FILED
09/06/19
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Consider Authorization of a Non-Bypassable Charge to Support California's Wildfire Fund.	Rulemaking 19-07-017 (Filed July 26, 2019)

WILD TREE FOUNDATION
REPLY COMMENTS ON SCOPED ISSUES

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Dated: September 5, 2019

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In accordance with the provisions of the Assigned Commissioner's Scoping Memo and Ruling ("Scoping Memo") and Administrative Law Judge's Ruling Soliciting Party Comment On Revenue Requirement Calculation and Administrative Law Judge's Ruling Soliciting Party Comment On Proposed Rate Agreement Wild Tree Foundation ("Wild Tree") submits the following reply comments.

A decision based upon the proposed schedule, whereby the matter will be submitted following the submission of this set of reply comments, that approves a rate increase pursuant to AB 1054 will be an unconstitutional taking in violation of ratepayers' due process rights to notice and an opportunity to be heard and would violate the Public Utilities Code and Commission Rules. The Legislature does not have the power to subvert constitutional due process rights in enacting a law, as the Scoping Memo seems to imply.[1] The schedule proposed in the Scoping Memo does not allow ratepayers and ratepayer advocates notice and meaningful

[1] Scoping Memo at p. 9.

opportunity to be heard. The opening comments make it abundantly clear that the need for evidentiary hearings in this case is not merely academic but required to address a wide range of disputed issues of material fact. Nonetheless, even if the Commission provided the process due, an increase in rates pursuant to AB 1054 would be unjust, unreasonable, and unsafe and should, therefore, be denied.

A. Ratepayers Will Pay Now, Ratepayers Will Pay Later

The IOUs and their cohorts argue that an increase in rates pursuant to AB 1054 will not actually increase rates. If the Commission so acts, rates will, in fact, be increased at the outset - to fund the fund - and later - to reimburse the fund following IOU-cause fires. The Coalition of California Utility Employees ("CUE") states, "further, the non-bypassable charge will not increase ratepayers' bills. The non-bypassable charge is merely a continuation of an existing monthly charge that would otherwise expire by the end of 2021."[2] This is an oversimplification that demonstrates a lack of understanding of AB 1054. The charge will increase ratepayers' bill when it is assessed because it, regardless of semantics, it is an additional rate that ratepayers would not have to pay otherwise. The Center For Accessible Technology ("CforAT") explains, "the Commission here is considering extending a charge that would otherwise be eliminated. Considering the affordability pressures on customers, opportunities for relief, such as the sunsetting of the DWR bond charge, represent an opportunity to make bills more affordable. Continuing the charge as part of the Wildfire Fund thus results in continued bill pressures. . ."[3]

[2] CUE Comments at p. 4. Note, all references herein to "Comments" are to the parties' opening comments on the scoping memo in this proceeding.
[3] CforAT Comments at p. 3.

The charge will also lead to increased bills, in addition to the charge itself, in the future. The increased rates will support the overall scheme whereby utilities will be able to utilize the fund and, under a variety of scenarios, the ratepayers, *not* the IOUs, will reimburse the fund. Following an IOU-caused fire, an IOU is presumed to have acted prudently in regards to the fire so long as they have a rubber-stamped safety certificate issued as a ministerial action prior to any fires and without taking into consideration actual IOU action or inaction. Unless intervenors, who are, for the most part, small non-profits and individual ratepayers with limited resources, can overcome the presumption, the IOUs will not have to reimburse the fund. But, even if intervenors can overcome the presumption and show that an IOU acted negligently and recklessly, IOU reimbursement is capped. As the Public Advocates Office ("PAO") explains: "After the Commission makes its determination, a utility is only obligated to reimburse the Fund for the amount of disallowed costs, subject to a rolling three-year cap.16 The cap is set at 20% of the utility's transmission and distribution equity rate base, less any actual or pending reimbursements during the prior three-year "measurement period." For example, PG&E's shareholders face a reimbursement cap of approximately [$2.5 billion: 20% x 53% x $23.5 $billion$ = $2.5 $billion$]. Under this cap, PG&E would be obligated to reimburse the Fund only up to $2.5 billion, regardless of whether it received more from the Fund for claims payments."[4] The $2.5 billion is the cap for not just one, but three years.

