CALIFORNIA PUBLIC UTILITIES COMMISSION

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The California Public Utilities Commission (CPUC) was created in 1911 to regulate privately-owned utilities and ensure reasonable rates and service for the public. Today, under the Public Utilities Act of 1951, Public Utilities Code section 201 *et seq.*, the CPUC regulates energy, aspects of transportation (rail, moving companies, limos, and shared ride carriers), some aspects of water and sewage, and limited coverage of communications. It licenses more than 1,200 privately-owned and operated gas, electric, telephone, water, sewer, steam, and pipeline utilities, in addition to 3,300 truck, bus, "shared ride," railroad, light rail, ferry, and other transportation companies in California. The Commission grants operating authority, regulates service standards, and monitors utility operations for safety.

The agency is directed by a Commission consisting of five full-time members appointed by the Governor and subject to Senate confirmation. The Commission is authorized directly by the California Constitution. The Constitution provides the Commission with a mandate to balance the public interest—that is, the need for reliable, safe utility services at reasonable rates—with the constitutional right of a utility to compensation for its "prudent costs" and a fair rate of return on its "used and useful" investment.

The Commission has quasi-legislative authority to adopt regulations, some of which are codified in Chapter 1, Title 20 of the California Code of Regulations (CCR).

Also, the Commission has quasi-judicial authority to take testimony, subpoena witnesses and records, and issue decisions and orders. The CPUC's Administrative Law Judge (ALJ) Division supports the Commission's decision-making process and holds both quasi-legislative and quasi-judicial hearings where evidence-taking and findings of fact are needed. In general, the CPUC ALJs preside over hearings and forward "proposed decisions" to the Commission, which makes all final decisions. At one time, the CPUC decisions were reviewable solely by the California Supreme Court on a discretionary basis; now, Public Utilities Code section 1756 permits courts of appeal to entertain challenges to most CPUC decisions. Judicial review is still discretionary and most petitions for review are not entertained; thus, the CPUC's decisions are effectively final in most cases.

The CPUC allows ratepayers, utilities, and consumer and industry organizations to participate in its proceedings. Non-utility entities may be given "party" status and, where they contribute to a beneficial outcome for the general public beyond their own economic stake, may receive "intervenor compensation." Such compensation facilitated participation in many Commission proceedings over the past twenty years by numerous consumer and minority-representation groups, including San Francisco-based TURN (The Utility Reform Network), San Diego-based UCAN (Utility Consumers' Action Network), and the Greenlining Institute, an amalgam of civil rights and community organizations in San Francisco.

The CPUC staff—which includes economists, engineers, ALJs, accountants, attorneys, administrative and clerical support staff, and safety and transportation specialists—are organized into 14 major divisions.

In addition, the CPUC maintains services important to public access and representation. The San Francisco-based Public Advisor's Office as well as the Commission's outreach offices in Los Angeles and San Diego provide procedural information and advice to individuals and groups who want to participate in formal CPUC proceedings. Most importantly, under Public Utilities Code section 309.5, the Office of Ratepayer Advocates (ORA) independently represents the interests of all public utility customers and subscribers in Commission proceedings in order to obtain "the lowest possible rate for service consistent with reliable and safe service levels."

Pursuant to SB 62 (Hill) (Chapter 806, Statutes 2016), the Office of Safety Advocate (OSA) is the CPUC's newest division; its purpose is to "advocate for the continuous, cost-effective improvement of the safety management and safety performance of public utilities."

The five CPUC Commissioners each hold office for staggered six-year terms. Current commissioners include President Michael Picker, Commissioners Liane M. Randolph, Martha Guzman Aceves, and Clifford Rechtschaffen. The fifth and most recently appointed commissioner is Genevieve Shiroma, who was appointed by new Governor Newsom in January of 2019 to take over the seat previously occupied by Carla J. Peterman. Alice Stebbins is the Commission's Executive Director.

MAJOR PROJECTS

Internal CPUC Policies

Establishing a Framework and Processes for Assessing the Affordability of Utility Service (R.18-07-006)

On November 19, 2018, Commissioner Clifford Rechtschaffen issued a scoping memo and ruling regarding the CPUC's Order Instituting Rulemaking (OIR) to establish a framework to assess the affordability of utility services. *[24:1 CRLR 138–140]* The scoping memo confirmed the issues that are within the scope of the rulemaking, including: (1) identification and definition of affordability criteria for Commission-jurisdictional utility services; (2) methods to assess affordability impacts across Commission proceedings and utility services; and (3) other related affordability issues. The memo provided a schedule for the proceeding, with the first event being a workshop in the San Francisco Commission Office on January 22, 2019.

On December 14, 2018, ALJ Sophia J. Park issued a ruling granting party status for the Utility Consumers' Action Network (UCAN), Pacific Institute for Studies in Development, Environment, and Security and Rising Sun Energy Center. On April 12, 2019, the ALJ also issued a ruling adding several of the workshop presentations that took place on January 22 to the record as well as inviting post-workshop comments. The CPUC's Energy Division presented *California Alternative Rates for Energy (CARE) & Low Income Affordability Metrics* (Attachment A of the workshop presentations), which contemplated a proposal to restructure CARE that was introduced in a pre-hearing conference on October 12, 2018. The presentation also highlighted the 2016 Low Income Needs Assessment, which included several findings regarding the percentage of low income households' bills that go towards utilities and the general difficulties that low income households face in paying basic living expenses.

Comments to the workshop presentations are due by May 12, 2019, within 30 days of the ALJ's ruling, and reply comments due within 7 days of filing the initial comments.

Wildfires

CPUC Holds Workshops to Assess M-4833 and M-4835 Disaster Relief Emergency Protections and Appropriate Actions to Take During and After a Wildfire Strikes

On October 17, 2018, several utility companies and consumer organizations filed comments to the Commission's ruling ordering workshop statements in response to R.18-03-011, which considers whether to adopt the M-4833 and M-4835 post-disaster consumer protections for all utilities within CPUC jurisdiction in the event the Governor issues a state of emergency. *[24:1 CRLR 141–142]* The ruling asked stakeholders of communication providers, water and sewer services, and electric and natural gas services, to provide comments on several inquiries regarding actions to take during and after emergency disasters. San Diego Gas & Electric Company and Southern California Gas Company filed a joint workshop statement addressing these issues. Their comment noted that more discussion is necessary regarding how the Commission should interpret and define "disruption of the delivery or receipt of utility service" due to the different ways in which gas and electric outages are treated. In acknowledging these differences, they concluded that electrical service restoration after an emergency could occur more frequently than gas shortages or delivery disruptions. They also stated that "emergency disaster relief customer protections should be considered necessary for gas and electric customers when a catastrophic event has directly impacted the ability for the customer to receive electric or natural gas service." Additionally, The Utility Reform Network (TURN), Center for Accessible Technology, and National Consumer Law Center filed a joint workshop statement, urging the Commission to further investigate the role of the emergency 211 service, a designated phone number for access to community information and referral services, to educate consumers about billing and emergency relief measures within the proceeding. They argued that the Commission should consider how to support the use of the emergency 211 service by reviewing service requirements and requiring coordination and communication between utility companies and emergency 211 providers to ensure that consumers are aware of these services.

After consideration of the various workshop comments, the Commission held workshops on November 1, November 5, and November 6. On February 11, 2019, the ALJ issued a joint ruling entering portions of the workshop transcript from November 1, 2018 to the record.

