recovery for programs at the outset, the utilities are incentivized to make needed improvements to their systems, as those improvements will correspondingly help reduce the risks of damages. Booking the costs to the memorandum accounts does not assure their recovery. Although general agreement exists on that point, there is not agreement on the range of costs subject to review. The statutory language of both Public Utilities Code section 8386 (g) and (j) demonstrates the

⁶ SDG&E WMP, page 83 and substantially the same language at SCE WMP, page 8.

⁷ Joint Response of Southern California Edison Company and Pacific Gas and Electric Company to Motions for Evidentiary Hearings by TURN and POC, R. 18-10-007, February 25, 2019, page 3.

Legislature's intent to provide a broad review of costs in subsequent general rate cases that assures ratepayer interests are balanced with other interests implicated through the WMPs, while funding improvements to utility infrastructure and systems.

Memorandum accounts importantly assure that the expenditure of costs associated with certain activities do not run afoul of retroactive ratemaking prohibitions.⁸ Such accounts operate in multiple settings to assure recovery of costs by the utility once entered into the account with varying degrees of requirements for recovery. WMP costs should not be given a presumption of authorization and must be required to meet the same burden as other costs requested for approval in a general rate case. Like those other costs, recovery should be sought through testimony in the appropriate application, requiring a compelling case be made to request the recovery of the costs from the Commission. In a general rate case that compelling case requires the utility to meet the burden of proving that it is entitled to the relief sought in the proceeding and affirmatively establishing the reasonableness of all aspects.⁹ Even for programs justified on the basis of safety, the Commission should require a demonstration both of the need for and reasonableness of the programs themselves and that the approach for the programs is the most cost-effective method available to the utility.¹⁰

Without explicit directives about the scope of the scrutiny that will be used to assess the WMP costs in the Commission decision adopting the WMPs, all parties could be harmed through misunderstood expectations about the cost recovery process. The expectation that some level of costs would be eligible for recovery as part of approving

⁸ Resolution No. E-3238, July 24, 1991.

⁹ D. 14-08-032, page 17, August 14, 2014.

¹⁰ D. 14-08-032, page 29.

any programs within the initial WMPs should not detract from the full review of the costs associated with the programs.

B. Prudency Standard and Compliance with Plans

It was in the related proceeding, R. 19-01-006¹¹, that arguments were made by the utilities to elevate compliance with the WMPs as a new standard for prudent utility conduct despite clear language from SB 901 indicating otherwise. “In opening comments, both SDG&E and Southern California Edison (“SCE”) argued that the Commission should address cost recovery by clarifying that an IOU will be deemed prudent for cost recovery purposes if the IOU is found to have substantially complied with its Commission-approved Wildfire Mitigation Plan.”¹² Although R. 19-01-006 may provide direction about how WMPs impact the prudency determination established by Public Utilities Code section 451.1, it is important here to affirm the role the WMPs under review here play.

Public Utilities Code section 451.1 designates the WMPs as just one element of many in considering recovery of costs arising from a catastrophic wildfire. In addition, Public Utilities Code section 8386(f) provides that: “The commission’s approval of a plan does not establish a defense to any enforcement action for a violation of a commission decision, order, or rule.” Such language indicates that assessments about utilities’ performance in this arena require a broader examination than how the provisions of the WMPs were met. Even in addressing the utilities’ compliance with the WMPs, the statute

¹¹ 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)

¹² SDG&E Reply Comments, R. 19-01-006, February 25, 2019, page 4, citing SCE Opening Comments pp. 13-16 and SDG&E Initial Comments pp. 14-15.

recognizes there are various regulations, laws, commission orders that must be scrutinized in conjunction with the WMPs to determine compliance.¹³ Most obvious is the interrelationship between the requirements in the Commission General Order 95, which affect the integrity of the utilities' infrastructure. Although elements of the WMPs are informed by GO 95, such as vegetation management requirements, the elements of the WMPs are a subset of overall compliance with various regulations, as recognized by PG&E: "The significant and aggressive expansion, enhancements, and acceleration of wildfire risk mitigation measures that are proposed in this Plan is in addition to PG&E's ongoing regulatory compliance workstreams."¹⁴ The WMPs are clearly not interchangeable with the prudence factors in section 451.1 and have not been presented in a manner that would usurp those delineated factors.