The IOUs' position depends on ignoring the burden shifting and cap on reimbursements. SCE states, "In addition, AB 1054 prescribes that if the Wildfire Fund is accessed to pay for costs after a wildfire event, and these costs are subsequently determined not to be just and reasonable, only shareholders have the obligation of reimbursing the Wildfire Fund. Customers

[4] PAO Comments at pp. 6-7.

will receive the benefits from the Wildfire Fund covering claims and others costs regardless of a prudency determination and will only have to repay the Wildfire Fund if the costs are found to be just and reasonable, providing them greater benefits than the shareholders."[5] This simply isn't true. If an intervenor is able to overcome the prudency presumption for a fire where costs exceed the cap, ratepayers will be subsidizing shareholder profits despite IOU negligence and/or recklessness. This is hardly a ratepayer benefit but is, instead, an unjust enrichment of shareholders on the backs of ratepayers, including fire victims. Given the anticipated cost of the 2017 and 2018 fires of $10s of billions, there is a high likelihood that a future fire will easily exceed the cap, providing a culpable IOU with an undeserved windfall.

B. Hearing are Necessary

The Commission cannot make a legally defensible determination that any rate increase is just and reasonable if it does not examine any of the disputed issues of material fact. As explained in detail in Wild Tree's comment and in comments by UCAN, PAO, and Ruth Henricks, due process requires a hearing to develop a record of evidence upon which such a decision must be based.[6] The party comments make it abundantly clear that there are a wide range of disputed issues of material fact that demand a hearing. For example, SCE would have

[5] SCE Comments at p. 3.

[6] Wild Tree Comments at pp. 3-8, see also UCAN Comments at pp. 2-3 ("UCAN contends the extreme haste that has characterized the Commission's deliberations in this proceeding, Rulemaking 19-07-017 effectively prohibits the development of a sound evidentiary basis for imposing a non-bypassable wildfire fund charge."); PAO Comments at p. 8 ("The current procedural schedule alone runs afoul of the fundamental protections of due process, which require notice of a proposed deprivation of property right, and a meaningful opportunity to be heard."); Henricks Comments at pp. 4-5 ("Numerous parties warned the CPUC at the prehearing conference that the abbreviated procedures in this proceeding would not offer the parties a fair opportunity to "meaningfully consider" the complex issues at stake.6 Yet, the CPUC has denied the parties' requests for evidentiary hearings. . . CPUC has not allowed sufficient fact finding to ascertain whether the charge would be just and reasonable."

the Commission raise rates by $15+ billion in a decision issued next month but not make any finding in that decision as to which ratepayers will pay the increased rate. "SCE believes that whether it is reasonable to collect the Wildfire Fund Charge from customers of an electrical corporation that is deemed ineligible to participate in the Wildfire Fund is not ripe for a determination. . . If PG&E cannot meet the statutory deadline to participate in the Wildfire Fund, the Commission should take up the issue at that time."[7]

SCE does not explain how procedurally this would operate since the Commission is forbidden by AB 1054 to: "revise, amend, or otherwise modify a decision to impose a charge made pursuant to this section at any time prior to January 1, 2036"[8] and, as SDG&E states, "AB 1054 does not appear to address this situation."[9] SDG&E claims that "PG&E's eligibility to participate in the Wildfire Fund will be known once the U.S. Bankruptcy Court either approves or denies PG&E's decision to pay its Wildfire Fund contributions, which should occur before the Commission issues its decision in this OIR"[10] but that is not true. Public Utilities Code section 3291 make PG&E participation in the Fund contingent upon the resolution of bankruptcy whereby the Commission has approved its reorganization plan based upon a determination that the governance structure is acceptable; the plan is consistent with the state's climate; the plan is neutral to PG&E ratepayers; the plan recognizes the contributions of ratepayers, if any, and compensates them accordingly.[11] This will most certainly not occur prior to the issuance of a