Implementing Electric Utility Wildfire Mitigation Plans Pursuant to Senate Bill 901 (2018)

On October 25, 2018, the Commission issued R.18-10-007 to implement electric utility wildfire mitigation plans pursuant to SB 901's requirement that all utilities prepare and submit plans that describe how they plan to prevent, combat, and respond to wildfires affecting their service territories. Due to the increase in both the number of wildfires and the length of the wildfire season, the Commission's goal is to have the initial set of electric utility wildfire mitigation plans approved as close to the beginning of summer 2019 as possible. A pre-hearing conference on the rulemaking took place on November 14, 2018.

On December 7, 2018, Commissioner Picker issued a scoping memo and ruling setting forth the category, issues, and schedule for the proceeding. He concluded that the purpose of the proceeding is to review and approve the 2019 wildfire mitigation plans of California's electric utilities pursuant to section 8386 of the Public Utilities Code. Specifically, the Commission will assess the proposed mitigation plans pursuant to the statute's list of required elements that each plan must contain, including: (1) a description of the metrics the electrical corporation plans to use to evaluate the plan's performance and the assumptions underlying the use of those metrics; (2) protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the impacts on public safety; and (3) plans for inspections of the corporation's electrical infrastructure. On December 27, 2018, the Commission issued a ruling requiring the electric utilities to serve their proposed mitigation plan templates by January 3, 2019.

On January 17, 2019, after several electrical corporations filed their own wildfire mitigation plan templates, ALJ Sarah R. Thomas issued a ruling attaching the CPUC template that the electrical companies must use moving forward. Accordingly, San Diego Gas & Electric (SDG&E), Pacific Gas & Electric (PG&E), Southern California Edison Co. (SCE), PacifiCorp, and additional respondent electrical corporations submitted their respective wildfire mitigation plans. PG&E filed an amendment on February 14, 2019, detailing the "aggressive steps" it will take to address the urgent need to prevent wildfires. Within the plan, PG&E specifically highlighted its proposal to extend its Public Safety Power Shutoff ("PSPS") program to prevent wildfires from occurring. Based on the utility's predictions, the plan would increase the total number of electric customer premises potentially impacted by PSPS events from 570,000 in 2018 to 5.4 million in 2019.

Various cities and organizations, including the city of Malibu and TURN, filed comments in response to the utilities' wildfire mitigation plans, urging the Commission to make certain findings regarding their adequacy. TURN's comment, for example, called on the Commission to find that the plans did not contain sufficient information to demonstrate that they are supported by the "necessary quantitative risk analysis" necessary to satisfy the "just and reasonable" standard required by the statute. The comment further urged the Commission to closely examine future utility spending on additional detailed inspections to ensure that the cost of such expenses are not borne on ratepayers. A decision on these initial mitigation plans is set to occur in May of 2019.

Implementing Public Utilities Code Section 451.2 Regarding Criteria and Methodology for Wildfire Recovery Pursuant to Senate Bill 901 (2018)

On January 10, 2019, the Commission filed R.19-01-006 to implement the provisions of SB 901 related to what criteria and methodologies the Commission should use when assessing applications of electrical corporations for cost recovery from wildfires. Pursuant to section 451.2(b) of the Public Utilities Code, the Commission must "determine the maximum amount the corporation can pay without harming ratepayers or materially impacting its ability to provide adequate and safe services." On March 29, 2019, Commissioner Picker issued a scoping memo and ruling that listed the events that have transpired since SB 901 was adopted, including the devastating 2018 wildfires, Governor Newsom's Task Force to address issues related to wildfires, and PG&E's Chapter 11 bankruptcy. The scoping memo provided three issues to be determined during the proceeding, including: (1) what financial metrics the Commission should consider when examining an electrical corporation's "financial status"; (2) how the Commission should define a "material impact" on a utility's ability to provide safe and adequate service; and (3) how the Commission should define harm to ratepayers.

On April 5, 2019, Commissioner Picker filed a ruling releasing a "Staff Proposal" by the Energy Division for a "Stress Test" methodology as a starting point for the public to discuss how California can ensure financially viable, safe, and reliable electrical utility services. The proposal addressed the struggle to balance issues regarding the costs associated with the 2017 wildfires and the threat to safe, adequate, and affordable service. Ultimately, the framework was composed of a process in which a utility can request application of the Stress Test in order to determine if "disallowed wildfire costs" should be allocated to ratepayers. Subsequently, the Commission would apply a three-factor Stress Test to determine the maximum amount the utility can pay, known as the "Customer Harm Threshold." Lastly, the Commission will consider ratepayer protection measures as a condition for the utility to recover Stress Test costs. The Staff Proposal explicitly noted that "the purpose of the Stress Test is to shift the risk burden from shareholders to ratepayers, at least for wildfire liabilities incurred due to the 2017 fires." With this goal in mind, one of the proposed ratepayer protections requires the utility to decrease its applied "return on equity" (*e.g.,* dividends to stockholders) for up to five years based on the amount of wildfire liability allocated from shareholders to ratepayers. The staff reasoned that, "when ratepayers are allocated wildfire costs above the maximum the utility can pay, ratepayers have assumed that wildfire risk." When that happens, some decrease in payments to stockholders may be equitably expected.

Initial public comments addressing the Staff Proposal are due by April 24, 2019.

General Energy Regulation

CPUC Implements SB 237

On March 21, 2019, CPUC issued R.19-03-009, an OIR to Implement Senate Bill 237 Related to Direct Access. SB 237 increased the amount of gigawatt hours (GWh) allowed to non-residential customers through Direct Access arrangements. Direct Access allows end-use customers of an investor owned utility (IOU) such as PG&E, SDG&E, or SCE to choose to take their electric service from a competing Electric Service Provider.

First, the rule provides that on or before June 1, 2019, the Commission must authorize the increase in the allowable amount of GWh and apportion the increase to each service territory. CPUC will consider if the implementation date will impact existing rules and regulations. Second, CPUC will provide the legislature with guidance as it seeks to expand retail competition in California energy markets. By June 1, 2020, CPUC will provide recommendations to the Legislature outlining an approach for reopening enrollment into the "Direct Access" program for all interested non-residential customers in each electric utility's distribution territory. R.19-03-009.

The OIR sets forth an initial scoping memo with the following preliminary schedule. A prehearing conference to be held on April 4, 2019, a proposed decision on April 30, 2019 with a CPUC final decision set for May 30, 2019.

CPUC Issues OIR Crafting a Policy Framework on Building Decarbonization

On February 8, 2019, CPUC issued R.19-01-011, an OIR Regarding Building Decarbonization. The Commission instituted this rulemaking process on its own to reduce the Greenhouse Gas (GHG) emissions of buildings. The initial scope of the proceedings is to determine methods associated with the State's goal of reducing GHG emissions to below 1990 levels by 2030, and to complete carbon neutrality by 2045. Additionally, CPUC intends to focus on implementation of SB 1477 (Stern) (Chapter 378, Statutes of 2018), which requires CPUC to develop two programs to test programmatic approaches to building decarbonization. Building decarbonization has received less attention than other programs to reduce GHG emissions. These programs include actions to reduce GHG emissions from natural gas use in buildings and to increase the electrification of previously carbon intensive building usage. The role of building decarbonization in helping the state meet system-wide GHG reduction goals continues to inform the development of future energy modeling scenarios reflecting the impact of higher electric loads on resource portfolios.