III. 2. OVERALL OBJECTIVES AND STRATEGIES

It is essential to recognize that these WMPs are an important element of the ongoing actions taken by the State to address the impact of the wildfires faced by so many businesses and residents but are still just one part of that effort. The WMPs should be viewed in that context to support reasonable expectations about outcomes from their implementation. Recognition that utility infrastructure related wildfires are a subset of causes places this process in an appropriate context. Thus, it's very important that continued focus be placed on all other aspects related to wildfire causes and their spread to help in reducing those related to utility infrastructure.

¹³ Public Utilities Code section 451.1 (a)(9).

¹⁴ PG&E WMP, page 36.

Some of the utilities detail the risks associated with climate change as required by statute.¹⁵ However both manmade and natural factors have combined to place California forests and wildlands in their current condition, exacerbating the intensity and scope of wildfires. The need for active forest management has been seen all too vividly in recent years. Excessive vegetation density, an overabundance of smaller trees and underbrush, and unprecedented tree mortality will continue if actions to improve forest health are not pursued. Decades of active management and ongoing funding will be needed to reverse problems exacerbated by regulatory constraints, lack of funding and decades of fire suppression. CAL Fire recently recommended a suite of actions to maximize safety and improve forest health, including the identification of more than 30 strategically defined local projects that can be addressed urgently in partnership with communities to make a difference this wildfire season.¹⁶ The Commission's support of efforts to address different, but related, issues will assist with the statewide programs.

There is great momentum from state government to find solutions to California's wildfire and forest-management crises. SB 901 not only addressed utility related wildfire issues but was also the most comprehensive legislative proposal related to wildfire prevention, fuel reduction, and forestry policies.

It is hoped that the recent announcement by the California State Board of Forestry and Fire Protection and the Department of Forestry and Fire Protection to expedite forest-management projects and prescribed burns, by creating a single, streamlined environmental-review process for activities conducted on private land will facilitate the efforts being considered here. Regulatory streamlining for environmental reviews is not

¹⁵ SCE WMP, pp 12-13; PG&E WMP, pp 17-19.

¹⁶ Community Wildfire & Mitigation Report (In response to Executive Order N-05-19) dated February 22, 2019.

an entirely new concept, but it's imperative that California state agencies begin to carefully examine the current condition of our forested landscapes and move expeditiously, both to protect Californians from wildfires and to protect our forests from further environmental damage. This option effectively eliminates the need for repetitive review of related actions on a project-by-project basis, while allowing comprehensive examination.

Vegetation management is broader than the programs presented by the utilities and can also consist of activities such as prescribed fire, mechanical and manual thinning, grazing and the targeted ground application of herbicides—all intended to alter landscape fuels and reduce the size, intensity and frequency of wildfire. Such vegetation management is a wildfire-prevention strategy that complements other fuel-reduction projects conducted by the federal government, local governments and individual Californians who practice and maintain defensible space, or who have invested financially by retrofitting their homes with more wildfire-resilient construction. Farm Bureau supports complementary efforts to address the issues sought to be solved in this and related proceedings.

II. 4. WILDFIRE PREVENTION STRATEGY AND PROGRAMS

Farm Bureau appreciates the consideration that has gone into the utilities' filings in this proceeding, particularly this section addressing the strategies and programs that can and should be used for addressing what has been learned from the recent wildfires and how to implement effective changes. Farm Bureau has not recently participated in the phase one of general rate cases or similar proceedings that closely examine the costs for utility operation and maintenance of the systems and infrastructure. With the

accelerated schedule and complexities of this proceeding, it has not been possible to commence any substantive review of the programs and the cost estimates provided. We are confident that the Commission's scrutiny of the programs at this stage and subsequent opportunities in general rate cases will assure that there is no duplication with previously requested and authorized activities and programs funded by ratepayers. Farm Bureau, however, has experience with utilities' vegetation management activities that may inform the programs here. We also provide preliminary comments about the de-energization topic.