[7] SCE Comments at p. 6, see also SDGE Comments at p. 11 ('SDG&E does not take a position on whether it is reasonable to impose the Wildfire Fund non-bypassable charge on PG&E customers if PG&E is deemed ineligible to participate in the Wildfire Fund. AB 1054 does not appear to address this situation.")
[8] Pub. Util. Code, § 3289, subd. (c).
[9] SDG&E Comments at p. 11.
[10] SDG&E Comments at p.
[11] Pub. Util. Code, § 3291, subd. (b).

decision in this proceeding. PG&E itself says, "it is possible that PG&E will not be able to meet the deadline to participate in the Wildfire Fund."[12]

Leaving this issue unaddressed makes it impossible to determine what ratepayers will actually pay. Without such a finding, it is impossible to determine if the rate increase is just and reasonable. Making such a finding requires a fact-based analysis which requires an evidentiary hearing which is not planned for in this proceeding. Whether or not PG&E ratepayers will pay into the Fund is just one of a wide range of questions that the Commission must answer before they can make a legally defensible decision to increase rates by any amount pursuant to SB 1054.

Questions that the Commission must answer prior to issuing a rate increased pursuant to SB 1054 include, but are not limited to, the following:

1. **Which ratepayers will pay increased rates?**

    a. **Will all IOUs ratepayers pay regardless of individual IOU participation?**

    PG&E says no[13], SCE says let's decide later[14], SDG&E says it has no opinion just so long as its ratepayers don't have to pay more.[15] EPUC says no: "If PG&E is ineligible to participate in the Wildfire Fund, its customers should not be required to contribute to the fund, nor should customers of other utilities bear the consequences of these circumstances. The amount of the revenue requirement should be reduced."[16] TURN: "To effectuate this result, the Commission should clarify that if PG&E does not participate in the Fund, the annual revenue requirement discussed in Water Code Section 80524 collected from SCE and SDG&E's ratepayers would be based on the average of each utilities' allocation of the annual adopted DWR Bond Charge revenue requirements for 2013 through 2018." [17]

    b. **Will CARE and medical needs ratepayers pay? How much?**

[12] PG&E Comments at p. 1.
[13] *Ibid.*
[14] SCE Comments at p. 6.
[15] SDG&E Comments at pp. 11-12.
[16] EPUC Comments at p. 12.
[17] TURN Comments at p. 20

The Joint CCAs[18] and CforAT[19] support exemptions.

c. Will NEM participants pay? How much?

SDG&E say NEM customers should pay same fixed rate as other ratepayers.[20] TURN suggests change should be considered: "The Commission should further consider whether to apply the charge more comprehensively to NEM customers as part of possible revisions to the NEM tariff that will be addressed in R.14-02-007 or a successor proceeding."[21] Joint CCAs recommend charging NEM in same fashion as current water bond: "[U]nless there is some additional justification for exemptions for NEM customers (based on evidence provided in phase two of this proceeding), all NEM customers should pay the Wildfire NBC based on electricity they consume from the grid."[22]

d. Will Direct Access customer pay? How much?

The Joint CCAs: "[O]ther exemptions to the DWR Bond Charge, including an exemption for so-called continuous direct access ("DA") customers, need to be carefully scrutinized as many of these exemptions were previously justified on the basis of whether a customer received power from DWR during the 2000-2001 Energy Crisis. No similar justification applies to the new Wildfire NBC."[23]

e. Do ratepayers of all IOUs continue to pay if an IOU becomes ineligible in the future?

2. How much will ratepayers pay?

a. Will the charge be based on usage or a set fee?

SDG&E suggests that non-bypassable charge must be fixed, not volumetric[24] while many parties maintain that AB 1054 requires imposition of rate be in the same fashion as current water bond charge.

[18] Joint CCAs Comments at p. 1.
[19] CforAT Comments at p. 1.
[20] SDG&E Comments at p. 14.
[21] TURN Comments at p. 18.
[22] Joint CCAs Comment at p. 8.
[23] *Id.* at pp. 1-2.
[24] SDG&E Comments at p. 14.

b. How should the revenue requirement equivalent amount be calculated?