The OIR sets forth a preliminary scoping memo with the following preliminary schedule. A prehearing conference is scheduled for the first quarter 2019. A ruling on implementation of SB 1477 is set for second quarter 2019, with a decision set for fourth quarter 2019.

CPUC to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions

On December 19, 2018, CPUC issued R.18-12-005, an OIR to Examine Electric Utility De-Energization of Power Lines in Dangerous Conditions. CPUC opened the OIR to examine the rules which allow utilities to de-energize power lines when dangerous conditions exist that threaten life or property.

"California is experiencing an increase in wildfire events due to a number of factors, including an extended period of drought, upwards of 10 years, increased fuel for fires, and unprecedented conditions that are leading to extreme weather events." R.18-12-005. Making matters worse, wildfires are started by energized power lines with the potential to either spark or worsen a wildfire. To mitigate these risks in the past, electric utilities have proactively shutdown power to specific power lines to limit the impact or damage where the utilities are aware of dangerous conditions. However, de-energization can leave communities and essential facilities without power, bringing other risks and hardships, particularly for vulnerable communities.

This proceeding focuses on the following issues:

- Examining conditions in which proactive and planned de-energization is practiced;
- Developing best practices and ensuring an orderly and effective set of criteria for evaluating de-energization programs;
- Ensuring electric utilities coordinate with state and local level first responders, and align their systems with the Standardized Emergency Management System framework (SEMS);
- Mitigating the impact of de-energization on vulnerable populations;
- Examining whether there are ways to reduce the need for de-energization;
- Ensuring effective notice to affected stakeholders of possible de-energization and follow-up notice of actual de-energization; and
- Ensuring consistency in notice and reporting of de-energization events.

Id.

Public Utilities Code sections 451 and 399.2(a) provide electric utilities with the authority to shut off electric power to protect public safety. "Public safety" includes shutting off power for the prevention of fires where strong winds, heat events, and other related conditions are present. In the past, CPUC allowed SDG&E to engage in proactive de-energization in D.12-04-024, allowing to shut off power as a fire-prevention measure against severe Santa Ana winds. SDG&E requested this authority after the 2007 wildfire season that resulted in the Rice, Witch, and Guejito wildfires. In response to this decision, CPUC adopted certain review and notice requirements when proactive de-energization takes place. The current OIR was issued to set further rules on the review and notice requirement for other electric utilities to shutoff power in dangerous weather conditions.

The OIR sets forth an initial scoping memo with the following preliminary schedule: (1) A prehearing conference was held on February 6, 2019; (2) Comments to the Scoping Memo are scheduled for April 2019; and (3) A final decision on rules governing de-energization is scheduled for the summer of 2019.

Consideration of New Approaches to Disconnections/ Reconnections to Improve Energy Access and Contain Costs Update

On December 13, 2018, CPUC issued D.18-12-013 to R.18-07-005 an OIR to Consider New Approaches to Disconnections and Reconnections to Improve Energy Access and Contain Costs pursuant to SB 598 (Hueso) (Chapter 362, Statutes of 2017). The decision adopts interim rules applicable to California gas and electric utilities attempting to reduce the number of residential disconnections for nonpayment and also during extreme weather events. The interim rule would reduce disconnection levels to the levels of 2017 and modify rules prohibiting disconnections during extreme weather events. Currently, utilities must not disconnect residential customers during extreme weather conditions based on a 24-hour forward projection. The decision extends this forward projection to 72-hours. This provides greater customer protection from disconnection when extreme weather events exist. The decision goes on to define vulnerable customers as "any household on medical baseline or life support and for customers age 65+." (D.18-12-013)

The proceeding remains open for further consideration of policies, rules, and regulations to reduce the rate of customer disconnections.

SDG&E Withdraws from the Business of Energy Procurement

SDG&E has expressed its intent to withdraw from the energy procurement business. In November, SDG&E asked lawmakers to introduce legislation for the state to buy out its long-term power contracts. In a letter to State Senator Hueso, SDG&E asked for the introduction of legislation "that would allow us to begin planning a glide-path out of the energy procurement space." SDG&E cites to San Diego's desire to create a Community Choice Aggregation (CCA) as the reason for seeking an end to its role as energy procurer. SDG&E discusses the fact that 40% of the energy sold currently goes to San Diego city area, and with San Diego's discussions with other surrounding cities on a Joint Power Agreement on the CCA, this number could be significantly larger. Further, SDG&E notes that long-term power contracts are difficult—with uncertain energy futures, stating "[s]igning contracts that are 10 and 20 years in length while the cities are discussing the possibility of joining together to buy their energy from a CCA provider will be tricky to say the least and thus we are looking at what the best options are for the near future related to our efforts." *Id.*

SDG&E is responding to the uncertainty over future sources of energy by seeking to become a "transmission only" business. The draft legislation SDG&E is sponsoring asks the state to allow it to sell off its long-term contracts to a "state-level electrical procurement entity." The draft bill seeks the creation of a state level task force to sort through the issues that a sell-off would create. The draft bill also asks the state to create a "framework for an electrical corporation to transition its electricity procurement to the state-level procurement entity, including a method of transitioning all existing energy procurement contracts from electrical corporations to the state-level electricity procurement entity with full cost recovery for the electrical corporations." This could be a non-starter, in that it could require the state to buy "dirty" fossil fuel plants at the same time the state is transitioning to 100% renewable resources by 2045.

SDG&E's parent company, Sempra Energy, is similarly positioning itself as a transmission only business. Recently, Sempra bought 80% of Texas' largest utility, Oncur, for $9.5 billion. Oncur only delivers electricity through management of transmission projects, it does not procure the energy.

No bill has been introduced as of April 15, 2019.

PG&E Reorganization

In April of 2019, PG&E decided to remove a large number of its current board members. The decision comes after two years of some of the worst fires in California history. It would change the last five board members remaining after the 2010 San Bruno explosion. A total of ten board members would be replaced, with votes on nominees imminent. In addition, Bill Johnson was named as the new CEO of PG&E. Johnson is the former CEO of the Tennessee Valley Authority. The other three members of the fourteen-member board are carryovers from the current board. PG&E noted the need to keep some current members to transfer institutional knowledge to the new members.

PG&E is naming the eleven new members after years of controversy involving gas pipeline safety issues after the San Bruno explosion, and the occurrence of wildfires due to PG&E causes, or exacerbation, immolating thousands of homes, and decimating wine country and other natural state treasures. In particular, the deadly Camp Fire in November of 2018 is attributed to PG&E. The new board did not take their positions without controversy. California Governor Gavin Newsom has publicly criticized what he contends is excessive Wall Street influence and a lack of relevant experience. However, PG&E argues that it has tried to "holistically balance critical skills" in the new board to navigate the restricting process. *Id.* The three remaining members also came onto the board after the San Bruno explosion. All of the new PG&E board picks will stand for election at the May 21 shareholders meeting.

Energy Efficiency, Solar, and Storage

Renewables Portfolio Standard Program Continuation Update

On February 21, 2019, CPUC issued D.19-02-007 to R.018-07-003, an OIR to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard (RPS) Program. R.018-07-003 addresses CPUC's ongoing oversight of the RPS program, including: "reviewing RPS procurement plans submitted by retail sellers; providing tools for analysis of and reporting on progress of retail sellers and the RPS program as a whole; assessing retail sellers' compliance with their RPS obligations; and integrating new legislative mandates and administrative requirements into the RPS program." R.18-07-003.