A. (D.) Vegetation Management Plan

Farm Bureau's experience with utility vegetation management programs generally excludes the types of vegetation addressed here, as agricultural operations are by their nature and definition excluded from the high fire threat districts.¹⁷ However, even in areas not within high fire threat districts, issues between landowners or business operations and utility practices about vegetation management have arisen and offer perspectives in that context. Our experience is that the most problematic encounters arise with regard to transmission line easements, as the largest clearances arise in that context.

PG&E references the challenges of working with landowners and communities in addressing vegetation management challenges.¹⁸ While landowners or communities may question the breadth of actions the utilities determined are necessary for adhering to safe operation requirements in the high fire threat districts, at the same time utilities

¹⁷ Appendix E to Rule 35 of G.O. 95, item jii in Case 14; See 14 California Code of Regulations Section 1257 that exempts certain agricultural areas from the clearance requirements outlined in Public Resources Code section 4293.

¹⁸ PG&E WMP, pp 83-84.

are accorded a fairly high level of discretion in addressing specific conditions. It is difficult to assess the level of impact from landowner objections to vegetation management programs, however, based on experience in a variety of circumstances we have learned that understanding reasons for the objections can lead to solutions. Our observation from a variety of events in non-high fire threat district locations, is that the utilities' outreach and explanations to customers may have lagged behind their activities to increase the various pruning requirements, which created confusion and resistance to some extent about the vegetation management efforts. When parameters and programs for vegetation are established and maintained for a number of years, a concerted effort must be made to explain significant changes to the programs.

In this context the important action to be considered is that the communication and the procedures used by the utilities regarding vegetation management on all types of property – private, municipal, state, federal owned – must be considered a key element in the program. In non-emergency circumstances there should be outreach that reflects a willingness to explain the underlying reasons for the actions taken. In addition, consideration of post-management activities and inspections are also essential for building consistent positive working relationships on targeted properties. On many properties, inspections and management activities occur on a regular basis. Lack of communication or appropriate treatment of the properties in one instance is likely to precipitate more questions and concerns about further activities.

B. (F.) Protocols on Public Safety Power Shut-Off (or de-energization)

Farm Bureau is keenly interested in the programs that utilities have implemented and continue to refine necessitating the shut-off of power to minimize public safety risk

during high wildfire conditions. Since the Commission has adopted Resolution ESRB-8 detailing elements of the de-energization programs, it has established certain requirements that must move forward. In addition, the Commission has now opened a separate proceeding, R. 18-12-005, to examine its rules allowing the utilities to de-energize power lines in appropriate conditions. As outlined in the Assigned Commissioner's Scoping Memo and Ruling (Phase 1) in that proceeding, the Commission will undertake a thorough examination of de-energization processes. The adjustments to utility programs that Farm Bureau plans to address regarding the value of agricultural lands in mitigating the consequences of wildfires and the importance of the re-energization process will occur in the de-energization Rulemaking.

III. 7. RECOMMENDATIONS FOR FUTURE WMPs

Farm Bureau's recommendations for consideration of future WMPs are procedural rather than substantive in nature. Appropriately, this round of WMPs was introduced, reviewed and will be acted upon quickly. As part of the decision on them, the Commission should set out a schedule for future WMP filing dates and compliance periods that do not require all WMPs to be filed and reviewed simultaneously. Pursuant to Public Utilities Code subsections 8386(b) and (e) the Commission has the authority to both stagger compliance periods and extend the deadline for approvals of the WMPs, which would better accommodate all stakeholders' resources for participation, including the Commission's. Such a determination would also be consistent with the Commission's concept expressed in the initial Rulemaking that: "The Commission will also use this

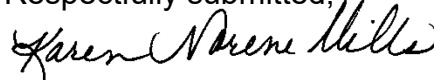
proceeding to further refine its approach to the review and implementation of subsequent electric utility wildfire mitigation plans.”¹⁹

IV. CONCLUSION

Farm Bureau recognizes the limitations placed on all parties to bring forward concrete solutions to the overwhelming issues created by the state’s wildfires. As the stakeholders continue to work toward development of the long-term benefits of finding reasonable steps to reach sustainable outcomes, we have confidence that improvements will be made that do not sacrifice the well-being of any one entity.

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Respectfully submitted,



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¹⁹ Order Instituting Rulemaking, October 25, 2018, page 3.