There is disagreement over both the method and inputs used to determine the revenue requirement. CLECA: "Notably, there are already different representations of the average annual amounts for the period in question, 2013-2018."[25] PG&E: "However, in implementing the Wildfire Charge under AB 1054, the amount of the revenue requirement referred to in Public Utilities Code 3289 and referenced in Table 1, Row RR may be subject to adjustment to take into account three factors."[26]

c. What will interest rate of bonds be and how does this impact the rate increase?

EPUC explains that "While the rate at which these bonds would be issued is yet unknown, DWR appears to have issued bonds earlier this year at a rate of 2.36 percent . . . If the bond issuance or the interest rate were less than $10.5 billion and deviates from an interest rate of roughly 2.5 percent, implementing the revenue requirement provided by Water Code section 80524 would place the statute's provisions in conflict. The statute's directive that any excess collections by DWR flow into the Wildfire Fund would mean that ratepayers were extinguishing the DWR bonds ***and*** kicking in an extra amount to the fund. EPUC submits that, in order to find the New DWR Bond Charge reasonable, the Commission must conform the revenue requirement to the actual amount of the revenue requirement needed to extinguish the amount of the bonds issued and no more."[27]

d. Will the ratepayer fund amount be equivalent to the revenue requirement as adopted or collected?

TURN: "The annual revenue requirement for the Wildfire Fund should be equal to the average annual adopted revenue requirement for the DWR Bond Charge for 2013-2018."[28]

e. Is there a conflict in the law regarding the amount of bonds to be issued? If so, how it is to be settled and how does this impact rate increase?

EPUC points out: "Assembly Bill 1054 presents a conflict on its face between the amount of the bonds DWR may issue and the associated annual revenue requirement."[29] CLECL explains: "AB 1054 directs the following to limit the impact on customers: first, a total cap restricts the discretionary bond issuance to

[25] CLECA Comment at p. 6.
[26] PG&E Comments at p. 3.
[27] EPUC Comments at p. 9.
[28] TURN Comments at p. 4.
[29] EPUC Comments at p. 8.

"*up to*" $10.5 billion, meaning the ultimate bond issuance could be less than $10.5 billion; and second, a mandate requires that the collection of the charge be in the same manner as the current DWR Bond Charge."[30]

f. Will the revenue requirement change if an IOU is or become ineligible?

3. When does payment into the fund begin? When does the water bond charge expire?

CLECA: "Here too, there are discrepancies in the parties' prehearing conference statements as to when the current Bond Charge will terminate; the lack of a common understanding of when this date will be substantiates the need to take the time to get the facts right."[31]

4. Will rate increase make utility bills unaffordable?

CforAT: "CforAT is concerned with how a Wildfire Fund charge will impact the affordability of customer bills. These costs are direct, while any impact from the creation of a fund that will "reduce costs to ratepayers" is more attenuated."[32]

a. Will the fund increase bill volatility?

b. What is the cumulative impact on ratepayers of all rate increases to cover all fire-related costs?

EPUC "It thus is necessary to assess the likely ***cumulative*** effect of wildfire-related cost on ratepayers ***before*** authorizing yet another charge for customers. Any other approach would be a further signal that this Commission and the Legislature have abandoned the notion of "just and reasonable" rates."[33]

c. What is the cumulative impact on ratepayers of all rate increases currently proposed i.e requested increased rates of return?

5. Will ratepayers be reimbursed for overpayment? How and when?

UCAN asserts rebates for overpayment must be part of decision: "Thus, the decision approving the imposition of a non-bypassable charge should include a provision for rebates if the fund exceeds what is necessary to cover prudently incurred utility wildfire liability."[34] TURN: "Using the average annual collected revenue requirement for the DWR Bond Charge will result in greater overcollections and, according to the Rate

[30] CLECA Comments at p. 7.
[31] CLECA Comments at p.5 fn7.
[32] CforAT Comments at p. 4.
[33] EPUC Comments at p. 6.
[34] UCAN Comments at p. 5.