This decision accepted the draft 2018 RPS Procurement Plans filed by PG&E, SCE, and SDG&E. The Procurement Plans allow the above organizations to enter into sales agreements, with CPUC approval, for a term of five years or less. Further, the decision authorizes the state's Small and Multi-jurisdictional Utilities, CCAs, and Electric Service Providers to enter into their own RPS Procurement Plans and sales agreements. This allows for the further development of RPS programs across the state and may facilitate an increase in renewable energy as increasing sources of power.

Nuclear Power

San Onofre's Near Miss

On March 25, 2019, the U.S. Nuclear Regulatory Commission (NRC) sanctioned SCE with $116,000 in civil penalties relating to an incident in August 2018 in which a 50-ton canister of spent nuclear waste was left suspended for 45 minutes—18 feet above the floor of its storage silo. After the "near miss," the NRC halted all future nuclear waste transfers until all the canisters could be remotely inspected for scratches or other signs of danger. The NRC cited SCE for not properly supporting the canister during the movement process, and for not reporting the incident within 24 hours as required. An NRC inspector stated, "SCE management failed to establish a rigorous process to ensure adequate procedures, training and oversight guidance." An SCE spokesperson said that the utility will not contest the fine and that its shareholders, not ratepayers, will pay. NRC officials did not indicate how long inspections and safeguard implementation will take before transfers can resume again.

Energy Efficiency, Solar, and Storage

SDG&E Transitions to Time-of-Use Billing

In March 2019, SDG&E rolled out a new billing system for 750,000 San Diegans called Time-of-Use billing. Effectively, the new system charges customers a higher rate during "on peak" hours, 4:00 p.m.to 9:00 p.m. during weekdays. It lowers the rate for the midnight to 6:00 a.m. period. The new system differs from the previous state mandated high-usage charge that caused some customers over the summer to see bills as high as

$700. To explain, the longstanding "volume extra charge" system raised rates per kilowatt hour as electricity usage increased in volume monthly, Thus, low level users paid low rates, while those using above that specified low level paid a higher rate on use above that level. Then the rate could increase yet again as usage increased. The concept was to encourage conservation by discouraging heavy usage by specifying separate and higher rates per KwH in brackets, imposed as monthly usage increased.

The new system intends to acknowledge the high fixed cost structure for the provision of electricity. Power plants and distribution systems involve huge initial investment costs. Cost per KwH is much lower if that fixed plant enjoys high utilization. If demand is below the fixed cost total capacity, maximum efficiency and lower unit costs and prices occur with the high utilization of the existing plant. If demand becomes too high and exceeds capacity, capital investment may be necessary to provide additional power—with required dividends or debt interest payments to achieve. The result is higher rates as the overall system costs increase per kilowatt hour produced. Accordingly, maximum utilization of the fixed plant is a major determinant of efficiency and lower rates. Electric utilities benefit from predictable demand that is high for efficient plant provision, but one that does not spike and hence require additional capacity. Usage tends to spike from 4 p.m. to 9 p.m. Hence, charging more during that period provides an incentive to smooth out usage over a longer period and lessen cost which should generate high levels beyond existing capacity.

Under the plan, the day is broken up into three time periods: on-peak, off-peak, and super off-peak. During on-peak hours (weekdays 4:00 p.m.–9:00 p.m.) prices are their highest at 45 cents per kilowatt-hour in the summer (June 1–Oct. 31) and 24 cents per kilowatt-hour in the winter. Off-peak is priced at 21 cents per kilowatt-hour in the summer and 23 cents in the winter. Moreover, super off-peak is the cheapest at 16 cents per kilowatt-hour in the summer and 22 cents in the winter. Weekends are divided only between off-peak and super off-peak pricing schedules with extended hours for super off-peak. If a customer opts out of the TOU-DR1 plan, they can enroll in one of the two remaining plans. The first breaks the day into two time periods, on-peak and off-peak hours with no weekend scheduling. The second plan is to stay with the current tiered system.

The plan is to transition about 750,000 customers a year through 2020 into the new system based not on increases for overall monthly volume (the design of the extant rate system), but on use during peak periods. Approximately 90 days prior to the transition customers should receive notice of the pending transition and can opt-out if desired. SDG&E will automatically enroll new customers during the transition to the TOU-DR1 plan.

Under CPUC rules, customers get bill protection. This mean that for the first year customers get a shadow bill that shows the difference between the TOU plan and the current tiered-rate plan allowing customers to make informed decisions. Note that one developing trend is to use solar power with substantial battery capacity in homes and businesses. They, then, may draw upon their batteries during the high-rate period.

San Diego City Council Votes to Create a CCA

On February 25, 2019, San Diego took a key step in the formation of a government-run utility. The City Council voted 7–2 authorizing Mayor Kevin Faulconer to negotiate formal agreements with local agencies to form a CCA system. The City Council also voted to establish guiding principles for a Joint Powers Authority. The vote would require state approval for the creation of the CCA by December of 2019—and for launching the CCA by 2021.

The Mayor and the seven members of the Council voted aye, contending that this new CCA entity will take control of the city's energy future—in the overarching setting of the Climate Action Plan of San Diego. The Mayor and the Council argue that this is the best method to ensure that clean and renewable energy sources are used and stimulate the reduction of GHGs. Critics, however, claim that the move to a CCA puts taxpayers at risk. Those claimed risks include financial and legal liability implicit in utility costs and dangers. Further, the Mayor and the Council fear that rates may increase rather than decrease.

In October, CPUC put in place new "exit fee charges" associated with the creation of CCAs—called Power Charge Indifference Adjustments (PCIA). These charges are calculated by CPUC to help utilities offset the cost of costumers leaving to join the CCA when they are formed. This charge will be one of the driving factors in determining what ratepayers would have to pay when San Diego formally sets up its CCA. *[24:1 CRLR 148–150]*

Transportation

CPUC Reclassifies Uber as a Charter-Party Carrier and Transportation Network Company [Update]

As of April 15, 2019, the CPUC still had not ruled on Uber's motion for stay filed May 25, 2018 nor Uber's motion for rehearing filed June 1, 2018. On April 26, 2018 the CPUC passed D.18-04-005 which reclassified Uber as both a transportation network company (TNC) and a transportation charter party carrier (TCP). This new designation led to a number of changes, including one that subjects Uber to additional requirements and fees. Before the CPUC passed D-18-04-005 only Uber subsidiaries, Rasier-CA and UATC, were assessed and CPUC fees based on total revenue earned from passenger operations for the reporting period. This ruling would assess fees based on the total revenue of Uber as a whole rather than based on the revenue of its small subsidiaries. *[24:1 CRLR 153–154]*

On August 3, 2018, the court in *Overton v. Uber* stated that "the CPUC's efforts to determine Uber's regulatory status and develop its rules is ongoing. Although the CPUC has voted to adopt a particular set of rules, the internal appeal and review process has not yet been completed."

Uber Settles with CPED over Failure to Follow CPUC Zero-Tolerance Policy Against Drunk Drivers

On November 8, 2018 the CPUC decided D.18-11-006—which adopted the settlement agreement between Uber and the Commission's Consumer Protection and Enforcement Division (CPED). The decision resolved the dispute as to whether Uber failed to follow the zero-tolerance rules established to protect the public against drunk drivers. This dispute began with D.13-09-045, the rule "establish[ing] TNC regulations, rules, and reporting requirements." These rules counterbalanced the exemptions given to TNCs not afforded to other charter-party carriers, such as exemptions from "mandatory enrollment in a controlled substance and alcohol testing program[s]." The TNCs were not required to test their drivers, and instead had to "include a phone number or in-app call function and email address to contact to report the zero-tolerance complaint" and to "promptly . . . suspend" a driver who has a related complaint lodged against them. Also, Uber was required to submit "annual reports" to demonstrate its compliance with the regulations.

Soon after Uber started to submit its reports, CPED began an investigation into whether it was complying with those rules. After a series of information requests, CPED was notified that Uber received a remarkable total of 2,047 zero-tolerance complaints from August 12, 2014 to August 31, 2015. CPED reviewed 154 of these complaints and found that in 149 of the complaints (97% of all instances) Uber "failed to promptly suspend drivers." Strikingly, a driver was "suspended," however not logged off the application, providing three additional rides over a two-hour period.

In light of Uber's alleged failure to follow regulations, CPED recommended a $7,500 fine per violation for a total of $1,132,500. Uber soon filed a response and on October 13, 2017. The parties filed a "Joint Motion for Adoption of a Settlement Agreement" with, among other things, the stipulation that Uber would pay a somewhat lower $750,000, and would implement interim zero tolerance complaints "education and investigation" protocols.

On January 7, 2019, Uber filed a motion asking the CPUC to develop industry-wide "zero tolerance rules" pursuant to the settlement agreement reached between Uber and the CPED. Uber argues that this will clarify the terms "promptly" and "further investigation," which Uber contends are inadequately defined. Uber also argues that it will help set minimum standards for suspending access to a TNC platform and for the investigation of a driver suspected of a zero tolerance violation.

On March 28, 2019, Assemblyman Jordan Cunningham (35th District) wrote a letter to the CPUC requesting an investigation into a recently uncovered "black market for counterfeit TNC driver accounts." These accounts allow individuals to "steal the identity of a TNC driver who has already gone through the background check process" and "drive unsuspecting passengers." In an interview with San Luis Obispo Times, Assemblyman Cunningham made reference to D.18-11-006—explaining that this identity theft impacts the safety of using Uber and Lyft. The companies would not be able to check have bad or dangerous drivers. Worse still, a person with a zero-tolerance suspension on their account may still be able to drive, while suspended, by obtaining an identity from this market.

As of April 15, 2019, the CPUC has not ruled on Uber's motion nor launched an investigation regarding Assemblyman Cunningham's letter.

Water

California State Auditor Presents Report Finding CPUC Failure to Provide Sufficient Information Regarding Ratesetting Practices

On December 18, 2018 the California State Auditor presented an audit report concerning the CPUC's water rate-setting process. The report detailed three areas where the CPUC failed to provide customers with clear information about water rate increases or its processes for approving those rate changes. The three areas are (1) that the CPUC failed to provide customers with clear information about water rate increases and its process for approving rates; (2) that the CPUC did not ensure that water utilities notify customers about public hearings and proposed rate increases as required; and (3) that the CPUC did not conduct audits of water utilities as required.

First, the report details how the CPUC failed to disclose the full impact its decisions have on water rates and filed to make information adequately available about its rate-setting process. The report recommended that, by May 2019, the CPUC begin publishing a summary of the impact that each "general rate case proceeding" would have on water rates and by July 2019 make information about its rate-setting process readily available. Second, the report explains that because the CPUC does not verify "whether water utilities comply with regulations" regarding "notifications to the public." The report simply recommends that by May 2019, the CPUC implement a system that verifies whether water utilities have complied with notification regulations. Third, the report found that the CPUC failed to conduct required audits of water utilities. The report's recommendation is for the CPUC to develop policies and procedures concerning the audits of Class A water utilities and to complete the audits as required by May 2019.

On November 20, 2018 the date of the draft report's release, the CPUC agreed with all three of the audit report's findings and recommendations, and agreed to implement them in the timeline put forth by the report.

CPUC Conducts Formal Investigation into San Jose Water Billing Practices (I.18-09-003) [Update]

On February 11, 2019, the CPUC released the assigned commissioner's scoping memo and ruling regarding the investigation. This memo limited the issues regarding the investigation into San Jose Water Company's (SJWC) billing practices to: (1) whether SJWC overbilled its customers during the period from January 1987 to June 2011; (2) if the overbilling occurred, should the commission fine SJWC or impose some other penalty; and (3) whether this action is subject to any statute of limitations—including, but not limited to section 736 of the Public Utilities Code. Finally the memo and ruling released a timeline showing that the proposed decision will be submitted in August 2019, and the Commission decision will be submitted in September of 2019.

On September 14, 2018, the CPUC announced a formal investigation into SJWC billing practices. *[24:1 CRLR 155–156]* The commission explained that a previous investigation of the CPED alleges that for the past "three decades" the water company engaged in illegal billing practices. Under the remedies section of the report, the CPUC explains how the CPED recommends SJWC implement "a sur-credit of approximately another $2 million" in addition to the $1.7 million that the SWJC proposed. The Commission summed up by ordering a formal investigation to determine if SJWC's actions were illegal, and allowing the commission to adopt fines or penalties to deter future improper practices. *[24:1 CRLR 156]*

LEGISLATION

Internal

AB 560 (Santiago), as amended March 7, 2019, would add section 468 to the Public Utilities Code relating to union organizing. This new section would prevent public utilities from recovering through rates, either directly or indirectly, any expenses incurred in assisting or deterring union organizing. Instead, such costs would be required to be exclusively borne by the shareholders of the public utility. Possible costs incurred include communicating with employees, or utility contractor's employees, in an effort to sway their labor organization beliefs. *[A. L&E]*

AB 1323 (Stone), as amended April 2, 2019, would amend section 583 of the Public Utilities Code relating to public utilities confidentiality. Currently, disclosure of nonpublic information by a present or former officer or employee of the Commission a misdemeanor. This bill would instead require that the information be open to public inspection, unless specific findings in federal or state law, or an order by the CPUC or ALJ requires otherwise. AB 1323 would also make it a misdemeanor for a present or former officer or employee of the Commission to divulge any information that is exempt from public disclosure. A hearing on the bill is postponed by the committee until further notice. *[A. U&E]*

Wildfires

AB 868 (Bigelow), as amended April 9, 2019, would amend sections 8385 and 8386 of, and add section 8390 to, the Public Utilities Code. These provisions relate to power shutoff protocols for preventing the rapid growth of wildfires. The bill would require each electrical corporation, including IOUs, POUs, and co-ops, that deenergize portions of the distribution grid as part of a wildfire mitigation measure, to adopt specific protocols for when that diminution of power occurs and provide steps to minimize adverse effects. New section 8390 would define "de-energizing" as "voluntarily stopping the transport of electricity over a segment of the electrical distribution system." It would also provide certain required features for those protocols, including: (1) a way for customers to be notified in the event of a potential or anticipated de-energization and how they may request such notice (*e.g.*, phone, electronic mail, or text message); (2) reasonable steps to notify residential and business customers that are likely to be affected (*e.g.*, notice to local media, schools, disability rights advocates, and consumer groups); and (3) reasonable steps to contact customers of services such as water suppliers, fire departments, law enforcement agencies, and hospitals—to notify them of the potential interruption in their electrical services. *[A. Appr]*

AB 235 (Mayes), as introduced January 18, 2019, would add Chapter 7 (commencing with section 8400) to Division 4.1 of the Public Utilities Code. The bill would create the California Wildfire Catastrophe Fund Authority ("Authority"), which would be governed by a board of directors comprised of nine members, seven of whom would be appointed by the Governor and two by the Speaker of the Assembly. These members will include representatives from electrical corporations, local publicly owned electric utilities, electrical ratepayers, and experts in insurance, commercial investing, and wildfire mitigation.