Agreement, there is no guarantee as to when, and even if, these overcollections will be refunded to ratepayers."[35] PG&E: "PG&E recommends that the Commission consider whether it should interpret AB 1054's reference to "collection" as including the "true-up" in order to ensure that the Wildfire Fund charge accurately reflects the actual amounts required to be collected to pay the existing DWR bond charges."[36]

6. **Will ratepayers be required to pay more if the fund is entirely depleted?**

7. **How will the fund impact safety?**

   Wild Tree and PAO comments include discussion of how the fund will increase risk to public safety.

None of these questions are answered in the scoping memo, yet the proceeding schedule plans for the matter to be submitted following these reply comments on the scoping memo. The Scoping Memo lauds the Governor Newsom's Strike Force and the report from the Commission on Catastrophic Wildfire Cost Recovery and asks for party comments on its contents implying that these reports can substitute for Commission review. The IOUs and their cohorts would have the Commission make a decision based solely only upon the reports. For example, CUE asserts that "The Commission should also give substantial deference to the findings and recommendations made in the report from Governor Newsom's Strike Force (Strike Force Report) and the report from the Commission on Catastrophic Wildfire Cost Recovery (CCWCR Report). The conclusions reached by these specialized working groups, along with the legislative findings, support the Commission imposing a nonbypassable charge as just and reasonable."[37] This position ignores the law that establishes that the reports are uncorroborated hearsay of little to no value as substantial evidence.

[35] TURN Comments at p. 5.
[36] PG&E Comments at p. 3.
[37] CUE Comments at pp. 2-3, see also SDG&E at p. 9 ("The Commission should also recognize that both the SB 901 Commission and the Governor's Strike Force endorsed ratepayer contributions to the Wildfire Fund, and the Commission should rely on those endorsements given the depth of study and analysis that went into their respective reports.")

The position that the reports should play an important role in this proceeding completely ignores the body of law regarding the standard for official notice and the lack of value of uncorroborated hearsay. First, as explained in detail in Wild Tree's opening comments, these reports do not meet the standard for official notice and, even if they were properly officially noticed, the material within the reports is not to be noticed.[38] Secondly, the reports have no independent value as evidence in this proceeding as they are uncorroborated hearsay. Finally, the reports do not actually answer any of the critical questions in this proceeding and thus, provide no evidence whatsoever as to the whether the rate increase would be just and reasonable. The parties opening comments demonstrate that there are a wide variety of disputed issues of material fact for which an evidentiary hearing is needed. If the Commission approves a rate increase in this proceeding without having conducted evidentiary hearings that can answer all of the above listed questions it will have failed to provide the process due under the California and United States Constitutions, Public Utilities Code, and Commission Rules. Such a decision cannot be supported alone by the uncorroborated hearsay of the reports. The imposition of a multi-billion dollar rate increase under these circumstances would be manifestly unjust and unreasonable.

C. Any Rate Increase Pursuant to AB 1054 Would be Unjust and Unreasonable

Even if the Commission provides due process and develops a full record through evidentiary hearings answering all questions posed above, no rate increase for the Fund can be found to be just and reasonable because it will unreasonably increase risk to public safety and will wrongly socialize IOU risk and privatize gains. Wild Tree endorses the Office of Ratepayer

[38] Wild Tree Comments at pp. 11-14.

Advocates comments in regards to the rate increase being unjust and unreasonable because it will "Offer no known and measurable benefit to ratepayers; Enable future utility windfalls; Underwrite potential utility mismanagement; Reduce utilities' incentives to operate their systems safely; Reduce utilities' incentives to defend against future liability claims; Remain in rates until 2036, regardless of actual conditions and costs; and impose charges on PG&E ratepayers, with no guarantee that PG&E can access the Fund."[39]

The Commission should deny any rate increase pursuant to AB 1054 as unjust, unreasonable, unconstitutional, and unsafe.

Respectfully submitted,

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[39] PAO Comments at pp. 1-2.