AB 235 would require each participating entity to make an initial and annual contribution to the Authority and would also require shareholders of certain large electrical corporations to make an initial contribution. The bill would then require the Commission to deem such a contribution as qualifiedly "just and reasonable." In the event an electrical corporation's annual contribution increases due to costs incurred by a wildfire, the bill would require the board to determine how to apportion the increase between ratepayers and shareholders based on the level of the corporation's negligence. *[A. U&E]*

SB 209 (Dodd), as amended April 11, 2019, would add Chapter 7.1 (commencing with section 8669) to Division 1 of Title 2 of the Government Code relating to wildfires. The bill would establish the California Wildfire Warning Center ("Center"), which would consist of two representatives from the CPUC, the Office of Emergency Services, and the Department of Forestry and Fire Protection, along with two county fire chiefs, a representative of an electrical corporation, and a representative of a local publicly owned electric utility. The Center would oversee the development and deployment of a statewide network of automated weather and environmental stations designed to study weather phenomena that contribute to increased wildfire risk. This would include a statewide system for forecasting, monitoring, and assessing wildfire threats. The Rural County Representatives of California expressed approval of SB 209, stating that "[e]arly warning and accurate forecasting of fire risk could help save both homes and lives" and alluding to SDG&E's similar use of technology in successfully monitoring and putting out fires. A hearing on the bill is set for April 24, 2019. *[S. EU&C]*

SB 167 (Dodd), as amended April 8, 2019, would amend section 8386 of the Public Utilities Code relating to electricity. The bill would require each electrical corporation that prepares a wildfire mitigation plan that includes protocols for disabling reclosers and deenergizing portions of the electrical distribution system to also include protocols considering the impact that such actions will have on customers who are receiving medical baseline allowances. Accordingly, the bill would authorize electrical corporations to deploy backup electrical resources or provide financial assistance for such resources to customers who meet specified requirements. Such requirements include: (1) customers who rely on life-support equipment that operates on electricity to sustain life; (2) customers who demonstrate financial need; and (3) customers who are not eligible for backup electrical resources provided through medical services, medical insurance, or community resources. A hearing on the bill is set for April 22, 2019. *[S. Appr]*

General Power

AB 1733 (Salas), as amended March 23, 2019, would amend sections 399.25, and add section 399.23 to the Public Utilities Code regarding California Renewable Portfolio Standard. The new section 399.23 would allow energy sources that are not eligible for renewable energy credits to petition for certification to receive clean energy credits if the source is within an area "classified as being in nonattainment of state or federal ambient air quality standards." It encourages energy generation from a source that provides health benefits and contributes to the safe and reliable operation of the electric grid. Section 399.25 would add further language to the existing Public Utilities Code to include clean energy credits to existing requirements for the Commission to issue energy credit certification. *[A. U&E]*

AB 915 (Mayes), as amended February 20, 2019, would amend section 399.12, 399.15, 399.30, and to add and repeal section 917 to the Public Utilities Code regarding renewable resources. Amended section 399.12 adds that a "zero-emission resource" would be determined through a comparison of the procurement cost from an eligible renewable resource as opposed to the procurement cost from a fossil fuel facility. Furthermore, a "Zero-carbon resource" means an electrical generation facility that achieves a point source emission level of 100 grams or fewer of carbon dioxide equivalent per kilowatt-hour over a 100-year global warming potential time frame. Sections 399.15, and 399.30 would sets goals for renewable energy sources for the state at 68% by 2033, 76% by 2036, and 80% by 2038. *[A. U&E/NatRes]*

SB 549 (Hill), as amended on February 22, 2019, would add section 748 to the Public Utilities Code regarding the public utilities capital structure changes as they affect rates. Section 748 would add language allowing the Commission to approve a capital structure change in rates for PG&E only upon the Legislature's approval of that change. Moreover, the bill would require legislative findings and declarations as to the necessity of a special statute for the PG&E. *[S. EU&C]*

Energy Efficiency, Solar, and Storage

AB 1143 (Quirk), as amended February 21, 2019, would add section 748.7 and Article 14 to Chapter 4 of Part 1 of Division 1 of the Public Utilities Code regarding renewable gas building program. Under existing law, CPUC is required to develop and supervise the administration of the building Initiative for Low-Emissions Development Program. This program requires gas corporations to provide incentives to eligible applicants for the deployment of near-zero-emission building technologies. The purpose is to significantly reduce the emissions of GHGs from buildings. This bill would require CPUC to administer the Renewable Gas Building Program requiring gas corporations to provide incentives to residential customers or developers to purchase renewable gas—thereby significantly reducing the emissions of GHGs from the building sector. The bill would, for four years beginning July 1, 2020, require CPUC to annually allocate $50,000,000 of the revenues received by a gas corporation due to the direct allocation of GHG "emissions allowances" to fund the Renewable Gas Building Program. The bill would provide that the incentive amounts would reserve not less than 30% of the total to be allocated specifically for low-income residential housing. *[A. U&E]*

SB 288 (Wiener), as amended on March 28, 2019, would add section 913.14, 2817, and 2829.5 to the Public Utilities Code regarding renewable resource self-generation and storage. Existing law requires public electric utilities to develop, and make available to eligible customer (generally those customers who generate energy that is supplied back to the grid), standard contracts or tariffs for net energy metering. This includes an increasing number of home and business owners placing solar panels on their properties and feeding the grid from those sources. If the total energy capacity used by such eligible customers exceeds 5% of the aggregate customer peak demand, the bill's requirements would be triggered. This bill would, by January 1, 2021, require CPUC to create one or more tariffs that offer fair compensation for customer-sited energy storage systems that export electricity to the electrical grid and to consider one or more tariffs for customer-sited renewable energy and energy storage systems to support grid reliability and community resiliency in the event of emergencies or grid outages. Section 913.14 would implement language requiring CPUC to segment out low-income customers and customers located in low-income and disadvantaged communities in its annual report evaluating the interconnectedness of public utilities. Section 2817 would add language defining "customer-sited renewable energy and energy storage systems" to mean renewable energy systems and storage systems located on a customer's owned, leased, or rented premise when interconnected and operating in parallel with the grid. Section 2829.5 would also add language prohibiting utilities from charging customers when using electricity generated onsite from renewable sources or from the storage of said energy, whether the electricity is used simultaneously with generation or stored for consumption at a later time. This legislation deals with the anomaly of customers feeding the system during sunlight and then drawing on the utility during other hours, and reflects the current need for energy storage assets to allow the shift of excess power generation beyond need (*e.g.*, during daylight hours) into a source providing it when needed and where those sources cease to contribute. *[S. EU&C]*

Telecommunications

The following bills deal with telecommunications and cover somewhat similar topics. SB 208 dubbed the "Consumer Call Protection Act of 2019" and AB 1132 both seek to combat the growing number of robocallers who operate over internet protocol networks rather than traditional telecommunication services. These callers sometimes impersonate the identities of government officials. Conversely, AB 1699 is a bill that would forbid the type of data throttling that Verizon carried out last year during the California wildfires and that primarily affected first responders.

SB 208 (Hueso), as amended March 28, 2019, would add Section 2893.5 to the Public Utilities Code. This act dubbed the "Consumer Call Protection Act of 2019" seeks to combat the growing number of robocallers who operate over internet protocol networks rather than traditional telecommunication services. New provisions would implement specified protocols and standards to verify and authenticate caller identification for calls carried over an internet protocol network. The bill would also authorize the Commission and the Attorney General to bring an action against any person within the United States for knowingly transmitting misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value over an internet protocol network. *[S. Jud]*

AB 1132 (Gabriel), as amended March 25, 2019, would add section 2893.2 to the Public Utilities Code. The new section would prohibit any caller from entering, causing to be entered, or making a call knowing that false government information was entered into a caller identification with the intent to mislead, cause harm, deceive, or defraud the recipient of the call. Further, the bill would make the violation of each provision subject to a civil penalty of up to $10,000. *[A. Jud]*

AB 1699 (Levine), as introduced February 22, 2019, would add section 2898 to the Public Utilities Code. This new section would prohibit a telecommunications service provider from throttling or otherwise failing to provide adequate or necessary telecommunications service to its public safety customer accounts during a state of emergency. *[A. C&C/P&CP]*

LITIGATION

Internal

***Karen Clopton v. California Public Unities Commission*, Case No. CGC-17-563082 (Cal. Super. Ct. San Francisco)**. On November 7, 2018, former CPUC

Administrative Law Judge, Karen Clopton filed a response to an order to show cause for why her wrongful termination claim against the CPUC should not be dismissed for her failure to dismiss defendants Carla J. Peterman, Martha Guzman Aceves, and Clifford Rechtschaffen. On November 20, 2018, she also filed a motion to compel further responses to requests for about 75 documents from the CPUC. She argued that the CPUC's argument that her requests were "burdensome, oppressive, and harassing" is insufficient to justify a refusal to answer the tendered document requests. She also claimed that the CPUC agreed to produce responsive documents for numerous requests and failed to do so. Lastly, she argued that the Court should impose monetary sanctions payable to her for costs incurred by the CPUC's failure to provide such documents. *[24:1 CRLR 170–171; 23:2 CRLR 185–186; 23:1 CRLR 213]*

Following a hearing on December 18, 2018, the Court granted in part Clopton's motion to compel for a fraction of the requested documents. The Court denied sanctions for Clopton, but ordered the CPUC to provide a detailed privilege log identifying any information being withheld on privilege or other grounds. Following this, the CPUC filed a Motion to Stay Discovery on March 11, 2019, which argued that the Commission has now produced 7,645 pages of documents. Also, allowing Clopton to continue to conduct discovery would cause unnecessary costs to the CPUC at ratepayers' expense. As a result of the judge recusing himself from considering the motion due to his previous representation of Clopton's counsel, a decision on the matter was continued to May 8, 2019. A jury trial on the wrongful termination claim is set for April 6, 2020.

Wildfires

***San Diego Gas & Electric v. Public Utilities Commission*, Docket No. D074417 (Cal. App. Ct.)**. On November 13, 2018, the Fourth Appellate District of California denied SDG&E's petition for writ of review of the CPUC's decision determining that SDG&E acted unreasonably in connection to the 2007 Witch, Guejito, and Rice wildfires and, therefore, should not be able to shift the $379 million recovery costs to ratepayers. *[24:1 CRLR 172–174]* The Court opined that the Commission did not abuse its powers in determining that SDG&E did not satisfy its statutory "Prudent Manager" standard. It further concluded that SDG&E failed to meet its burden to show that it reasonably and prudently operated and maintained its facilities in Witch, Guejito, and Rice.

SDG&E filed a petition for review of the Appellate Court's decision on November 26, 2018. The petition argued that the purpose of inverse condemnation is to distribute the loss inflicted upon an individual throughout the community and socialize the burden to be assumed by society.[1] With this purpose, SDG&E argued that, "when inverse condemnation is applied to a governmental agency or public utility, that entity can unilaterally recoup the costs from the benefited public through taxation or rate increases." It further stated that the Court has extended inverse condemnation liability to privately owned utilities, such as SDG&E, on the express assumption that the CPUC will spread the costs of liability among ratepayers. Ultimately, the utility asserted that preventing a privately owned utility from recovering the costs of inverse condemnation liability through ratemaking damages the

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[1]Inverse condemnation is derived from the constitutional principle that private property may not be "taken" or damaged for public use without just compensation. In an inverse condemnation proceeding, a property owner seeks to hold the public or government entity strictly liable for any physical injury or damage that have been caused by that entity. Under this doctrine, liability can be found whether or not the damage was foreseeable and even if there was no fault or negligence by the public entity.

utility's financial solvency and ability to serve all ratepayers in its service territory. SDG&E also argued that the decision should be reviewed because Justice Patricia Benke, the justice who entered the decision, should have recused herself because she had previously sued SDG&E on negligence and inverse condemnation claims when she lost her house in the Guejito Fire. The petition was denied on January 30, 2019.

***Citizens Oversight, Inc., et al. v. CPUC, et al.*, Docket No. 15-55762 (9th Cir.)**. On September 20, 2018, the CPUC petitioned the Ninth Circuit Court of Appeals *not* to dismiss the federal lawsuit contesting the original CPUC settlement regarding the San Onofre closure, and instead sent it back to a lower court for further review. The Commission argued the $5.4 million in attorney fees that would be paid to Aguirre & Severson upon dismissal are unreasonable. Commission lawyers argued that if Aguirre & Severson are paid the millions in legal fees, the intervenor compensation fund would be undermined. The CPUC argued regulators were never a party to the Aguirre & Severson settlement announced in January 2018. The CPUC, therefore, opposed the motion to dismiss on the limited basis that it "prejudices the CPUC's exclusive ratemaking authority and duty to ensure the due process rights of all parties in CPUC proceedings and is contrary to public policy."

Aguirre & Severson, who sued the Commission and SCE in 2014, argued that the CPUC and SCE illegally worked out a deal to push the cost of decommissioning San Onofre onto ratepayers without proper notice and public comment, as required. The suit was dismissed in 2015, and the Ninth Circuit agreed to hear the appeal. Following the Ninth Circuit agreeing to hear the appeal, Aguirre began settlement talks with SCE. An agreement was reached and approved by the other consumer groups and stakeholders in the Commission's

San Onofre case. Severson claims that the legal fees at issue represent less than 1% of the savings ratepayers are receiving under the settlement and would be paid by SCE shareholders not ratepayers. Notwithstanding, the Commission's opposition the Ninth Circuit dismissed the appeal on November 15, 2018.

***In re Pacific Gas & Electric Company*, Case No. 19-30088-DM (Bankr. N.D. Cal.)**. On January 29, 2019, PG&E Corporation, the holding company for the state's largest electric energy utility, filed for Chapter 11 bankruptcy in federal court. During a hearing before the California State Senate Committee on Energy, Utilities and Telecommunications, PG&E stated the filing was necessary "by a confluence of factors resulting from the catastrophic and tragic wildfires that occurred in Northern California in 2017 and 2018, and PG&E's potential liabilities arising therefrom." The declaration directly cites to PG&E's potential liability of $30 billion from the fires as the reason for filing.

In 2017, PG&E caused seventeen of the eighteen fires when utility infrastructure came into contact with trees, or other ignitable material. At the time of filing in January there were approximately 700 complaints and 3,600 individual plaintiffs related to PG&E's role in the Northern California fires. Then in November 2018, a wildfire broke out near Paradise, California. This fire, called the "Camp fire," resulted in 86 fatalities and the destruction of almost 14 thousand residences. An official investigation into the cause of the fire is still ongoing. However, PG&E acknowledged: "based on current information . . . it is probable its equipment ignited the fire." PG&E, as a result of the Camp fire, took a $10.5 billion charge from its accounting. At the time of filing, PG&E knew of 46 complaints on behalf of 2,000 plaintiffs related the Camp fire.

Many of the law suits relate to liability under "inverse condemnation." Inverse condemnation is a strict liability action and is not based on negligence (see note 1 *supra*). Further, SB 901, passed in 2018, allowed PG&E cost recovery for the 2017 fires through the issuance of rate recovery bonds. However, this bill does not apply to any liability that may be found from the 2018 fires. In early January 2019, PG&E's problems worsened when their credit rating was downgraded to "junk status." This further inhibits PG&E's ability to access capital to fund liability assessments. PG&E was also found to have violated its criminal probationary status in connection with the 2010 San Bruno explosion. That offense was prosecuted criminally under federal law, with criminal probationary status resulting under the supervision of federal district court Judge Alsup. The finding allows the Court to add additional and even more costly requirements to resolve PG&E's ongoing safety issues. These requirements may entail inspection of all powerlines which could cost billions of dollars, or PG&E may be ordered to adopt the same energy de-energization plan that SDG&E was allowed to adopt where the utility shuts down power during dangerous weather events.

As of April, PG&E has increased its total liabilities associated with the bankruptcy filing to over $68.6 billion, with only $71.4 billion in assets claimed. The total liabilities grow "as it includes the liabilities related to the wildfires as well as all other PG&E liabilities," according to PG&E spokeswoman Kristi Jordan. As of April 15, 2019, the bankruptcy case is ongoing, however, as reported above the majority of the board of directors is being replaced and a new CEO was named (see MAJOR PROJECTS).

In the Matter of the Application of San Diego Gas & Electric Co. & Southern California Gas Co. for a Certificate of Public Convenience and Necessity for the Pipeline

***Safety & Reliability Project*, A.15-09-013.** The CPUC Safety and Enforcement Division found numerous examples of misrepresentations as to how quickly PG&E responded to requests to mark underground pipelines for excavators. California law gives PG&E 48 hours to respond to requests to locate and mark natural gas pipelines. However, between 2012 and 2017 the investigation found that 135,000 late tickets were issued. The CPUC staff stated, "[t]he problems presented significant risks to the public and went unreported for many years even though PG&E was aware that its system did not properly record late tickets at least as early as 2009 and continued to report to its leaders repeatedly about this issue." The CPUC's case against PG&E will be heard by an ALJ, and the Commission ultimately will decide what, if any, punishment is warranted due to the breach evident from its safety records. Of particular concern, the issue of record falsifications after PG&E was already under scrutiny for the 2010 San Bruno explosion, and wildfires of 2017 and 2018. State Senator Hill stated, "[i]t seems that they have certainly not learned from their mistakes and not changed the culture of the company to prioritize safety. They ignore safety." The CPUC will decide if the most recent example of safety issues presented by PG&E warrant more punishment on the company. *[24:1 CRLR 171–172]*

Telecommunications

***Mozilla Corp. v. Federal Communication Commission*, Case No. 18-1051 (D.C. Cir.).** On January 17, 2019, the D.C. Circuit Court denied the FCC's request to delay oral argument due to the Trump administration's shutdown. On February 1, 2019, oral arguments for the case began. *[24:1 CRLR 175]*

On August 27, 2018, New York City, along with 27 other local governments and mayors, filed an amicus brief in support of the CPUC, California, and other petitioners in the case against the FCC order ending Obama-era protections for net neutrality. This case began in January 2018, when California Attorney General Xavier Becerra filed a lawsuit against the FCC, joining some 20 other states in suit to block the FCC's repeal of net neutrality. *[24:1 CRLR 175; 23:2 CRLR 190]* The 21 state attorneys general filed a petition challenging the FCC's repeal as "arbitrary, capricious, and an abuse of discretion," and arguing the action violated Federal laws and regulations. Then, in March of 2018 these cases were consolidated and transferred to the District of Columbia to be heard by the U.S. Court of Appeals for the D.C. Circuit. *[24:1 CRLR 175]*

On November 5, 2018, the Supreme Court of the United States denied certiorari for the consolidated cases. Justices Gorsuch, Thomas, and Alito stated that they would have granted the cert and ruled against the Obama era net neutrality rules while Justice Roberts and Justice Kavanaugh recused themselves.

United States v. State of California (E.D. Cal. 2018). On October 26, 2018 Attorney General Xavier Bercarra entered into an agreement with then Attorney General Jeff Sessions to postpone the case until the net neutrality case in D.C. had been resolved. Later that same day, the federal district judge in charge of the case approved that agreement.

Prior to that event, (on September 30, 2018), the Governor signed SB 822 (Wiener) (Chapter 976, Statutes of 2018), considered by many to be the nationally strongest net neutrality law. On the same day, the United States DOJ, filed a lawsuit in California district court seeking to block and invalidate the new law. *[24:1 CRLR 175–176]* Analysts see three possible outcomes when comparing this suit with the current net neutrality litigation filed with the D.C. District Court. The first, would be that if the FCC loses the current case net neutrality would still be in effect and California's law would become redundant. The second, would be if the D.C. Court rules in favor of the FCC, but separately holds that states may pass their own net neutrality protections. Though this may seem like a win for California, the federal DOJ could still argue that SB 822 is invalid on impeding interstate commerce grounds. The third scenario would be that the court rules that the FCC both properly rolled back the old protections and that only the federal government can regulate the internet. This would invalidate SB 822 and would likely produce a victory for the U.S. Department of Justice and the diminution of net neutrality, with implications for access to, and private control of, the major communications mechanism of the modern world.

RECENT MEETINGS

♦ ***CPUC's Annual Update to the Legislature.*** The CPUC met with the legislature on March 12, 2019, to present its 2018 Annual Report on the actions it has taken this past year, its proposed budget for 2018–2019, and its work plan for 2019. The report focused largely on the approval of SB 901 and the Commission's efforts to comply with its requirements and review wildfire mitigation plans as efficiently as possible. The CPUC's operational budget for 2018–2019 totals $347,814,000, with an appropriation of $200,535,000 for the regulation of utilities, $37,966,000 for the regulation of transportation, and $109,313,000 for universal service telecommunications programs. Ultimately, the Commission's plan for 2019 includes: (1) assessing wildfire mitigation plans; (2) adopting mechanisms for determining the allocation of wildfire recovery costs without harming ratepayers; (3) examining de-energization practices of electric utilities; (4) overseeing PG&E's developments in leadership, financial status, and legal filings; and

(5) continuing to support consumers impacted by the wildfires through assistance with service restorations and bill credits.